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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



File: WAC 01 097 51053

Office: California Service Center

Date: AUG 27 2002

IN RE: Petitioner:
Beneficiary:



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 that 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 that 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 that 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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner 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 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 or her field of expertise are set forth in the Service 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 sustained national or international acclaim at the very top level.

The petitioner is a state university that seeks to employ the beneficiary as a cross-country/track coach. 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 petition was originally prepared without the assistance of counsel. Only on appeal does counsel specify which of the ten criteria the petitioner purports to have fulfilled. We will therefore address the

pertinent criteria in the context of counsel's commentary and the evidence cited therein. In denying the petition, the director acknowledged that the beneficiary has had a successful career, but the director found that much of the petitioner's evidence falls short of the regulatory standards, and that the petitioner has failed to "show that the beneficiary has achieved a **sustained level** of national or international acclaim and recognition" (emphasis in original).

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

In 1988, the Ministry of All Sports Federation of the People's Republic of China presented to the beneficiary the Annual National Athletic Achievements Coach of the Year Award. This award appears to represent a qualifying award. We note, however, the statutory and regulatory requirement that an alien's acclaim be "sustained." The beneficiary has demonstrated no comparable prizes or awards since entering the United States in August 1992, eight and a half years before the filing of the petition. Given the significant length of time in which the beneficiary had been in the United States prior to the filing date, we cannot find that the beneficiary's acclaim is "sustained" if he has not shown such acclaim in the United States.

Counsel argues that the beneficiary further satisfies this criterion through awards received by the athletes under his tutelage. Counsel lists three individuals coached by the petitioner, and asserts that they have, respectively, won the following honors:

- 6th place, World Modern Pentathlon Championship Tournament, 1986
- 8th Place, World Modern Pentathlon Championship Tournament, 1987
- 4th Place, Beijing International Triathlon, 1990

While it is customary to award gold, silver and bronze medals to the top three athletes in many competitions, there is no evidence that individuals who place fourth or lower receive any kind of prize or award. The very act of competing is not a prize or award. There is no evidence to support counsel's claims regarding the World Modern Pentathlon Championship Tournaments in 1986 and 1987. Counsel cites "exhibit B3" in support of the above claims, but exhibit B3 is a letter from the president of the petitioning university, which contains no mention of either athlete or any World Modern Pentathlon Championship Tournament. The exhibit has not been mislabeled, as counsel specifically refers to this letter as exhibit B3 elsewhere in the appellate brief. Another letter in the record provides partial corroboration for some of the above claims, indicating that certain athletes placed "number six and number eight in individual events" at world tournaments.

Regarding the third listed event, the record contains copies of certificates indicating that an athlete "was successful in completing the 1990 BEIJING INTERNATIONAL TRIATHLON CHAMPIONSHIP" as well as the same event in 1991. Although the text of the certificate is in English, the athlete's name is in Chinese characters, and thus we cannot confirm that the athlete named is the same as the one named by counsel. That issue is moot, however, because the document does not state or imply that the athlete won, or placed highly in the event. It states only that the athlete completed the event, which is not a prize or award. A separate "diploma"

indicates that another athlete placed 4th in the “1991 Beijing International Triathlon Championship MPI.” This is the only document that specified how the individual placed in the competition.

Counsel also claims that the beneficiary’s coaching has resulted in two team prizes: a Gold Medal for the Chinese National Modern Pentathlon Team, Asian Modern Pentathlon Tournament, 1986, and a conference championship for the petitioner’s men’s cross-country team, California Pacific (“Cal Pac”) Conference championship, 2000. The latter championship is regional rather than national, as the Cal Pac Conference includes only 13 colleges, all in California.¹ The petitioner has not shown that the Cal Pac Conference championship is recognized nationally, or that the schools in that conference consistently rank among the best in collegiate cross-country athletics.

As for the claim pertaining to the 1986 Gold Medal, counsel again cites exhibit B3, a letter from an individual with no evident connection to the Asian Modern Pentathlon Tournament, containing no reference to any specific tournament, competition, or prize. Another letter in the record, from Liu Guanglin, vice president of the Chinese Iron Man Triathlon and Modern Pentathlon Association, asserts “[t]he Chinese Male Modern Pentathlon Team won the championship at the 1986 Asian Modern Pentathlon Championship Tournament (South Korea),” although the record contains no evidence from any entity that actually presented awards at that tournament.

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.

The beneficiary is a member of the National Board of the Chinese Modern Pentathlon Association. Counsel asserts that this body “only grants membership to the nation’s most influential coaches and administrators in the sport.” The record, however, contains no documentation from the association to establish its membership requirements. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

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 articles from local California newspapers, many of them unidentified, some of which appear to be the petitioner’s campus publications. Counsel asserts “[t]hese publications may be local in their coverage, however, [they] serve as a great indication of [the beneficiary’s] extraordinary coaching ability nonetheless.” As admittedly local publications, they cannot spread the

¹ This figure includes some colleges without track and field teams. A newspaper article in the record shows that, after winning the conference championship, the petitioner’s team was unable to compete in the nationals because its conference, with only five full-sized teams and one partial team, was judged to be too small.

beneficiary's reputation nationally. The articles are not about the beneficiary; rather, they mention him only briefly, in terms that neither state nor imply sustained acclaim.

The petitioner also submits an article from *American Track & Field*. The seven-page article, "Developing U.S. Distance Runners," contains two passages highlighted in yellow ink. Neither of these passages mentions the beneficiary or the petitioner. Counsel offers no explanation for the relevance of the article, which discusses efforts to establish USA Track & Field training facilities in Pocatello, Idaho and Seattle, Washington.

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 that the beneficiary "has been invited to serve as a referee in numerous track and field competitions held in China. . . . [The] Chinese Modern Pentathlon Association also conferred upon him the highly respected title of National A Class Officiating Referee in the sport of modern pentathlon." The record contains a translated certificate from 1989, naming the beneficiary a National A Class Officiating Referee, but the record does not establish the extent to which the beneficiary has actually acted as a judge in national or international level competitions. The conferring of the title is not proof of subsequent activity.

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

Counsel cites the beneficiary's "tremendous success in promoting and popularizing the sports of modern pentathlon and triathlon in China." The record offers no concrete support for this rather vague assertion.

Counsel reiterates that the beneficiary has led the petitioner's men's cross-country team to the California Pacific Conference title in 2000. As noted above, this conference title appears to be of regional significance at best. Prizes and awards are covered by a separate criterion; we cannot consider every championship victory to be a contribution of major significance in the field.

As another example of a major contribution, counsel observes that the beneficiary organized the first annual half marathon, jointly operated by the petitioner and Big Sur Marathon, "which attracted 600 + runners from all over the country." The record does not show that this half-marathon event is a nationally significant race on a par with, for example, the Boston Marathon, the New York Marathon, or other major distance races in the United States. The major marathons, for instance, receive significant coverage in national media. The petitioner has not shown that his event has attracted comparable attention. The beneficiary did not invent the long-distance race, and the burden is on the petitioner to show that this particular race is especially significant.

Several witness letters accompany the petition, and more accompany the appeal. These letters are, for the most part, from individuals in China and the U.S. who have worked with or supervised the beneficiary's work as a coach, or instructed the beneficiary during his graduate studies at Washington

State University. The witnesses attest to the beneficiary's considerable talent as a coach, and state that the beneficiary has been "building a successful cross country program" at the petitioning university. While it is no easy task to create a successful cross-country program, there are countless college cross-country and track and field teams in the United States, and working for one of those teams is not inherently a contribution of major significance. The petitioner has not shown that the beneficiary has earned a significant reputation as a coach beyond the West Coast.

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

Counsel states that the beneficiary "has authored/co-authored several scholarly articles and writings on the topic of athletes with disabilities, which was the focus of his graduate study at Washington State University. In light of their originality and significance in the field of physical education, some of these have been published/presented in professional conference proceedings such as VISTA '93 – The Outlook." The only scholarly writing by the beneficiary actually in the record is an excerpt from the beneficiary's master's thesis. Such a thesis appears to have been a requirement for the degree, and completion of basic degree requirements neither indicates extraordinary ability nor results in sustained acclaim. There is no evidence that the beneficiary's master's thesis has appeared in any national or international publication. The petitioner submits a partial copy of the *VISTA '93* published conference proceedings, including a one-paragraph abstract of which the beneficiary is the fourth of seven credited co-authors. The co-authors are identified as being affiliated with Washington State University, and it was published two years before the beneficiary completed his master's studies there. The petitioner has not shown that the beneficiary has produced any published scholarly work outside of routine graduate research.

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

Counsel states:

Throughout his career as a track and field coach, [the petitioner] has always been performing in a leading and critical role for each institution/organization with which he has been associated. All these institutions/organizations enjoy a distinguished reputation both nationally and internationally. For instance, the Chinese National Teams of Modern Pentathlon and Triathlon are widely regarded as the best in Asia and among the top in the world. [The petitioner], on the other hand, is a distinguished member of the largest public university system in the U.S. As to Team USA Monterey Bay Distance Running Training Center, it is an "Olympic athletes development" project jointly sponsored by the USA Track & Field, the national governing body of the sport, and Running USA.

Counsel asserts that, as the coach of a team in China which has competed nationally and internationally, the beneficiary has played a leading or critical role for a distinguished organization. The record contains sufficient evidence to support this claim, although we cannot conclude that the beneficiary has sustained this level of accomplishment since entering the United States in August 1992.

Counsel states that the petitioning institution “is a distinguished member of the largest public university system in the U.S.” The petitioning university first opened its doors in 1996, and is one of twenty-one state universities in its state. The petitioner has not shown that this very new university, or its track and field program in particular, has a distinguished reputation among U.S. universities. Such distinction does not automatically arise from attachment to a large state university system.

Regarding the distance running training center, [REDACTED] Pacific Association USA Track & Field liaison for the Team USA Monterey Bay Distance Running Project, states in a letter dated February 4, 2002 that the beneficiary is involved in a “project that will open an ‘Olympic development’ Team USA distance running training center . . . which will ultimately assist our developing elite U.S. distance runners to win medals in international competition, including the Olympic Games.” It is clear from this letter that, as of February 2002, the project was still in the planning stages, and it certainly did not exist at the time of filing. A training center that is not yet operational cannot have earned a distinguished reputation. The distinguished reputation of the parent organization is immaterial because the beneficiary has not played a leading or critical role for that organization as a whole.

Counsel notes, as “[o]ther evidence of extraordinary ability,” that the beneficiary has “stellar academic credentials,” as a graduate of “the leading institutions in the field of physical education in China and the U.S., respectively.” While some universities are more prestigious than others, and a good education can provide a firm footing for later achievements, an individual does not earn significant acclaim simply by attending a top school. We cannot consider the beneficiary’s educational background as presumptive evidence of extraordinary ability as that term is defined in the regulations.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the beneficiary has consistently distinguished himself as a coach 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 continue to set him significantly above almost all others in his field at a 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.