



U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted]
SRC 06 246 51524

Office: TEXAS SERVICE CENTER Date: JAN 04 2008

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:

[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.


2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office 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 was not seeking to continue working in her area of expertise.

On appeal, counsel asserts that the director failed to afford sufficient weight to a reference letter. Whether or not the reference was previously aware of the petitioner through her reputation, letters alone cannot establish eligibility for the classification sought, which requires objective evidence of acclaim rather than simply subjective opinions about the alien’s talent. Specifically, 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. Citizenship and Immigration Services (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)).

Regardless, the director did not dispute the petitioner’s ability as an athlete. Thus, the weight afforded to this particular letter is irrelevant. At issue is whether the petitioner has demonstrated that her intended employment is within her area of expertise. We will discuss this issue in detail below.

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.

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 she has sustained national or international acclaim at the very top level.

According to Part 6 of the petition, this petition seeks to classify the petitioner as an alien with extraordinary ability as an "Athletic Admin Assist/ Coach and Instructor." The regulation at 8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." On appeal, counsel asserts that while "it may not be true that not every basketball player becomes a basketball coach, it is irrefutable that every successful basketball coach began his or her career as a basketball player." Counsel references the biographies of professional coaches who began their careers as players. Finally, counsel cites a 1993 non-precedent decision issued by this office. While the regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The issue is not whether most, if not all, basketball coaches began as players. At issue is whether coaching is sufficiently within a player's area of expertise such that acclaim as a player necessitates extraordinary ability as a coach. While a basketball player and a coach certainly share knowledge of basketball, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching 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. While not binding on us, we find the court's decision, which noted a consistent history in this area, to be persuasive. Nevertheless, this office has recognized that there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is

appropriate. 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 level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the petitioner's area of expertise. Specifically, in such a case we will consider the level at which the alien acts as coach. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not. Thus, we will first examine whether the petitioner has demonstrated her extraordinary ability as a coach or as an athlete through the regulatory criteria. If the petitioner has demonstrated extraordinary ability as an athlete but not as a coach, we will then consider the level at which she has successfully coached.

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. As noted by the director, the petitioner in this matter won an Olympic Silver Medal in 2000 as a basketball player, a one-time achievement. Thus, the petitioner has demonstrated her extraordinary ability as a player. The petitioner, however, must demonstrate either that she has also sustained acclaim as a coach by meeting the necessary three criteria set forth at 8 C.F.R. § 204.5(h)(3) or that coaching is within her overall area of expertise through successful coaching at the national level.

We first consider whether the petitioner has demonstrated acclaim as a coach pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). As her one-time achievement was as a player, we must consider whether she meets at least three of the ten alternative regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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

The record contains no evidence of coaching awards issued to the petitioner.

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 record contains no evidence that the petitioner is a member of a coaching association that requires outstanding achievements of its member coaches.

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.

Some of the published material in the record is primarily about the petitioner's teams, not the petitioner personally. The record contains one article on the petitioner's ability to balance her work as a player with her family. This article appears in a publication issued by her team at the time, the Minnesota Lynx. The record lacks evidence that this publication has a national distribution or is otherwise major media. The record also contains an article primarily about the petitioner posted on the Internet site www.blackathlete.com. In addition, the record contains an article about the petitioner that appeared in the *Washington Post*. While the article is entitled "[The petitioner] is the Mystics' Den Mother," and characterizes her as "the leader of this team," the article is about her role as a player, not a coach. It remains, none of the published material relates to the petitioner's work as a coach.

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 record contains no evidence relating to this criterion beyond the normal review of athletes inherent to the occupation of coach. Simply reviewing the athletes one is responsible for coaching is not indicative of or consistent with national or international acclaim. Thus, the petitioner has not demonstrated that she meets this criterion as a coach.

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

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. As of the date of filing, the petitioner's coaching experience consisted of three months for a middle school team, a lecture at a camp and a coaching experience at a camp for a team of unknown age and experience. We are not persuaded that the petitioner has demonstrated that she was able to make an original contribution of major significance to the field of basketball coaching through these experiences.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The record contains no evidence relating to this criterion.

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

The petitioner's field is athletics, not arts. Thus, this criterion is not applicable to the petitioner's field.

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

While the record contains an article referring to the petitioner as “the leader” of the Washington Mystics, the record does not contain evidence that the petitioner was hired or officially selected for a leading or critical coaching role for this team. The petitioner initially submitted a letter from [REDACTED] Headmaster of Glenelg Country School, confirming the petitioner’s employment at that school as an administrative assistant to the director of athletics. He further states that her position “has expanded to include becoming the Assistant Coach to the Varsity Girls Basketball team.” He does not indicate when the petitioner became an assistant coach. We are not persuaded that an administrative assistant or assistant coach is a leading or critical role for the school. The record also lacks evidence that the school’s Varsity Girls Basketball team enjoys a distinguished reputation nationally.

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

The record contains no evidence that the petitioner’s remuneration as a coach compares with the most renowned female basketball coaches in the United States.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

As stated above, the petitioner’s field is athletics, not performing arts. Thus, this criterion is not applicable to the petitioner’s field.

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. The record does not establish that the petitioner meets the regulatory requirements for extraordinary ability as a coach.

As stated above, however, the petitioner has established her past acclaim as basketball player. Thus, the next question is whether coaching is also within her area of expertise. Specifically, whether she has successfully coached at the national level. Moreover, the petitioner must establish her coaching expertise as of the date of filing in this matter. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). As stated above, the petitioner initially submitted a letter from [REDACTED] Headmaster of Glenelg Country School, confirming the petitioner’s employment at that school as an administrative assistant to the director of athletics. He further states that her position “has expanded to include becoming the Assistant Coach to the Varsity Girls Basketball team.” He does not indicate when the petitioner became an assistant coach or discuss how the team has done since the petitioner took on that responsibility.

In addition, the petitioner submitted a letter from the Director of Athletics at Glenelg Country School, [REDACTED]. He asserts that the petitioner’s responsibilities as his assistant included: “scheduling and sustaining athletic events with other schools; maintaining weekly, monthly and annual calendars for the athletic department; creating several seasonal athletic publications; creating word and data base

documents; maintaining daily, weekly and monthly communication with officials and other athletic directors; preparing contracts and creating schedules for outside groups to use our facilities; as well as, coaching middle school girl's basketball for three months." [REDACTED] further explains that in "[t]his coming year, because of her professional knowledge and experience in women's basketball, [the beneficiary] has been assigned as the assistant varsity girl's basketball coach." While he predicts that the petitioner "will make an immediate impact on the girls and the program," he does not list any previous coaching successes.

[REDACTED], Head Basketball Coach at the University of Connecticut and founder of the [REDACTED] Basketball Camp at that university, asserts that "the best players in the world come to lecture and teach our campers," including the petitioner who "brought her outstanding presence to our camp." He then references the awed reaction to her lecture but does not assert that she actually coached a team at this camp.

[REDACTED], the girl's basketball coach at the Governor Drummer Academy in Byfield, Massachusetts, asserts that the petitioner "served as a coach at one of my basketball camps." [REDACTED] does not provide the age of the players coached by the petitioner or their experience level. The record is absent evidence that the team coached by the petitioner competed successfully at the national level.

While other references discuss the petitioner's leadership abilities while still a player, the record lacks evidence that the petitioner's actual coaching experience as of the date of filing, three months for a middle school team, a lecture at a camp and a coaching experience at a camp for a team of unknown age and experience, is consistent with an athlete who has already demonstrated that coaching is within her area of expertise by successfully coaching at the national level.

Review of the record does not establish that the petitioner has distinguished herself as a basketball coach to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner showed talent, and even acclaim, as a basketball player, but is not persuasive that coaching is also within her area of expertise. 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.