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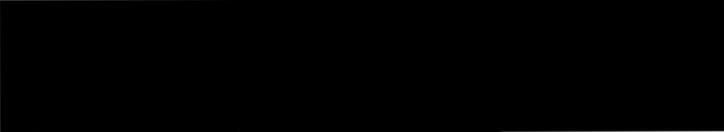
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

SRC 07 008 52876

Office: TEXAS SERVICE CENTER Date: **APR 09 2008**

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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 argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and has submitted other comparable evidence of his extraordinary ability pursuant to 8 C.F.R. § 204.5(h)(4).

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, 60898-99 (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, filed on February 23, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a soccer player and coach. 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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to 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.

The petitioner submitted photographs of various trophies and medals, but the inscriptions on these awards were not legible. On appeal, counsel asserts that “the trophies and awards were individually awarded to the Petitioner . . . while participating in competitions and tournaments with the national professional soccer team, H2K Holy Family Elite Division Football Team. Thus, the . . . trophies and medals awarded are from the national level” and therefore meet this regulatory criterion. 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 Obaighena*, 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 record includes no evidence that petitioner’s soccer team, H2K Holy Family, received nationally or internationally recognized prizes or awards during his tenure as a player in Mumbai, India. According to the petitioner’s H2K Holy Family “Identity Card” and newspaper coverage of the team’s games submitted with the petition, his team competed in the “Mumbai District Football Association” League and Group 3 of the Second Division National Football League. The Second Division, however, is not the highest level of competition in the National Football League of India.¹ We do not find that competing for a soccer team in the Second Division of this league is evidence that the petitioner “is one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). CIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.² Likewise, it does not follow that a

¹ The “Premier Division” of the National Football League of India represents the highest level of competition. See <http://www.indianfootball.com/specials/ileague/index.php> and <http://www.indianfootball.com/index1.html>, accessed on March 26, 2008.

² While we acknowledge that a district court’s decision is not binding precedent outside of the district in which the case arose, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

soccer player competing below the “Premier” level in India or at the amateur level in the United States should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”

The petitioner also submitted a Certificate of Merit from the 8th Savio Sports Festival (2004) stating that he and his team members of “Lizlyn Friends United” were the “runners up” of the Savio Football Tournament at St. Dominic Savio High School in Mumbai, India. The plain language of this regulatory criterion requires “receipt of lesser nationally or internationally recognized *prizes* or *awards* for excellence in the field.” [Emphasis added] There is no evidence that finishing as a runner-up at this local soccer tournament constitutes the petitioner’s receipt of a nationally or internationally recognized prize or award.

On appeal, the petitioner submits an October 14, 1998 article printed from <http://www.expressindia.com> that promotes eight different sporting events. Under the heading “Savio sports festival at Andheri,” the article states:

The past pupils of Don Bosco (Andheri unit) are organising a mega sports festival for boys and girls from October 17 to 25, at the St. Dominic Savio school ground, Mahakali Caves Road, Sher-E-Punjab, Andheri (East). For entries and further information contact Jason (football) 8341070; Anthony (cricket) 8228875; Jimmy (basketball) 8385150; Saby (throwball) 8223219, or fax on 8394511.

The preceding promotional material does not discuss the soccer tournament at the 8th Savio Sports Festival in 2004, nor does it establish that the petitioner’s receipt of a Certificate of Merit for “runners up” at the tournament is a nationally or internationally recognized prize or award for excellence in the petitioner’s sport.

The petitioner’s initial submission included a captioned photograph in *The Free Press Journal* of Mumbai (December 1, 2004) and a brief piece in the “City Sports” section of *The Times of India*, Mumbai edition (November 30, 2004), stating that his team, Lizlyn Friends United, defeated the Chakala Sports Club to win the final of the “Neil Roy Memorial floodlit rink football tournament.” The brief news piece in the Mumbai edition of *The Times of India* states that the petitioner was named “Outstanding player of the tournament.” There is no evidence establishing that an award from this local tournament in Mumbai is a nationally or internationally recognized soccer award.

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

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.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that CIS’s interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

In order for published material to meet this criterion, it must be primarily about the petitioner 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 broadcast. 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.³

The petitioner submitted articles in the *Deccan Herald*, *The Times of India* (Mumbai Edition), and the *Free Press Journal* of Mumbai about local soccer games in which the petitioner competed, but the majority of these articles were not primarily about the petitioner. Further, the authors of these articles were not identified as required by the plain language of this regulatory criterion. In response to the director's notice of intent to deny, the petitioner submitted information indicating that *The Times of India* has substantial national distribution, but there is no evidence that the articles mentioning the petitioner in its "Mumbai Edition" had the same level of national distribution. The petitioner also submitted information stating that the *Deccan Herald* "is the largest English-language daily newspaper in the Indian state of Karnataka," but there is no evidence that this publication had significant national distribution. As such, the petitioner has not established that the newspaper articles mentioning him were published in major media.

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

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

The petitioner submitted a September 21, 2004 letter from the Houston Green Eagles Soccer Club inviting the petitioner to participate in its "9th All Nigeria Soccer Festival" in Houston. The petitioner also submitted a promotional flyer for the event, a team photograph, and two photographs of the petitioner holding trophies.⁴ On appeal, counsel argues that the preceding evidence meets this regulatory criterion. The plain language of this regulatory criterion, however, indicates that it applies to artists (such as sculptors and painters) rather than to competitive athletes such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. Even if we were to accept a soccer tournament as art rather than athletics (which we do not), the aforementioned evidence is not sufficient to meet this criterion. For example, there is no evidence establishing the significance and prestige of the Westland YMCA venue where the tournament was held. Nor is there evidence showing that the tournament's competitors were top players in the sport.

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.

³ 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, for instance, cannot serve to spread an individual's reputation outside of that county.

⁴ The inscriptions on these trophies are not legible.

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted evidence that he has played for teams such as Udoji United Football Club in Nigeria, H2K Holy Family Football Club in India, the Lizlyn Friends team in India, and the amateur Houston Football Association's Aria Soccer Club New Stars. The record includes general information about the Udoji United Football Club in Nigeria and the Aria Soccer Club New Stars amateur team, but there is no evidence showing that these teams had a distinguished reputation during the petitioner's tenure as a player.

On appeal, counsel argues that the newspaper articles discussing the petitioner's play in India are sufficient to meet this criterion. The newspaper coverage of the H2K Holy Family Football Club in India and the Lizlyn Friends team is not sufficient to demonstrate that these teams had a distinguished reputation. For example, while the petitioner's teams in India may have vied for wins at local tournaments in the Mumbai area, there is no evidence that these teams had a distinguished reputation through competitive success at the national or international level. Nor is there evidence originating from a coach or official representative of these teams stating that the petitioner's role for them was "leading or critical."

With regard to the teams for which the petitioner has played in the United States, India, and Nigeria, there is no evidence (such as team statistics for a complete season) demonstrating how the petitioner's role differentiated him from the other players on his teams. As such, the petitioner has not established that he was responsible for his teams' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

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

In this case, the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the of the criteria at 8 C.F.R. § 204.5(h)(3). Further, the statute and regulations require the petitioner's national or international acclaim in his sport to be *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The record, however, lacks evidence of achievements and recognition subsequent to the petitioner's arrival in the United States in 2004 showing that he has sustained national or international acclaim as a soccer player or coach in this country. We cannot conclude that playing soccer for a team competing in a local Houston amateur league is evidence of national or international acclaim in the sport. Further, with regard to the petitioner's work as an assistant for Soccer Vibration International of Houston, there is no evidence that his work in "training children to learn the sport" is consistent with sustained national or international acclaim as a soccer coach.

Beyond the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the petitioner submitted letters of support discussing his talent as soccer player.

██████████ of Soccer Vibration International in Houston states: "I was not surprise[d] when I heard that [the petitioner] left for [the] USA [because] he has . . . extraordinary ability in soccer. That is why I called him to come & help me to train the little kid[s] that I have in my soccer vibration."

Researcher, Department of Biology and Biochemistry, University of Houston, and an amateur soccer player, states that the Premier Division of the Houston Football Association, the division in which the Aria Soccer Club New Stars team competes, “is the top amateur division . . . in Houston.” [REDACTED] further states: “[The petitioner] joined the Houston Football Division and has been a key player of the ASC New Stars. The Team won the premier league back to back in 2005 and in 2006. In addition, the team performed very well at the state level with a victory in 2005 and the second place in 2006.” The record, however, includes no evidence of these competitive results. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

[REDACTED], Athletic Director, San Jacinto College South, Houston, states:

This letter is in support of [the petitioner] as a potential student-athlete for the soccer team at San Jacinto College South

Due to NJCAA [National Junior College Athletic Association] regulations, only U.S. citizens, F-1 student visa holders, and Permanent Residents or Green Card holders are eligible for athletic scholarships.

While I know that this process does take quite time [sic] to receive a green card, [the petitioner] has been a B-1/B-2 visa holder for the past year and a half. I only hope that this process could be expedited which would allow [the petitioner] to receive a free education as a student-athlete.

On appeal, counsel argues that the director should have considered the preceding letters of recommendation as “other comparable evidence.” The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence,” but only if the ten criteria “do not readily apply to the beneficiary’s occupation.” The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner’s occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Nevertheless, the letters of recommendation submitted by the petitioner are not sufficient to establish his eligibility for classification as an alien of extraordinary ability. For example, the letters include no information to establish that an offer of an athletic scholarship to a local junior college and participation in a local amateur soccer league are evidence that the petitioner has sustained national or international acclaim at the very top of his field. Nor is there evidence establishing that the individuals who provided the letters of support are recognized experts in the petitioner’s field. 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 (Comm. 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 of support from the petitioner’s personal contacts 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. Thus, the content of the writers’ statements and how

they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of achievements and recognition consistent with sustained national or international acclaim at the very top of one's field.

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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.