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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 03 136 52703 Office: VERMONT SERVICE CENTER Date: MAY 24 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Elizabeth Ble

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by th[redacted]nd is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner,[redacted] is a company offering training in tennis. The beneficiary is a tennis competitor and coach. The petitioner seeks O-1 classification of the beneficiary, as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of th[redacted] Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ him in the United States as the head tennis coach for ranked junior tennis players for a period of three years at an annua[redacted]

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has received sustained national or international acclaim and is one of a small percentage who have risen to the very top of his field of endeavor.

On appeal, counsel for the petitioner submits a brief.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

> *Extraordinary ability in the field of science, education, business, or athletics* means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part, that:

> *Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics.* An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:
>
> (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
>
> (B) At least three of the following forms of documentation:
>
> (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The regulation at 8 C.F.R. § 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The beneficiary in this matter is a [redacted] The evidence on the record indicates that the beneficiary last entered the United States as a P-1 nonimmigrant alie[redacted]

After a careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial of the petition. The record is insufficient to establish that the beneficiary is an alien with extraordinary ability in athletics.

First, there is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). Nor is the record persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

For criterion number one, the petitioner stated:

> [The beneficiary] has been a participant in numerous professional tennis tournaments . . . and represented Jamaica in the [redacted] [The beneficiary] has always been within the few top players in Jamaica for more than ten years and also within the top players ranked in Jamaica.

The petitioner provided [redacted] with a web-site printout indicating that the beneficiary was ranked [redacted] The petitioner submitted a letter written by [redacted] member of the [redacted] which states that the beneficiary "had success on the professional tennis circuit." The petitioner also submitted a letter written [redacted]

> [The beneficiary] was top-ranked in the 18-and-Under Division in Jamaica. He received the "Most Outstanding Player" award in the All [redacted] [The beneficiary] has also performed well at the senior level, reaching the final of the Men's doubles in the [redacted] respectively.

In review, the petitioner has failed to establish the significance of these awards. Additionally, the petitioner failed to provide independent corroboration of the beneficiary's receipt of the awards.

On appeal, the petitioner submitted a copy of an unnamed website indicating that the beneficiary was [redacted] The petitioner failed to establish that this ranking is an internationally or nationally recognized award for excellence.

In cases such as this, where alien athletes/coaches seek O-1 classificatio[redacted] consider as comparable evidence, the success of athletes coached by the alien.

In the instant case, the petitioner indicated that the beneficiary coached th[redacted] enabling the team to qualify for th[redacted] In review, the beneficiary's players have not achieved significant recognition; hence, the evidence is insufficient to establish the beneficiary's acclaim.

Counsel further asserts that comparable evidence for criterion one is the beneficiary's membership in t[redacted] Given that the record shows that th[redacted] members, membership cannot be considered comparable evidence of the receipt of a nationally or internationally recognized prize or award for excellence.

For criterion number two, the petitioner asserts that the beneficiary's membership in the [redacted] criterion. The director determined that the petitioner failed to establish that th[redacted] outstanding achievements of its members, given that it has more than 35,000 members. [redacted] The beneficiary does not satisfy this criterion.

No evidence was submitted in relation to criterion number three.

For criterion number four, the petitioner asserts that the beneficiary satisfies this criterion by virtue of his role as a coach for th[redacted] his work with th[redacted] and his selection to serve as a volunteer official at USTA Junior-level tournaments. As a coach, the beneficiary was merely performing his job. The record fails to show that the beneficiary was selected to judge the work of others on the basis of his acclaim. The beneficiary does not satisfy this criterion.

No evidence was provided in relation to criteria numbers five and six.

For criterion number seven, the director determined that the beneficiary satisfies this criterion. This portion of the director's decision shall be withdrawn.

Counsel for the petitioner asserted that the beneficiary had served in essential coaching capacities with the [redacted] as well as the [redacted] plus as a coach for the [redacted] The assertions of counsel do not constitute evidence. [redacted]

The petitioner asserts that the beneficiary "will work in the leading, essential and critical capacity as [redacted] for [redacted] at our distinguished tennis tournament training facility." The regulation requires that the petitioner establish that the beneficiary has been employed in a critical or essential capacity. It is not enough to state that the beneficiary will serve in such a capacity in the future. The beneficiary does not satisfy this criterion.

Fo[redacted] the petitioner asserts that the proffered base salary of $62,000 is a salary above the average for a [redacted] The petitioner submitted a copy of a wage survey printed [redacted] that indicates that median annual earnings of coaches and scouts were [redacted] top ten percent earned more [redacted] The beneficiary would satisfy this criterion if the proffered wage had been evidenced by contracts or other reliable evidence as required by the regulation.

Counsel for the petitioner asserts that the criteria at 8 C.F.R. § 214.2(o)(iii)(B) do not readily apply, and as comparable evidence submits expert letters v[redacted] of the [redacted] former Russian tennis coach of the [redacted] While this evidence would bolster other evidence of extraordinary ability, the record contains no firsthand evidence of athletic or coaching achievements by the beneficiary or by athletes he has coached. This evidence is insufficient, without more, to establish eligibility for this restrictive visa classification, which requires extensive documentation of extraordinary achievement.

The burden of proof in these proceedings rests solely with the petitione[redacted]
Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.