



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-C-A-M-, LLC

DATE: APR. 13, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a tennis academy and training center, seeks to classify the Beneficiary as a foreign national of extraordinary ability in athletics. See Immigration and Nationality Act (the Act) § 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i). This O-1 classification makes nonimmigrant visas available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation.

The Director, Vermont Service Center, denied the petition. The Director concluded that the record did not establish that the Beneficiary qualifies for the O-1A classification.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in its consideration of the Petitioner's evidence.

Upon *de novo* review, we will dismiss the appeal.

I. PERTINENT LAW AND REGULATIONS

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 extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). 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 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 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 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.

(b)(6)

Matter of C-C-A-M-, LLC

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(iii) provides:

The evidence submitted with an O petition shall conform to the following:

- (A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.
- (B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

II. FACTUAL AND PROCEDURAL HISTORY

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation on April 30, 2015. The Director issued a request for additional evidence (RFE) on May 26, 2015, to which the Petitioner replied. We have considered the record in its entirety in reaching this decision.

The Petitioner explained that it is a sports academy "specializing in delivering top-level training in tennis, soccer, basketball, lacrosse, and general fitness across six state-of-the-art facilities." According to the record, the Petitioner intends for the Beneficiary to be a tennis coach at its facility in ██████████ New Jersey for a period of 36 months beginning on May 1, 2015, with a salary of \$38,400 per year. The Beneficiary would train junior and senior players for tournaments as well as plan and participate in coaching camps. The Petitioner's evidence also included the required advisory opinion, letters from other tennis players and coaches, information about the Beneficiary's certifications, memberships, and coaching experience, and articles about coaching.

III. ANALYSIS

A. Evidentiary Criteria

The Petitioner did not claim, and the record does not establish, that the Beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A). Therefore, 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). After careful review of the record and for the reasons discussed herein, the Petitioner has not established eligibility under three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). We will address these criteria below.¹

¹ We have reviewed all of the evidence the Petitioner has submitted and will address those criteria the Petitioner asserts that it meets or for which it has submitted relevant and probative evidence. Although the Petitioner states that criteria 4, 5, and 6 do not readily apply to athletes and coaches, and that therefore the comparable evidence standard applies, the Petitioner has not explained what evidence it considers comparable for these criteria, or which evidence that it provided

(b)(6)

Matter of C-C-A-M, LLC

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

To meet criterion number one, the Petitioner must submit documentation of the Beneficiary's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 214.2(o)(3)(iii)(B)(1). The Petitioner also claimed that this criterion applies to the Beneficiary under the comparable evidence standard because "[a]thletes, not coaches, win tournaments, trophies, and recognition. No prizes or awards are awarded to coaches in the sport of tennis." Although the Petitioner provided evidence that the Beneficiary was a member of the [REDACTED] for Nigeria, the Petitioner did not provide any evidence that the Beneficiary or the Nigerian [REDACTED] received a nationally or internationally recognized prize or award for excellence.

The Petitioner claims that the Beneficiary should be evaluated for this criterion under the comparable evidence standard based on the achievements of the Beneficiary's students pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(C). The burden is on the Petitioner to show that the evidence submitted is comparable to the evidence the criterion describes. Accordingly, the Petitioner can rely on comparable evidence if it can establish that the Beneficiary has coached athletes who have received nationally or internationally recognized awards for excellence in the sport while under the Beneficiary's instruction.

The Beneficiary's coaching experience was documented through coaching certificates and testimonial evidence. The coaching certificates do not identify the athletes the Beneficiary was coaching. The Petitioner also did not submit any evidence that students the Beneficiary coached won any awards, either individually or a team. Therefore, although the Petitioner has submitted letters from [REDACTED] a National Tennis Coach at the [REDACTED] a tennis coach in Florida, and [REDACTED] a tennis coach in the United Kingdom, regarding the Beneficiary's coaching experience, none of these letters indicate that the players coached by the Beneficiary won any nationally or internationally recognized awards while primarily under the Beneficiary's tutelage.

In sum, the Petitioner has not established that the Beneficiary has received nationally or internationally recognized awards for excellence in coaching or that he has coached athletes who have received such awards while primarily under his tutelage. Upon review, the submitted evidence does not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

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

met the comparable evidence standard for these three criteria. Even assuming these criteria are not readily applicable to the occupation of tennis coach, the burden is on the Petitioner to show that the evidence submitted as comparable is comparable to the evidence the criteria describe.

(b)(6)

Matter of C-C-A-M, LLC

In support of this criterion, the Petitioner originally stated that the Beneficiary was a member of the [REDACTED] was a certified professional from the [REDACTED] which the Petitioner stated is the largest global organization of teachers and coaches: and a [REDACTED] Tennis Coach in Ireland.

The Petitioner did not provide any evidence that the Beneficiary was a member of the [REDACTED] nor did the Petitioner submit evidence of requirements to be a member of the [REDACTED]. Although the Petitioner states on appeal that it submits evidence of the Beneficiary's membership in [REDACTED] at "Exhibit B," such certification is not included in the record of evidence.

The copy of the Certificate from the [REDACTED] indicated that the Beneficiary qualified for Associate Instructor on June 21, 2001. According to [REDACTED] website,² (last reviewed on April 12, 2016, and a copy incorporated into the record), "[t]o become [REDACTED] Certified you must pass all [REDACTED] Certification Tests. The highest certification rating is Professional, followed by Instructor, then Associate Instructor. Your overall certification rating is the lowest of your test scores." However, the Petitioner has not explained how this documentation demonstrates that [REDACTED] requires outstanding achievements of its members.

Finally, the Petitioner did not submit any evidence regarding the [REDACTED] which issued the certificate stating that the Beneficiary had successfully completed Level One in tennis coaching. Nor did the Petitioner submit any documentation regarding the requirements to receive this certificate.

On appeal, the Petitioner claims that this criterion applies to the Beneficiary under the comparable evidence standard because "[t]here are no organizations in the field of Tennis that are unique to Coaches. The [REDACTED] and [REDACTED] offer opportunities for professional Coach Certification, but offer no membership class that requires outstanding achievements of their members." However, the Petitioner does not provide other comparable evidence of the Beneficiary's extraordinary ability, pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(C) and, instead, reiterates the Beneficiary's memberships and certifications as described above. As stated previously, the burden is on the Petitioner to show that the evidence submitted as comparable is comparable to the evidence the criterion describes.

The submitted documentation does not establish that the Beneficiary's memberships and certifications are indicative of the Beneficiary's national or international acclaim as a player or as a tennis coach. For all of the reasons discussed above, the Petitioner has not established that the Beneficiary satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

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

[REDACTED]

(b)(6)

Matter of C-C-A-M-, LLC

In general, in order for published material to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), it must be “about” the Beneficiary and, as stated in the regulations, be printed in professional or major trade publications or major media. To qualify as major media, the publication should have significant national or international distribution. The Petitioner did not initially assert that the Beneficiary satisfied this criterion, and the Petitioner’s initial evidence did not include published material about the Beneficiary that met this criterion. Accordingly, the Director determined that the Petitioner did not submit any evidence to establish that the Beneficiary satisfied this criterion.

The Petitioner now argues that this criterion applies to the Beneficiary under the comparable evidence standard because “Tennis is an individual sport. There exist few articles about the coach.” However, the Petitioner does not offer what it considers would constitute comparable evidence of the Beneficiary’s extraordinary ability, pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(C). As stated previously, the burden is on the Petitioner to show that the evidence submitted as comparable is comparable to the evidence the criterion describes. We note that the Petitioner may have been able to rely on comparable evidence if it had established that the Beneficiary coached athletes who were featured in major media, provided that that it could also demonstrate that these players’ success was attributable to the Beneficiary’s coaching. Further, the Petitioner did not submit articles in major media featuring athletes the Beneficiary coached, nor, as discussed in criterion one, did the Petitioner demonstrate that such athletes’ success was primarily due to the Beneficiary’s coaching.

The Petitioner’s evidence includes one article in [REDACTED] called [REDACTED] dated [REDACTED], 2013. This article mentions the Beneficiary as follows:

Then, we had players. [REDACTED]
[REDACTED]
etc. Later, the likes of [the Beneficiary], [REDACTED]
[REDACTED]

They made tennis vibrant here and the sport competed with football. Newspapers led with tennis stories. We went to the airport to cover the arrival of tennis players.

Additionally, the Petitioner includes a printout from the website of [REDACTED] which put the Beneficiary on its list of “Some of Nigeria’s Finest Sports Men and Women of All Times.” However, the Petitioner did not establish that [REDACTED] or [REDACTED] is a professional or major trade publication or other major media. The Petitioner did not submit evidence pertaining to the audience, circulation and distribution of the publications.

Based on the forgoing, the Petitioner has not submitted evidence that satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

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

(b)(6)

Matter of C-C-A-M, LLC

The seventh criterion requires the Petitioner to establish that the Beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The Director determined that the Petitioner did not establish that the Beneficiary satisfies this criterion.

On appeal, the Petitioner asserts that the Beneficiary satisfies this criterion based on his working as "Captain/Playing Coach of the [REDACTED] While the Beneficiary's position as captain and player-coach of his [REDACTED] may be in a critical or essential capacity for his team, the Petitioner has not established that the team is an organization with a distinguished reputation. The record contains no evidence that the team has achieved any measureable success in the [REDACTED] competition or any information about the requirements for participation in a [REDACTED] competition.

The Petitioner has not submitted sufficient evidence to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

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

As discussed previously, the Petitioner offered the Beneficiary a salary of \$38,400. On appeal, the Petitioner states that the Beneficiary will earn more than \$56,490 per year, which it claims is higher than the OES Level 4 wage in its metropolitan statistical area for coaches and scouts. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'1 Comm'r 1978). Further, the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8) requires the Petitioner to submit evidence showing that the Beneficiary will earn a "high salary." Average or median salary information is not a proper basis for comparison. Accordingly, as the Petitioner has not provided meaningful comparisons to the Beneficiary's past and proposed salary, the submitted evidence does not meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8).

IV. PRIOR APPROVALS

The Petitioner also claims that the petition should be approved because USCIS approved another O-1 petition that had been previously filed by a different petitioner on behalf of another tennis coach whom it states has similar credentials to the Beneficiary. The Director's decision does not indicate whether she reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of other beneficiaries and the Petitioner could demonstrate that they had similar credentials to the Beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

V. CONCLUSION

The Beneficiary has not received a major, internationally recognized award, such as the Nobel Prize, and the record does not satisfy at least three criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) or the comparable evidence provision at 8 C.F.R. § 214.2(o)(3)(iii)(C). Consequently, the Petitioner has not established that the Beneficiary is eligible for classification as a foreign national with extraordinary ability in athletics.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of C-C-A-M-, LLC*, ID# 16205 (AAO Apr. 13, 2016)