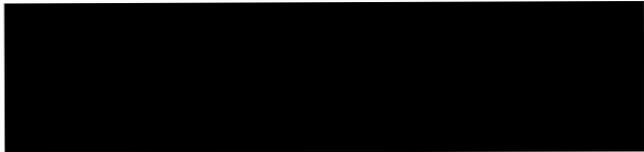


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**U.S. Citizenship
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FILE: WAC 07 026 52214 Office: CALIFORNIA SERVICE CENTER Date: **MAY 12 2008**

IN RE: Petitioner:
Beneficiary:



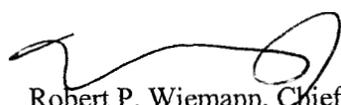
PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



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 nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is self-described as a tennis, fitness and sports club. It seeks to employ the beneficiary as a tennis professional. The company filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in athletics.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has achieved sustained national or international acclaim as a tennis instructor with extraordinary ability in athletics.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner submitted sufficient evidence to establish that the beneficiary qualifies for O-1 classification pursuant to the standards set forth at 8 C.F.R. § 214.2(o)(3)(iii). Counsel submits a brief, but no new evidence, in support of the appeal.

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 extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is “at the very top” of her field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii).

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:

Evidentiary criteria for an O-1 alien of extraordinary ability in the arts. 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 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 either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence;
 - (8) Evidence that 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 record consists of a petition with supporting documentation, a request for additional evidence (RFE) and the petitioner's reply, the director's decision, an appeal and an appellate brief. The beneficiary in this case is a native and citizen of Sweden who last entered the United States on August 8, 2006 as an F-1 nonimmigrant student. The record shows that the beneficiary competed as a tennis player in Sweden beginning in 1995, and that she has some experience as a tennis instructor in the year preceding the filing of the petition. The petitioner seeks to classify the beneficiary as an alien with extraordinary ability as a tennis professional. The petitioner indicates that the proffered position "will be that of teaching," and will include teaching fundamentals and advanced techniques, performing exhibitions, and offering clinics.

In denying the petition, the director found that while the beneficiary may have some acclaim as a competitive tennis player, the record was insufficient to establish that the beneficiary had achieved sustained acclaim as a tennis teacher, instructor or coach.

On appeal, counsel for the petitioner asserts that the petitioner established that the beneficiary meets at least three of the eight evidentiary criteria for O-1 classification as outlined at 8 C.F.R. § 214.2(o)(3)(iii)(B) and thus is qualified for the benefit sought. Counsel does not directly address the director's finding that the petitioner's evidence was lacking with respect to the beneficiary's sustained acclaim as a tennis instructor or coach. Rather, counsel's arguments primarily emphasize the beneficiary's qualifications as a competitive tennis player.

As noted by the director, while a competitive tennis player and a tennis coach share knowledge of tennis, the two rely on different sets of basic skills. Thus, competitive tennis and tennis coaching/instruction are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918.

The statute requires that the beneficiary seek entry into the United States "to continue work in the area of extraordinary ability." Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i) (2007). U.S. Citizenship and Immigration Services (USCIS) will not assume that an alien with extraordinary ability as an athlete has the same level of expertise as a coach or instructor of his or her sport. However, given the nexus between athletic competition and coaching or sports instruction, in a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national or international level, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that it can be concluded that coaching is within the beneficiary's area of expertise. Specifically, in such a case, USCIS will consider the level at which the alien acts as a coach. Accordingly, we will address the evidence regarding the beneficiary's accomplishments as both a tennis player and coach.

Upon review and for the reasons discussed herein, the petitioner has not established that the beneficiary is fully qualified as an alien with extraordinary ability in athletics.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. Here, the petitioner has not submitted evidence that the beneficiary has received a major, internationally recognized award.

In cases such as this one, where petitioners seek O-1 classification of an alien athlete and coach, USCIS will consider the success of athletes coached by the alien as comparable evidence. The record also does not demonstrate that the beneficiary has instructed, trained or coached any tennis players who have won major, internationally recognized awards.

As there is no evidence that the beneficiary has received a major, internationally recognized award, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

In order to meet criterion number one, the petitioner must submit documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 214.2(o)(3)(iii)(I). The petitioner submitted a letter from [REDACTED], who stated that he has been the Head Tennis Professional at Karlskrona Tennisklubb (KTK) in Sweden since 1990. He indicated that he has known the beneficiary since 1992 and began coaching her in Sweden in 1995. Mr. [REDACTED] further stated that the beneficiary has "qualified for every Swedish Championship" since the age of 11, and went on to discuss particular tournament wins. Mr. [REDACTED] indicated that the beneficiary became nationally recognized in Sweden in 2000 when the KTK team of which she was a member qualified for the "Elite Division of Team Tennis in Sweden." He stated that the eight Elite Division teams play "to become the best team in the Nation."

The petitioner also submitted a list of the beneficiary's tennis tournament results and awards for the years 1995 through 2005, for tournaments in which she was a semi-finalist, finalist or champion. Her championships included the following:

- 1996 - Champion, Tenniskoletavlingen, Girls Singles 14 years or younger
- 1999 – Champion, Slazenger Cup, Girls' Doubles, 13-18 years
- 2000 – Champion, Swedish Team Tennis Leagues, Ladies' Division 1A
- 2000 – Champion, BLT Cup, Girls' Singles, 18 years or younger
- 2001 – Champion, Indoor District Championship, Ladies, Singles
- 2001 – Champion, Indoor District Championship, Mixed Doubles
- 2001 – Champion, Tyger Cup, Ladies Doubles
- 2001 - Champion, Kollevikspelen, Ladies' Doubles
- 2001 – Received the "Feat-award" from the City of Karlskrona
- 2002 – Champion, The Ystad Games, Ladies' Singles
- 2002 – Champion, Karlskronavakan, Ladies' Singles
- 2003 – Champion, ITA Regional Championship, NAIA Florida Region Women's Doubles
- 2003 – Champion, 9th Annual Intercollegiate Tournament WIU, A-Division Consolation Singles
- 2005 – Champion, Florida Southern College Invitational Tennis Tournament, Ladies' Singles (USTA)

The petitioner stated that the listed tournaments are "Category 3" Swedish national tournaments, while the Swedish Indoor and Outdoor Championship is an invitational "Category 2" tournament, and the "SALK Open" is a "Category 1," International tournament. The petitioner provided copies of photographs of various medals, trophies and awards received by the beneficiary.

The petitioner also submitted a letter from [REDACTED] Director of Athletics at Webber International University in Florida, who confirmed that the university competes as a member of the National Association of Intercollegiate Athletics (NAIA). He stated that the beneficiary is a "capable tennis player," and was a three-time All-Academic Florida Sun Conference team member, and twice an NAIA Academic All-American.

In a cover letter submitted in support of the petition, counsel for the petitioner noted that the beneficiary "qualified for every Swedish championship" since 1994, and won 10 tournaments in Sweden between 1995 and 2002. Counsel emphasized that the high point of the beneficiary's career in Sweden was when she took the KTK club to the Elite Division.

Finally, in a letter dated July 9, 2006, the petitioner stated that the beneficiary is currently playing regional tournaments, pro-am events, and is competing "in the highest level of the Orlando team tennis league."

Overall, the evidence is insufficient to establish that the beneficiary's tournament victories resulted in her receipt of nationally or internationally recognized prizes or awards for tennis excellence. Although the petitioner states that all of the beneficiary's tournaments in Sweden were at the national level, the record contains insufficient evidence to support this claim. For example, an "Indoor District Championship" would appear to be a regional, rather than a national competition, and in fact, Mr. [REDACTED] noted that the beneficiary was not nationally recognized until 2000 when her team qualified for the "Elite Division" in Sweden. There is no evidence that she ever achieved a national ranking among Swedish tennis players or that she achieved sustained national recognition in her home country.

Furthermore, the petitioner has not shown that the beneficiary's competitive tennis play in the United States at the collegiate level has resulted in her receipt of any nationally or internationally recognized awards. The record also contains no evidence that the beneficiary has instructed or coached players who have won national or international tournaments or other nationally or internationally recognized prizes or awards for tennis excellence. Accordingly, the beneficiary does not meet this criterion.

In order to establish that the beneficiary meets the second criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), the petitioner must document 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.

In this regard, the petitioner submitted a copy of a certificate issued to the beneficiary by the United States Professional Tennis Association (USPTA), dated November 4, 2005, showing that the beneficiary "completed all requirements, including an extensive examination of teaching, playing and business skills, necessary for the rating of Professional 2." The certificate was accompanied by a letter dated June 29, 2006 from [REDACTED] Director of Operations of the USPTA, who noted that the organization represents professional tennis teachers and coaches, and has over 14,000 members. Mr. [REDACTED] noted that the beneficiary's certification "exemplifies knowledge and excellence in teaching the sport of tennis to others." Counsel for the petitioner emphasized that "not all tennis pros are eligible to be members in USPTA – rather, only selected pros, those who have successfully passed a rigorous certification exam, are eligible for USPTA membership." Counsel further stated that the Professional 2 certification "is granted only to those few individuals who are able to successfully pass the most rigorous written

and performance tests administered by the USPTA," and that less than 5,000 people hold a Professional 2 certification.

Upon review, the petitioner has not established that the beneficiary meets the second criterion based upon her membership in the USPTA. While her achievement of Professional 2 certification, apparently the second highest certification offered by the organization, is noteworthy, the record is devoid of any evidence that "outstanding achievement" is a pre-requisite to taking the USPTA's certification examination, or that membership in the organization required the beneficiary to be judged by recognized national or international experts in her field.

To meet the third criterion, the petitioner must submit 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. 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

The petitioner submitted photocopies of many articles that mention the beneficiary, although not all of the submitted evidence includes the title, date and author of such published material. With respect to the beneficiary's achievements in the United States since 2002, the petitioner provided copies of two articles from *The Ledger*, which counsel states "covers Polk County and Central Florida," and one article printed in the Webber International University student newspaper. The petitioner has not established how either of these publications could be classified as a professional publication, major trade publication or major media. Moreover, the criterion requires evidence that the beneficiary has *achieved national or international recognition* as evidenced by the published material. None of these materials indicate that the beneficiary has achieved national or international recognition as a tennis player or as a tennis instructor.

With respect to the beneficiary's career in Sweden, the petitioner submitted numerous articles dated from 2000 through 2002 which reference the beneficiary, the majority of which were published in *Sydostran*, although one article was published by the Karlskrona Tennis Club, and one was published by the *Bleking Lans Tidning*. While the beneficiary's name appears in all of the submitted articles, many of them simply reference her results at various matches. Counsel emphasizes that the beneficiary's departure from Sweden "was covered with much fanfare" by the "major Swedish newspapers." Counsel refers to an article titled "Sophie Travels Toward the Adventure," published in *Sydostran* on August 21, 2002. The article discusses the beneficiary's academic scholarship to attend school in the United States, her intended academic major, her desire to "try to get the fourth single on the school team," and her hopes to become a professional tennis player. While this article suggests that the beneficiary had some local or regional recognition in Sweden as a competitive tennis player, the submitted articles as a whole do not evidence that the beneficiary has achieved sustained national or international recognition in her sport. Furthermore, the petitioner provided no information regarding the Swedish publications, and thus it is impossible to conclude that the submitted articles could be considered as "major media" coverage of the beneficiary.

Similarly, the petitioner did not provide any published materials referencing the beneficiary's work as a tennis coach or instructor, or any published materials relating to tennis players who have been coached by the beneficiary. Accordingly, the petitioner has not satisfied this third criterion.

To meet the fourth criterion, the petitioner must submit evidence of the beneficiary'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. 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

Counsel for the petitioner claimed that the beneficiary meets this criteria based on her work experience with Tennis:Europe, which is described as "an internationally recognized junior tennis tournament." According to the beneficiary's resume, she spent three weeks with Tennis:Europe in Holland and Spain during the summer of 2006, during which time she: "coached and chaperoned a group of American teenagers during tournament play in Europe" and was responsible for "match analyses, practice sessions, mid-term and final evaluations, match play, finances, and traveling." The petitioner also submitted a letter from [REDACTED] of Tennis:Europe, who confirmed the beneficiary's duties as stated in her resume. The petitioner did not establish how the beneficiary's responsibilities with Tennis:Europe rise to the level of judging the work of others in her field of specialization.

Counsel has also stated that the beneficiary "is active in the Florida Division of the USPTA," and that she "trains, coaches, and judges individuals who are playing on various local, national and international tours." Counsel referenced no specific activities undertaken by the beneficiary with the Florida USPTA, nor any specific events at which the beneficiary has served as a judge. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Based on the foregoing, the petitioner has not established that the beneficiary meets the fourth criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

The fifth criterion requires the petitioner to submit evidence of the beneficiary's original scientific, scholarly, or business-related contributions of major significance in the field. 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

The petitioner submitted support letters from [REDACTED], Director of Operations of the USPTA; [REDACTED], Head Tennis Professional of Karlskrona Tennis Club; [REDACTED] of Tennis:Europe; [REDACTED], Director of Athletics at Webber International University; [REDACTED], Head Tennis Professional, Interlachen Country Club; [REDACTED], Director of Tennis of Heathrow Country Club; [REDACTED], Business Unit Manager of Bollettieri Tennis Academy; [REDACTED], Strategy Zone Specialist of Bollettieri Tennis Academy; [REDACTED], Director of Club Development for the Swedish Tennis Association; [REDACTED], a professional tennis player; and [REDACTED], Executive Vice President of IMG. These individuals all praise the beneficiary's accomplishments and skills as a tennis player and abilities as a juniors coach, but none of their letters indicate that the beneficiary has made original contributions of major significance to her field.

Similarly, the petitioner has not attempted to establish that the beneficiary has authored scholarly articles in the field in professional or major trade publications or other major media, or otherwise claimed that the beneficiary meets the sixth criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6).

The petitioner has not claimed that the beneficiary meets the seventh criterion in that she has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). According to the beneficiary's resume, the beneficiary's relevant coaching experience

includes the above-referenced three-week tenure with Tennis: Europe and an internship with the Bollettieri Tennis Academy during which she assisted coaches with drills, executed private lessons for short-term students, organized student matches, received training and supervised students during trips. The record shows that the beneficiary has also been employed by the petitioning organization since February 2006 as an assistant to the head tennis professional at the petitioner's country club. Mr. [REDACTED] stated that the beneficiary has "the desired skills and insight necessary to coach most effectively at the Interlachen Junior Academy." The petitioner has not shown that the beneficiary has been employed in a critical or essential capacity with any of these organizations, or that such organizations have a "distinguished reputation."

The eighth and final criterion requires the petitioner to establish that the beneficiary has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(iii)(B)(8). The petitioner has not documented the beneficiary's previous or current salaries or remunerations, nor has it claimed that her offered annual salary of approximately \$34,000 should be considered a "high salary" for a tennis professional/coach. Accordingly, the petitioner has not met this criterion.

Overall, the record does not establish that the beneficiary has extraordinary ability in athletics, which has been demonstrated by sustained national or international acclaim and that her achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O) of the Act. The petitioner submitted no evidence that the beneficiary has received a major, internationally recognized award and the documentation submitted does not meet three of the eight other evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act and the petition must be denied.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of her field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements have not yet risen to this level.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.