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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-00-049-53121 Office: Vermont Service Center Date: MAY 22 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Robert P. Wiemann, Acting Director
Administrative Appeals Office

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 tennis school. The beneficiary is a professional tennis player. 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 her in the United States for a period of three years as a tennis coach and player.

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 record was insufficient to establish that the beneficiary was recognized as being at the "very top" of the field of professional tennis as required.

On appeal, counsel for the petitioner argues, in pertinent part, that the beneficiary achieved national acclaim as a tennis player in her native country and that she was the first and only professional women's tennis coach in India.

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 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.

The beneficiary is a native and citizen of India who last entered the United States in B-2 classification as a visitor for pleasure. Her current immigration status is unknown. Documentation was submitted showing that the beneficiary had achieved a level of recognition as a professional tennis player in India. A letter was also submitted from the United States Professional Tennis Registry (USPTR) opining that the beneficiary is a tennis teaching professional of extraordinary ability.

Counsel argues that the record is sufficient to show "national acclaim" gained in India and that such recognition is sufficient to establish eligibility for classification as an alien of extraordinary ability.

The argument is not persuasive. There is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. 214.2(o)(3)(iii)(A). Nor is the record persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(A). It must be noted that these provisions are only documentary requirements and merely addressing them does not establish eligibility for the benefit sought.

The petitioner claimed that its seeks classification of the beneficiary both as a player and as a coach. First, the petitioner did not submit documentation of the system of ranking of tennis players in India or the beneficiary's standing in that ranking. Second, there is no evidence that the beneficiary is ranked in international women's professional tennis. Therefore, the record is insufficient to establish that the beneficiary is at the "very top" of the international field of women's professional tennis.

There is an additional issue of whether the proffered position meets the criteria for O-1 classification. The O-1 classification is available to qualified athletes who seek to come to the United States to perform services relating to a specific event or events. 8 C.F.R. 214.2(o)(1)(i). The petitioner stated that the duties of the proffered position would be teaching children's tennis at the tennis school for which she would be paid $30,000 per year.

In this case, it is concluded that teaching youth tennis is not related to a specific athletic event or events and does not constitute continuing in the work of athletic performance at the extraordinary level. Nor does a general statement that the beneficiary will compete in unspecified competitions establish that the beneficiary seeks admission to continue in athletic performance at the level of extraordinary ability. Therefore, it must be concluded that the proffered position has not been shown to constitute continuing work requiring extraordinary ability in athletics within the meaning of the Act.

It must also be noted that the petitioner did not submit a labor consultation addressing the nature of the work to be performed in the United States as required. For this reason as well, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. § 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.