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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: EAC-00-097-51975 Office: Vermont Service Center Date: MAR 27 2001

IN RE: Petitioner: [redacted]
Beneficiary:

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

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which 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 which 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 which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Unit

DISCUSSION: The nonimmigrant 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 is a small manufacturing company. The beneficiary is a cricket player and student. The petitioner seeks classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act") as an alien with extraordinary ability in athletics, in order to employ him in the United States for a period of one year as a player and coach of the company cricket team.

The director denied the petition finding that the petitioner failed to establish that the beneficiary qualifies for classification as an alien with extraordinary ability in athletics within the meaning of the regulatory provisions. The director noted that the petitioner had not established the requisite level of sustained national or international acclaim in the sport.

On appeal, counsel for the petitioner asserted that the decision is arbitrary and capricious. Counsel argued that the beneficiary is a nationally and internationally recognized cricket player and qualifies for O-1 classification.

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 beneficiary is a native and citizen of India who last entered the United States between September 1996 and March 1997 as a B-2 visitor with a stated intention of a two week stay in New York. The record reflects that the beneficiary subsequently changed nonimmigrant status to an F-1 student authorized to attend Northhampton Community College, Bethlehem, Pennsylvania in a program of computer information services through December 31, 2001.

The issue raised by the director in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien of extraordinary ability in athletics.

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.

8 C.F.R. 214.2(o)(3)(iii) states, in pertinent part, that:

> *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 national 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 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.
>
> (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.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

> Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

In support of the petition, the petitioner submitted a variety of newsclippings of the beneficiary's career as a cricket player in both youth and adult leagues. The petitioner also submitted a letter from the United States of America Cricket Association ("USACA") opining that the beneficiary is "an individual of substantial skill" in the sport.

The director concluded that the evidence submitted was insufficient to demonstrate that the beneficiary had the requisite sustained national or international acclaim to establish that he was recognized at being at the very top of the sport pursuant to 8 C.F.R. 214.2(o)(3)(ii).

On appeal, counsel resubmitted copies of newsclippings already in the record and argued that the documentation shows that the beneficiary has both national and international recognition in the sport.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the director's objections.

First, the director carefully reviewed the evidence submitted and issued a decision finding that the beneficiary did not satisfy the regulatory criteria. Therefore, the argument that the decision was either arbitrary or capricious is without merit.

Second, counsel's argument that the documentation furnished shows that the beneficiary satisfies the standard for O-1 classification is not persuasive. The petitioner submitted evidence that the beneficiary played cricket in both youth and adult leagues in India, that he engaged in international play, and was recognized in

the press for his accomplishments. This is insufficient to satisfy the requirements for O-1 classification.

The petitioner did not provide any explanation of the league or ranking systems for the sport of cricket in India or on the international level. The petitioner also did not provide any explanation of the level of play in which the beneficiary competed. Simply demonstrating media recognition for athletic performance at the amateur or minor league level of play does not establish the requisite level of sustained acclaim necessary for O-1 classification. The petitioner failed to submit any evidence that the beneficiary was ranked as a professional athlete at the national or international level. Nor is their any evidence that the beneficiary was ranked at the olympic level of amateur athletics. Therefore, the petitioner has failed to overcome the director's finding that the evidence did not establish eligibility for the benefit sought.

Third, as noted by the director, the required consultation letter from the USACA did not provide the requisite analysis of the beneficiary's standing in the sport and did not address the proffered position. For this reason as well, the petition is deficient.

Fourth, pursuant to 8 C.F.R. 214.2(o)(1)(ii) O-1 classification is available to alien athletes to continue work in the area of extraordinary ability. The proffered position in this matter is as a player/coach of an amateur local team sponsored by a manufacturer. This level of play is not one requiring extraordinary ability in athletics.

Finally, the record is not persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B). It must be noted that these provisions are only documentary requirements and merely addressing them does not establish eligibility for the benefit sought.

The press clippings praise the beneficiary's performance at individual events, but none of them recognized him as having sustained acclaim in the sport. Counsel asserted that the beneficiary received numerous prizes and trophies for his play. Again, however, none of these were shown to be for performance at the very top levels of the sport. In addition, as noted by the director, there is no evidence that the beneficiary has commanded a high salary as an athlete in the past and the proffered wage of $35,000 from the petitioner is not considered "high" in athletics. Accordingly, the petitioner has not satisfied at least three of the requisite regulatory criteria.

Pursuant to the regulations, O-1 classification is available to a "small percentage" of athletes who have arisen to the "very top" of

the field of endeavor. The petitioner has not established that the beneficiary's abilities have been so recognized. Therefore, it must be concluded that the petitioner has not shown that the beneficiary is an athlete of extraordinary ability within the meaning of section 101(a)(15)(O) of the Act or that he seeks admission in order to continue work in the area of extraordinary ability.

The burden of proof in these proceedings rests solely 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.