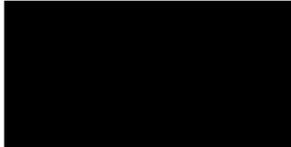




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U.S. Department of Justice
Immigration and Naturalization Service

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



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

File: EAC 99 221 53289 Office: Vermont Service Center Date: DEC 17 2001

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)

IN BEHALF OF PETITIONER:



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

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 classification 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 she has earned 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 or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). 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, filed on July 14, 1999, seeks to classify the petitioner as an alien with extraordinary ability as a professional volleyball player. The director denied the petition on September 28, 2000, stating that the documentation submitted was unable to establish the petitioner as "an individual who has received sustained national or international acclaim as a professional volleyball player of extraordinary ability."

On appeal, the representative for the petitioner claims that the Service "failed to consider all relevant and credible evidence in its finding that the appellant did not meet her burden of establishing that she qualifies as an alien of extraordinary ability." The petitioner submits additional evidence in support of the appeal which will be addressed along with the initial evidence accompanying the petition.

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 which, counsel claims, 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.

The petitioner provides a listing of seventeen medals she has received in various team volleyball competitions. These medals are confirmed through photographs and testimonial letters provided in support of the petition. Several of these awards appear to be regional or related to college competitions rather than national professional team volleyball competitions. The petitioner submitted a letter asserting that Hungarian "college (university) players are considered professional along with our city named teams." The petitioner further states: "Both Class I and II, and the University teams are all considered professional. All are awarded with monetary and many other awards." The petitioner supports this claim by submitting an independent certification from Laszlo Korosfoi, the President of the Hungarian Volleyball Federation. Laszlo Korosfoi states: "The Hungarian Volleyball Federation certifies that [the petitioner] used to play professional volleyball for fifteen years in the first class of the national competition. Several times her team finished the competition among the bests of Hungary." Therefore, we accept the petitioner's explanation that her college teams competed on the Hungarian professional level.

Counsel notes that in 1992, the petitioner "was recognized as the Best Woman Player of the County of Szabolcs-Szatmar-Bereg." This award appears to be regional rather than national, and its significance to professional volleyball has not been established. Further, the petitioner has not provided evidence of the criteria used by the judges of this award for determining the selection of its winners.

While regional, student, and junior competitions are unable to satisfy this criterion, the petitioner has submitted evidence that she received awards at the national professional level in Hungary. Since 1987, the petitioner has received five gold medals (1987, 1989, 1990, 1992 and 1998), one silver medal (1988), and four bronze medals (1991, 1995, 1996 and 1997) while competing in the Hungarian Volleyball Federation National Championships. According to the testimonial letters submitted, the petitioner was a starting player on the volleyball teams that received these awards. Based on these awards, the petitioner has appeared to satisfy this criterion.

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 states that the petitioner satisfies this criterion through her receipt of a "Title of Honor" for achievement in learning and sport signed by the Lord Mayor of Budapest on June 29, 1996. While receipt of this honorary certificate reflects the petitioner was recognized by the Budapest Student Sport Association, the Budapest Branch of the Hungarian University and the College Sport Association; there is no evidence to prove her actual membership in each of these associations or that they require outstanding achievements of their members. The petitioner has not submitted evidence to reflect the membership criteria for these associations. Furthermore, even if the petitioner were to prove herself a member of these organizations, she has failed to provide evidence that these associations enjoy sustained national or international recognition.

Counsel also refers to the certification from the President of the Hungarian Volleyball Association describing the petitioner's various teams as finishing their competitions among the best of Hungary. However, the petitioner cannot satisfy this restrictive criterion by simply participating as a player on various professional volleyball teams. There is no documentation to show that being selected as a player on a Hungarian Volleyball Association team is decided by national or international experts, rather than by the coaches and managers of various local teams.

The Service has long held that athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. See 56 Fed. Reg. 60897, 60899 (November 29, 1991). Likewise, it does not follow that all professional volleyball players performing on a national level should necessarily qualify for an extraordinary ability immigrant visa. To do so would contravene Congress' intent that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

In regards to the memberships claimed by the petitioner, the record does not contain the associations' bylaws, constitutions, or any other objective documentation to establish the associations' membership requirements, nor is there any indication that the associations enjoy significant recognition or prestige. In sum, there is no evidence to indicate that these organizations require outstanding achievements of their members or that the petitioner was judged by national or international experts in consideration of her membership.

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.

The petitioner submits copies of several articles with incomplete translations or no translations at all. By regulation, any document containing foreign language submitted to the Service shall

be accompanied by a full English language translation which 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. 8 C.F.R. 103.2(b)(3). Unattested summary translations of various articles cannot suffice to satisfy this criterion. Without complete translations, it cannot be determined that the petitioner is the main subject of the articles, or that she was featured because of her achievements as an extraordinary volleyball player. Further, many of the articles submitted by the petitioner do not include the title or date of the publication, or the name of the author, as required by the regulation. Additionally, the petitioner has omitted evidence regarding the extent of the publications' circulation.

Counsel contends that the petitioner is pictured prominently in the various articles submitted with her name appearing underneath. Counsel cites a testimonial letter from Laszlo Man, Sports Editor of the Kelet Magyarorszag Daily, affirming that "[the petitioner] is known as one of the best players and athletes in Hungary." While this letter indicates that Laszlo Man covered the petitioner's volleyball games and that he is aware of her career, it is insufficient to establish eligibility under this criterion. The plain wording of the regulation requires the petitioner to submit "published materials about the alien," and articles that barely mention the alien cannot satisfy this criterion. The majority of the articles submitted are about the local volleyball team and only briefly mention the petitioner or include her picture in amongst the entire team. Articles specifically referring to the petitioner do so in two sentences or less.

Additionally, the regulation repeatedly stresses that the petitioner should be the subject of coverage in "major" publications and media. Because the statute demands national or international acclaim, the petitioner cannot satisfy this criterion unless she has been the subject of coverage in major national or international publications. Local newspapers and regional magazines with limited circulation do not constitute major media in this regard. The petitioner has not demonstrated sustained attention from major national media.

The petitioner maintains that Roplabda is a magazine "equivalent to the Volleyball magazine in the United States." Although the petitioner has authored an article in Roplabda, it is not clear whether any of the articles mentioning the petitioner originate from that publication. The evidence submitted under this criterion is insufficient to demonstrate that the petitioner has attracted the sustained attention of the national press or major media.

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 states: "No evidence in this category was provided to the Service."

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

Counsel states: "As stated above, [the petitioner] was given the Title of Honor 'Leading in Learning, Leading in Sport' for her outstanding achievement in learning and in sport." While receipt of this honorary certificate reflects the petitioner was recognized by the Budapest Student Sport Association, the Budapest Branch of the Hungarian University and the College Sport Association; there is no evidence to indicate that the beneficiary has made original athletic "contributions of major significance" to the sport of volleyball. The Title of Honor for "Leading in Learning, Leading in Sport" is an award related to academic and athletic achievement. This award appears to be regional rather than national. Prizes and awards have already been considered under a criterion that the petitioner has already met. The ten criteria are intended to be separate and distinct from one another. Therefore, an award cannot fulfill this second criterion without clear evidence that the prize was awarded for specific contributions of major significance, rather than for general recognition of one's academic and athletic achievements.

The petitioner has submitted letters from various witnesses describing her various accomplishments. Laszlo Ivanyi, President of the Sport Association of Bekescsaba College, where the petitioner played volleyball in 1997 and 1998, describes her as "the right person to lead our team." Laszlo Ivanyi credits the petitioner as "helping the team to achieve" third place at a tournament in the Netherlands. Lajos Nemeth, Deputy Chair of the Sport-Game Department of the Hungarian University of Physical Education, describes the petitioner as "the lead player and best server of our Class One team." Lajos Nemeth states that the petitioner was his student "during her undergraduate (education) and postgraduate (coaching) studies." He adds: "It is my opinion that [the petitioner] is one of the best professional server players and athletes in Hungary." Lajos Nemeth refers to himself as "Lead Coach of the Hungarian Adult and Junior All-Star Teams." It should be noted that the petitioner has provided no evidence to indicate that she ever played on these Hungarian "All-Star Teams" or competed at the Olympic level for her country.

Klara Boldizsar, a former teammate of the petitioner from the Godollo Sport Club, states: "In my opinion, Eva is not only among the best servers in the country, I can also state with a clear conscience that she is among the best athletes."

Gyula Novak, the petitioner's former high school coach, states:

Under [the petitioner's] leadership, the school team became one of the country's best. She received many offers from across the country because every expert noticed her talents. [The petitioner] played, fortifying the Miskolc team under my leadership, and I was satisfied to the utmost maximum with her play and reliability. [The petitioner] was not just one of the leading servers in the country, but was considered to be among the best sportspersons.

She gave a definite and strong push to the increasingly successful performance of our women's volleyball team. As a defining player in the seven times regional champion team, she accepted an active part in its coaching and in its game achievements. Her faculties and her attitude greatly helped in the achievement of our women's team, which won special prizes. No wonder, as every serious professional knew her to be and the best defining player and server in her age group.

Dr. Richard Horcsik, a member of the Hungarian Parliament describes the petitioner as a "first class volleyball player and athlete." Dr. Richard Horcsik is familiar with the petitioner through his "long-standing friendship with her husband's family." The petitioner also submits letters from former teammates, Jutka Juhasz and Brucker Mikula, attesting to her abilities as a volleyball player. Albert Vitko, Director of Sports of the Budapest Directorate of the Border Guard further certifies that the petitioner is "among the top volleyball players." Laszlo Man, Sports Editor of the Kelet Magyarorszag Daily, also affirms that "[the petitioner] is known as one of the best players and athletes in Hungary."

While the witness letters submitted praise the petitioner's experience and accomplishments, they are insufficient to establish that the petitioner is, nationally or internationally, among the best known individuals in the sport of volleyball. The majority of the witness letters submitted are from acquaintances of the petitioner, including former teammates, coaches, teachers and professors. The structure of the regulations illustrates the Service's strong preference for verifiable, documentary evidence, rather than subjective opinions from witnesses selected by the petitioner. And while the witness letters confirm the petitioner's contributions to the teams on which she participated, they fail to demonstrate her "contributions of major significance" to the sport of volleyball.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submits evidence of a single article appearing in Roplabda. Other than the petitioner's assertions, no evidence has been provided regarding the national significance of this publication or the extent of its circulation. The petitioner has not submitted evidence to qualify this publication as "major media." Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel states that on November 21, 1996, the petitioner "received a commemorative certificate for authoring a scholarly article in the field of volleyball." The certificate referred to was not accompanied by a certified translation pursuant to 8 C.F.R. 103.2(b)(3). It remains unclear whether the petitioner received this certificate for her participation in a sports conference or in recognition of a published article.

unclear whether the petitioner received this certificate for her participation in a sports conference or in recognition of a published article.

Despite counsel's claim that "this is not the only article authored by [the petitioner]," there is nothing in the record to demonstrate that the petitioner has any other published works. The regulation requires "authorship of scholarly articles in the field" and a single article is insufficient to meet this criterion.

According to Lajos Nemeth of the Hungarian University of Physical Education, the petitioner was his student "during her undergraduate (education) and postgraduate (coaching) studies." As a requirement for her postgraduate studies, it would be expected for the petitioner to submit scholarly articles.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment."

Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles. Frequent citation by independent researchers demonstrates more widespread interest in, and reliance on, the petitioner's work. The record contains no evidence that the petitioner's articles have been cited by others in her field.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Counsel states: "Each of the statements provided in support of the petition clearly shows that [the petitioner's] athletic ability has been on display. She has played in numerous competitions and has won a substantial number of awards." This claim is not persuasive. The plain wording of the regulation refers to "artistic exhibitions or showcases," which does not apply to volleyball games. This regulatory criterion is clearly intended for artists such as sculptors and painters rather than for athletes. Not every criterion will apply to every occupation. Furthermore, given that volleyball matches are virtually always played before an audience, every volleyball player is "on display" in this way. Counsel's interpretation appears to imply that every volleyball player who competes "on display" is a top player, which is logically untenable. The awards and witness statements referred to by counsel were each separately addressed under previous criteria. The ten criteria in the regulations are designed to cover different areas; it cannot be held that fulfilling any one of those criteria automatically implies fulfillment of another.

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

Counsel states: "The statements provided to the Service demonstrate the distinguished reputations of many of the teams that [the petitioner] has played for." It should be noted that the majority of testimonials submitted describe the petitioner, rather than the reputations of the various teams for which she played. Little or no evidence is offered regarding the teams' reputations. Further, counsel's statement seems to suggest that wherever the petitioner plays, her team has a distinguished reputation.

Counsel provides the following example of how the petitioner meets this criterion by noting: "Novak states that he built [the petitioner's] high school team from her." While the petitioner may have been an excellent team leader as a high school player, it does not follow that she achieved sustained national acclaim in the field of professional volleyball through leading a local high school team. Counsel's argument attempts to equate high school volleyball competition to the professional level. And even if the petitioner were to demonstrate that she played a leading or critical role on her professional volleyball teams, she must still prove the distinguished reputation of those teams.

In his statement regarding the petitioner, Lajos Nemeth refers to himself as "Lead Coach of the Hungarian Adult and Junior All-Star Teams." It should be noted that he makes no mention of the petitioner's participation on these teams. Further, the petitioner has provided no evidence to indicate that she ever played as a Hungarian "All-Star" or competed at the Olympic level for her country. While performing a leading or critical role for teams of such distinction would satisfy this criterion, the petitioner has offered no such comparable evidence.

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

Counsel states: "[The petitioner] described her remuneration in her initial statement to the INS." In the statement, the petitioner describes her remuneration as follows: "We are paid for our athletic abilities. In the U.S., if you are in college, you are considered an amateur and don't receive any monetary rewards for the sports you participate in." The petitioner adds: "Both Class I and II, and the University teams are all considered professional. All are awarded with monetary and many other awards." Throughout her initial statement, the petitioner mentions receiving gratuities, monetary prizes, monetary compensation, and monetary rewards, but fails to offer specific amounts or supporting documentary evidence. At one point, the petitioner specifically mentions receiving a scholarship of "18,000 Forint for athletics." However, college scholarships fail to satisfy the regulatory requirement of "a high salary or other significantly high remuneration" in the field of professional volleyball. The record does not offer any comparison between the petitioner's remuneration and the monies paid to other professional volleyball players, nor does the record contain first-hand documentary evidence to support the petitioner's claims.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Counsel states: "This criterion is inapplicable to the situation."

It must be emphasized that merely submitting evidence intended to address at least three of the criteria is not necessarily sufficient to demonstrate that the beneficiary has sustained national or international acclaim at the very highest level. The petitioner must clearly establish that she is within the small percentage at the very top of the sport of professional volleyball.

For comparison, the Service has long held that athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *See* 56 Fed. Reg. 60897, 60899 (November 29, 1991). Likewise, it does not follow that all professional volleyball players performing on a national level should necessarily qualify for an extraordinary ability immigrant visa. To do so would contravene Congress' intent that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

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. The petitioner has failed to demonstrate receipt of an internationally recognized award, or that she meets at least three of the criteria of which must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

A review of the record does not establish that the petitioner has distinguished herself as a professional volleyball player to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a volleyball player, and has won various national awards in Hungary, but is not persuasive that the petitioner's achievements set her significantly above others in the sport of professional volleyball. 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.

ORDER: The appeal is dismissed.