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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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[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: OCT 29 2009
SRC 08 081 52572

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).

Perry Rhew
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 (AAO) 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 had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel submits a brief. For the reasons discussed below, we uphold the director's overall determination that the petitioner has not established her eligibility for the exclusive classification sought.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(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, 60898-9 (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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an assistant tennis coach. First, we will not narrow the petitioner's field to assistant coaches. Rather, she must compare with the most experienced and renowned tennis coaches nationally, including head coaches.

As stated by the director in the request for additional evidence, the regulation at 8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." The petitioner intends to work as a coach in the United States. While a tennis player and a coach certainly share knowledge of tennis, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. *See Lee v. I.N.S.*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002). In response to the director's request, the petitioner noted the discussion of this issue in the memorandum by Michael Aytes, Acting Associate Director, Domestic Operations, USCIS, *AFM Update: Chapter 22: Employment-based Petitions (AD03-01)*, HQPRD70/23.12 (Sept. 12, 2006).

We recognize 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 recent 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.

In the response to the director's request for additional evidence, counsel asserted that the evidence of the petitioner's accomplishments as a competitor and coach show "an overall pattern of sustained acclaim and extraordinary ability." Counsel references the above memorandum again on appeal. Nothing in the memorandum referenced by counsel suggests that the petitioner may rely on a vague "overall pattern of sustained acclaim" without first establishing extraordinary ability as an athlete (as defined in the pertinent regulations). Rather, if the petitioner is unable to meet the regulatory evidentiary requirements as a coach but is able to do so with recent evidence as an athlete, she may then present evidence that coaching also falls within her area of expertise. Thus, we will examine below whether the petitioner has demonstrated her extraordinary ability as an athlete or a coach. For the reasons discussed below, the petitioner does not meet the necessary criteria as an athlete. Thus, she must meet the necessary evidentiary criteria as a coach rather than simply demonstrate that coaching is within her area of expertise. As will be discussed below, she has not established that she meets the necessary evidentiary criteria as a 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, 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.

At the outset, we note that the petitioner relies heavily on letters, two of which are unsigned and, thus, have no evidentiary value. In addressing whether or not the petitioner had established that she has performed a qualifying leading or critical role pursuant to 8 C.F.R. § 204.5(h)(3)(viii), the director stated: "The evidentiary requirements of this criterion heavily favor objective evidence that exists because of the petitioner's acclaim, rather than materials (such as witness letters) created specifically to assist the petitioner with her visa petition."

On appeal, counsel asserts that it is unreasonable to require "pre-existing" rather than "solicited" letters and asserts that the letters submitted fall under the comparable evidence standard set forth at 8 C.F.R. § 204.5(h)(4).

Counsel misunderstands the director's concerns. We agree with the director that witness letters alone cannot support eligibility under this classification, which, according to section 203(b)(1)(A)(i), requires "extensive evidence." 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. USCIS 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'r. 1988). However, USCIS 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; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS 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 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

Ultimately, objective evidence *other than letters* (solicited or otherwise) in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. We agree with the director's implication that an individual with sustained national or international acclaim should be able to produce unsolicited materials *other than letters* reflecting that acclaim. *See also Kazarian v. USCIS*, ___ F. 3d ___, 2009 WL 2836453, *5 (9th Cir. 2009).

Nevertheless, regarding the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), it would appear that letters from employers could serve as appropriate evidence of the nature of the petitioner's role for those employers, *see* 8 C.F.R. § 204.5(g)(1), although employment contracts and organizational charts are also useful. Thus, while we concur with the director that, in general, letters must be supported by preexisting objective evidence *other than letters* to establish eligibility for the classification sought, we withdraw the implication that they cannot serve as probative evidence relating to 8 C.F.R. § 204.5(h)(3)(viii).

We acknowledge that the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence where the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not "readily applicable." First, the petitioner has not demonstrated that the regulatory criteria are not readily applicable to her occupation. Significantly, she claims to meet several of those criteria. Regardless, we are not persuaded that general affirmations of acclaim or talent from peers selected by the petitioner are comparable to the objective evidence required under the ten regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3). *See generally Kazarian*, 2009 WL 2836453 at *5. Thus, we will not consider the letters as comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4) and will instead consider those letters only insofar as they address the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

The petitioner initially submitted evidence without any explanation as to which criteria that evidence is purported to meet. In response to the director's request for additional evidence and again on appeal, counsel addresses 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.

Regarding her success as a competitor, the petitioner submitted Romanian championship awards and U.S. collegiate awards. While the professional awards carry more weight than the collegiate awards given the existence of professional championships in the sport, we are satisfied that the petitioner meets this criterion as an athlete. For the reasons discussed below, however, the petitioner does not meet any other criterion as an athlete.

We note that the record contains evidence that some awards exist for tennis coaches. For example, [REDACTED] at Georgia Tech, received the U.S. Tennis Association (USTA)/Intercollegiate Tennis Association (ITA) National Coach of the Year title in 2007. Thus, it appears that this criterion is readily applicable and we need not consider comparable evidence under this criterion pursuant to 8 C.F.R. § 204.5(h)(4). Nevertheless, as the director considered the issue of whether the petitioner might meet this criterion through comparable evidence, we will also consider whether the petitioner has demonstrated qualifying awards or prizes received by athletes directly under her tutelage at the time. Before discussing the evidence, we note that the petitioner must establish eligibility as of the date the petition was filed, January 11, 2008. *See* 8 C.F.R. § 103.2(b)(1), (12); *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008); *Matter of Katigbak*, 4 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Thus, awards issued after that date cannot be considered. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Comm'r. 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981)). The director concluded that the evidence of the success of the team for which the petitioner serves as an assistant coach postdates the filing of the petition.

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

On appeal, counsel asserts that the director failed to consider the success of athletes coached by the petitioner in 2005 through 2007. The petitioner cannot be credited with the success of any Georgia Tech player prior to taking her position as an assistant coach for that team. At Florida State University, while a volunteer/graduate assistant coach, the petitioner was primarily a student. The regulation at 8 C.F.R. § 204.5(h)(3)(i) unambiguously requires evidence of the *alien's* receipt of a qualifying award. On a case-by-case basis, awards won by athletes under the primary tutelage of a coach at the time of the award may be considered comparable evidence under this criterion for the coach. To credit the volunteer/graduate assistant coach with an award received by another player, however, cannot credibly be considered "comparable" to winning a qualifying award oneself and would credit someone so far removed from the achievement as to render this criterion meaningless. Regardless, the achievements of Florida State University students referenced by counsel on appeal include a sixth place ranking and an "NCAA Tournament bid." These are not nationally recognized prizes or awards.

According to her curriculum vitae, the petitioner spent one year as an assistant coach at East Tennessee State. This year of experience is referenced in a press release regarding the petitioner's selection for the same position at Georgia Tech but the record contains no evidence regarding the success of any players at East Tennessee State during the petitioner's time there. Regardless, the accomplishments referenced by counsel² on appeal include a *regional* ranking and conference "final appearance." Once again, these accomplishments are not nationally or internationally recognized prizes or awards.

A July 3, 2007 press release announces the petitioner's selection as an assistant coach at Georgia Tech. As stated above, the petition was filed on January 11, 2008. Thus, we will consider the evidence of Georgia Tech players' success between those two dates and whether the record supports the proposition that the petitioner is responsible for any success during that period. One month after the petition's filing date, Georgia Tech won the ITA National Team Indoor Title. This accomplishment, however, postdates the filing of the petition. While the team qualified for the event prior to the filing date, the qualifying games do not constitute nationally or internationally recognized awards or prizes. On July 5, 2007, three Georgia Tech players were named to the 2007 All-ACC Academic Women's Tennis Team based on their academic achievements. The selection of the petitioner as assistant coach at Georgia Tech had only been announced and these players were selected based on academic rather than athletic ability. Thus, we will not consider these selections. A January 9, 2008 article states that the Georgia Tech's women's tennis team earned the top spot in the first national poll of the 2008 season as announced by the ITA. The record, however, contains little evidence regarding the criteria for this poll. Any consideration of the team's success in the previous season cannot be credited to the petitioner.

² The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

her field, including head coaches. Rather, they conclude that her abilities will allow her to achieve this level in the future. That said, we acknowledge that in a subsequent letter, [REDACTED] asserts that the petitioner's knowledge "is far superior to most division 1 head coaches." Still, even in this second letter, [REDACTED] does not explain how the petitioner has impacted the field.

[REDACTED] of Athletics at Georgia Tech, asserts that the petitioner's accomplishments as a player and coach are an asset to the school and student athletes. [REDACTED] Tennis Coach at Georgia Tech praises the petitioner's recruitment efforts and ability to challenge the players on the court. Merely contributing to the team she serves, however, is neither original nor of major significance to the field of tennis coaching as a whole.

[REDACTED] a professional tennis player, asserts that the petitioner is a hard worker and brings out the best in others. Once again, this general praise does not address the question of how the petitioner's work is either original or of major significance.

[REDACTED] at the University of Michigan, discusses how accomplishments as a tennis player can be utilized to be a successful coach. As stated above, we do not deny the existence of a nexus between playing and coaching. [REDACTED] does not identify a specific contribution or explain how it has impacted the field. He does not claim to have been influenced by the petitioner himself. Similarly, [REDACTED] Athletics Director at the University of Oklahoma, discusses the significance of securing the position at Georgia Tech but does not explain how the petitioner has impacted his own tennis coaches or the field of tennis coaching as a whole. We will consider the nature of the petitioner's position below pursuant to 8 C.F.R. § 204.5(h)(3)(viii).

[REDACTED] a former tennis player at Florida State University, asserts that the petitioner's unique language skills allow foreign students to communicate in their native language and that her unique experience as a former professional player sets her apart "from many other collegiate tennis coaches." We are not persuaded that speaking multiple languages, while useful in recruiting and communicating with foreign students, is an original contribution of major significance to the field of tennis coaching. While the petitioner's experience may help her serve her athletes, once again, that is not a contribution to the field of tennis coaching as a whole such that it can be considered to be of major significance.

[REDACTED], a professional tennis player, asserts that the Tennis Channel visited Georgia Tech recently to film [REDACTED] and the petitioner providing coaching tips. While [REDACTED] asserts that this program will be aired to the larger tennis audience, the record does not establish that it had aired as of the date of filing. Thus, the recording cannot be considered. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The remaining letters provide similar broad accolades. The record does not establish that the petitioner's accomplishments as an athlete are either original or of major significance. Every tennis match has a winner; it is not an original accomplishment. This conclusion does not suggest that these

wins are irrelevant; we have already concluded that the petitioner meets the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). We simply conclude that success on the court cannot also serve to meet this entirely separate criterion. Regarding her coaching accomplishments, the petitioner had only been coaching a short time as of the date of filing. While she clearly contributed to her team, already a successful team at the time she joined Georgia Tech, none of the references have adequately explained how an ability to perform well as an assistant coach is either original or of major significance to the wider field of tennis coaching.

In light of the above, the petitioner has not established that she meets this criterion as an athlete or as a coach.

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

The record contains no evidence that the petitioner meets this criterion as an athlete.³ Thus, we will limit our consideration to the evidence of her role as an assistant coach. As stated above, we withdraw the director's concern that letters from the petitioner's employer are not probative evidence for this criterion. At issue for this criterion are the nature of the role the petitioner was hired to fill and the reputation of the entity that hired her. In other words, the selection of the petitioner for this role, in and of itself, must be at least consistent with national or international acclaim.

The petitioner was hired as an assistant coach for the women's tennis team at Georgia Tech. The record adequately establishes the nationally distinguished reputation of this school's women's tennis team. We are not persuaded that an assistant coach plays a *leading* role for the team. At issue, then is whether the role is sufficiently critical. We note that the team's brochure indicates that the team has a head coach, an assistant coach and a volunteer assistant coach. We are hesitant to find that every member of the team's coaching staff plays a sufficiently critical role for the team as contemplated by 8 C.F.R. § 204.5(h)(3)(viii). Such a finding risks rendering this criterion meaningless.

As the assistant coach, the petitioner is not only responsible for monitoring the team members' academic performance, she also participates in recruitment, workouts and conditioning training. Some of the letters suggest that the petitioner not only participates in recruiting identified players, but also helps scout prospects. Given the evidence in the aggregate, both that discussed above and other evidence in the record, we are satisfied that the petitioner minimally meets this criterion as a coach.

In summary, the petitioner must establish that she either meets three criteria as a coach, or, given her recent switch from competing to coaching, that she meets three criteria as an athlete and coaches at the national level. The record establishes that the petitioner meets the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) as an athlete and plays a qualifying critical role as a coach pursuant to 8 C.F.R.

³ We have already considered the petitioner's athletic awards above pursuant to 8 C.F.R. § 204.5(h)(3)(i). We are not persuaded that these awards are also presumptive to meet this entirely separate criterion at 8 C.F.R. § 204.5(h)(3)(viii).

§ 204.5(h)(3)(viii). Even if we somehow looked at both her competitive and coaching accomplishments as some type of "overall pattern," the petitioner has not established that she meets at least three criteria.

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 the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a tennis 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 shows talent as an assistant tennis coach, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.