

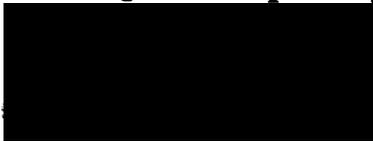


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: [Redacted] Office: NEBRASKA SERVICE CENTER

Date: DEC 10 2002

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 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
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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 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

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(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 he has sustained national or international acclaim at the very top level.

Counsel describes the petitioner as "one of the youngest golf players in China." Born in late 1989, the petitioner was eleven years old when he filed the petition in July 2001, and thus he has always competed at the junior level.

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 submits photographs of numerous trophies with Chinese inscriptions. There are no certified translations of these inscriptions, although there are English captions from an unidentified source. Other awards are identifiable from English inscriptions. The petitioner has not established how many, if any, of these awards are nationally or internationally recognized rather than local or provincial.

The petitioner submits a printout from San Diego Golf's web site, listing the final results for the Boys 9-10 Division of the 2000 Junior World Championships. Thirty-nine names appear, followed by the notation "did not make the cut" and several additional names. The petitioner's name is sixth in the listing of those who "did not make the cut." A brochure from the 2001 Junior World Championships identifies the petitioner as the Boys 9-10 Putting Champion. The record does not show the level of national or international attention afforded to these competitions. Because the petitioner's field of endeavor is golf, rather than "junior golf," the burden is on the petitioner to show that he has won competitions that are commensurate with nationally and internationally recognized golf tournaments.

The petitioner submits certificates of several school awards in mathematics, calligraphy, "throwing cotton ball competition," and other activities with no discernible relevance to the petitioner's acclaim as a golfer. An accompanying letter from an official of a school the petitioner has attended indicates that the petitioner is a good student who actively participates in school activities, but this cannot contribute to a finding that the petitioner is nationally or internationally acclaimed in the sport of golf.

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.

Articles from *Tee Times*, a magazine published in English and Chinese by the Sand River Golf Club, Shenzhen, China, report the results of monthly members tournaments. It appears that *Tee Time* is a publication for members of the Sand River Golf Club rather than a widely circulated golf publication; it contains articles about member services, club policies, staff meetings, and other information more germane to a limited, internal publication than to a nationally circulated golf periodical. Furthermore, a monthly competition limited to members of one club does not appear to be a national or international-level competition.

The record contains untranslated articles from the Chinese publications *Golf Weekly* and *China Golf*. The above regulation plainly requires translations, without which we cannot determine the content of the articles. The record also fails to establish whether *Golf Weekly* and *China Golf* are major publications.

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

Counsel asserts that the petitioner meets this criterion, but counsel does not specify what contributions the petitioner has made. Simply winning a competition, or a series of competitions, is not a contribution of major significance unless, by doing so, the petitioner breaks national or international records or otherwise sets widely recognized standards for the sport.

The petitioner submits several witness letters. [REDACTED] the petitioner's coach and director of instruction at various golf courses in Monterey, California, states that the petitioner "is believed to be the youngest winner" of the Hong Kong Open. [REDACTED] adds "[i]t is unlikely that he would be able to succeed in the game residing in China," and that his career would be best served by immigrating to the United States.

Michael Long, who first met the petitioner when [REDACTED] was golf director at Sand River Golf Club, states that the petitioner "wins every tournament he plays in China and Hong Kong" but should have "better access to top golf teachers and top junior golf competition." [REDACTED] states "I think he could do something" if allowed to compete against top U.S. golfers and "to improve his game in the States." Andrew Smith, director of instruction at Sand River Golf Club, states that the petitioner has won "an outstanding number of junior titles in China," and that the petitioner's "ability compared to most 11/12 year olds is far higher than I have seen before."

None of the above letters identifies any specific contribution that the petitioner has made to the sport, or indicates that the petitioner is a nationally known golfer. They stress, instead, that his abilities should be nurtured in a less restrictive environment than his native China. Even counsel states that approval of the petition will give the petitioner "a good chance to grow up as an excellent golf player." The petitioner seeks an extremely restrictive immigrant classification, reserved not for aliens who, given the chance, may eventually achieve excellence, but who are already nationally or internationally acclaimed as extraordinary and at the top of their respective fields. Subjective attestations of the petitioner's promise cannot serve as evidence of present extraordinary ability. The comparison of the petitioner to "most 11/12 year olds" is not dispositive, because to be an 11 or 12-year-old golfer is not a distinct field of endeavor. The sport of golf encompasses one of the broadest age ranges of any sport, including young adults such as Tiger Woods and older players such as Arnold Palmer, and the petitioner cannot place himself at the top of his field by arbitrarily excluding from his "field" the superior golfers outside of his narrow age range.

The director denied the petition, stating "the petitioner does not assert, nor does the record otherwise establish, that the petitioner has competed and regularly played at the highest levels of professional or amateur golf."

On appeal, counsel states that the petitioner “won two national and international competitions this year.” Counsel does not specify whether the events took place before or after the petitioner’s July 2001 filing date. If the petitioner was not eligible as of the filing date, later developments cannot confer eligibility. See Matter of Katigbak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Counsel states that evidence about these competitions is forthcoming, but to date, a year after the filing of the appeal, the record contains no such submission.

In a new letter submitted on appeal, Gary Gilchrist, director of instruction at the David Leadbetter Golf Academy, states that the petitioner possesses the “necessary skills to become a great golfer,” and is attending the academy “to take his game to the next level.” Mr. Gilchrist states that the academy “can provide the environment that [the petitioner] needs to excel to the next level and become a promising college golfer and possibly even further.” This letter, like previous letters from other instructors, focuses on the petitioner’s promise, rather than demonstrating that the petitioner is already capable of playing at a level comparable to the best-known golfers. We cannot approve an extraordinary ability petition based on the attestation that the petitioner could “possibly” advance beyond the level of “promising college golfer.” The immigrant classification is not simply a reward for past performance.

The predictions of the petitioner’s instructors may one day come to pass, and the petitioner could become a nationally or internationally acclaimed golfer who plays at the highest levels. Until that happens, however, conjecture and speculation about the petitioner’s promise (especially when it originates only from sources close to the petitioner, such as his own coaches) cannot take the place of extensive documentation of sustained national or international acclaim.

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 petitioner has distinguished himself as a golfer 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 petitioner’s achievements 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.