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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 02 193 52005 Office: VERMONT SERVICE CENTER Date: JAN 04 2005

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)

ON BEHALF OF PETITIONER:

[redacted]

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.

Mari Johnson

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 Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a soccer academy. It 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 director determined the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 field of expertise are set forth in the 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 earned sustained national or international acclaim at the very top level.

This petition, filed on May 16, 2002, seeks to classify the beneficiary as an alien with extraordinary ability as a soccer coach/instructor. The petitioner has submitted documentation pertaining to the beneficiary's career as a soccer player for various professional teams in Argentina, Venezuela, Bolivia, and Portugal. The documentation presented indicates that the beneficiary last competed professionally in 2001. There is no evidence that the beneficiary, age thirty-two at the time of filing, remains consistently active at the national or international level as a competitive soccer player.

The regulation at 8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." We note, however, that the petitioner seeks to employ the beneficiary not as an extraordinary soccer player, but,

rather, as an extraordinary coach/instructor. As noted by counsel and as indicated under Part 6 of the I-140 petition, athletic competition is not the field in which the beneficiary seeks to continue working in the United States. In this country, the beneficiary intends to work as a coach.

While a soccer player and coach certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, playing and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. Ziglar,* 237 F.Supp.2d 914 (N.D.Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's 'area of extraordinary ability' as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Nevertheless, recently this office has recognized that there exists a nexus between playing and coaching a given sport. 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 who has an established a successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices or intermediates does not. Thus, we will examine whether the petitioner has demonstrated the beneficiary's extraordinary ability as a player or as a coach. If the petitioner has demonstrated the beneficiary's extraordinary ability as a soccer player, we will consider the level at which he has successfully 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. The petitioner has submitted evidence pertaining to 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.*

The petitioner submitted a letter from [redacted] Coach of Argentina's National Soccer Team.[1] [redacted] ates: "As a soccer player [the beneficiary] is known as one with very good behavior; he received a Fair Play Award awarded by the Argentinean Association of Referees because he was never expelled from the field." The record contains no first-hand evidence of this award. Nor has the petitioner provided evidence to show that this award is a nationally or internationally recognized award, rather than simply an acknowledgment of the beneficiary's sportsmanlike conduct.

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[1] The letter from Jose Omar Pastoriza does not indicate that the beneficiary ever played for Argentina's national team.

On appeal, counsel states: "Twice, while playing in the Portuguese professional league [the beneficiary] was honored by Infesta as Best Player . . . . To reiterate, Team Infesta is a team in the Portuguese professional soccer league." The record contains photographs of two medals from "Soccer Club Infesta." These "Best Player" awards, however, were limited to members of the Team Infesta Soccer Club, therefore, they constitute organizational recognition, rather than national or international recognition.

Counsel further states: "The third Best Player award was awarded to [the beneficiary] for his performance at the 1995 championship game of the Beer Schneider Cup, a professional invitational championship in South America." The record contains a photograph of a trophy bearing the following translated inscription: "CUP OF BEER SCHNEIDER, To the best player of the game, [redacted] Posadas Missiones vs. Patronato [redacted] 1995." We note that the beneficiary's name is not inscribed on the trophy appearing in the photograph. Counsel cites a newspaper article, entitled "[The beneficiary], the Hero" that discusses the beneficiary's performance in this championship (scoring two goals), but the article does not indicate that the beneficiary received a trophy naming him "Best Player." Without evidence of publicity surrounding the actual presentation of the award or evidence showing that the beneficiary received significant attention extending beyond the sporting event where this trophy was presented to him, we cannot conclude that this trophy represents a nationally or internationally recognized soccer award.

It is noted that the preceding awards were based on the beneficiary's ability as a soccer player. These awards do not establish that he has sustained national or international acclaim as a coach. Therefore, in the present case, we must separately examine whether the petitioner has demonstrated the beneficiary's extraordinary ability as a soccer coach. It is not clear that significant awards exist for soccer coaches; however, nationally or internationally recognized prizes or awards won by teams coached by the beneficiary may be considered as comparable evidence for this criterion under 8 C.F.R. § 204.5(h)(4). Here, it is important to evaluate the level at which the beneficiary acts as coach. A coach who has an established a successful history of coaching top athletes who win titles at the national level or above has a credible claim under this visa classification; a coach of intermediates or novices does not. In this case, the record contains no evidence showing that the beneficiary has coached soccer teams to national or international titles.

Without evidence showing that teams coached by the beneficiary or teams for which he has competed as a starting player have won nationally or internationally recognized awards in recent years, the petitioner has failed to establish the beneficiary's *sustained* acclaim as a soccer player or 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.*

On appeal, counsel states: "[The beneficiary] has played for, at least, seven different professional teams in four different countries. Furthermore, in all of the countries (Argentina, Bolivia, Venezuela, Portugal) where the beneficiary has played, soccer is the most popular, and arguably, most important sport and amusement."

Citizenship and Immigration Services (CIS) has long held that athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) 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."

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level.

While a soccer team is not an "association," we could consider such evidence as comparable under 8 C.F.R. § 204.5(h)(4) if the petitioner were to show that the beneficiary played on a national team, such as, for example, Argentina's National Team. Given the level of accomplishment generally required to secure and maintain a place on a country's national, World Cup, or Olympic team, it appears reasonable to conclude that they are the functional equivalent of an association of the type contemplated in the regulations. In this case, however, the evidence presented is not adequate to show that playing for soccer teams such as Club Atletico Banfield or Club Jorge Wilsterman elevates the beneficiary to the very top of his sport at the national or international level.

In regard to the beneficiary's work as a coach, the record contains no evidence indicating that he has ever coached a soccer team at the national level. Even if we were to conclude that the beneficiary's involvement (as a player) with the Banfield Athletic Club or Club Jorge Wilsterman satisfies this criterion, his participation as a player cannot establish sustained national or international acclaim as a coach/instructor.

> *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.*

In general, in order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution. An alien would not earn acclaim at the national level from a local publication.

The petitioner submitted newspaper clippings from newspapers such as *Cronica*, *Clarin*, and *El Territorio*. The record contains no data showing that these publications have significant national distribution. Several other articles presented by the petitioner cannot be accepted as supporting evidence because we are unable to discern the date of their publication or the newspaper in which they appeared. We note here that the plain wording of this criterion requires the title and date of the publications to be submitted as evidence. Many articles were accompanied by incomplete translations or no translations at all. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS shall be accompanied by a full

English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

It is further noted that the regulations require the beneficiary's acclaim to be *sustained.* The overwhelming majority of the dated newspaper articles in this case are from the first half of the 1990's. The record contains no articles about the beneficiary from February 1999 to May 2002, and only two articles from 1996 to 1999. For this reason, the evidence submitted under this criterion fails to show that the beneficiary has sustained whatever acclaim he may have earned in Argentina's sports media as a soccer player. Furthermore, none of the articles provided describe the beneficiary's activities as a coach. In sum, the articles presented fail to show that the beneficiary has sustained national or international acclaim in major sports media as a soccer player or coach.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of the beneficiary's role within the entire organization or establishment and the reputation of the organization or establishment.

Carlos Portell, President, Banfield Athletic Club, Argentina, states: "[The beneficiary] was a player in our first soccer team from 1987 to 1990 and then again in 1991 and 1992. He played in 31 official games, scoring three times. [The beneficiary] is still well remembered in the Club and in the community of Banfield."

It has not been shown that scoring three times in 31 games is tantamount to a leading or critical role as a player for the Banfield Athletic Club. The petitioner has not provided official statistics for the other players who competed for the Banfield Athletic Club that would indicate that the beneficiary's role as a player on the team was more important than that of his fellow teammates.

In this case, the evidence presented is not adequate to show that the soccer teams for which the beneficiary has played have distinguished themselves at the national level. For example, it has not been shown that soccer teams for which the beneficiary has played have a history of consistently outperforming their competitors or winning a greater percentage of national championships. Furthermore, the petitioner has not provided official statistics distinguishing the beneficiary's performance during a given season from that of his fellow teammates. Finally, the record contains no evidence showing that the beneficiary has coached a soccer team at the national level. For these reasons, we find the petitioner has not established that the beneficiary has performed in a leading or critical role for a distinguished organization as a player or coach, or that his involvement has earned him sustained national or international acclaim.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The petitioner submitted copies of his contracts and pay stubs, but there is no indication that the amounts shown are "significantly high" in relation to those of other soccer professionals. Without comparative evidence showing that the beneficiary is among the highest paid professional soccer players or coaches in

his sport at the national or international level, we cannot conclude that the documentation presented is adequate to satisfy this criterion.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) states, in pertinent part:

> ...the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

The record contains no such evidence. For example, there is no documentation from the petitioning entity indicating that it has offered the beneficiary a contract to coach or clearly describing the capacity in which the beneficiary will serve as a coach. Nor is there any statement from the beneficiary detailing his plans for how he intends to work as a soccer coach in the United States.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. In this case, the petitioner has failed to demonstrate that the beneficiary meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the beneficiary has distinguished himself as a player, coach, or instructor 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 is not persuasive that the beneficiary's achievements set him significantly above almost all others in his sport at the national or international level. 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.