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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE: [Redacted]
SRC 05 099 50283

Office: TEXAS SERVICE CENTER Date: MAR 24 2006

IN RE: Petitioner:
Beneficiary:

[Redacted]

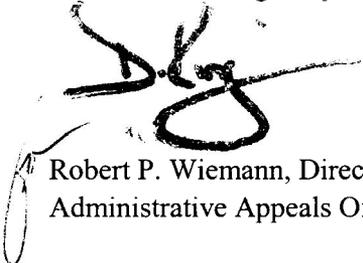
PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:

[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.


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a tennis club. The beneficiary is a tennis player. The petitioner seeks O-1 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), in order to employ him in the United States as a tennis coach for young athletes for a period of two years at a weekly salary of \$2,200. The beneficiary is a 28-year-old native and citizen of South Africa. The beneficiary last entered the United States as an F-1 nonimmigrant student on January 28, 2004.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has received sustained national or international acclaim and is one of a small percentage who have risen to the very top of his field of endeavor.

Counsel for the petitioner asserts that the director's decision is not supported by the regulation. On appeal, counsel submits copies of previously submitted documentation.

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.

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 regulation at 8 C.F.R. § 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

Counsel asserts that there is no statutory or regulatory requirement that requires the beneficiary to be recognized as a tennis coach of extraordinary ability. Counsel further asserts that the petitioner must only establish that the beneficiary "possesses extraordinary talent . . . in his field of specialty, and that he has sustained national or international acclaim for his athletic talent. The crux of the statutory requirement is that the alien must be coming to the United States to perform services in the area of his extraordinary ability."

Counsel's argument is without merit. While a tennis competitor and a coach certainly 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. 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. The court noted a consistent history in this area. 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 examine whether the petitioner has demonstrated the beneficiary's extraordinary ability as a coach or as an athlete. If the beneficiary has demonstrated extraordinary ability as an athlete, we will consider the level at which he has successfully coached.

After a careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial of the petition. The record is insufficient to establish that the beneficiary is an alien with extraordinary ability in athletics.

First, there is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). Nor is the record persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The petitioner has submitted evidence that is pertinent to the following criteria:

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

The petitioner submitted a copy of a February 10, 2005 letter from [REDACTED] Junior Administrator for the South African Tennis Association, indicating that the beneficiary "ended his career as a junior player in South Africa ranked as number two in singles and number one in doubles." The petitioner also submitted a partial copy of the Association of Tennis Professionals (ATP) rankings for September 10, 2001, reflecting that the beneficiary was ranked 602. A copy of a 1997 certificate from the Intercollegiate Tennis Association indicated that the beneficiary was a member of the 1997 Men's NAIA ITA All-America Team at Auburn University in Montgomery, Alabama.

The petitioner also submitted various certificates and “diplomas” issued to the beneficiary from 1984 through 1995.¹ Most of the documents are not accompanied by English translations. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

None of the evidence submitted by the petitioner indicates that the beneficiary received a national or internationally recognized award for excellence in tennis. Therefore, the beneficiary does not meet this criterion.

The petitioner submitted no evidence relevant to criterion number two.

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 copies of several articles. We note first that the accompanying translations submitted by the petitioner do not comply with the provisions of 8 C.F.R. § 103.2(b)(3), which require that documents submitted in a foreign language “shall be accompanied by a full English 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.” Thus they have no probative value in this proceeding.

Second, the petitioner submitted no evidence that these articles were published in professional, major trade publications or major media. In fact, many of the documents do not contain the publication in which the article appeared or the date that it appeared.

Furthermore, from the pictures with the published articles, the handwritten annotations and the identifiable English content, the documents do not appear to be of the beneficiary's recent successes as a tennis player. The documents appear to document the beneficiary's early years as a tennis player, from 1989 to 1995, the latest date identified on the documents by the petitioner. The petitioner must establish that the beneficiary has sustained acclaim in his field of expertise. The beneficiary's accomplishments as a junior tennis player do not establish his sustained acclaim as a tennis player currently at the very top of the field.

The evidence does not establish that the beneficiary satisfies this criterion.

The petitioner submitted no evidence relevant to criteria four through seven.

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.

¹ Several of the documents were copied so that their dates do not show.

The petitioner stated that the beneficiary would be paid \$2,200 per week, a salary “commensurate with his international recognition.” The petitioner submitted a document that it indicates is an offer of employment. The document is a letter “to whom it may concern,” outlining the petitioner’s reasons for hiring the beneficiary, and setting forth his proposed duties and salary. The petitioner did not submit a copy of a contract between it and the beneficiary, and submitted no other “reliable evidence” of the beneficiary’s salary or that it is high in comparison to others in the beneficiary’s field of endeavor. The petitioner has not established that the beneficiary meets this criterion.

The record contains letters of reference or recommendation that discuss the beneficiary’s record as a tennis player. While the authors express their opinions that the beneficiary is “an extraordinarily talented young man,” a “tennis professional of extra ordinary ability which is evident in his credentials,” and “quite literally, the cream of the crop in tennis,” the petitioner submitted insufficient corroborative evidence to establish the beneficiary’s standing as an alien of extraordinary ability in tennis, as a player or as a coach. This evidence is insufficient, without more, to establish eligibility for this restrictive visa classification, which requires extensive documentation of extraordinary achievement.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.