

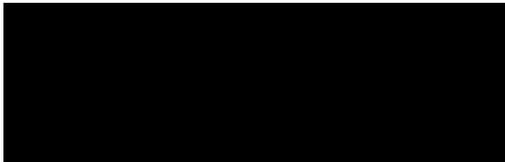


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC-00-112-51632

Office: Vermont Service Center

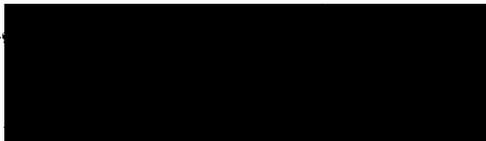
Date: AUG 30 2002

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, Vermont Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion 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 the sustained national or international acclaim necessary to qualify for classification as an extraordinary coach.

On appeal, counsel argued that the petitioner's acclaim as an athlete is sufficient to warrant approval of the petition. Counsel relied on several federal cases and an unpublished decision from the Administrative Appeals Office.

In a six page decision, the Administrative Appeals Office (AAO), on behalf of the Associate Commissioner, rejected counsel's argument that an alien seeking to enter the United States as a coach can demonstrate extraordinary ability *solely* through her achievements as an athlete. The AAO did, however, concede that there is a nexus between performing as an athlete and coaching. The AAO stated:

In general, we concur with the director's basic premise that extraordinary ability as an athlete is not, in and of itself, evidence of extraordinary ability as a coach. On the other hand, we do not deny that there exists a nexus between competing and coaching. To assume, however, that a given extraordinary athlete will be an extraordinary coach would be too speculative without any evidence of that athlete's coaching abilities. Given the nexus between the two, we find that evidence of an alien's sustained acclaim as an athlete carries considerable weight, provided that the petitioner can demonstrate that the alien has enjoyed comparable acclaim as a coach. 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, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability in the field generally. While the alien's acclaim as a competitive athlete is a legitimate consideration, we cannot disregard the level at which the alien acts as coach. A coach of athletes who compete at the national level has a more credible claim than a coach of novices.

In this case, the petitioner could minimally establish sustained national acclaim as an athlete. The record lacks sufficient evidence, however, that the petitioner has been coaching at a national level.

The petitioner completed a graduate level sports education correspondence course program between September 1991 and June 1994. The record contains a

certificate from Heilongjiang Personnel Department certifying the petitioner as a qualified coach. At the time of filing, the petitioner was coaching at the Guang Zhou City athletic sports committee swimming supervisory center. As stated above, National Coach Zhen Jie Gong asserts that the petitioner has coached a national champion and has discovered other talented swimmers for China. National Coach Lin Wang writes that the petitioner “had a National Championship coming out under her coaching.” The petitioner submitted the swimming competition results of the Xi An City National City Game in 1999 highlighting 10 swimmers ranked 8th or higher as being swimmers “under my coaching.” As discussed above, this evidence is insufficient evidence of the petitioner’s level of coaching. The record does not reflect that the petitioner carries the title “National Coach.” The letters are ambiguous as to whether the petitioner continued to coach her student who won a national championship. Nor do the letters specify the national contest or provide any evidence of its significance. The record does not contain independent evidence confirming the petitioner’s claim to have coached 10 competitors in the Xi An City National Game. Nor has the petitioner established the significance of this game. For all these reasons, the petitioner has not demonstrated that she is coaching at a national level.

On March 13, 2002, counsel submitted a letter entitled “MOTION TO RECONSIDER.” While the cover letter indicates that the motion is a motion to reconsider the AAO’s decision, the brief only addresses the director’s decision. Specifically, counsel submits essentially the same brief as submitted on appeal. Pages three through eleven are identical, including the handwritten “B” and typographical error on page seven. Pages one, two, and twelve differ only in that counsel has added the additional procedural history and requests that the AAO’s decision be overturned. The changes on pages one, two, and twelve do not address the AAO’s decision other than to state that the AAO dismissed the appeal. Despite the AAO’s clear and unambiguous statements regarding the documentary deficiencies in this case as quoted above, the petitioner resubmitted the exact same documentation on motion as was previously submitted on appeal. The petitioner failed to provide any additional evidence regarding her level of coaching, the deficiency stated by the AAO.

According to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. INS v. Doherty, 502 U.S. 314, 323 (1992)(citing INS v. Abudu, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a “heavy burden.” INS v. Abudu, 485 U.S. at 110. Moreover, a motion must identify an error of law or fact in the decision it seeks to reopen. In this case, the petitioner seeks to reopen the AAO’s decision, not the director’s decision.

Neither counsel nor the petitioner has stated any new facts or submitted new documentation. While the brief cites precedent decisions, those cites only appear in the section of the brief which is word for word identical to the appellate brief. Thus, the AAO has already considered the arguments based on those cases. As counsel does not even discuss the AAO's decision, he has not asserted that it was based on an incorrect application of law or Service policy. The resubmission of the appellate brief and the appellate exhibits does not constitute a proper motion to reconsider or reopen.

A request for motion must meet the regulatory requirements of a motion to reopen or reconsider at the time it is filed; no provision exists for the Service to grant an extension in order to await future correspondence that may or may not include evidence or arguments.

ORDER: The motion is dismissed.