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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: APR 23 2009

LIN 06 254 52623

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)

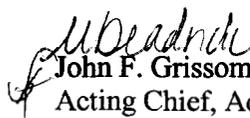
ON BEHALF OF PETITIONER:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

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

The petitioner seeks classification of the beneficiary 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 that the record did not establish that the beneficiary had achieved the sustained national or international acclaim required for classification as an alien of extraordinary ability. The director also found the beneficiary had not established that he is one of that small percentage who have risen to the very top of his field of endeavor.

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.

U.S. Citizenship and Immigration Services (USCIS) 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 the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on August 30, 2006, seeks to classify the beneficiary as an alien with extraordinary ability as a soccer coach. The record reflects that the beneficiary has been coaching in the United States since 2004. Aside from his activities as a coach, the record includes evidence showing that the beneficiary competed successfully as a player in Brazil's national collegiate competitions in the late 1990s and in the United Soccer League (USL) in the early 2000s. Although we do not dispute the beneficiary's participation in the USL, the record contains no evidence that participation in the USL is tantamount to playing nationally at the top level

of soccer, such as playing for a team within U.S. Major League Soccer (MLS). USCIS 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.<sup>1</sup> Therefore, to find that a player who had success in college or in a subordinate league qualifies for an extraordinary ability employment-based immigrant visa 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.”

While we acknowledge that the beneficiary was previously approved by USCIS as a P-1 nonimmigrant to play for a team in the USL, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. See e.g. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See e.g. *Matter of Church Scientology International*, 19 I. & N. Dec. at 597. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d at 1090. Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

As discussed above, subsequent to his collegiate level play in 1999, there is no evidence indicating that the beneficiary remained active as a player in national or international soccer competition. Further, according to Part 6 of the Form I-140 petition, “Basic information about the proposed employment,” the beneficiary (age 30 at the time of filing) is seeking work in the United States as a soccer instructor/coach rather than as a

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<sup>1</sup> While we acknowledge that a district court's decision is not binding precedent, 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.

competitive soccer player. The statute and regulations require the beneficiary's national or international acclaim to be *sustained* and that he seeks to continue work in his area of expertise in the United States. See sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a competitive athlete and a coach may share knowledge of the sport, 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.<sup>2</sup>

In the present matter, the evidence is clear that the beneficiary intends to work as a soccer coach and that the petitioner has failed to demonstrate the beneficiary's sustained national or international acclaim through achievements as a competitive soccer player subsequent to 1999. Further, the evidence demonstrates that the beneficiary intends to work as a soccer coach and instructor for World Cup Soccer of Greater Nashua, Inc. Therefore, while the beneficiary's competitive accomplishments as a soccer player are not completely irrelevant and will be given some consideration, ultimately he must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through his achievements as a coach and instructor.

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 a such an award, the regulation at 8 C.F.R. § 204.5(h)(3) 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 the beneficiary's 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 beneficiary 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.<sup>3</sup>

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

The petitioner claims that the beneficiary demonstrates eligibility under this criterion by virtue of his participation on and role as captain of Brazil's bronze medal winning team in the 1999 World University

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<sup>2</sup> While not binding precedent, we note that the reasoning contained in *Lee v. I.N.S.*, 237 F.Supp.2d 914, 918 (N.D.Ill. 2002), supports this interpretation:

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.

<sup>3</sup> Only those criteria claimed to be applicable by the petitioner will be discussed, because neither the petitioner nor counsel claim to meet any of the remaining criteria and the record contains no evidence relevant to those criteria.

Games. The petitioner presented no evidence to show either who was eligible for the competition or how, if the competition was restricted to university students, the award constitutes a national award for excellence in the field if it did not allow those working in the field, i.e. professional soccer players, to participate. The petitioner submitted a printout of the sponsoring organization, Federation Internationale du Sport Universitaire, which states that the competition "is second in importance only to the Olympic Games." That information was not provided by an impartial source and does not contain any information about how that conclusion was reached. The team that qualified for the World University Games won the Brazilian University Championship, but again, the petitioner did not show how a competition limited to university students instead of professional players constitutes a national award for excellence in the field.

Regardless, as discussed previously, the statute and regulations require the beneficiary's national or international acclaim to be *sustained* and that he seeks to continue work in his area of expertise in the United States. See sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While the beneficiary's awards as a competitive athlete are not completely irrelevant and could be given some consideration, ultimately he must satisfy the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) through his achievements as a coach and instructor. As such, the beneficiary's awards and competitive results demonstrating his past record of success as a national and international soccer competitor from the late 1990s cannot serve to meet this regulatory criterion.

Nationally or internationally recognized prizes or awards won by athletes coached primarily by the beneficiary, however, can be considered for this criterion. In that regard, the petitioner submitted letters from parents of children coached by the beneficiary. The letter from [REDACTED] and [REDACTED] states that their daughter was selected as an alternate for the under-15 Super Y/ODP National Team as a result of the beneficiary's coaching. The letter from [REDACTED] states that his daughter, as coached by the beneficiary, was selected for the NH Olympic Development Team, the Massachusetts ODP Team, and as an attendee of the US Soccer National Team Olympic Development Team Identification Camp. The letter from [REDACTED] and [REDACTED] stated that their daughter blossomed under the beneficiary's coaching and was selected to represent New England at the Super Y National ODP camp and participated on a team that competed at the National Super Y Championships as well as making her high school varsity team as a freshman. The Laries stated that their son was selected to attend the Super Y National ODP camp as well. The petitioner submitted information about the Super Y and ODP programs which states that the National Camp "provide[s] an opportunity for elite players to be identified for US National Team Programs. In addition, in the older age groups, many college coaches will be in attendance to identify players for their program[s]." The petitioner has failed to establish that selection for these teams or camps is tantamount to a national or international prize or award.

Accordingly, the petitioner has not established that the beneficiary meets this criterion.

*(ii) 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 claimed that the beneficiary was eligible under this criterion by virtue of his Carteira de Trabalho e Previdencia Social do Atleta Profissional de Futebol which identifies him as a professional soccer player in Brazil and his United States coaches' license. In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an

essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, proficiency certifications, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted no evidence to show that his Carteira de Trabalho conveyed membership in an organization or association, that any such organization or association requires outstanding achievements of its members, or that membership is judged by recognized national or international experts in the field. Instead, the Carteira de Trabalho appears to be a classification system issued to workers in Brazil similar to the United States social security system. The petitioner submitted a copy of the beneficiary's United States Youth Soccer Coaches' Pass and a letter from [REDACTED], director of coaching for New Hampshire Coaching Association. According to [REDACTED] letter, a National "D" coaching license requires the applicant to demonstrate "Significant Professional or Collegiate playing experience; Coaching experience with high school age player for five years or longer; or Providing proof of one or more soccer coaching licenses from another country . . ." Those requirements do not indicate that outstanding achievement is required for membership nor do they indicate that national or international experts would judge the membership application. [REDACTED] letter also indicates that the "D" license is the lowest of four levels of coaching license.

On appeal, counsel claimed eligibility based on the petitioner's membership on the Brazilian University national team. While membership on an Olympic Team or a major national team such as a World Cup soccer team may serve to meet this criterion as such teams are limited in the number of members and have a rigorous selection process, it is the petitioner's burden to demonstrate that the beneficiary meets every element of a given criterion, including that he is a member of a team that requires outstanding achievements of its members, as judged by recognized national or international experts. We will not presume that every national "team" is sufficiently exclusive. In this case, the evidence submitted indicates that only those soccer players currently enrolled at a Brazilian university would qualify for this team. As previously indicated, USCIS 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. at 953, 954; 56 Fed. Reg. at 60899. A team that does not allow professional athletes to compete would not be sufficiently exclusive to qualify the petitioner under this criterion.

For all of the above reasons, the petitioner failed to demonstrate the beneficiary's eligibility under 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.*

In general, in order for published material to meet this criterion, it must be primarily about the beneficiary 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 level from a local publication. 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.<sup>4</sup>

The petitioner submitted articles discussing the beneficiary's achievements as a soccer player including "Bruno makes Rio Branco stronger," published on April 19, 1997; "UVV soccer team wins national championship in SE;" "Soccer wins the Bronze;" "Champion of 'Junes' will be crowned today;" "UVV crushes at Junes with no mercy;" a series of articles published in 2003 on the Vermont Voltage team's website; "Rhinos wary of 'lesser' rivals," published on July 16, 2003 on the *Democrat and Chronicle* website; "Phantoms host Chesapeake tonight" published July 10, 2003 and "Phantoms singe the Flames 3-0" published June 30, 2003 on the *Union Leader* website; and "Wolves solidify playoff position" published on July 28, 2002 on the *New Britain Herald* website. The articles submitted from Brazilian news sources do not contain identifying information about the publication in which they appeared and several also do not indicate the date of publishing as required by 8 C.F.R. § 204.5(h)(3)(iii). Without a translation, we are unable to ascertain the relevance or impact of these articles upon the beneficiary's eligibility. Accordingly, these articles cannot be considered in this proceeding. The record is devoid of documentation such as the national or international circulation of any of the newspapers that printed the submitted articles, and the petitioner submits no other evidence that the newspapers are professional, major trade publications, or other major media publications. In addition, only the first article can be considered to be "about the alien" as required by the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii); the other articles were about the entire team or the results of a particular match. The petitioner also submitted three articles that appeared without any translation as required by 8 C.F.R. § 103.2(b)(3). As previously indicated, as the articles do not contain the required translation, they cannot be considered in this proceeding.

More importantly, the record contains no published materials about the beneficiary as a coach. On appeal, counsel claims that the articles published about the beneficiary's students qualifies him under this criterion, however, those articles are about the students and do not mention the beneficiary's name anywhere within the articles. In addition, the petitioner presented no evidence showing that any of these articles were published in professional or major trade publications or other major media. Accordingly, the petitioner had not demonstrated that the beneficiary meets this criterion.

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

The petitioner asserts the beneficiary's eligibility under this criterion by virtue of his participation on the New Hampshire Phantoms professional soccer team, the Brazilian team of Rio Branco Atletico Clube, Palmeiras soccer team, the Brazilian National Team, and the Universidade Vila Velha soccer team. Even acknowledging that the petitioner served as the captain of his university soccer team, the beneficiary did not demonstrate a leading or critical role on that team. We note the article entitled "Soccer wins the Bronze" contains an interview with the beneficiary where he stated that he did not play in any of the tournament games except for the bronze medal match where he scored one goal and assisted another. The match reports submitted about the New Hampshire Phantoms shows that the beneficiary did not play full games but instead played 15-45 minutes of the 90-minute game.

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<sup>4</sup> 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.

In addition, the petitioner submitted no evidence regarding the reputations of any of these organizations. Therefore, we are unable to conclude that the beneficiary performed in a leading or critical role for an organization with a distinguished reputation as a soccer player. Even if the beneficiary performed in a leading or critical role for distinguished teams as a soccer player, the record does not demonstrate that the beneficiary sustained his acclaim as a soccer coach.

The petitioner made no argument that the beneficiary performs in a leading or critical role for any organization as a soccer coach, but it submitted evidence regarding the beneficiary's role as a coach for the petitioning organization, so we will consider the beneficiary's position under this category. We first note that the petitioner submitted no information about its organization to establish its reputation. Even if the petitioner had been shown to enjoy a distinguished reputation, the letter from [REDACTED] indicates that the beneficiary is one of fifteen coaches. The letter does not indicate that the beneficiary operates in a capacity different from the other fourteen coaches or that his contributions to the program are any different from his co-workers. [REDACTED] letter outlines the contribution that the beneficiary made to the skills of [REDACTED] and states that her selection to the Super Y/ODP team "demonstrates her excellent soccer capabilities and strong technical background [that] can only be developed from a young age and requires the dedicated, exceptional coaching of people such as [the beneficiary]." Although this letter speaks highly of the beneficiary's contribution to [REDACTED] development, it does not explain how the beneficiary plays a leading or critical role for the petitioner's organization.

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 indicates that the beneficiary participated on the Brazilian National University Team and was a successful soccer player. However, the record does not establish the beneficiary's as acclaim either as a former soccer player or through his subsequent work as a soccer coach. 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. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed. This decision is rendered without prejudice to the filing of a new petition with the requisite supporting documents under section 203(b) of the Act, 8 U.S.C. § 1153(b).

**ORDER:** The appeal is dismissed.