



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

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

MATTER OF S-H-P-T- LLC

DATE: NOV. 13, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a tennis academy, seeks to classify the Beneficiary as an internationally recognized athlete. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(P)(i), 8 U.S.C. § 1101(a)(15)(P)(i). The Director, Vermont Service Center, denied the petition. The Petitioner filed a motion to reconsider. The Director granted the Petitioner's motion, but affirmed its denial of the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner filed the Form I-129, Petition for Nonimmigrant Worker, seeking to sponsor the Beneficiary to compete as a tennis player in various tournaments in the United States and abroad for a period of five years. At the time of filing, the Petitioner asserted that the Beneficiary satisfies four of the seven evidentiary criteria for internationally recognized athletes or athletic teams pursuant to the regulations at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). The Director denied the petition, concluding that the Petitioner did not show that the Beneficiary, as an individual athlete, has achieved international recognition in her sport based on her own reputation as defined at 8 C.F.R. § 214.2(p)(3). The Director also determined that the record does not establish that the Beneficiary is coming to the United States to compete in an athletic competition which has a distinguished reputation and requires the participation of an athlete who has an international reputation. *See* 8 C.F.R. § 214.2(p)(4)(ii)(A).

On appeal, the Petitioner asserts that it has demonstrated the Beneficiary's eligibility as an internationally recognized athlete, and submits a brief and new evidence. Upon review, and for the reasons stated herein, we find that the record does not establish either that the events in which the Beneficiary will compete require participation of an athlete who has an international reputation, or that the Beneficiary is an athlete who performs at an internationally recognized level of performance. Accordingly, we will uphold the Director's decision and dismiss the appeal.

I. PERTINENT LAW AND REGULATIONS

Under section 101(a)(15)(P)(i) of the Act, a foreign national having a foreign residence which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or sponsor. Section 214(c)(4)(A)(i) of the Act, 8 U.S.C. § 1184(c)(4)(A)(i), provides that section 101(a)(15)(P)(i)(a) of the Act applies to a foreign national who:

- (I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance;
- (II) is a professional athlete, as defined in section 204(i)(2);
- (III) performs as an athlete, or as a coach, as part of a team or franchise that is located in the United States and a member of a foreign league or association of 15 or more amateur sports teams, if
 - (aa) the foreign league or association is the highest level of amateur performance of that sport in the relevant country;
 - (bb) participation in such league or association renders players ineligible, whether on a temporary or permanent basis, to earn a scholarship in, or participate in, that sport at a college or university in the United States under the rules of the National Collegiate Athletic Association; and
 - (cc) a significant number of the individuals who play in such league or association are drafted by a major sports league or a minor league affiliate of such a sports league; or
- (IV) is a professional athlete or amateur athlete who performs individually or as part of a group in a theatrical ice skating production

Section 214(c)(4)(A)(ii)(I) of the Act, 8 U.S.C. § 1184(c)(4)(A)(ii)(I), provides that the foreign national must seek to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

The regulation at 8 C.F.R. § 214.2(p)(4)(i)(A) states:

P-1 classification as an athlete in an individual capacity. A P-1 classification may be granted to an alien who is an internationally recognized athlete based on his or her own reputation and achievements as an individual. The alien must be coming to the United States to perform services which require an internationally recognized athlete.

The regulation at 8 C.F.R. § 214.2(p)(3) further states, in pertinent part:

Internationally recognized means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country.

The regulation at 8 C.F.R. § 214.2(p)(4)(ii) sets forth the documentary requirements for P-1 athletes as:

- (A) *General.* A P-1 athlete must have an internationally recognized reputation as an international athlete or he or she must be a member of a foreign team that is internationally recognized. The athlete or team must be coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete or athletic team that has an international reputation.

- (B) *Evidentiary requirements for an internationally recognized athlete or athletic team.* A petition for an athletic team must be accompanied by evidence that the team as a unit has achieved international recognition in the sport. Each member of the team is accorded P-1 classification based on the international reputation of the team. A petition for an athlete who will compete individually or as a member of a U.S. team must be accompanied by evidence that the athlete has achieved international recognition in the sport based on his or her reputation. A petition for a P-1 athlete or athletic team shall include:
 - (1) A tendered contract with a major United States sports league or team, or a tendered contract in an individual sport commensurate with international recognition in that sport, if such contracts are normally executed in the sport, and

 - (2) Documentation of at least two of the following:
 - (i) Evidence of having participated to a significant extent in a prior season with a major United States sports league;

 - (ii) Evidence of having participated in international competition with a national team;

 - (iii) Evidence of having participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition;

 - (iv) A written statement from an official of the governing body of the sport which details how the alien or team is internationally recognized;

 - (v) A written statement from a member of the sports media or a recognized expert in the sport which details how the alien or team is internationally recognized;

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- (vi) Evidence that the individual or team is ranked if the sport has international rankings; or
- (vii) Evidence that the alien or team has received a significant honor or award in the sport.

Finally, the regulation at 8 C.F.R. § 214.2(p)(2)(ii) states that petitions for P nonimmigrant aliens shall be accompanied by the following evidence:

- (A) The evidence specified in the specific section of this part for the classification;
- (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;
- (C) An explanation of the nature of the events or activities, the beginning and end dates for the events or activities, and a copy of any itinerary for the events or activities; and
- (D) A written consultation from a labor organization.

II. FACTUAL AND PROCEDURAL HISTORY

The Beneficiary is a [REDACTED]-year-old tennis player who participated in junior and youth tennis competitions in Russia, her native country, as well as in the United States and Europe between 2011 and 2013. The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on June 27, 2014, seeking to have the Beneficiary compete in various tournaments in the United States and abroad.

The initial evidence included an itinerary of events in which the Beneficiary will participate, information about the Petitioner downloaded from the organization's website at [REDACTED] a letter of "no objection" from the [REDACTED] reference letters from persons working in the sport, the Beneficiary's results in various tennis tournaments, the Beneficiary's ranking in Europe and Russia, and a signed summary of the oral agreement between the parties dated June 3, 2014. The agreement summary indicates that the Petitioner, as the sponsoring organization, will not directly employ the Beneficiary but will guarantee the terms and conditions of the Beneficiary's employment. The Petitioner will allow the Beneficiary to train at its facility and will assist the Beneficiary in arranging her tournament schedules. In exchange, the Beneficiary will promote the Petitioner's academy while competing at various tennis tournaments in North America, Europe and Asia.

The Director issued a request for additional evidence (RFE) on July 8, 2014, to which the Petitioner responded with an additional reference letter, and a letter providing general information regarding the [REDACTED] tennis circuits in which the Beneficiary will compete. The Director denied the petition,

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concluding that the Petitioner did not satisfy at least two of the seven evidentiary criteria for internationally recognized athletes, pursuant to 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). The Director further raised concerns regarding the nature of the events where the Beneficiary would participate. The Director reaffirmed these conclusions on motion. On appeal, the Petitioner asserts that it has established the Beneficiary's eligibility as an internationally recognized athlete and submits a brief and new evidence.

III. ANALYSIS

A. Competition Having a Distinguished Reputation Requiring an Athlete with an International Reputation

The first issue addressed by the Director is whether the Beneficiary is coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete who has an international reputation, pursuant to 8 C.F.R. § 214.2(p)(4)(ii)(A). The Petitioner provided an itinerary of events for 2014 which are junior tennis tournaments, and events between 2015 and 2019 which are professional tennis tournaments that the [REDACTED] or the [REDACTED] sponsor. The Petitioner's initial evidence did not include any materials pertaining to the reputation of any of the competitions or their entry requirements.

In response to the Director's RFE, the Petitioner submitted a letter from [REDACTED] Player Development, [REDACTED] dated May 19, 2014, stating that "world-class 'junior tennis' is an extremely competitive, high level, multi-billion dollar worldwide industry," and that players enter tennis tournaments "as their physical condition permits, and as their performance allows." [REDACTED] explained that "[m]any of the top international and national championships require that a player qualify by earning points." [REDACTED] stated that competing in the [REDACTED] tennis circuit "requires exceptional talent and ability."

The Petitioner also provided a letter from [REDACTED] President of the [REDACTED] [REDACTED] dated September 5, 2014, stating that the itinerary of [REDACTED] and [REDACTED] professional events "without questions [*sic*] requires a world-class, internationally recognized and exceptionally talented tennis player." He noted that players must qualify for these events by ranking and/or performance, and emphasized that "[t]he [REDACTED] professional circuit is the highest-level of women's tennis in the world" and that by competing in this circuit, the Beneficiary "will be competing in events that require a superior level of ability or 'international recognition.'" The Petitioner further submitted materials from the [REDACTED] website discussing the structure of the [REDACTED] and its role in administering, regulating and organizing tennis competitions and structuring, developing and promoting the game.

The Director determined that the Petitioner did not establish that the specific competitions in which the Beneficiary will compete have a distinguished reputation and require participation of an athlete that has an international reputation. On appeal, the Petitioner contests the Director's finding, stating

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that the “Beneficiary’s itinerary of events includes world class tennis competition” on the [REDACTED] and [REDACTED] tours, which “are the highest level of amateur/junior and professional women’s tennis.” The Petitioner also asserts that the Director was in error in finding that the junior competitions do not require an athlete with an international reputation.

First, while letters discuss the prestige of [REDACTED] and [REDACTED] sponsored events, the Petitioner has not demonstrated the Beneficiary’s eligibility to participate in these professional tennis tournaments listed on the itinerary between 2015 and 2019, including [REDACTED]. The letters of [REDACTED] and [REDACTED] indicated that the Beneficiary would have to qualify for those events, but the letters do not provide the entry requirements or state that the Beneficiary is currently eligible to compete in such events, which they describe as the highest level of international tennis in the world. The Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the Petitioner or Beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg’l Comm’r 1978).

With respect to the junior events listed for 2014, the Petitioner has not demonstrated that they require the participation of an athlete who has an international reputation. The itinerary lists the [REDACTED] and [REDACTED]. While these tournaments all have names suggesting that they are international competitions that may reasonably require the participation of internationally-recognized athletes, the Petitioner has not provided the entry requirements for the events or comparable exhibits that would establish whether the event requires the participation of athletes with an international reputation.

The letters of [REDACTED] do not provide the entry requirements or similar information that would establish whether the junior events require the participation of an athlete who has an international reputation, such as the number of entries accepted, or the number of participants who qualified for the tour. 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’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Finally, the remaining junior competitions are tennis competitions of unknown significance in the sport. Based on the foregoing, the Petitioner has not demonstrated that the specific competitions in which the Beneficiary will compete are competitions which require participation of an athlete who has an international reputation, pursuant to 8 C.F.R. § 214.2(p)(4)(ii)(A). The appeal will be dismissed on this basis.

B. Internationally Recognized Athlete

The remaining issue addressed by the Director is whether the Petitioner showed that the Beneficiary is an internationally recognized athlete as defined in the Act and regulations. The Petitioner’s evidence must support a finding that the Beneficiary’s individual achievement in the sport is renowned, leading or well-known in more than one country, pursuant to the definition of “internationally recognized” at 8 C.F.R. § 214.2(p)(3). The Director determined that the Petitioner did not satisfy any of the seven

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criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2), of which two must be satisfied. The Petitioner does not assert that the Beneficiary meets the criteria at 8 C.F.R. §§ 214.2(p)(4)(ii)(B)(2)(i), (ii), (iii), or (vii), nor does it contest the Director's determination that these criteria have not been met. The remaining three criteria will be discussed below. For the reasons discussed, we find that the Petitioner has not established the Beneficiary's eligibility as an internationally recognized athlete.

A written statement from an official of the governing body of the sport which details how the foreign national or team is internationally recognized

The Director determined that the Petitioner did not meet this criterion. The Petitioner initially submitted a letter from [REDACTED] of the [REDACTED] the governing body of tennis in Russia. [REDACTED] affirmed that the Beneficiary "is clearly and undeniably an internationally recognized athlete" and emphasized that in the last two years the Beneficiary "has competed in at least 26 international tournaments . . . and she advanced to the Quarterfinals or better in 12 (including seven Finals or Semi-Finals.)" He also noted that the Beneficiary's ranking in the [REDACTED] as of March 2014 in [REDACTED] competition is [REDACTED] and in All Girls is [REDACTED] out of approximately 2,500 competitors. He further stated that the Beneficiary is ranked [REDACTED] in Russia. We will address the Beneficiary's rankings under the relevant criterion below. Finally, [REDACTED] listed some of the events in which the Beneficiary has competed between 2012 and 2013.

In response to the Director's RFE, the Petitioner proved the letter from [REDACTED]. He attested to "the international renown and exceptional accomplishments of [the Beneficiary.]" [REDACTED] reached similar conclusions to those contained in [REDACTED] letter, pertaining to the events in which the Beneficiary competed between 2012 and 2013, and her rankings in the [REDACTED]. [REDACTED] emphasized that the fact that the Beneficiary will be coming to the United States to compete in the [REDACTED] professional circuit. As previously stated, the Petitioner has not demonstrated the Beneficiary's eligibility at the time of filing to participate in the [REDACTED] sponsored professional tennis tournaments listed on the itinerary after the junior competitions. Regardless, the Petitioner has not established that qualifying for the [REDACTED] professional circuit, in and of itself, reflects that the Beneficiary's achievement in the sport of tennis is "renowned, leading, or well-known in more than one country." The Petitioner has not detailed the requirements for participation in the [REDACTED] professional circuit, nor is there any evidence in the record to support a finding that the [REDACTED] professional circuit only accepts tennis players who have previously achieved international recognition in the sport.

While [REDACTED] suggested that the Beneficiary is internationally recognized based upon her advancing to "the Quarterfinals or better" in 12 junior international competitions, and [REDACTED] affirms this suggestion, they do not sufficiently explain the significance of these achievements. While winning a gold medal in certain major competitions may convey international recognition, we will not assume that any first place finish in any competition designated a "world" or "international" competition will have such an effect. [REDACTED] and [REDACTED] have not commented on the significance of the specific competitions in which the Beneficiary achieved the Finals or Semi-Finals

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finishes. The fact that the Beneficiary achieved such finishes in those events, in and of itself, does not establish that the Beneficiary's achievement in the sport of tennis is "renowned, leading, or well-known in more than one country." For example, neither letter explains the significance or scope of the competitions such as detailing the requirements for participation in those competitions. Nor do the letters discuss the international recognition conveyed on the Beneficiary as a result of her performance in those competitions.

The regulation at 8 C.F.R. § 214.2(p)(2)(iii)(B) provides that affidavits written by recognized experts "shall specifically describe the [foreign national's] recognition and ability or achievement in factual terms, and also set forth the expertise of the affiant and the manner in which the affiant acquired such information." Furthermore, the plain language of this criterion requires that the authors "detail how the alien . . . is internationally recognized." While we recognize [redacted] and [redacted] as officials of the [redacted] and conclude that they have described the Beneficiary's recent achievements in the sport of tennis in some detail, they have not described the manner in which they acquired such knowledge about the Beneficiary. See 8 C.F.R. § 214.2(p)(2)(iii)(B). Regardless, we may, in our discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). We, however, are ultimately responsible for making the final determination regarding a foreign national's eligibility for the benefit sought. *Id.* The submission of letters supporting the petition is not presumptive documentation of eligibility; we may evaluate the content of those letters as to whether they support the foreign national's eligibility. See *id.* at 795-796. Thus, the content of the writer's statements and how they became aware of the Petitioner's reputation are important considerations. For the above reasons, the letters of [redacted] and [redacted] do not sufficiently detail how the Beneficiary is in fact internationally recognized.

The Petitioner also initially provided a written statement from [redacted] of the [redacted]. [redacted] indicated that the [redacted] has no objection to the Beneficiary being granted P-1 status, which meets the consultation requirement at 8 C.F.R. § 214.2(p)(2)(ii)(D). She did not, however, detail how the Beneficiary is internationally recognized. Based on the above, we agree with the Director's determination that the letters submitted by representatives of the [redacted] do not meet the criterion set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iv).

A written statement from a member of the sports media or a recognized expert in the sport which details how the foreign national or team is internationally recognized

The Director determined that the Petitioner did not meet this criterion. The Petitioner submitted a letter from [redacted] of the [redacted] who provided a list of the Beneficiary's accomplishments similar to the list in [redacted] letter and concluded that the Beneficiary "is clearly an outstanding tennis player who is at the top of the game and, therefore, is internationally recognized as an exceptional tennis player." [redacted] also affirmed that the Beneficiary's act of qualifying to compete in the [redacted] in 2012, and the [redacted] between 2011 and 2013

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“requires international recognition as earned by competing and succeeding at the highest levels of tennis,” because “[t]he main draws of these international championships are open only to the Top [redacted] players in the world.” (Emphasis in original.) However, [redacted] did not corroborate her statements by providing any information regarding the requirements to qualify for those specific international tournaments. The Petitioner also asserted that the above-mentioned letters of [redacted] satisfy this criterion.

On appeal, the Petitioner concludes that the Director erred by finding that the Beneficiary’s achievements in junior competitions do not show the Beneficiary’s eligibility for the classification sought. For the reasons discussed above, we find that while the junior competitions do not preclude approval, we agree that the Petitioner did not demonstrate the Beneficiary’s eligibility as an internationally recognized athlete, because the list of tournament results provided in the letters was lacking explanation of the significance of the Beneficiary’s accomplishments in specific tournaments or how such results conveyed international recognition on the Beneficiary. In addition, [redacted] letter does not establish on what basis she is a recognized expert in the field of tennis, and none of the letters describes the manner in which the author acquired such knowledge about the Beneficiary. See 8 C.F.R. § 214.2(p)(2)(iii)(B). For the above reasons, we agree with the Director’s determination that the submitted letters do not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(v).

Evidence that the individual or team is ranked if the sport has international rankings

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vi), the Petitioner provided the above-referenced letter from [redacted] stating that the Beneficiary’s ranking in the [redacted] as of March 2014 in [redacted] competition is [redacted], and that the Beneficiary is ranked [redacted] in Russia. Both official rankings are in the record. [redacted] also refers to an additional ranking, but he does not specify the source. A review of the website for the [redacted] reveals that the organization maintains an international, under-[redacted] junior circuit for Boys and Girls and ranks junior players. A review of the rankings for Girls Juniors reveals that the Beneficiary is currently ranked [redacted] out of approximately 2,370 competitors. In light of the above, we withdraw this portion of the Director’s decision, and find that the Petitioner has submitted sufficient evidence to establish that the Beneficiary meets the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vi).

In summary, the Petitioner has not satisfied at least two of the seven criteria for internationally-recognized athletes as set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). The appeal will be dismissed on this additional basis.

IV. CONCLUSION

The record does not confirm that the Beneficiary is coming to the United States to participate in an athletic competition which has a distinguished reputation and requires participation of an athlete that has an international reputation, pursuant to 8 C.F.R. § 214.2(p)(4)(ii)(A). In addition, the evidence submitted by the Petitioner does not satisfy at least two of the seven evidentiary criteria listed in the

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regulation at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). Consequently, the Petitioner has not established that the Beneficiary is eligible for classification as an internationally recognized athlete.

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, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-H-P-T- LLC*, ID# 14418 (AAO Nov. 13, 2015)