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U.S. Citizenship
and Immigration
Services

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FILE: EAC 03 162 51308 Office: VERMONT SERVICE CENTER

Date: JUN 24 2005

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.

for
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. 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 major league soccer is not well established in the United States and, thus, reaching the top of the collegiate level is the top of the field nationally. Counsel then acknowledges the existence of major league teams in the United States, as does one of the petitioner's references, and asserts that the petitioner is currently playing with the Syracuse Salty Dogs.¹ The fact that the petitioner achieved major league status after the date of filing is not relevant to his eligibility as of the date of filing other than as an indication of the employment he intends to pursue. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). We will not narrow the petitioner's field to collegiate soccer. Whatever his status, he must still demonstrate that he compares with the top players nationally, including professionals. Moreover, this classification is not available to all major league players. 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."

Our analysis of the regulatory criteria that follows will take into account the above discussion. Ultimately, we conclude that while the petitioner meets one criterion, even the evidence for that criterion is not indicative of sustained acclaim as of the date of filing. Thus, while the director's decision could have provided more detail as to the deficiencies in the evidence, we uphold the director's ultimate conclusion that the petitioner does not qualify for the 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):

¹ An attempt to review that team's website and a review of other United Soccer League Internet materials suggests that the Syracuse team, while a professional division I team in 2004, no longer exists. Moreover, FoxSports.com includes an overview of the United Soccer League, which indicates that this league "taps into North American soccer at its grassroots and feeds talent into the MLS [Major League Soccer]." Thus, it appears that while the petitioner played professional soccer, he did not do so in the nation's highest league. Internet materials further indicate that after brief memberships with other professional teams, the petitioner now coaches for the Athletic Club Norfolk. This employment raises the concern that the petitioner does not seek to continue working in his area of expertise, playing soccer. See *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002) upholding our interpretation that extraordinary ability as an athlete does not imply extraordinary ability as a coach.

(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.

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 soccer player. 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. 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.

The director dismissed the petitioner's "awards" as student based and, thus, insufficient to meet this criterion. More analysis is warranted.

As evidence to meet this criterion, counsel references the petitioner's scholarships and statistics. Neither of these accomplishments constitutes nationally recognized awards or prizes. Scholarships are limited to students and the most accomplished professionals in the field do not aspire to win them. Game statistics, while notable, do not constitute the type of formal selection from a pool of candidates by an identifiable entity integral to the concept of "prize" or "award."

The petitioner also received recognition from the Colonial Athletic Association (CAA). The certificate from this association reflects that it covers 10 teams. Thus, any recognition from this association does not appear to be national in scope. Similarly, the All-Virginia State Men's Soccer Team appears limited to Virginia and his election for the All-South Atlantic third team also appears to be less than national. The record contains no

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

information regarding the criteria for selection to the Verizon Academic All-American All-District III Squad, but it appears limited to players in a specific district. Thus, the petitioner has not established that this selection constitutes a nationally recognized award. Moreover, team membership is more related to the membership criterion that follows and will be considered below.

The petitioner's three-goal performance in a collegiate game in 2002 earned him selection for the "Team of the Week" by *College Soccer News*. The petitioner was also named to Soccer America's Team of the week. A weekly selection of top scoring college players, while notable, is not a nationally recognized award or prize for which all players, including professionals, compete. Similarly, selection to Soccer America's All-Freshman Team appears limited to college freshmen.

In light of the above, we concur that the recognition discussed above not only occurred while the petitioner was a student, which would not be problematic, but that the competition for such recognition was limited to students. As stated above, we will not narrow the petitioner's field to collegiate soccer. Thus, we concur with the director's conclusion that the limited nature of this recognition cannot serve to meet 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 the collegiate team memberships discussed above and evidence of his "nomination" to Slovakian National teams. The director concluded that the petitioner had not demonstrated evidence of memberships beyond the collegiate level. On appeal, counsel asserts that the director did not consider all of the evidence.

The petitioner's collegiate "team" memberships cannot serve to meet this criterion. Most of the selections are not national in scope. The ones that are national appear to be weekly selections for hypothetical teams that never actually played as a team.

While the record lacks full and complete certified translations of the foreign language materials as required by the regulation at 8 C.F.R. § 103.2(b)(3), the record suggests that the petitioner played on national Slovakian teams. While not every professional team membership serves to meet this criterion, selection for a national team can serve as comparable evidence to meet this criterion pursuant to 8 C.F.R. § 204.5(h)(4). Nevertheless, the petitioner's most recent national team membership was in 1998, five years before the petitioner filed the instant petition. Thus, while these national team memberships could serve to meet this criterion, they are not indicative of sustained acclaim as of the date of filing.

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.

The director concluded that the media coverage all related to the petitioner's student achievements. Counsel asserts that the only issue is whether the material is published and about the petitioner relating to his work in the field. Such a strict interpretation would lead to absurd results. For example, one cannot credibly argue that negative press coverage could serve to meet this criterion. Thus, a determination under this criterion requires at

least some evaluation of the content of the published materials. Nevertheless, more analysis of the evidence submitted to address this criterion is warranted.

Several of the exhibits constitute promotional materials such as posters and tickets and do not constitute published materials. Similarly, inclusion on the website of the petitioner's own school and the website of the CAA, the ten-school association to which his school belongs, is not evidence of his recognition beyond that institution and its association and is not as persuasive as independent journalistic coverage.

Further, nearly all of the U.S. coverage focused on events in which the petitioner participated, and not the petitioner himself. Such coverage is not primarily "about the alien" and, thus, cannot serve to meet this criterion. More significantly, local newspapers, as the *Richmond Times Dispatch*, *Mace and Crown*, *Daily Press* and *Virginian-Pilot* appear to be, are not major media.

The petitioner did not provide evidence regarding the circulation of *Soccer America*, the magazine that highlighted the petitioner as one of five foreign players recruited to attend U.S. colleges. Thus, the petitioner has not established that it constitutes major media. Regardless, the article appears to be primarily about the recruitment of foreign players, and not the petitioner himself.

The foreign press materials also cannot serve to meet this criterion for several reasons. First, the petitioner did not provide full and complete translations of these materials as required by the regulations at 8 C.F.R. § 103.2(b)(3) and 8 C.F.R. § 204.5(h)(3)(iii). While the director advised the petitioner of this deficiency on page three of his denial, the petitioner does not submit translations on appeal. Rather, the petitioner inexplicably resubmits the entire initial submission. Second, the petitioner did not submit any evidence of the circulation of the publications. As such, we cannot determine whether these publications constitute major media. Finally, despite the lack of translations, the materials do not appear to be primarily about the petitioner. Rather, they report the results of games in which he played and he is mentioned as one of several players who participated.

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

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The director concluded that no evidence was submitted to meet this criterion. On appeal, counsel asserts that the director failed to consider evidence of the petitioner's services as a volunteer coach for the Eurotech Soccer Academy.

Initially, counsel asserted that the petitioner "was chosen to fill one of the coach positions as a result of his ability to demonstrate to the youths some of the most challenging soccer techniques and strategies." According to counsel, the petitioner evaluated the youths' abilities for placement. 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).

The letter from Jim Risher, President and National Director at Eurotech International Soccer, Ltd., does not support counsel's assertions. Mr. Risher merely states that the petitioner "donated some time to helping the local kids in our nationally recognized soccer academy division." While nationally recognized, the academy is located in Newport News, Virginia, the petitioner's residence at the time. Nothing in Mr. Risher's letter suggest

that the petitioner's volunteer assistance at this prestigious but local camp is indicative of national acclaim. Thus, we concur with the director that the petitioner failed to sufficiently document his claim to meet this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The director concluded that the record lacked evidence of the petitioner's influence on the field of soccer. On appeal, counsel asserts that the director failed to consider the statements in her initial letter and the supporting evidence.

Initially, counsel asserted that the petitioner's "awards, honors and scoring records" serve to meet this criterion. She further asserted that the petitioner has increased the success of his college team and "soccer in the United States." The petitioner's honors have been considered under a separate criterion. The record of proceedings contains no evidence that the petitioner, a high scorer nationally and a record setter at his college, has set a national record to which others aspire. Counsel does not explain how contributing to the petitioner's college team constitutes a contribution of major significance to U.S. soccer as a whole.

The petitioner submitted letters from his collegiate coach, Al Albert; Mr. Risher; an assistant coach with a local professional soccer team, Jesse Myers; the head coach of another local professional team, Shawn McDonald and the vice president of a California professional team, Doug Hamilton. The letter from Mr. Hamilton is unsigned and, as such, has little evidentiary value.

The letters praise the petitioner's skills and attest to his ability to compete for placement on professional teams. As stated above, playing for a major league team is not presumptive evidence of eligibility for this classification. Absent evidence that the petitioner set a national record or otherwise influenced the sport of soccer in the United States as a whole, we cannot conclude that his undisputed talent in the field constitutes a contribution of *major significance* to the field.

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

The director concluded that this criterion does not apply to the petitioner's field. On appeal, counsel asserts that the petitioner has played games in large stadiums before numerous fans. The plain language of this criterion, set forth at 8 C.F.R. § 204.5(H)(3)(vii), limits its applicability to the visual arts. Notably, in her appellate brief, counsel omits the word "artistic" from her section heading relating to this criterion. Her heading otherwise is a direct quote of the regulatory criterion.

A sports contest is not an artistic exhibition or showcase. Moreover, playing before fans is inherent to the occupation of soccer player. Thus, we cannot conclude that these games are comparable to the type of exclusive artistic exhibition or showcases that could serve to meet this criterion for a visual artist.

In light of the above, we concur with the director that this criterion is not applicable to the petitioner's field. We further find that the petitioner's participation in games attended by fans is not comparable evidence to meet this criterion pursuant to 8 C.F.R. § 204.5(h)(4).

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

The director concluded that the record lacked evidence to meet this criterion. On appeal, counsel asserts that the director failed to consider statements made in her initial cover letter and the supporting documents.

Counsel initially explained that the Slovakian national team members are nominated for one game at a time and asserted that the petitioner played a leading or critical role for the Slovakian national team “by virtue of the fact that he was consistently nominated to the team for six years.” Counsel further asserted that the Old Dominion University Monarchs have a distinguished reputation solely because of their participation in the NCAA system. Counsel notes the honors the petitioner received while playing for Old Dominion, indicative of his critical role for the team.

We do not contest the national distinguished reputation of the Slovakian national team. We will not presume, however, that multiple nominations for this team demonstrate that the petitioner played a uniquely leading or critical role for this team sport.

Conversely, we do not contest that the petitioner has played a critical role for the Old Dominion Monarchs. We will not presume, however, that every school participating in the NCAA system enjoys a distinguished reputation nationally. That Old Dominion ranked first in the Colonial Athletic Association, an association that appears to include only ten schools, is not persuasive evidence that Old Dominion enjoys a distinguished reputation nationally.

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

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 soccer 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 soccer player, 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.