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FILE: LIN 06 117 54114 Office: NEBRASKA SERVICE CENTER Date: MAR 22 2007

IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



**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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues that the beneficiary meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has earned sustained national or international acclaim at the very top level.

This petition, filed on March 13, 2006, seeks to classify the beneficiary as an alien with extraordinary ability as a Major League Baseball player for the Washington Nationals. At the time of filing, the beneficiary was entering his second season with the Washington Nationals.<sup>1</sup>

The petitioner submitted a July 7, 2006 letter of support from [REDACTED], Assistant General Counsel, Major League Baseball Players Association, stating:

The Major League Baseball Players Association (“MLBPA”) is the union that represents Major League Baseball players. In order for a Major League player to obtain immigrant classification and admission to the United States under Section 203(b)(1)(A) of the Immigration and Nationality Act, the petition on behalf of such player must establish, pursuant to the Immigration Act of 1990 and the rules implementing that Act, that the player has “extraordinary ability” or is “internationally recognized” as a baseball player.

In support thereof, the MLBPA hereby verifies that only players who have “extraordinary ability” and are “internationally recognized” as baseball players are tendered and signed to contracts with Major League Baseball clubs.

On behalf of Major League Baseball, and for purposes of any petition filed by a Major League player for immigrant classification, the MLBPA requests that the USCIS accept (a) such players Major League contract as conclusive evidence that such player has “extraordinary ability” and/or is “internationally recognized” as a baseball player, and (b) this letter as an advisory opinion with respect to each such petition.

[REDACTED] cites no statute, regulation, standing precedent, or other legal authority to support his assertion that baseball players who “are tendered and signed to contracts with Major League Baseball clubs” automatically qualify for extraordinary ability classification pursuant to section 203(b)(1)(A) of the Act. Eligibility for extraordinary ability classification rests on the individual player’s fulfillment of the statutory and regulatory requirements set forth at section 203(b)(1)(A) of the Act and at 8 C.F.R. § 204.5(h). We will not infer national or international acclaim from the act of being tendered and signed to a Major League Baseball contract. While the beneficiary’s Major League Baseball contract carries significant evidentiary weight, it relates to only one of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3), of which an alien must meet three individually.<sup>2</sup> Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

The Service disagrees that all athletes performing at the major league level should automatically meet the “extraordinary ability” standard. . . . A blanket rule for all major league athletes would contravene Congress’ intent to reserve this category to “that small percentage of individuals who have risen to the very top of their field of endeavor.”

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<sup>1</sup> According to a December 2006 Associated Press article posted on ESPN’s internet website, the Seattle Mariners signed the petitioner to a one-year, \$5.5 million contract for the 2007 Major League Baseball season. See article accessed at <http://sports.espn.go.com/mlb/news/story?id=2683902> on March 7, 2007.

<sup>2</sup> The beneficiary’s Major League Baseball contract relates to the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix).

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. We find that the petitioner's evidence satisfies the following criteria.

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

In response to the director's request for evidence, the petitioner submitted evidence from Major League Baseball's official internet website showing that the beneficiary was selected as the American League's "2004 Player of the Week winner" during the week of May 3<sup>rd</sup> through May 9<sup>th</sup> for his outstanding play during that period. Other individuals selected for this honor in prior weeks included renowned players such as [REDACTED] of the New York Yankees [REDACTED] of the Seattle Mariners, and [REDACTED] of the Boston Red Sox. We find that the beneficiary's American League Player of the Week award from Major League Baseball is adequate to satisfy this criterion.

*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.*

The petitioner submitted information printed from the 2006 World Baseball Classic internet website indicating that the beneficiary was among ten outfielders (including the likes of [REDACTED] and [REDACTED] named to represent the Dominican Republic. On appeal, the petitioner submits a letter from [REDACTED] Assistant General Manager and Travel Director, Dominican Republic National Team, confirming that his team selected the beneficiary "to be its starting right fielder for the inaugural World Baseball Classic" held in February and March of 2006. While the Dominican Republic National Team is not an "association," we could consider the beneficiary's selection to such a team as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4) because being named to the roster of a national team participating in the World Baseball Classic is the result of multi-level national selection process, supervised by national baseball experts. Given the level of accomplishment required to secure a place on a country's World Baseball Classic national team (which competes at the international level), it appears reasonable to conclude that it is the functional equivalent of an association of the type contemplated in the regulations.

*Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

In general, in order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a

particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>3</sup>

The petitioner submitted articles about the beneficiary appearing in major media such as the *Washington Post* and *Sports Illustrated* and posted on websites such as SI.com and ESPN.com (which provide national sports coverage). Therefore, we find that the petitioner's evidence satisfies this criterion.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

The petitioner submitted information printed from the Washington Nationals player profile section of Major League Baseball's official internet website. The beneficiary's "2005 Career Highlights" states: "Led the Nationals in home runs and RBIs [Runs Batted In]. . . . Collected career hit No. 1000 against the Braves on Sept. 9. . . . Had 12 game-winning RBIs, which led the Nationals. Was one home run shy of matching the franchise record in home runs on the road."

The petitioner also submitted the Washington Nationals media guide for 2006 which describes the beneficiary's 2005 season as follows:

In first season with the franchise, was Washington's top offensive threat in first season with the club . . . led the Nationals in most offensive categories, including runs (81), hits (156), total bases (264), home runs (24), RBI (76), HBP (19) and outfield assists (10). . . paced Washington with 12 game-winning RBI and 23 go-ahead RBI. . . also tied for the team lead in games . . . and slugging percentage. . . ranked among NL [National League] leaders in road batting (7<sup>th</sup> at .320).

On appeal, the petitioner submits 2004 offensive statistics for Anaheim Angels players printed from Major League Baseball's official internet website. According to these statistics, the beneficiary ranked second on the team in games played (148), home runs (27), RBIs (104) and total bases (281).

We find that the preceding evidence is adequate to demonstrate that the beneficiary performed in a leading or critical role as a starting player for both the Washington Nationals and the Anaheim Angels. The record also adequately establishes that these teams have a distinguished reputation. Therefore, the beneficiary meets this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The petitioner submitted a contract signed in December 2003 between Angels Baseball LP and the beneficiary. This contract states that the beneficiary's rate of compensation is as follows: \$2.2 million for the 2004 season, \$3.5 million for the 2005 season, and a \$4 million option for the 2006 season.

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<sup>3</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

In response to the director's request for evidence, the petitioner submitted an April 5, 2006 Associated Press article posted on ESPN's internet website listing the "2006 starting salaries for the 409 Major League Baseball players . . . earning \$1 Million or more." The beneficiary's \$4 million salary from the Washington Nationals ranks 184<sup>th</sup> on the list.

On appeal, the petitioner submits 2006 statistics originating from the Office of the Commissioner for Major League Baseball reflecting 7,554 total players under contract. On appeal, counsel states that the beneficiary's salary of \$4 million is "a salary higher than the salaries received by more than 97% of all professional baseball players 'under contract' in the United States." We concur with this observation. The record shows that the beneficiary has commanded a high salary in relation to other professional baseball players. Thus, the petitioner's evidence is adequate to demonstrate that the beneficiary meets this criterion.

Accordingly, the beneficiary has satisfied more than three of the regulatory criteria required for classification as an alien of extraordinary ability. Pursuant to the statute and regulations as they are currently constituted, the beneficiary qualifies for the classification sought.

In this case, the totality of the evidence establishes an overall pattern of sustained national acclaim and extraordinary ability. The petitioner has also established that the beneficiary seeks to continue working in the same field in the United States and that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has overcome the stated grounds for denial and thereby established the beneficiary's eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.