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Immigration and Naturalization Service

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



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Office: Vermont Service Center

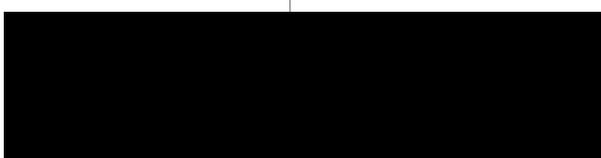
Date: 08 FEB 2002

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 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 the sustained national or international acclaim necessary to qualify for classification as an extraordinary coach.

On appeal, counsel argues that the petitioner's acclaim as an athlete is sufficient to warrant approval of the petition. For reasons to be discussed below, we reject 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.

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

This petition seeks to classify the petitioner as an alien with extraordinary ability as a swimming 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 petitioner has submitted evidence which, she 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.*

In 1992 the petitioner won several awards in an age group invitational championship in Beijing. An age-group competition award is insufficient to meet this criterion. In December 1995, the petitioner was awarded a certificate as one of the 20 best outstanding sportsmen in Lian Shen province. This is a local, not a national award.

FINA listed the petitioner as having the 10<sup>th</sup> fastest time in the world for the 100 meter breaststroke and the 5<sup>th</sup> fastest time in the world for the 200 meter breaststroke between January and June 1996. The same publication listed the petitioner as having the third fastest time in the world for the 200 meter breaststroke and the 7<sup>th</sup> fastest time in the world in the 100 meter breaststroke in 1994. While these are not "awards," they clearly rate the petitioner as one of the world's fastest swimmers in breaststroke.

Regardless, the petitioner has won several awards with more significance. In 1994, the petitioner won a silver medal in the 200 meter breaststroke and a bronze medal in the 100 meter breaststroke at the Rome 7<sup>th</sup> World Swimming Championships and she won a gold medal in the 200 meter breaststroke in the Asian Games. The petitioner received a trophy as the "ten excellent all of military" in 1995. Also in 1995, the petitioner won first prize in the 100 meter breaststroke and second prize in the 50 meter breaststroke at the Mondiali Militari Roma. The petitioner won first place in the 4x100 meter medal relay, second place in the 200 meter breaststroke and third place in the 100 meter breaststroke at the 8<sup>th</sup> Sports Meet All China in October 1997. These final awards allowed the petitioner to qualify for China's Olympic swimming team, reflecting the significance of that competition.

The petitioner, however, is not seeking to enter the United States to continue her swimming career. Rather, she intends to coach. On appeal, counsel asserts that China does not award prizes to coaches. Where the criteria are not applicable to an occupation, a petitioner may submit comparable evidence pursuant to 8 C.F.R. 204.5(h)(4). As comparable evidence for this criterion, we would consider evidence that the petitioner's students have won national or international awards. [REDACTED] asserts that the petitioner has coached a national champion and has discovered other talented swimmers for China. [REDACTED] writes that the petitioner "had a National Championship coming out [sic] under her coaching." The petitioner submitted the swimming competition results of [REDACTED] National City Game in 1999 highlighting 10 swimmers ranked 8<sup>th</sup> or higher as being swimmers "under my coaching." This evidence is very ambiguous as to whether the petitioner was currently coaching a national champion swimmer at the time the swimmer attained that status. The national coaches

are not clear as to whether one of the petitioner's former students has gone on to win a national championship or whether she is currently the head coach for that champion. There is no indication in the record that the petitioner has the title of "National Coach."

In addition, the record contains no evidence regarding the significance of the [redacted] City National City Game. Specifically, the petitioner has not established who made up the pool of competitors and whether it included nationally-acclaimed swimmers. Finally, the petitioner's own assurances that she personally coached ten of the top ranked swimmers at that competition is insufficient. 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).

*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 refers to the following documents as evidence that the petitioner is a member of exclusive associations:

1. A certificate designating the petitioner an "athlete of international standard,"
2. A certificate of employment from the Guangzhou City Athletic Sports Committee,
3. A membership certificate for the China Swimming Sport Association,
4. A certificate of completion and graduation for Sports Institute of Liberal Army three year program in sports education, and
5. The Heilongjiang Province Professional position qualification certificate.

Counsel asserts that the "criteria and selection process for membership in these organizations are confidential," but insists that "these organizations only recognize athletes who have obtained such world renown stature." First, only the third document listed above is evidence of membership in an organization. The remaining documents merely verify the petitioner's standing as an athlete, her employment, her education, or her employment qualifications. Moreover, whether or not the selection criteria and process are confidential, the petitioner must provide some evidence that the China Swimming Sport Association is a national organization and that it requires outstanding achievements of its members. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

The record contains evidence that the petitioner participated in the 1996 Olympics as a member of the Chinese team. While a team is not an association, membership on an Olympic team as an athlete could be considered comparable evidence under this criterion under 8 C.F.R. 204.5(h)(4) of extraordinary ability as an athlete. The record, however, contains no evidence that the petitioner is a member of an association that requires outstanding achievements of its members for which the petitioner was selected based on her coaching achievements.

*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 submitted several newspaper articles. Many of the articles are from local Harbin papers or merely report competition results. The petitioner failed to submit a complete translation of an article which appeared in a swimming magazine, making it impossible to determine whether the article is primarily about the petitioner. The record does include articles published in *Sports News* and *Sportsfans* which are primarily about the petitioner. The petitioner failed, however, to provide any information regarding the circulation of these publications. Thus, it is not clear that they constitute major media. The record also includes an article in the *Southern Daily News* and another article in the *Guangzhou Daily News* reporting the petitioner's success in breaking an Asian breaststroke record. While the above evidence might be considered minimal evidence to meet this criterion were the petitioner seeking to work as an athlete, there is no evidence that major media has published articles about the petitioner's work as a coach or even that her students receive such media attention.

In light of the above, the petitioner is unable to meet at least three of the regulatory criteria based on her acclaim as a coach. On appeal, counsel refers to an unpublished opinion of the AAO sustaining an appeal on a petition where the alien demonstrated extraordinary ability as an athlete and intended to seek work as a coach. Counsel also notes that a federal court in Russell v. INS, 2001 WL 11055 (N.D.Ill.) referred to this non-published case and two other hockey player cases involving hockey players coming to the United States to work in a hockey related area. The AAO decision is unpublished and has no precedential value. Counsel concedes that the Federal Court's reference to this case and the two hockey player cases is "dicta." In other words, the court in Russell held that the petitioner in that case rendered his case moot by retiring from hockey, although the court also upheld the Service's decision on its merits. The court did not hold that an alien seeking to enter the United States as a coach and who is able to demonstrate extraordinary ability as an athlete need not demonstrate any coaching ability.

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. Similarly, coaching is not within every extraordinary athlete's area of expertise. 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. 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 has minimally established sustained national acclaim as an athlete. The record lacks sufficient evidence, however, that the petitioner has been coaching at a national level such that coaching is within her area of demonstrated athletic expertise.

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 [REDACTED] sports committee swimming supervisory center. As stated above, [REDACTED] asserts that the petitioner has coached a national champion and has discovered other talented swimmers for China. [REDACTED]

Wang writes that the petitioner "had a [REDACTED] coming out [sic] under her coaching." The petitioner submitted the swimming competition results of the [REDACTED] National City Game in 1999 highlighting 10 swimmers ranked 8<sup>th</sup> 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 when that student became a national champion. Nor do the letters name the student, specify the national contest in which he or she competed. The record does not include independent evidence of the contest's significance. Finally, the record does not contain independent evidence confirming the petitioner's claim to have coached 10 competitors in the [REDACTED]. 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.

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 herself as a swimming coach 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 swimming coach, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. In addition, the petitioner has not demonstrated that coaching is within her area of athletic expertise as she has not sustained her national acclaim as an athlete through coaching at a national 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.