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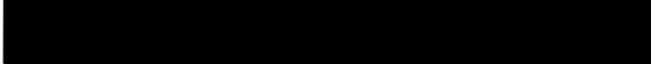
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FILE: WAC 07 055 52449 Office: CALIFORNIA SERVICE CENTER Date **MAR 21 2008**

IN RE: Petitioner:   
Beneficiary: 

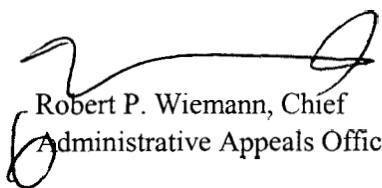
PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is self-described as a tennis, fitness and sports club. It seeks to employ the beneficiary as a tennis professional/coach for a three-year period. The company filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in athletics.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has achieved sustained national or international acclaim as a tennis instructor with extraordinary ability in athletics.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the director erred with respect to her analysis of several of the evidentiary criteria for the requested classification, and that the beneficiary qualifies as an alien with extraordinary ability in athletics. Counsel submits a brief and additional documentary evidence in support of the appeal.

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:

*Evidentiary criteria for an O-1 alien of extraordinary ability in the arts.* 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 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 either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence;
  - (8) Evidence that 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 record consists of a petition with supporting documentation, a request for additional evidence (RFE) and the petitioner's reply, the director's decision, an appeal and brief, and additional evidence supporting the appeal. The beneficiary in this case is a native and citizen of Barbados who last entered the United States on August 9, 2006 as an F-1 nonimmigrant student. The record shows that the beneficiary competed in national and international tournaments as a tennis player since 1992, and that she has some tennis coaching experience in the year prior to the filing of the petition. The petitioner seeks to classify the beneficiary as an alien with extraordinary ability as a tennis professional/coach.

In denying the petition, the director found that the beneficiary may meet two or more of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) as a competitive tennis player, the petitioner had not established that the beneficiary met at least three of the criteria as a tennis coach. The director also observed that there was no

evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A).

Upon review and for the reasons discussed herein, the petitioner has not established that the beneficiary is fully qualified as an alien with extraordinary ability in athletics.

The statute requires that the beneficiary seek entry into the United States “to continue work in the area of extraordinary ability.” Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i) (2007). Competitive athletics and sports instruction are not the same area of expertise and the USCIS will not assume that an alien with extraordinary ability as an athlete has the same level of expertise as a coach or instructor of his or her sport. However, given the nexus between athletic competition and coaching or sports instruction, 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 or international level, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that it can be concluded that coaching is within the beneficiary's area of expertise. Specifically, in such a case, USCIS will consider the level at which the alien acts as a coach. Accordingly, we will address the evidence regarding the beneficiary’s accomplishments as both a tennis player and coach.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification.

At the time of filing, counsel for the petitioner indicated that the beneficiary meets at least three of the eight criteria provided at 8 C.F.R. § 214.2(o)(3)(iii)(B), but did not claim that the beneficiary qualifies for O-1 classification on the basis of her receipt of a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A). However, on appeal, counsel asserts that the petitioner did in fact submit evidence that the beneficiary has received a major, internationally recognized award equivalent to those contemplated by the regulations. Specifically, counsel states that the petitioner submitted substantial evidence that the beneficiary has been ranked the number one tennis player in her category in Barbados for many years and that she was the Champion of the Caribbean region in her category. The petitioner submits a letter dated March 13, 2007 from Michael I. King, Ambassador to the United States from Barbados, who attests to the beneficiary's reputation as a "veritable tennis prodigy," who has played on national teams and received the distinction of Champion of the Caribbean region in 1997. Counsel asserts that this award qualifies as a "major internationally recognized award" consistent with 8 C.F.R. § 214.2(o)(3)(iii)(A).

Counsel's arguments in this regard are unpersuasive. The petitioner provided no further explanation or evidence that would establish the significance of the "Champion of the Caribbean" title achieved by the beneficiary, and without further evidence regarding the event and its importance within the sport, has not established that this award can be deemed a major, internationally recognized award. Furthermore, the petitioner provided no primary evidence of the beneficiary's receipt of the 1997 award. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In cases such as this one, where petitioners seek O-1 classification of an alien athlete and coach, USCIS will consider the success of athletes coached by the alien as comparable evidence. The record also does not demonstrate that the beneficiary has instructed, trained or coached any tennis players who have won major, internationally recognized awards.

As there is no evidence that the beneficiary has received a major, internationally recognized award, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

For criterion number one, which requires documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor, counsel for the petitioner stated that the beneficiary has received numerous awards for excellence in her field and has been ranked as the number one women's tennis player in her home country of Barbados for several years. The petitioner submitted a letter dated August 8, 2006 from [REDACTED] of the Barbados Olympic Association, Inc. who stated that the beneficiary has been Barbados' number one ranking female tennis player since 1997, and that she possesses the highest International Tennis Federation (ITF) Junior ranking in Barbados at 116 in singles and 104 in doubles. The petitioner did not provide any other documentary evidence confirming the beneficiary's rank either within Barbados or her ITF ranking. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner also submitted a letter from [REDACTED] of the Barbados Tennis Association, Inc., who states that the beneficiary has received many accolades including recognition by the Association as the Player of the Year in the years 1997, 1998 and 2000. He further stated that the beneficiary is a member of the Barbados Federal Cup Team and has represented Barbados at the Federal Cup, the Central American and Caribbean Games, the Pan American Games, the World Youth Games, the Orange Bowl and the NEC Youth Cup, as well as a member of ITF touring teams for Europe in 2000 and in South America from 1996 to 2000. In addition, the petitioner submitted a letter from [REDACTED] of National Sports Council, who acknowledged that the beneficiary has been an outstanding junior athlete in Barbados for some time, receiving an Appreciation Reward in 1997, and a Junior Outstanding Sports Personality Award in 2000. The petitioner provided color photographs of these and a number of other awards received by the beneficiary. Finally, the petitioner submitted a letter from [REDACTED], head coach for the Clemson University women's tennis team, who stated that the beneficiary, as captain of the team, helped guide the team to two NCAA Final Four Championships in 2004 and 2005, and an ACC Conference Championship in 2004. [REDACTED] further stated that the beneficiary and her partner were ranked among the top 50 doubles teams in the United States.

The director found the evidence sufficient to establish that the beneficiary has received nationally or internationally recognized awards as a competitor in tennis, but found that the petitioner had not shown that the beneficiary had won any nationally or internationally recognized prizes or awards for her performance as a coach. At the time of filing, the petitioner submitted the following evidence relating to the beneficiary's experience as a tennis coach:

- A letter dated September 27, 2006 from [REDACTED] head coach of women's tennis at Cornell University, who confirmed that the beneficiary worked for her as a women's assistant tennis coach from January 24, 2006 until April 24, 2006.
- The above-referenced letter from [REDACTED], who states that the beneficiary "has the skills necessary to teach and perform the sport at the highest level," and "can help develop our juniors to be competitive amongst the world ranks."

In an RFE issued on December 22, 2006, the director advised the petitioner that while USCIS recognizes a nexus between playing and coaching a given sport, it would not be assumed that every extraordinary ability athlete's area of expertise includes coaching. Therefore the director requested, *inter alia*, evidence of the alien's receipt of nationally or internationally recognized prizes or awards in coaching.

In response to the request for evidence, counsel acknowledged that the petitioner understood that "extraordinary ability in the field of athletics will be considered when an extraordinary applies as a coach, provided that acclaim as a coach at a national level. . . can be demonstrated." The petitioner submitted the following evidence in support of its claim that the beneficiary has coached "teams of national caliber":

- A letter dated January 8, 2007 from [REDACTED], Assistant Professor at Clemson University, who stated that the beneficiary attended Clemson University on a full athletic scholarship, and assisted with the management and coaching of the team as team captain for a team that achieved prominence as one of the best in the United States. [REDACTED] stated that the beneficiary remained at Clemson after graduation to serve as assistant coach and was subsequently recruited by Cornell University to serve as an assistant tennis coach.
- A letter dated January 25, 2007 from [REDACTED] Assistant Athletics Director for Compliance Services at Clemson University, who confirms that the beneficiary successfully completed the National Collegiate Athletics Association (NCAA) Coaches' Certification examination on December 15, 2005. [REDACTED] indicated that only certified coaches may contact or evaluate prospective student athletes off campus.
- A letter dated January 11, 2007 from [REDACTED], National Player Development Coach with the U.S. Tennis Association (USTA). [REDACTED] provided a summary of the beneficiary's career as a competitive tennis player, and stated that "as a coach, [the beneficiary] is an outstanding teacher who shares her knowledge of tennis with her students in a way that motivates them to improve." He stated that the beneficiary demonstrated her coaching abilities working with well-respected teams at Clemson and Cornell Universities.
- A letter dated January 10, 2007 from [REDACTED] a tennis coach with the petitioning company who states that she has worked with the beneficiary for the past year. [REDACTED] describes the beneficiary as an "excellent coach" who has an advantage in the coaching field because of her own success as an athlete, therefore making it "easier for her to develop an elite tennis player."
- A letter dated January 12, 2007 from [REDACTED], who states that she has known the applicant as a tennis player and coach for five years, and that the beneficiary "has what it takes to be a great coach." She stated that she and the applicant "worked together teaching tennis players of all ages

tennis skills, preparing players for tournament play, and planning practices and demonstrating skills and techniques to players." She indicated that the beneficiary assisted in coaching a Romanian Tennis Federation junior team at a tournament in Florida, which included one tournament winner and one finalist.

- A letter from [REDACTED] Tennis Pro/Director with the One & Only Ocean Club in Nassau, Bahamas, who stated that he has seen the beneficiary's coaching techniques and skills as a coach and referred to her as "one of the tennis world's finest up-and-coming coaches."
- A letter dated January 16, 2007 from [REDACTED] a professional tennis player ranked #46 in the Netherlands, who previously competed with the beneficiary on the ITF junior circuit and played with her at Clemson University. [REDACTED] described the beneficiary as an "incredible mentor," who assisted her with her tennis development as a doubles player while at Clemson University. She indicated that what she learned from the beneficiary has been beneficial to her career, and that beneficiary continues to play a substantial role in guiding her career. She stated that the beneficiary demonstrates "extraordinary ability" as a player and coach, and that the two capacities are often intertwined with one another.

With respect to the director's request for evidence related to the beneficiary's achievements as a tennis coach, counsel now states on appeal that the beneficiary's field is "tennis" and the director's insistence on making a "fine distinction" between the beneficiary's achievements as a player and coach in the sport is artificial and not supported by the statute or regulations. Counsel asserts "the attempt to distinguish between competitor and coach is invoked as a rationale for discounting [the beneficiary's] standing in her field." Counsel contends that the beneficiary's standing at the very top of the field as an internationally recognized tennis champion is self-evident. Counsel further submits that the director's decision "has gone out of its way to discount the beneficiary's coaching work at a national level."

As noted above, the regulation at 8 C.F.R. § 214.2(o)(1)(ii)(1) requires the beneficiary to "continue work in the area of extraordinary ability." While a competitive tennis player and a tennis coach share knowledge of tennis, the two rely on different sets of basic skills. Thus, competitive tennis and tennis coaching and instruction 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 petitioner further asserts that the beneficiary does in fact coach at a national level. In support of this claim, the petitioner submits a letter dated March 2, 2007 from [REDACTED], the petitioner's executive director of tennis. [REDACTED] states that the beneficiary, as a student practical trainee, the beneficiary has been appointed "Assistant Director of Player Development" for the petitioner's Long Island, New York training centers. Mr.

states that the beneficiary has worked with some of the top junior players in the United States. He indicates that the petitioner's centers have over 100 nationally ranked junior players, 15 of which are in the top 50 in the country. [REDACTED] does not identify which individual players the beneficiary has personally coached or provide evidence that such players nationally or internationally recognized awards. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Upon review, the record contains no evidence that the beneficiary has won national or internationally recognized awards as a tennis coach or instructor, or evidence that the beneficiary has instructed or coached players who have won national or international tournaments or other nationally or internationally recognized prizes or awards for tennis excellence. Rather, the letters submitted demonstrate that the beneficiary shows promise as an instructor and is just beginning in the field. Therefore, the AAO concurs with the director's determination that the beneficiary has not met the criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) as a tennis coach or instructor.

In order to establish that the beneficiary meets the second criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(ii), the petitioner must document 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. In this regard, the petitioner emphasized that the beneficiary has participated in her home country's teams as a representative of the country at various international events.

Several of the recommendation letters note the beneficiary's participation on the Barbados Federation Cup team, but do not provide any probative details to show that the beneficiary's membership required outstanding achievements, as judged by national or international tennis experts. As discussed in the preceding section, the record also shows that the beneficiary represented Barbados as a national player at the Federation Cup, Central American and Caribbean Games and Pan American Games, and as a junior player at the World Youth Games, the orange Bowl and the NEC Youth Cup in Jamaica in 1996. Finally the record shows that the beneficiary was a member of "specially selected International Tennis Federation Touring teams for Europe in 2000 and South America from 1996-2000." The beneficiary's memberships as a representative of her home country appear to have occurred six or more years before the petition was filed and so not demonstrate the requisite sustained acclaim. There is no evidence in the record regarding the ITF's membership eligibility criteria or evidence that ITF requires outstanding achievements of its members, as judged by recognized national or international tennis experts. The record also contains no persuasive evidence that the beneficiary has instructed or coached any athletes who have gained memberships that satisfy this criterion. Accordingly, the beneficiary does not meet this criterion.

To meet the third criterion, the petitioner must submit 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 photocopies of many articles that mention the beneficiary, although not all of the submitted evidence includes the title, date and author of such published material. The petitioner submitted a total of sixteen articles dated between April 1992 and August 1998, the majority of which were printed in *The Barbados Advocate*, and all of which referenced the beneficiary's achievements as a junior tennis player on a

national and international level. As the most recent article regarding the beneficiary was dated more than seven years prior to the filing of the petition, this evidence is insufficient to demonstrate the requisite sustained acclaim. Furthermore, none of the articles submitted addressed the beneficiary's accomplishments as an instructor, trainer, coach or assistant coach. The evidence of record does not establish that the beneficiary meets this criteria as either a player or coach.

To meet the fourth criterion, the petitioner must submit evidence of the beneficiary'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. The record contains no evidence that the beneficiary has participated on a panel, or individually, as a judge of any tennis competitions or other tennis events. Accordingly, the beneficiary does not meet this criterion.

The fifth criterion requires the petitioner to submit evidence of the beneficiary's original scientific, scholarly, or business-related contributions of major significance in the field.

As discussed above, the beneficiary has submitted numerous letters from tennis players, coaches and others who praise the beneficiary's accomplishments and skills as a tennis player and coach, but none of their letters indicate that the beneficiary has made original contributions of major significance to her field. The petitioner does not claim that the beneficiary meets this criterion.

Similarly, the petitioner has not attempted to establish that the beneficiary has authored scholarly articles in the field in professional or major trade publications or other major media, or otherwise claimed that the beneficiary meets the sixth criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

The petitioner does claim that the beneficiary meets the seventh criterion in that she has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. Specifically, counsel emphasizes that the beneficiary served as captain and assistant coach of the number three ranked collegiate tennis team in the United States and that she was the assistant tennis coach at Cornell University, a leading institution which competes at a national level. Counsel disagrees with the director's determination that "such staff or assistant positions are not considered employment in a 'critical or essential capacity.'"

Upon review, the AAO concurs with the director's determination. The beneficiary's role as captain of her collegiate team can not be considered "employment" for the purposes of establishing that she meets this criterion. The petitioner has provided evidence that the beneficiary served as an assistant tennis coach for Cornell University for a period of three months in 2006. The petitioner has not provided the dates of the beneficiary's purported employment as an assistant tennis coach with Clemson University, although [REDACTED] of Clemson University indicated that the beneficiary, after graduating, "stayed on at Clemson as [Assistant] Coach," prior to working for Cornell University. Given that the beneficiary was certified as an NCAA coach on December 15, 2005 and she was hired by Cornell University on January 24, 2006, it is reasonable to conclude that her coaching tenure at Clemson would have been no longer than approximately six weeks. While the AAO recognizes the national reputation of these universities in the field of athletics, the record does not establish that

the beneficiary's short-term employment in an assistant coaching role rises to the level of a critical or essential capacity with either institution.

The eighth and final criterion requires the petitioner to establish that the beneficiary has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

The record does not document the beneficiary's previous or current salaries or remunerations, nor has the petitioner submitted an employment contract agreement for the offered position. The petitioner indicates that it intends to compensate the beneficiary at a rate of \$30.00 per hour or \$62,400 annually. The petitioner provided an excerpt from the Foreign Labor Certification Data Center's Online Wage Library (<http://www.flcdatcenter.com>) showing that the average annual salary for athletic coaches and scouts in the petitioner's geographical region as of the date of filing was between \$17,000 and \$43,040. While the beneficiary's offered salary is higher than the average for "coaches" in general, it cannot be concluded based on the evidence submitted that it is substantially higher than that paid to other tennis instructors working for private health and tennis clubs in the petitioner's geographical region, or other similarly-employed tennis instructors working for the petitioner's facilities.

The record does not establish that the beneficiary has extraordinary ability in athletics, which has been demonstrated by sustained national or international acclaim and that her achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O) of the Act. The petitioner submitted no evidence that the beneficiary has received a major, internationally recognized award and the documentation submitted does not meet three of the eight other evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act and the petition must be denied.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of her field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements have not yet risen to this level.

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, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.