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FILE: EAC 03 139 52680 Office: VERMONT SERVICE CENTER Date: DEC 22 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, Director
Administrative Appeals Office

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

The petitioner seeks classification 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, specifically as a professional soccer player. The director determined that the record did not establish that the petitioner sought to enter the United States to continue work in his area of expertise. On appeal, counsel submits a two-page letter and additional evidence relevant to this issue. The evidence submitted on appeal does not overcome this deficiency in the petition and we affirm the director's determination that the petitioner did not demonstrate his intent, at the time of filing, to continue working in his field.

Beyond the decision of the director, the record does not demonstrate that the petitioner has achieved sustained national or international acclaim as a soccer player. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

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

(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.

Whether the Petitioner Seeks to Enter the United States to Continue Work in the Area of Extraordinary Ability

In his letter accompanying the Form I-140, the petitioner summarized his accomplishments and stated that he was in the process of switching from his current team in the United Arab Emirates to a team in Iran. The record contains a printout of an article from the website of the Asian Football Confederation dated March 15, 2003 – less than one month before the petition was filed – which confirms that the petitioner was then playing for the Iranian team, Pirouzi. In his letter, the petitioner did not discuss his desire or intent to play professional soccer in the United States. The documents submitted with the petition contain no other evidence relevant to the question of whether the petitioner seeks entry into the United States to continue playing professional soccer.

For example, the petitioner submitted no contracts, offer letters, or other evidence that professional soccer teams in the United States would hire him. On appeal, the petitioner submits a letter from ██████████ a professional soccer agent. ██████████ states that he is confident that he could place the petitioner with a Major League Soccer team in the United States if the petitioner were granted lawful permanent residency in this country. ██████████'s letter is dated November 23, 2004. ██████████ explains that the petitioner "is one of the world's top players and he has indicated to me his desire to continue his soccer career in the U.S." Yet Mr. ██████████ does not state when he became aware of the petitioner's wish to continue playing professional soccer in the United States and the record contains no evidence to corroborate ██████████'s claim that he could place the petitioner with a professional soccer team in this country.

On appeal, the petitioner also submits an article printed from the website of *IranMania* dated November 9, 2004. The article reports that the petitioner and another player intend to file suit against their Iranian team because the soccer club owes the two players \$183,000. While this article indicates the petitioner's recent dissatisfaction with his current team, it was published after the petition was filed and does not establish that the petitioner sought to leave his team for another soccer team in the United States at the time of filing. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The record thus does not establish that, at the time of filing, the petitioner sought entry into the United States to continue working as a professional soccer player. He is thus ineligible for classification as an alien of extraordinary ability pursuant to section 203(b)(1)(A)(ii) of the Act.

Sustained National or International Acclaim

The director did not reach the issue of whether or not the submitted evidence demonstrates the requisite sustained acclaim. We find that the record does not establish that the petitioner has achieved sustained national or international acclaim pursuant to the regulation at 8 C.F.R. § 204.5(h)(3).

Specific supporting evidence must accompany an extraordinary ability petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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).

In this case, the petitioner submitted numerous press clippings and printouts from soccer-related websites and claims that these documents show that he meets five of the regulatory criteria to establish sustained national or international acclaim. We address the evidence submitted and counsel's contentions in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not listed below.

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

Counsel claims the petitioner meets this criterion because he received the "New Young Talent" award in 1996 for his performance in the Asian Cup as a member of the Iranian National Team. The record contains no evidence to document this purported award. 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).

Counsel also claims that the petitioner meets this criterion because he played with the Iranian National Team in its preliminary and qualifying matches of the 1998 World Cup, the quarterfinals of the 2000 Asian Cup and their first place finish in the 2000 West Asian Football Federation (WAFF) Championships. Counsel further claims that the petitioner's performance as a member of the Austrian soccer team, Sturm Graz, satisfies this criterion because the team won the Austrian Super Cup in 1998, the 1998-99 Championships of Austrian Clubs, and the 1998-99 Clubs League. Even if directly attributable to the petitioner, the Iranian National Team's 2000 WAFF championship and the championships won by Sturm Graz from 1998 to 1999 were earned between three and five years before this petition was filed and do not demonstrate the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

(iii) 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.

The record contains numerous articles from various media sources. The majority of these articles only briefly mention the petitioner in passing when reporting on soccer games in which he played. Five of the articles are not complimentary, but critical of the petitioner's performances during certain games. Seven articles were published in a foreign language and were submitted without certified English translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). Twelve of the submitted articles substantively discuss the petitioner's individual performances and aspects of his career. These articles were published between 1999 and 2003 in various newspapers and on various websites. Although these articles indicate that the petitioner received significant press coverage, the record contains no evidence that the source of these articles are professional, major trade publications or other major media, coverage in which would reflect the petitioner's national or international acclaim. Consequently, the evidence submitted does not meet this criterion.

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

This criterion applies to the visual arts. Counsel nonetheless claims that the petitioner meets this criterion because "he has been regularly playing soccer in front of thousands of people for nearly ten years." While the evidence regarding the venue and attendance of the games in which the petitioner has played might be considered as comparable evidence of his eligibility under 8 C.F.R. § 204.5(h)(4), counsel has not explained or documented the need to do so. The comparable evidence provision is only invoked when the ten criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to the alien's occupation. As the record in this case shows, at least four of the criteria at 8 C.F.R. § 204.5(h)(3) readily apply to professional soccer players. Accordingly, we have not considered the evidence submitted under this criterion.

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

Counsel claims the petitioner meets this criterion as a “star player” for the Iranian National Team and the Pirouzi team of Tehran and as “an essential player” for the Austrian team, ██████████. The record contains numerous articles that briefly mention the petitioner’s performance during various games for these teams. In an article printed from the website of Sky Sports, the petitioner’s photograph is captioned, “Minavand: Iranian star.” Another article printed from the website of the AFC describes the petitioner as a “huge boost to Pirouzi” and an article from the *Agence France Presse* calls the petitioner an “influential midfielder” for the Iranian National Team. Articles from the website of Persian Football also praise the petitioner as “one of the best players on the pitch!” and a “key player” for ██████████. However, an article from *Iran Daily* states that the petitioner “had short spells with Belgium’s Charleroi and Austrian outfits Sturm Graz, without really succeeding in proving his mark on the European soil.” While the articles show that the petitioner has played well on several occasions for the Iranian National Team, Pirouzi and Sturm Graz, the record does not persuasively establish that he performed a leading or critical role for these teams in a manner consistent with sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

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

Counsel claims the petitioner meets this criterion because he has received “lucrative offers to play for top teams in countries around the world” and because he accepted a two-year contract for one million dollars to play for the Al-Shabab team in the United Arab Emirates. The record shows that the petitioner joined Al-Shabab on a two-year contract worth one million dollars, but does not document his purportedly “lucrative offers” from top teams in other countries. The petitioner also submitted no comparable evidence of the salaries of other professional soccer players in Iran, the United Arab Emirates or other countries from which we could determine that his contract with Al-Shabab represents significantly higher remuneration than similar contracts for other professional soccer players. The record thus does not establish that the petitioner’s salary or remuneration is higher than that of other professional soccer players or comparable to such players at the very top of their field. Accordingly, the petitioner does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case does not establish that the petitioner has achieved sustained national or international acclaim as an athlete placing him at the very top of his field. The petitioner also failed to demonstrate that, at the time of filing, he sought to enter the United States to continue working as a professional soccer player. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.