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

[redacted]

File: EAC 00 157 52814 Office: Vermont Service Center Date: JAN 11 2002

IN RE: Petitioner: [redacted]
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: Self-represented

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, 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 --
> >
> > > (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.

The petitioner seeks classification as an alien with extraordinary ability as a volleyball player, trainer and 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 does not specify which of the criteria she claims to have satisfied, but the evidence submitted appears to be intended to satisfy 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 was captain of the volleyball team at Brigham Young University Hawaii ("BYUH"), where she earned her B.S. in Accounting. The BYUH team won the National Association of Intercollegiate Athletics ("NAIA") championships in 1991 and 1992. The petitioner also submits photographs of first place medals from the National Universal Volleyball Games from 1989 and 1990, and second place medals from the National Sports School Volleyball Championships from 1987 and 1988.

Gao Jun, a member of the 2000 U.S. Olympic table tennis team and "a former Chinese sports school classmate" of the petitioner, lists some of the petitioner's accomplishments as a volleyball player:

> Under her leadership [as captain of an unnamed team], the volleyball team took 3rd place in National Sports School Volleyball Games in 1986, [and] 2nd place both in 1987 and 1988. [The petitioner] was one of the top six Chinese players in 1988 [and] was twice chosen to be on the Chinese National Junior Olympic Team in 1987 and 1988. . . .
>
> In late 1988, at age sixteen, she was recruited to the Zhongnan University of Finance and Economics for the upcoming 1994 National Universal Games. Her exceptional ability helped the team win the annual universal open titles in 1989 and 1990. . . . Brigham Young University -Hawaii's volleyball team . . . won two NAIA national championships in her time there. . . .
>
> In 1996, she started assisting the Edwin O. Smith High School volleyball team. . . . She was appointed head coach of White 16 team in the [Connecticut Junior Olympic] program and her team placed 2nd in the final tournament. Currently, [the petitioner] is giving private lessons to children and saving for a not-for-profit sports project for underprivileged children in the future.

The record does not indicate that the petitioner is still active as a competitive volleyball player; witnesses indicate that, after completing her master's degree, she turned her attention to coaching. Given the absence of evidence that the petitioner has continued to play competitively, evidence of past success as a player carries diminished weight.

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 short articles from the Honolulu Advertiser, the Star-Bulletin and West Hawaii Today, as well as several unidentified publications. The petitioner is the principal subject of only a few of these articles, and the petitioner has not shown that any of these newspapers represent major media as opposed to predominantly local papers with limited circulation. The bulk of these articles address the petitioner's activity as a player rather than as a coach or trainer.

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

S. Wilfred Navalta, head coach of Women's Volleyball at BYUH, states:

> [The petitioner] played a significant role in establishing our successful sports history. . . . She performed in a leading or critical role for our team and helped us win two National Championship titles. . . .
>
> [The petitioner] was unanimously selected by her teammates and coaches to be our team captain in 1993.

The petitioner appears to satisfy this criterion, having established that the BYUH volleyball team has earned distinction by winning eight NAIA national championships since 1986. The petitioner has not shown that she has had similar success as a coach or trainer.

The petitioner has submitted letters from several witnesses. We have already addressed some of these letters above. For the most part, the remaining witnesses are all BYUH faculty members and officials of companies where the petitioner has worked. These letters show that the petitioner is admired by her professors and co-workers, but they do not show that she has achieved sustained national or international acclaim in the field of volleyball.

One hitherto unmentioned witness with more direct ties to national-level volleyball is F. Tyson Krause, president of the Connecticut Junior Volleyball Association. The letter from Mr. Krause contains praise for the petitioner as well as general statements about the neglected state of youth volleyball coaching in the United States, but no indication that the petitioner is nationally acclaimed as one of the top volleyball coaches in the United States. Discussion of the petitioner's impact at the local level does not demonstrate or imply wider acclaim.

On September 5, 2000, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish extraordinary ability. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, and specified that the Service has defined "extraordinary ability" as "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."

In response to this letter, the petitioner asserts that, as one of "approximately 400 females accepted into volleyball sports school" out of China's female population of roughly 600 million, she is "in the top one hundred thousandth percent." This figure is flawed because it presumes that every female in China is a volleyball player the same age as the petitioner (players of other ages would not have competed with the petitioner for spaces at the schools). Even then, study at a school is not a field of endeavor and there is no evidence that Chinese athletes achieve lasting acclaim simply by virtue of having attended one such school.

We note that supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

> The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

Given that playing on a major league team is not automatic evidence of extraordinary ability, by the same logic we cannot find that the petitioner's admission, as a young child, into an exclusive sports school is sufficient to place the petitioner at the very top of her field.

The petitioner asserts that she is "an assistant coach of the Baruch College Women's Volleyball Team," which "has won four out of the five CUNY conference games it played." The petitioner did not claim to hold this position at the time of filing, and there is no evidence that the petitioner was in any way responsible for the team's past success. 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.

Even if the above were not an issue, it remains that, as an assistant coach rather than a head coach, the petitioner is clearly not the top coach at Baruch College, let alone the United States. Jimmy Lam, head coach of women's volleyball at Baruch College, states that the petitioner's coaching duties there represent unpaid volunteer work "while working a 60 plus hour a week full-time job."

A part-time, unpaid position as an assistant coach does not appear to be consistent with national acclaim as one of the nation's top volleyball coaches, which the petitioner must demonstrate in order to qualify for this highly restrictive visa classification.

The petitioner submits further letters from witnesses who have worked with her in some capacity either in finance or in volleyball. While these letters express sincere admiration, such letters from individuals with close ties to the petitioner do not establish that the petitioner has earned a reputation as a top athlete not only at a particular school or on a particular team, but on a truly national or international level. The petitioner's former coach, Dong Li, states that the petitioner "was on the path to become one of China's great volleyball players," implying by omission that the petitioner did not actually achieve such stature prior to departing for the United States. Another former coach, Wilfred Navalta, states that the petitioner "is undoubtedly [one of] a select few who have risen to the top - academically and athletically at BYU Hawaii." Rising to the top at one's own school does not establish a wider reputation.

The petitioner submits copies of newspaper articles and other documents, mostly previously submitted, which establish local coverage but do not show that the petitioner has achieved national or international acclaim (sustained or otherwise) as a top volleyball player or coach.

The director denied the petition, stating that the petitioner has not objectively established the importance of her awards, and that the exhibits in the record "do not appear to put [the petitioner] on the level of an Olympic medal winner." On appeal, the petitioner states "participation in the Olympics is not the only indicator of extraordinary ability." This observation is true and the director did not say otherwise; rather, the director made the reasonable statement that, to qualify for this highly exclusive classification, the petitioner must rise to a comparable level.

The petitioner cites a dictionary definition of "extraordinary" and states that her achievements meet that standard. The regulations, however, offer a specific definition for "extraordinary ability" (derived from the legislative history) and it is the regulatory definition which is controlling in this case.

The petitioner asserts that she has submitted expert appraisals of her skills from well-known coaches and athletes. As we have noted, these individuals all have well-established direct ties with the petitioner. The petitioner is not nationally or internationally acclaimed if her reputation is primarily limited to those who have worked directly with her. Also, many of these witnesses can themselves cite achievements which substantially surpass the petitioner's own achievements. For instance, coach Wilfred Navalta has coached nine championship teams and was inducted into the NAIA Hall of Fame. To qualify for this highly restrictive visa

classification, it is not enough for the petitioner to submit recommendations from top figures in the field; she must establish objectively that she stands among them.

The petitioner asserts that she has "made significant contributions to strengthening the relationships between the United States and China among coaches and athletes." The petitioner's various claims in this regard are unsubstantiated. The petitioner has not demonstrated that she has had any more of an overall impact than other aliens who studied in the U.S. under athletic scholarships.

The petitioner states that she acts as a role model for those whom she coaches, which is likely true but arguably applies to most if not all coaches. Clearly her students admire the petitioner, but this does not establish that the petitioner is among the best-known volleyball coaches in the U.S. or the world.

Review of the record reveals another issue worthy of note here. 8 C.F.R. 204.5(h)(5) states, in pertinent part, "the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise." This regulation derives from the statutory requirement at section 203(b)(1)(A)(ii) that "the alien seeks to enter the United States to continue work in the area of extraordinary ability." Because the petitioner claims extraordinary ability as a volleyball player, trainer and coach, she must submit clear evidence that she seeks to enter the United States to continue work in volleyball.

The petitioner's passport identifies her as a "researcher." The petitioner is a certified public accountant who holds degrees in accounting and finance, and since 1997 has been employed in financial management occupations. This evidence demonstrates that the petitioner has trained for, and pursued, a career in finance.

The petitioner seeks an employment-based visa based on her athletic achievements, and yet there is no indication that athletics has ever been, is, or will be the petitioner's primary occupation. Instead, the petitioner works at an investment banking firm and volunteers part-time as an assistant coach. While the visa classification does not require a specific job offer, we cannot ignore the evidence of record which establishes a clear pattern wherein the petitioner coaches volleyball essentially in her spare time, while earning her livelihood in a completely unrelated field of endeavor. The petitioner's primary occupation is in the field of finance, a field in which she has neither established nor claimed extraordinary ability. The fact that she volunteers as an assistant coach, and provides private lessons as a side venture, does not fulfill the statutory or regulatory requirement that the alien continue work in the field of claimed extraordinary ability.

The petitioner has stated, in a letter accompanying her initial filing, her intention of establishing a sports center in Connecticut. On appeal, the petitioner states that she intends to

establish the center "[i]n the near future" but does not indicate what steps, if any, she has taken in this regard. The vague assertion that the petitioner intends to establish a sports center at some unspecified future time, using resources from an unidentified source, cannot carry the same weight as the established fact that the petitioner has continued to work full-time in the field of finance (in which she holds an advanced degree).

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.

Review of the record, however, does not establish that the petitioner has distinguished herself as a player, coach or trainer 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 is a dedicated coach who had previously enjoyed success playing volleyball at the collegiate level, but the evidence is not persuasive that the petitioner's achievements have consistently set her significantly above almost all others in her field at a national or international level. The petitioner's documented pursuit of a career entirely unrelated to volleyball leads to reasonable questions regarding the petitioner's future activities in the field of 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.