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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC-02-062-50268 Office: Vermont Service Center Date: JAN 17 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Hayward

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The petitioner, a tennis club, seeks to hire the petitioner as a "tennis professional." The director determined the petitioner had not established that the beneficiary had the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues that the denial of the immigrant visa on behalf of the petitioner after the Service approved a nonimmigrant visa for the petitioner in a similar classification is inconsistent as the regulations "mirror" each other. Counsel cites *Vargas v. INS*, 938 F.2d 358 (2d Cir. 1991).

We do not find that an approval of a nonimmigrant visa mandates the approval of a similar immigrant visa. Each case must decided on a case-by-case basis on the evidence of record. The nonimmigrant visa could have issued based on different evidence or in error. The Service is not bound to treat acknowledged past errors as binding. *See Chief Probation Officers of Cal. v. Shalala*, 118 F.3d 1327 (9th Cir. 1997); *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 517-518 (1994); *Sussex Engineering, Ltd. v. Montgomery*, 825 F.2d 1084 (6th Cir. 1987). We note that the case cited by counsel, *Vargas v. INS* reversed a BIA decision where the BIA did not follow its own rule, made no attempt to justify the rule used by reference to statute, and was attempting to amend the regulations without notice and comment. Unlike that case, the director's decision and ours is made with reference to the statute and regulations. In addition, as will be discussed below, as the petitioner is coming to the United States to coach, he must demonstrate extraordinary ability as a coach. It is not clear that this distinction was relevant at the nonimmigrant stage. Finally, a petitioner must show sustained acclaim. It is possible that an alien could show national acclaim at the nonimmigrant stage and not sustain that acclaim as of the date of filing the immigrant petition. We will consider counsel's additional arguments below.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term 'extraordinary ability' means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a tennis player/coach. While the petitioner listed the job title as "tennis professional" on the Form I-140, in a letter submitted in support of the petition, the petitioner provided:

> The individual will be responsible for the training of the students of the club. He will instruct, train, [and] coach junior players and professionals in the field of tennis. As a tennis coach, he will be involved in furthering the club's development of innovative teaching and coaching methods, and enhancing its reputation.

Thus, it is clear that the petitioner intends to work as a tennis coach. 8 C.F.R. 204.5(h) requires the beneficiary to "continue work in the area of expertise." The beneficiary intends to work as a coach in the United States. While a tennis player and a coach certainly share knowledge of tennis, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. We do not deny that there exists a nexus between playing and coaching tennis. 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. Specifically, in such a case we will consider the level at which the alien acts as coach. A coach of 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 petitioner has demonstrated the beneficiary's extraordinary ability as an athlete, we will consider the level at which the beneficiary has coached.

The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

On appeal, counsel states that while the beneficiary "qualifies in numerous categories," the Service should accept comparable evidence under 8 C.F.R. 204.5(h)(4) because the beneficiary works in a "rare occupation and field of endeavor." By its own terms, the statute applies to aliens with demonstrated extraordinary ability in athletics. The beneficiary is a tennis player and coach. Tennis is a sport with national and international awards, that is heavily covered in the press, and is otherwise typical of mainstream sports. We cannot conclude that there is anything "rare" about the sport of tennis. Regardless, 8 C.F.R. 204.5(h)(4) specifically states that comparable evidence is acceptable when the criteria at 8 C.F.R. 204.5(h)(3) do not readily apply to the beneficiary's field. Counsel has essentially conceded that "numerous categories" apply to the beneficiary's field. Moreover, the 10 regulatory criteria all require objective evidence. Counsel refers to several reference letters as "comparable evidence" under 8 C.F.R. 204.5(h)(4). The subjective opinions of other members of the beneficiary's field cannot form the cornerstone of a successful claim. Such letters are not comparable to the types of objective evidence required under 8 C.F.R. 204.5(h)(3).

The petitioner has submitted evidence that, it is claimed, meets the following criteria.

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

Counsel argues that the beneficiary meets this criterion based on the following:

1. Named All Sunbelt Region Conference for both singles and doubles 1995-1996.
2. All-American 1996.
3. Penn Classic Singles champion 1997.
4. Penn Classic Doubles champion 1997 and 1998.
5. Won ITF African Satellite tournament in doubles and second in singles 1999.
6. Won Central African tournament in segment 3 in both singles and doubles, 1999.

The director determined that the beneficiary did not meet this criterion because all of his awards were collegiate and he had not won any national or international "open" tournaments. Counsel does not directly challenge this conclusion on appeal.

The first item listed above is a regional title, and cannot establish the beneficiary's national acclaim. Regarding the second item, the record does not include official information on how All-Americans are chosen. Moreover, this accomplishment, evidenced by a certificate from the Intercollegiate Tennis Association (ITA) recognizing the beneficiary as a "member" of the 1996 Men's Division I ITA All-American Team, appears better considered under the next criterion. The Penn Classic championship is a collegiate competition in which the most experienced tennis experts that compete in the nationally known professional competitions no longer compete. Moreover, the petitioner has not submitted any information about this competition, such as which colleges compete. We concur with the director that collegiate tennis awards are not indicative of national acclaim as one of the very few at the top of one's field.

The petitioner submitted a list of results with a handwritten notation that they represent the results of the Central Africa Satellite tournament. The beneficiary made it to the finals where he and his doubles partner were defeated. The record contains no additional information about this competition, including who is eligible to compete.

The record also includes 1999 Circuit ATP (Association of Tennis Professionals) results for Central Africa where the beneficiary ranked third in singles and first in doubles. This tournament does not appear to be a collegiate or junior competition as concluded by the director. Moreover, the competition does not appear limited to a region within a country. Rather, the competitors appear to come from several Central African countries. As such, the beneficiary appears to meet this criterion as an athlete.

The record contains no evidence that the beneficiary has served as coach to any national champions during their quest for those championships. As such, the beneficiary does not meet this criterion as a coach.

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.

Counsel argues that the beneficiary meets this criterion based on scholarships, membership on collegiate teams, and professional rankings. Specifically, according to counsel, the beneficiary:

1. Received scholarship for tennis at the University of South Alabama, Division I college from 1994 - 1998.
2. Represented University of South Alabama as number one player position for both singles and doubles in his junior and senior years.
3. Played on pro ATP men's tour February 1999.
4. Ranked 10 nationally in South Africa as a junior player.
5. Ranked number three in singles and number two in doubles in South Africa in his final year under 18's.
6. Ranked 26 in singles and seven in doubles on the NCAA Division 1 tournament ranking.
7. Was a member of the championship squad H.F.B. college tennis tournament 1997 and 1998.
8. Ranked 560 in singles and 450 in doubles in the world.

The petitioner provided little independent evidence that the beneficiary received any scholarships. Regardless, a scholarship, no matter how competitive, is not a membership in an exclusive organization. Moreover, the beneficiary only competed with other students for those scholarships, and not against the most experienced experts in his field.

Under some circumstances, team membership can be considered comparable evidence for this criterion under 8 C.F.R. 204.5(h)(4). Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991), however, states:

> The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

Therefore, a major league athlete would need to demonstrate membership on a national team such as an All-Star team, and not simply that he or she plays on a major league team. As such, we cannot conclude that playing for a collegiate team, even a division 1 collegiate team, is sufficient to meet this criterion. The beneficiary's membership on the All-American team will be discussed below.

Further, the beneficiary's overall ATP rankings are not persuasive. On appeal, counsel argues that since the ATP only ranks 1,000 tennis players worldwide and since the world male population is approximately 4 billion, the beneficiary is therefore in the top .00000015 percent in the world. This argument completely mischaracterizes the regulatory requirement that the beneficiary be one of that small percentage who have risen to the very top of the field of endeavor. This regulatory definition of extraordinary ability clearly and unambiguously requires that the beneficiary demonstrate that he is at the top of his field, which, by definition, includes only those who are members of the field. To compare the beneficiary with every individual alive on the planet or even every individual who has lifted a tennis racket would lead to unacceptable results. By counsel's logic, every member of every field might qualify for this restrictive visa classification simply based on the fact that most people alive on the planet are either too young to work or work in a different field.

The beneficiary's rankings in the Central African tournament in 1999 are somewhat more persuasive. Moreover, as discussed above, the beneficiary was a member of the Intercollegiate Tennis Association's All-American "Team." Even if we were to consider the beneficiary's participation in the Central African tournament and selection for the All-American "Team" similar to national team membership, the beneficiary would still only meet two criteria as an athlete. For the reasons discussed below, the beneficiary falls far short of meeting any of the other criteria as an athlete.

The record reflects that the beneficiary's coaching history includes coaching junior players at tennis clubs in Connecticut. The record does not reflect that the beneficiary has coached any national team above the junior level. As such, we do not find that the beneficiary meets this criterion as a coach.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

While neither counsel nor the petitioner claims that the beneficiary meets this criterion, the petitioner submitted a few articles reporting the results of tennis competitions won by the beneficiary. The petitioner did not provide the names of the publications. As such, we cannot determine whether these articles appeared in major media. Regardless, the articles are primarily about the competition, not the beneficiary. While we acknowledge that a beneficiary need not meet any particular criterion, we cannot ignore that tennis is a sport heavily covered in the media and that the top tennis players in most countries receive considerable media coverage. While coaches receive less coverage, comparable evidence for this criterion could include media coverage of the beneficiary's students during his tutelage. The petitioner has not submitted such evidence. While not decisive, the lack of evidence for this clearly applicable criterion suggests that the top of the beneficiary's field is considerably higher than the level he has achieved.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

While neither counsel nor the petitioner claim that the beneficiary meets this criterion, the petitioner submitted several reference letters as "comparable evidence" under 8 C.F.R. 204.5(h)(4). As discussed above, the petitioner has not demonstrated either that a sufficient number of criteria are inapplicable to the beneficiary's field or how subjective reference letters are comparable to the ten objective criteria provided at 8 C.F.R. 204.5(h)(3). Thus, we will consider these letters as possible evidence of the beneficiary's contributions to his field.

Initially, the petitioner submitted 24 identical letters. While most of the references added the number of years they have as a "tennis professional/coach," sometimes as little as three years, some failed to list their title on the title line under their signature. These boilerplate letters are issued in support of the beneficiary's nonimmigrant visa and simply list his credentials discussed above. While the references attested to the contents of the letters by signing them, the use of identical boilerplate language with no explanation of how the reference knows of the beneficiary's alleged talents seriously diminishes the evidentiary value of these letters.

In response to the director's request for additional documentation, the petitioner submitted new letters. Four of those letters are again identical, boilerplate letters with no explanation of how the references know the beneficiary or their own qualifications. In addition, several of the letters are from students and their parents. Such letters are not indicative of the beneficiary's contributions of major significance to the field or that he is known beyond his immediate colleagues and students.

Further, the petitioner submitted letters from the beneficiary's employers and teammates. Specifically, John Hammill is the beneficiary's supervisor at the Tokeneke Club; Haydn Wakefield and Kevin Ullyett are the beneficiary's former doubles partners; Rudolf Van Schalkwyk was a fellow juniors player in South Africa; Myles Wakefield is a former team member from the University of South Alabama; Clive Ullyett was the beneficiary's coach at that university; and Jeffrey Gocke and Barbara Cavaliere are managers at the petitioning club where the beneficiary works. All of these references provide general praise of the beneficiary's abilities.

Finally, the beneficiary submits four letters from colleagues who have observed his coaching. Alain DeVos asserts that the beneficiary has an effective coaching style and that he is sought out by other tennis professionals to evaluate their game. Karl Levanat asserts that the beneficiary "strives to improve his students' game," and that his students get results. Glen McMurdo asserts that the beneficiary is respected by his students and that he is able to improve their skills. Mr. McMurdo further asserts that the beneficiary is respected by his peers. Robert Flink, a "teaching professional," provides general praise of the beneficiary's ability to express his knowledge of tennis to his students.

While all of these letters praise the beneficiary's skills and many provide subjective opinions about his "extraordinary" ability, none of these letters address the ten criteria or explain how the beneficiary has attained national or international acclaim. Without additional evidence, we cannot conclude that the petitioner is known beyond his immediate circle of colleagues. Even the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

On appeal, counsel argues that the letters are from "the people who make tennis what it is," and "the best of the best." We note that, according to his letter, Kevin Ullyett won the Australian Open Mixed Doubles in 2002 and the US Open Doubles in 2001. Mr. DeVos indicates that he has coached world professional tennis players on the men's and women's pro tours. Mr. DeVos is one of four examiners that test candidates for their Provincial exam in South Africa. Karl Levanat is one of 125 people worldwide certified by the PTR to test the teaching ability to tennis professionals. These accomplishments by the beneficiary's references reflect that the top of the beneficiary's field is significantly higher than the level he has attained.

The beneficiary has not set any record or achieved a similar goal to which others now aspire. While the beneficiary's references assert that his opinion is sought by other tennis professionals, the record does not include any letters from the top national tennis players, other than the beneficiary's former partner Kevin Ullyett, who attest to the beneficiary's contributions to their own games. As such, we cannot conclude that the beneficiary meets this criterion as an athlete or a coach.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Counsel argues that the beneficiary meets this criterion based on his position as "the assistant coach to the John Hammill College Hall of Fame at Tokeneke Club in Darien Connecticut every summer from 1994 until 1999. He was the Junior Tennis Co-Coordinator in 1997 and 1998. He coached both mens [sic] and ladies teams."

In response to the director's request for additional documentation, the petitioner submitted a new letter from Mr. Hammill. He states:

> [The beneficiary] now runs the Junior Program at the Club, which has over two hundred in the program. In the winter he is the director of the ATP program. This program has over one hundred of the best junior players in Fairfield Count. [The beneficiary] also instructs several of the top ranked juniors in New England. He is fast becoming one of the best known coaches in New England."

While the record reveals that Mr. Hammill has been recognized by the Hall of Fame, the record contains little evidence regarding the reputation of the Tokeneke Club or the petitioning club. Regardless, we cannot conclude that working as an assistant or junior coach is a leading or critical role. Mr. Hammill provides little information about the beneficiary's responsibilities in running the Junior Program or directing the ATP program. That the ATP program includes the 100 best players in a single county is not particularly impressive. Moreover, it is not clear that the beneficiary held these positions at the time of filing. The final sentences only indicate that the beneficiary has local acclaim and that his students have only acquired regional status. We note that while some of the beneficiary's students indicate that they have competed in United States Tennis Association Tournaments, they do not indicate where they ranked.

In light of the above, the beneficiary does not meet at least three of the criteria as a coach. In addition, he also fails to meet three of the criteria as an athlete. As such, we need not consider whether any acclaim as an athlete has been sustained through coaching activities at a national level.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a tennis coach to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a tennis player and coach, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.