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U.S. Citizenship and Immigration Services

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[redacted]

FILE: LIN 06 199 53137 Office: NEBRASKA SERVICE CENTER Date: MAR 0

IN RE: Petitioner: [redacted]
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:

[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.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

On appeal, counsel asserts that the director erred in failing to issue a request for additional evidence or notice of intent to deny prior to denying the petition. The regulation at 8 C.F.R. § 103.2(b)(8)(i) permits the director to deny the petition where there is evidence of ineligibility. Even assuming the director erred in failing to issue either a request for additional evidence or notice of intent to deny, the most expedient remedy for that error would be to consider any additional evidence of eligibility on appeal. Counsel submits no new evidence on appeal and does not identify new evidence that is or would become available within the response period for a request for additional evidence. As such, counsel has not demonstrated how a remand for a request for additional evidence or notice of intent to deny would be meaningful in this matter. Counsel's assertions on the merits will be discussed below. For the reasons discussed in the body of this decision, we concur with the director that the petitioner, a tennis player at the collegiate level who has yet to turn "pro," has not demonstrated his eligibility for the exclusive classification sought.

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 into 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 (Nov. 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 he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a tennis player. On appeal, counsel asserts that the regulations do not state that an individual must achieve a high level in professional ranks, but must simply rise to the very top of his field. We cannot ignore, however, that the petitioner's field includes professional tennis players. The supplementary information at 56 Fed. Reg. 60899 (Nov. 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."

Thus, not even all professional tennis players can qualify for the classification sought. While the regulations may not explicitly exclude collegiate athletes in a sport that has a flourishing professional league, the petitioner bears a high burden. He must compare with the small percentage at the top of his field, including those competing professionally.[1] Significantly, as will be discussed in more detail below, while the petitioner's references praise his talent and ability, they only discuss his future potential to compete successfully at the professional level.

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.

On appeal, counsel asserts that CIS "has recognized the [regulatory] criteria are not readily applicable to athletes" and that, therefore, we should accept "comparable" evidence pursuant to 8 C.F.R. § 204.5(h)(4). The regulation at 8 C.F.R. § 204.5(h)(4) does permit the submission of comparable evidence where the regulatory criteria are not readily applicable. Counsel cites no authority, however, for the assertion that CIS has adopted the broad conclusion that the regulatory criteria are not applicable to athletes. In fact, in *Matter of Price,* 20 I&N Dec. 953 (Act. Assoc. Commr. 1994), a professional

[1] The petitioner has not demonstrated that professional tennis is limited to college graduates. We note that, according to www.tennis.about.com, [redacted] i turned professional at age 16 and won Wimbledon at age 22.

golfer was found to qualify for classification under section 203(b)(1)(A) of the Act without any reference to "comparable evidence" or citation to 8 C.F.R. § 204.5(h)(4). In fact, the golfer's eligibility was demonstrated under the regulatory criteria because he had won nationally or internationally recognized prizes or awards pursuant to 8 C.F.R. § 204.5(h)(3)(i), was the subject of numerous newspaper articles in major media pursuant to 8 C.F.R. § 204.5(h)(3)(iii) and had received significantly high remuneration pursuant to 8 C.F.R. § 204.5(h)(3)(ix).

Even if all of the regulatory criteria were inapplicable, and we note that initially counsel asserted that the petitioner meets several of them, any evidence submitted pursuant to 8 C.F.R. § 204.5(h)(4) must be sufficiently "comparable" to the ten objective criteria set forth at 8 C.F.R. § 204.5(h)(3). In this matter, counsel references the subjective opinions of the petitioner's references as "comparable." We are not persuaded that necessarily subjective reference letters are comparable to the objective evidence required under the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3).

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). While we will consider the reference letters below, we will consider them only insofar as they relate to the 10 regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3).

The petitioner has submitted evidence that, he claims, meets the following criteria.[2]

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

Initially, counsel asserted that the petitioner meets this criterion based on the following selections: Southeastern Conference (SEC) Player of the Week (the only player in SEC history to be so named the first week of eligibility), Second Team All-SEC, Atlantic Coast Conference (ACC) Player of the Week for two consecutive weeks (the only player to be voted in this spot for two consecutive weeks in 2006) and Intercollegiate Tennis Association (ITA) 2006 All-America Honors.

With no further explanation, counsel strongly implies on appeal that this criterion does not actually apply to athletics. We emphasize that the petitioner's failure to meet a given criterion does not render

[2] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

that criterion inapplicable to his entire field. The assertion that prizes and awards do not apply in the field of athletics cannot be credibly entertained. The field of athletics includes national and international competitions in almost every if not every sport. In fact, competition is one of the most fundamental aspects of nearly every sport. Examples of athletic prizes and awards include the Olympics, the World Cup in soccer, the Stanley Cup in hockey, the Super Bowl in American football, the World Series in baseball and, in the petitioner's sport of tennis, Wimbledon and the U.S. Open.

The petitioner has not established the significance of selection as "player of the week" such that we can consider such selection as a prize or award. Even if we did find that such selection is a prize or award, SEC and ACC recognition is purely regional. As such, those selections cannot be considered nationally or internationally recognized prizes or awards for which the most experienced and renowned members of the field nationally compete.

The record contains no evidence regarding the number of collegiate players selected for ITA All-American Honors or other evidence of the significance of that selection. Moreover, it would appear that this selection is limited to college tennis players. The most experienced and renowned tennis players in the country do not aspire to win ITA All-American Honors.

We emphasize that the issue is not that the petitioner received the above recognition while a college student but that the recognition is limited to college students. The petitioner's sport includes professional open tournaments and other prestigious cups. While the petitioner was selected for the Bahamian team to compete in the Davis Cup, the record lacks evidence that the petitioner won any prizes or awards in that tournament. Moreover, it appears that the petitioner has not won national collegiate level tournaments. Specifically, the June 2, 2006 article on CSTV.com, an internet division of CBS Sports devoted to college sports, reveals that the petitioner made his program's first round of 16 appearances at the NCAA tournament in five years but does not reflect that the petitioner won this national collegiate tournament.

In light of the above, the petitioner has not established that he meets 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.*

Counsel initially asserted that the petitioner's membership in the National Collegiate Athletic Association (NCAA) and the ITA serve to meet this criterion. Counsel further asserts that both organizations "require stringent eligibility and conduct standards for membership and are nationally recognized." The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). The record does not contain the official membership criteria for either organization. Thus, the petitioner has not submitted the primary initial evidence required to meet this criterion. Moreover, on appeal, counsel states that *all* student athletes in

their respective colleges are members of the NCAA and *all* collegiate tennis players are members of the ITA. Assuming this claim is true, these memberships do not set the petitioner apart from other college tennis players. We cannot conclude that merely playing college sports is an "outstanding achievement" as contemplated by the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Moreover, professional and academic conduct are not outstanding achievements in tennis.

On a case-by-case basis, this office has considered national team membership as potentially comparable evidence to meet this criterion. In 2003, the petitioner was selected for the Bahamian national team to compete in the American Zone 1 for the 2004 Davis Cup. While this team membership is persuasive evidence relating to this criterion, the petitioner was selected in December 2003, two and a half years before the petition was filed. Thus, without evidence indicative of or consistent with national or international acclaim more proximate to the date of filing, we cannot conclude that this team membership is evidence of *sustained* national or international acclaim.

> *Published material 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.*

On appeal, this is the only criterion counsel acknowledges as applicable to the petitioner's field. The petitioner initially submitted articles in *The Nassau Guardian,* a Bahamian publication that appears to be called *The Journal* and the Bahamian *Tribune* edition of the *Miami Herald* about the final selections for the Bahamian National team for the Davis Cup. The only one of these articles to focus on the petitioner is the article in the *Tribune*. The petitioner did not submit the circulation data or any other evidence that these publications are major media. Whether or not the publications are professional or major trade publications or other major media is an element of this criterion set forth at 8 C.F.R. § 204.5(h)(3)(iii). It is the petitioner's burden to establish that he meets every element of a given criterion.

In addition, the petitioner submitted evidence of postings of his results on the websites of the colleges where he has attended and the ACC. While some of the articles on the official college websites can be considered "about" the petitioner, the articles posted on the ACC's website cannot. While Internet sites are technically accessible nationally and even internationally, it cannot be credibly asserted that every Internet site has the same degree of national or international influence. Anyone can create a website and post articles. The mere act of posting an article online does not transform what is otherwise a local college newspaper article or regional conference newsletter into major media. The record lacks evidence that these sites routinely attract national or international attention beyond the audience of a physical college newspaper - students, parents and alumni.

The record does contain an article about the petitioner accessed on College Sports Television's website, www.cstv.com. The article is authored by a writer for *The Crimson White*, the University of Alabama's college paper. The petitioner was a student at the University of Alabama at the time. The petitioner has not demonstrated that *The Crimson White* is major media. The record does not establish the

significance of this article being accessible on College Sports Television's website. For example, the petitioner did not submit evidence regarding how many college newspaper stories are accessible on this site. Without such evidence, the petitioner cannot establish that this article constitutes major media.

The *Miami Herald* published an article on the petitioner and a fellow University of Miami tennis player in May 2006. This article does not demonstrate the petitioner's recognition outside of Florida. While the petitioner is mentioned on Stanford University's website, the article cannot be said to be "about" the petitioner as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Rather, the article reports on all the results from a specific tournament.

The petitioner's transfer to the University of Miami is discussed in an issue of *Florida Tennis.* The same publication listed the results of the University of Miami's team at the University of Virginia Invitational, including the petitioner's. This last article is not primarily "about" the petitioner. Regardless, the petitioner has not established that *Florida Tennis* has a national circulation or can otherwise be considered major media. The coverage of the petitioner in this local publication does not seem indicative of or consistent with national or international acclaim.

Finally, the petitioner submitted the June 2, 2006 article on College Sports Television's website reporting his selection and the selection of another University of Miami player for ITA All-American Honors. There is no byline for this article, suggesting it may be a press release rather than independent journalistic coverage.

The petitioner did not submit the required initial evidence regarding the foreign published materials establishing their publication in major media. Moreover, those publications predate the filing of the petition by two and a half years and, thus, are not indicative of *sustained* national or international acclaim. The U.S. press coverage appears commensurate with the petitioner's status as a successful college player with some regional recognition. It is not on the level of a nationally acclaimed tennis player.

In light of the above, the petitioner has not established that he meets this criterion.

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

Initially, counsel asserted that the petitioner meets this criterion based on his selection for the Bahamian National Team for the Davis Cup and favorable statements by the petitioner's coach and a U.S. Tennis Association (USTA) coach.

We have already considered the petitioner's selection for the Bahamian National Team under the membership criterion above set forth at 8 C.F.R. § 204.5(h)(3)(ii). Under this criterion, we must consider the nature of the role the petitioner was selected to fill and the reputation of the entity that selected him. The nature of the role itself must be so significant that the very selection for that role is

indicative of or consistent with national or international acclaim. We do not question the national reputation of the Bahamian National Team. We are not persuaded, however, that mere selection to compete for this team can serve to meet this criterion. His selection does not set him apart from the other players selected. For example, there is no evidence he was selected as team captain or another leading or critical role that set him apart from his teammates.

[redacted], Head Men's Tennis Coach at the University of Miami and ACC Conference Coach of the Year, asserts that the petitioner is "a formidable player at the college level" and "the best player that I have coached." [redacted] does not assert that the petitioner was selected for a specific role for the University of Miami or the University of Alabama that is considered a leading or critical role for either university. Significantly, [redacted] goes on to state that the petitioner "will likely be one of the best athlete's [sic] to come out of the college ranks. Furthermore, [the petitioner] has the ability to achieve great success on the pro tour, *potentially becoming* a top 10 player." (Emphasis added.) This statement is not consistent with someone who is already within that small percentage at the top of his field.

[redacted], a USTA coach, asserts that the petitioner is "one of the most talented players in the country." Once again, this statement does not affirm that the petitioner was selected for a leading or critical role for an organization with a distinguished reputation. Moreover, like [redacted], Mr. [redacted] goes on to state that the petitioner's collegiate success is a good indicator of his future potential as a professional player. Contrary to counsel's assertion on appeal, [redacted] does not compare the petitioner to [redacted] and [redacted] himself. While [redacted] mentions his own accomplishments and that he coaches [redacted], these statements are the basis of his own expertise in the field. Specifically, after discussing his accomplishments and his coaching duties, he then concludes that he has "seen the youth of tennis grow" and feels that the petitioner "not only can compete but also be successful at the professional level." This statement does not compare the petitioner to [redacted] or [redacted]

Comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4).

As stated above, counsel asserts that the reference letters should serve as "comparable evidence" pursuant to 8 C.F.R. § 204.5(h)(4). As also stated above, we are not persuaded that the necessarily subjective opinions of the petitioner's references are comparable to the objective criteria set forth at 8 C.F.R. § 204.5(h)(3). Moreover, while the letters praise the petitioner's talent, they do not provide specific examples of achievements that place the petitioner in the small percentage of those who have reached the top of the field, including professionals.

We also acknowledge, however, that the petitioner has submitted evidence of his FILA Collegiate Tennis Rankings for Division I. In these rankings, the petitioner is ranked third in singles and 13th in doubles as of June 2, 2006.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a tennis player to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a tennis player and some regional recognition, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.