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U.S. Citizenship and Immigration Services
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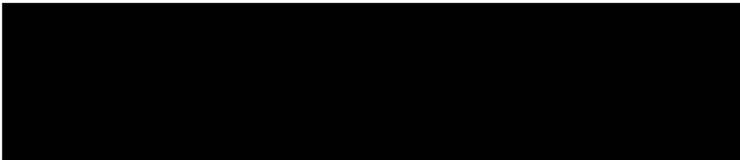
FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date:
SRC 08 150 50246

NOV 04 2009

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.

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petition 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. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel for the petitioner argues that the petitioner meets the statutory requirements and three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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 to the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and the 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 has 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.

The record reflects that the petitioner is currently in the United States as a P-1 nonimmigrant, a visa classification that requires the alien to perform as an athlete, either individually or as part of a team, at an internationally recognized level of performance, and that the alien seek to enter the United States "temporarily and solely for the purpose of performing as such an athlete." See section 214(c)(4)(A) of the Act, 8 U.S.C. § 1184(c)(4)(A). While USCIS has approved at least one P-1 nonimmigrant visa petition filed on behalf of the petitioner, 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 Form 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 Form I-129 nonimmigrant petitions than Form 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 USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

This petition, filed on April 7, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a professional tennis 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, 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.

On appeal, counsel states that the AAO has held that a "satisfaction of at least three of the regulatory criteria suffices for a petitioner to meet the requirements for classification as an alien of extraordinary ability." Quoting an unpublished 2004 AAO decision, counsel further states that "while not all of the petitioner's evidence carries the weight imputed to it by counsel, the totality of the evidence establishes an overall pattern of sustained acclaim and extraordinary ability."

A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three of the criteria outlined in 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 that, she claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).¹

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

The petitioner provided a list of prizes and awards she claimed to have won, including a Championship Trophy in Yugoslavia in the Juniors "under 14" division in 1997 (the competition was not specified); the 1997 Championship Trophy for placing first in the International Tennis Federation (ITF) competition in the "under 18" division; a plaque awarded to her by the Olympics Games Committee for her participation in the 1998 World Youth Games; the 1998 Championship Trophy for 1st place at the Serbian Championship Tournament in the "under 16" division; a 1997 "Best Female Athlete in Serbia" award; a 1997 diploma for her 1st place finish at the International Tennis Federation/European Tennis Federation; a Championship Trophy for a 2nd place finish at the European Championship in 1997 in Taga; a diploma for 3rd place at the Badischer Tennisverband Tournament on December 13, 1998 in the "juniors" division; and a 1999 1st place diploma for winning the International Open Tennis Tournament Rhodia-Cup in the Women's Single "A" and a diploma for 2nd place in the "A" Division.

The petitioner provided photographs of many trophies she has won and documentation of awards, including 3rd place in 1998 in the Junior AK-Division 1 at Bezirks-Hallenmeisterschaften Jugend, a 1st place finish in the 1999 Rhodia-Cup Women's Single A and 2nd place in Division A. We note first that the translations accompanying these documents were done by the petitioner and second that the translations are incomplete. The documents therefore do not comply with the terms of 8 C.F.R. § 103.2(b)(3), which provides:

Translations. Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner submitted documentation indicating she received several awards from Florida International University (FIU) including the 2004-2005 Mike Felsberg Spirit Award, certificate for "outstanding sportsmanship qualities for the 2005-2006 academic year, a certificate indicating that she made the Dean's List for the 2005-2006 academic year, the Sun Belt Conference Player of the Week in tennis on April 20, 2005, the 2006 Dr. Judith A. Blucker Outstanding Athletic Achievement Award and 2006 President's Award for "athletic and academic excellence among senior student athletes."

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

The petitioner has not demonstrated that her collegiate or amateur recognition constitutes nationally or internationally recognized prizes or awards. With regard to awards won by the petitioner in competitions that were limited by her amateur or collegiate status, such awards do not indicate that she "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). There is no indication that the petitioner faced significant competition from throughout the field of tennis. Competition for the awards won by the petitioner was limited to individuals in age-based or other similarly limited competition. 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 60899.² Likewise, it does not follow that a competitor like the petitioner who has had success in a competition restricted by age or non-professional status, 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."

Further, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. In this case, there is no evidence showing that petitioner's awards commanded a significant level of recognition beyond the context of the events where they were presented. For example, there is no evidence showing that the petitioner's awards were announced in major media or in some other manner consistent with national or international acclaim. Accordingly, the petitioner has not established that the divisions in which she successfully competed resulted in her receipt of nationally or internationally recognized prizes or awards in tennis.

The petitioner has failed to establish that she meets this criterion.

² 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.

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

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 order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as *The New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted a copy of a May 12, 2006 article from NCAASports.com, which reported on FIU's win in the opening match of the 2006 NCAA Women's Tennis Corals Gables Regional tournament. A similar article appeared on the website of cstv.com. The documents list the petitioner as one of the players in an unfinished singles match, but do not otherwise discuss the petitioner or her match. The article is not primarily about the petitioner or her work. The petitioner also submitted a page from the website of CBS Sports, accessed on April 3, 2008. The page lists the petitioner's name but provides no information about her other than her country of birth and her tour (World Tennis Association (WTA)). The petitioner provided a copy of a webpage from MiamiHerald.com, accessed on April 3, 2008. The page presents the results of a search of the petitioner's name on the website. Although the document indicated that the search resulted in 16 articles, only one contained information about the petitioner, and the petitioner did not provide a copy of the article. A January 19, 2006 article from beaconnewspaper.com, accessed by the petitioner on April 3, 2008, reported on the win by the FIU tennis team during the "FIU Spring Classic." The article included a sentence indicating that the petitioner was one of three seniors who won two singles matches. The article was not primarily about the petitioner or her work.

The petitioner also submitted copies of the 2005 and 2006 FIU media guides for women's tennis. Both included the petitioner's biography and the 2005 guide assessed her contribution to the team. The petitioner also provided the results of several of her matches that were reported on FIUsports.com. None of the information provided from FIU media is primarily about the petitioner or her work.

Additionally, the petitioner failed to provide documentation to establish that any of the media constitutes a professional or major trade publication or other major media. While the petitioner provided information about the *Miami Herald*, in today's world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet. While Internet sites are technically accessible nationally and even internationally, it cannot be credibly asserted that every Internet site has the same degree of national or international influence. Additionally, the mere act of posting an article online does not transform what is otherwise a local newspaper into major media. The record lacks evidence that the FIU internet sites routinely attract national or international attention beyond the audience of a physical college newspaper, i.e., students, parents and alumni.

The petitioner has failed to establish that she meets this criterion.

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

In support of this criterion, the petitioner submitted letters of reference from individuals who attest to her skill as a tennis player, particularly at the junior level. Several stated that the petitioner ranked in the top 20 junior tennis players in Europe and "never fell below the number 3 ranking" in Serbia. However, none indicate that the petitioner made a contribution of major significance to her field. For example, [REDACTED] of the Serbian Tennis Federation, stated in a March 23, 2008 letter: "With all the opportunities Miami brings . . . [the petitioner] will be ranked amongst the best players in the world in no time." [REDACTED] Head Coach of the California Tennis Academy (CTA) in Leysin, Switzerland, stated that she is "convinced" the petitioner "will now become a world top ranked tennis player." [REDACTED] stated in an April 2, 2008 letter that the petitioner "is now being personally managed by me and [REDACTED] She further stated:

For the past year I have provided a training and tournament schedule for [the petitioner] preparing her to become a top world ranked professional tennis player . . . It has been my determination that [she] will become a world renowned tennis player within 24 to 36 months.

This petition was filed in April 2008. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

[REDACTED], stated in a March 14, 2008 letter that the petitioner was the "finest player to ever come through the CTA." In an October 2, 2007 letter, [REDACTED] Director of the U.S. Tennis Association (USTA) Player Development Junior Competition, stated that the petitioner "has emerged as one of the best tennis players from Serbia" and that her "high level of achievement . . . has earned her international recognition to the extent that she is well-known throughout Europe and the United States." [REDACTED] also stated that the petitioner placed third in Olympic Games for juniors in Moscow. However, nothing in the record supports [REDACTED] statement. Further, neither [REDACTED] nor [REDACTED] described any contribution of major significance to the field of tennis made by the petitioner.

In a March 30, 2008 letter, [REDACTED] stated:

Prior to becoming a tennis coach, [the petitioner] was a top junior tennis player from Serbia. Throughout her junior career she was consistently ranked in the top three players in the country, and finished as the number one 14 and under and 16

and under girls tennis players. During this time, she competed with such current tennis superstars as [REDACTED], and [REDACTED]. In college, she was granted a full scholarship to attend FIU, where she was named the number one female athlete to ever attend the school. If it weren't for injuries, it would have been very feasible for [the petitioner] to have already become one of the top women's tennis players in the world.

We note that the petitioner has petitioned to enter the United States as a professional tennis player and not as a tennis coach. [REDACTED] does not indicate any contribution of major significance that the petitioner has made to her field of endeavor.

The petitioner's has failed to establish that she 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 have risen to the very top of her field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished herself 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 petitioner submitted no documentation that she has ever placed among the top ranked tennis players in the world or that she has been seeded (or even played) in any major tennis tournament. 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.