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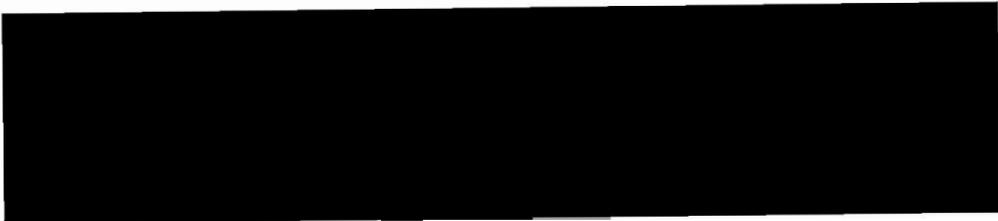
U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

D8

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FILE: SRC 06 071 50688 Office: TEXAS SERVICE CENTER Date: **JUN 02 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Acting as an agent, the petitioner seeks O-1 nonimmigrant classification of the beneficiary, as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i). The beneficiary is a professional polo player.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is one of a small percentage who have risen to the very top of his field of endeavor.

On appeal, counsel for the petitioner submits a brief.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

As used in this section, the term “extraordinary ability” means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii).

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

- (2) 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;
- (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
- (4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
- (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
- (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
- (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
- (8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The beneficiary in this matter is a 43-year old native and citizen of Argentina. According to the information provided on the Form I-129 petition, the beneficiary last entered the United States as a P-1 nonimmigrant alien on December 12, 2005.

The petitioner seeks to classify the beneficiary as an alien with extraordinary ability as a polo player. The regulation at 8 C.F.R. § 214.2(o)(3)(iii) indicates that a petitioner can establish that a beneficiary has sustained national or international acclaim thru evidence of a one-time achievement (that is, a major, internationally recognized award, such as the Nobel Prize). Barring the alien's receipt of such an award, the regulation outlines eight 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.

The petitioner has submitted evidence relating to the following criteria.¹

¹ The petitioner does not submit evidence or claim that the beneficiary met the criteria not discussed in this decision.

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

For criterion number one, the petitioner provided Citizenship and Immigration Services (CIS) with evidence that the beneficiary has a United States Polo Association (USPA) handicap or ranking of seven/eight points on a point system where the maximum achievable point ranking is ten and the lowest is a minus two. The petitioner provided documentation to explain the significance of a handicap rating. According to the USPA, the official governing body for polo in the United States, there are only 11 players registered with the USPA who carry a ten-goal rating.² According to the petitioner, there are currently 3,053 players in the USPA and only 53 have a rating of 6 goals or above.³ The petitioner has established that the beneficiary's 7/8 handicap is noteworthy.

The petitioner submitted a list indicating that the beneficiary and his teammates won 22 tournaments in the years 1993 through 2005. The petitioner established that the beneficiary and his team won some of the most prestigious USPA-sponsored competitions including the U.S. Open Championship, the USPA Gold Cup, and the Monty Waterbury. The petitioner has established that the beneficiary satisfies this criterion, but it is only one criterion.

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation.

The petitioner submitted numerous articles that mention the beneficiary, but they cannot be said to be about the beneficiary. The beneficiary is mentioned in goal-by-goal accounts reported in trade journals, e.g., "[REDACTED] scored the first two to tie the game at seven." The May 2001 edition of *Polo Players' Edition* features an uncaptioned photograph of the beneficiary and his teammates on the cover holding up a trophy. The online version of the publication features an article titled "Boca Polo's Redemption: [REDACTED] team finally goes from underdog to top dog after a five-year Gold Cup drought." The article mentions the beneficiary as well as other players.⁴ An untitled publication features captioned photographs of the beneficiary and his Boca Polo Team members. The petitioner submitted one article that featured the beneficiary, which was published in the March 24, 2001 edition of *Polo*, titled "[REDACTED] Never Look Back." This is the only article that is *about* the beneficiary and it is just one article. The record does not establish that the beneficiary has sustained acclaim over time. The beneficiary does not satisfy this criterion.

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

The petitioner submitted copies of two articles that the beneficiary authored. Both articles were published as features in the Instructor's Forum of *POLO Players Edition*. The articles are not dated. The article captioned "Pros and Patrons" may be incomplete. Neither article is scholarly. Both articles provide general advice to polo

² See USPA web page at http://www.us-polo.org/learn/polo_pro.htm as accessed on 12/23/2005.

³ 4,100 members in 2005 according to the USPA web page as accessed on 6/1/2006.

⁴ "The [beneficiary] was the hero of the match." See <http://www.poloplayersedition.com/new/may2001.html> as accessed 6/1/2006.

players, the first discussing the length and balance of a properly chosen mallet, and the correct position for hitting, the second advising players to be in good shape and to be mindful of their relationships with their patrons. The beneficiary does not satisfy this criterion.

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

For criterion number seven, the petitioner asserts that the beneficiary has competed for some of the world's top polo sponsors and top U.S. polo teams. The petitioner established that the beneficiary has been employed for organizations that have a distinguished reputation, but failed to establish that the beneficiary has been employed in a critical or essential capacity for these organizations. The petitioner has failed to establish that the beneficiary satisfies this criterion.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.