

PUBLIC COPY

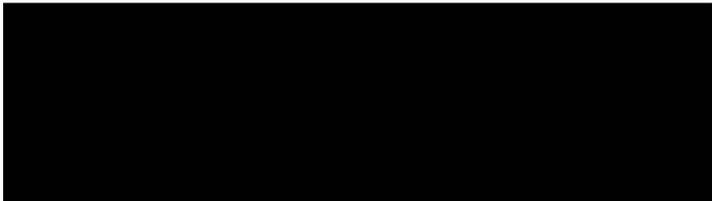
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

D9



File: WAC 07 006 50598 Office: CALIFORNIA SERVICE CENTER Date:

FEB 02 2009

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)

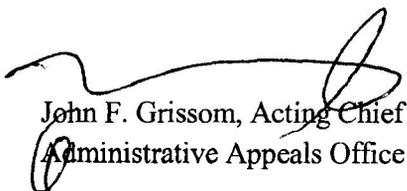
ON BEHALF OF PETITIONER:



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.

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).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner filed the instant 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 of extraordinary ability in athletics. The petitioner operates a sports club and seeks to employ the beneficiary as a tennis counselor for a period of two years.

The director denied the petition on January 12, 2007, on two separate and alternative grounds. First, the director concluded that evidence submitted does not support a claim of extraordinary ability, as it does not demonstrate that the beneficiary has achieved sustained national or international acclaim and recognition as a tennis player or coach. Second, the director found that the petitioner failed to submit the required written consultation from a peer group or labor organization as required by 8 C.F.R. § 214.2(o)(5)(i)(A).

The petitioner subsequently filed an appeal on February 13, 2007. Counsel for the petitioner stated on Form I-290B, Notice of Appeal to the AAO, that additional documentation evidencing the beneficiary's qualifications would be provided within 30 days. As no additional evidence has been incorporated into the record of proceeding, the AAO contacted counsel by facsimile on December 1, 2008 to inquire whether the brief or evidence were filed with the AAO within the period indicated on Form I-290B. On December 2, 2008, counsel replied, and confirmed that he did not file a brief or 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 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 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 evidentiary criteria for aliens seeking classification as O-1 aliens with extraordinary ability in the fields of science, education, business or athletics are set forth at 8 C.F.R. § 214.2(o)(3)(iii). Specifically, the petitioner must establish that the beneficiary meets the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(A) or three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). If the

criteria do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility. 8 C.F.R. § 214.2(o)(3)(iii)(C). The evidence submitted must demonstrate that the beneficiary has earned sustained national or international acclaim and recognition for achievements in the field.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. The director conducted a thorough review of the record of proceeding and clearly explained why the petitioner's evidence failed to satisfy any of the evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A), (B), or (C). The director also noted that the petitioner claimed that no appropriate peer group or labor organization exists in the sport of tennis, rather than providing the requisite written consultation. Specifically, the director observed that the United States Tennis Association (USTA) can and does routinely provide consultations that meet the requirements of 8 C.F.R. 214.2(o)(5)(i)(A).

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On appeal, the petitioner does not identify an erroneous statement of fact or conclusion of law on the part of the director. Petitioner's counsel does not specifically object to the denial of the petition on the grounds stated or otherwise state the basis for the appeal. Accordingly, the appeal will be summarily dismissed.

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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.