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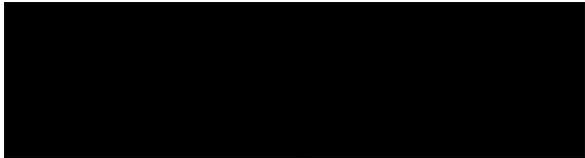
FILE: [REDACTED]
SRC 04 154 52829

Office: TEXAS SERVICE CENTER Date: **OCT 21 2005**

IN RE: Petitioner: [REDACTED]
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:



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.

2 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification of 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 that the petitioner had not established that the beneficiary had achieved the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

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

(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 into the United States will substantially benefit prospectively the United States.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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).

In this case, the petitioner seeks classification of the beneficiary as an alien with extraordinary ability in athletics as a former tennis player and current tennis coach. Much of the supporting evidence submitted with the petition and in response to the director's Request for Evidence (RFE) documents the beneficiary's accomplishments as a tennis player. The director denied the petition finding that the record did not establish that the beneficiary had achieved the requisite sustained acclaim as a tennis coach. The petitioner was unrepresented below. On appeal, counsel submits a brief and additional evidence.

To be classified as an alien with extraordinary ability, the petitioner must demonstrate that the beneficiary seeks entry into the United States “to continue work in the area of extraordinary ability.” Section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii). An alien who intends to work as a coach in the United States cannot rely solely on his or her past athletic acclaim because coaching is not necessarily within every athlete’s area of expertise. However, given the nexus between competing and coaching, 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 or international level, Citizenship and Immigration Services (CIS) may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability.

In this case, counsel contends that the director applied the wrong standard by failing to consider the beneficiary's accomplishments as a tennis player as evidence of his extraordinary ability. Counsel asserts that the beneficiary earned national acclaim as a tennis player, which he sustained through his subsequent work as a tennis coach. Although the director failed to consider the beneficiary’s past accomplishments as a tennis player, we find that the record does not demonstrate that the beneficiary achieved national or international acclaim as an athlete or sustained such acclaim by coaching at the national or international level. Because the AAO engages in *de novo* review, the AAO may deny an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also, Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

We address the evidence submitted and counsel’s contentions in the following discussion of the regulatory criteria relevant to the petitioner’s case. The petitioner does not claim that the beneficiary meets any criteria that are not addressed below.

(i) Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

On appeal, counsel claims that the beneficiary meets this criterion by virtue of his Swedish national championships as a junior tennis player. The record contains no primary evidence of the beneficiary’s junior titles. In an unsigned and undated letter submitted in response to the director’s RFE, Dobrivoje Stanojevic, Director of Tennis at the Norrkopings Tennis Club in Sweden, states that he trained the beneficiary as a junior and that the beneficiary “won the Swedish Championship three times and established himself as among the best juniors in Europe.” Director Stanojevic does not state when the petitioner won these championships. An article printed in the May 4, 2002 edition of *The Ole Miss Spirit* reports that the beneficiary was “ranked No. 1 in Sweden in 18-and-under singles prior to coming to the United State [sic].” The record shows that the petitioner came to the United States in 1999 to study and play tennis at the University of Mississippi. Even if sufficiently documented, the petitioner’s junior championships in Sweden would only evidence his past acclaim as a young tennis player because they were earned at least five years before this petition was filed.

Billy Chadwick, the beneficiary’s tennis coach at the University of Mississippi, states that the petitioner “was a four-year letter winner and a team captain leading our team to the NCAA Final Four and a SEC Championship. For his efforts he was named ALL-SEC. In addition, he qualified for the NCAA Championship in both singles and doubles.” In a letter dated April 12, 2004, ██████████ President of the petitioner’s Board of Directors, affirms that the beneficiary “excelled for Ole Miss obtaining a #13 ranking in the country in 2002; a NCAA

final sixteen, Sec West champion, and All SEC in 2001; SEC Player of the Week, Region 111 Doubles Finalist in 1999; and in the NCAA Final Four and SEC Team Champion in 1997.” Mr. [REDACTED] states that the beneficiary won these last honors in 1997 although the record indicates that the beneficiary did not start playing college tennis until 1999. A copy of an article entitled “Stahlberg SEC Player of the Week” from an unidentified source with a handwritten date of March 28, 2001, confirms that the beneficiary was named Southeastern Conference Men’s Tennis Player of the Week and states that he was ranked “No. 38 in the nation in singles and No. 18 in doubles.” [REDACTED] Executive Director for the United States Tennis Association (USTA) Southern Section, states that the petitioner took all SEC honors in 2001 and 2002 and “earned the NCAA ranking of 13th nationally at one time.” The record contains no primary evidence of the beneficiary’s honors or rankings as a college player and the submitted evidence does not show that the beneficiary won any national championships as an individual player during his college years.

The record indicates that the beneficiary continued to play tennis after he graduated from college, but the record contains no evidence that he won any nationally or internationally recognized awards or prizes as a professional player. In the submitted printout of his electronic mail message, [REDACTED] Head Women’s Tennis Coach and the former Assistant Men’s Coach at the University of Mississippi, states that after graduating, the beneficiary “went on to play professionally on the ATP Tour.” Yet the record contains no evidence that the beneficiary won any competitions on the ATP Tour. An unsigned letter from Ross Preston, Game Development Manager for Tennis New Zealand, states that the beneficiary “came to New Zealand in September 2003 to fill the number one position in the Browns Bay men’s premier grade tennis team.” Mr. [REDACTED] explains that the beneficiary led “the Browns Bay team to the championship for the first time in 16 years. [He] fashioned a 70% winning record, playing against New Zealand’s leading tennis players, some with many years of Davis Cup experience behind them.” Yet Mr. [REDACTED] does not identify “the championship” and the record contains no corroborative evidence that the petitioner won national competitions in New Zealand. In sum, the relevant evidence does not demonstrate that the beneficiary won awards or prizes as a tennis player in a manner consistent with the requisite sustained acclaim.

The record shows that the petitioner began coaching tennis in 2004. Nationally or internationally recognized prizes or awards won by a coach’s students may be considered as comparable evidence of a coach’s eligibility under this criterion pursuant to 8 C.F.R. § 204.5(h)(4). [REDACTED], a French tennis player, states that the beneficiary coached him between February through May 2004. During this time, Mr. [REDACTED] explains, “My results improved quickly and . . . I had [sic] received the highest ranking of my career so far, 150 on the ATP Tour. I also won my first ATP title in Dallas, TX, while working with [the beneficiary].” In a letter submitted on appeal, [REDACTED] Project Manager for ATP who is in charge of the international rankings in men’s professional tennis, affirms that during the time Mr. [REDACTED] was coached by the beneficiary, he “moved up the ATP rankings to the ATP singles race ranking of 83, and was consistently ranked near 150 on the ATP entry-ranking list.” Yet the record contains no corroborative evidence of Mr. [REDACTED] accomplishments while being coached by the beneficiary. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record also contains no evidence that any of the beneficiary’s other students have won national or international prizes or awards. Moreover, even if fully documented, Mr. De Chaunac’s single ATP title would not demonstrate sustained acclaim for the beneficiary as a tennis coach.

In review, even if the beneficiary won nationally recognized championships as a junior tennis player in Sweden, the record does not demonstrate that he sustained such acclaim in his subsequent five-year career as a college

and professional tennis player. Moreover, although three letters attest to Mr. [REDACTED] improvement while being coached by the beneficiary, the record does not document Mr. [REDACTED] s single ATP title purportedly won during this time or any national or international honors won by any other players coached by the beneficiary. The record thus does not demonstrate that the petitioner won nationally or internationally recognized awards as a tennis player or that he coached award-winning tennis players in a manner consistent with the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

(iii) Published material 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.

The petitioner initially submitted copies of seven newspaper articles about the beneficiary as a player for the University of Mississippi's men's tennis team, none of which satisfy this criterion. Three articles are undated. Only one article is identified as having been printed in *The Ole Miss Spirit*, although the other six articles appear to have come from University of Mississippi publications. College or university newspapers do not constitute professional, major trade publications or other major media because they are limited to their specific academic institutions, generally have only local or private circulation, and are not distributed nationally or available to the general public. In its RFE response, the petitioner submitted an additional article entitled "Stahlberg Helps Lift Tennis in Mississippi," printed from the website of *Mississippi Scout* and dated June 2, 2005. We cannot consider this article because it was published after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Accordingly, the beneficiary does not meet this criterion.

On appeal, counsel states, "There was no indication in either the Request for Evidence or the Notice of Decision that the Texas Service Center informed the *pro se* petitioner of objections to the form or content of these articles in any way." While we recognize the difficulties a *pro se* petitioner may face in understanding other subtleties of the law, the regulation here clearly states that articles will meet this criterion only if they are dated and printed in "professional or major trade publications or other major media." 8 C.F.R. § 204.5(h)(3)(iii). This section of the regulation was quoted verbatim in the director's RFE.

(iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

Counsel does not claim that the beneficiary meets this criterion, but the record contains relevant evidence which merits brief discussion. The record indicates that the beneficiary had been employed as a tennis coach for the petitioner for six months before this petition was filed and also coached Mr. [REDACTED] during this time. The beneficiary was also selected to coach the Mississippi Junior Davis Cup Team, but we cannot consider this evidence because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. In a letter dated May 13, 2005, [REDACTED] Chairman of the Mississippi Junior Tennis Council for the USTA Southern Section, Mississippi, states, "It is my distinct pleasure to nominate Mr. [REDACTED] to fill the vacant position of Head Coach for this year [sic] Junior Davis/Junior Fed Cup team. This team will consist of the top junior players in the state of Mississippi to compete Regionally and Nationally." Mr. [REDACTED] letter indicates that the beneficiary was selected nearly a year after the petition was filed on June 23, 2004.

Moreover, while coaching inevitably entails judgment of the coached athletes, duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. The petitioner submitted no evidence that, at the time of filing, the beneficiary had judged of the performance of tennis players in a manner significantly outside the general duties of his position and reflective of national or international acclaim. For example, the record contains no evidence that the beneficiary judged national or international tennis competitions. Accordingly, the beneficiary does not meet this criterion.

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

To meet this criterion, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization as a whole.

In this case, counsel claims the beneficiary meets this criterion as a former tennis player for the University of Mississippi. Mr. [REDACTED] the beneficiary's tennis coach at the University of Mississippi, states that the petitioner "was a four-year letter winner and a team captain leading our team to the NCAA Final Four and a SEC Championship. . . . [He] set many records at the University of Mississippi and remains as one of the all time Winn ingest [sic] players in the history of the program. . . . [He] excelled as an athlete, a student and as a leader for the team and University." [REDACTED] of the Department of Intercollegiate Athletics at the University of Mississippi, states that the beneficiary "was one of the most competitive players we have ever had on our tennis team and one of the reasons we have had such unbelievable success in our rankings throughout the nation." An undated article entitled "Netters Slug State to Claim West Crown" reports that the University of Mississippi men's tennis team "is ranked No. 4 nationally." Another article entitled "Stahlberg Leading Rebel Charge Toward Top 10" and dated March 22, 2001 reports, "The Ole Miss men's tennis team is inching toward a Top 10 ranking, and one of the main reasons is the play of junior [REDACTED]. [REDACTED] leads the No. 11 Rebels with a 12-0 record in dual matches, losing only lost [sic] one set during the win streak." The article further explains that "[a]s a freshman, he posted a 20-3 record in helping the Rebels to a Final Four appearance. Last year as a sophomore, he went 26-10." This evidence indicates that the beneficiary performed a leading or critical role for the University of Mississippi men's tennis team, which earned high national rankings during his enrollment at the University.

However, even if we found the beneficiary to meet this criterion through his former role as a collegiate tennis player, the record does not indicate that he has sustained his past athletic acclaim in this regard through his subsequent work as a coach. The record indicates that the beneficiary is the Head Tennis Professional for the petitioner. In his June 6, 2005 letter, Mr. [REDACTED] President of the petitioner's Board of Trustees, states that the beneficiary "has been a true asset to our organization. He has truly performed in a leading, vital and critical role for our organization. [He] is truly a unique coach with qualities that are very difficult to find in other employees." [REDACTED] the petitioner's Manager, also explains that "[t]ennis in Mississippi is in need of tennis coaches with international exposure to continue to lift the quality of the game locally both in infrastructure and player success in order to bring the state at par [sic] with states like Georgia, Florida and even California." However, the record contains no evidence that the beneficiary has a distinguished reputation that

extends beyond Mississippi or the southern region of the United States. Hence, the petitioner's coaching role for the petitioner does not reflect national acclaim. Accordingly, he does not meet this criterion.

We have reviewed the 16 recommendation letters from individuals who have worked with the beneficiary or know him personally and the support letters from two independent tennis experts submitted on appeal. We have quoted and referenced the letters that are relevant to the regulatory criteria discussed above. The remaining letters affirm the beneficiary's accomplishments as a tennis player, praise his athletic skills and personal qualities, but do not demonstrate his eligibility for classification as an alien with extraordinary ability.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The record in this case does not establish that the petitioner achieved sustained national or international acclaim as a tennis player that was further sustained in his subsequent work as a tennis coach. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.