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U.S. Department of Justice

Immigration and Naturalization Service

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[Redacted]

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

26 JUL 2002

File: [Redacted]

Office: Nebraska Service Center

Date:

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:

[Redacted]

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, 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

(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.

The petitioner is a table tennis 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. In the initial submission, counsel did not make it entirely clear which of the criteria the petitioner claims to have satisfied (although some of the criteria can be inferred from counsel's claims).

Counsel observes that the People's Republic of China Physical Culture and Sports Commission awarded the petitioner a Second Grade Medal in December 1984. Awards and prizes fall under 8 C.F.R. 204.5(h)(3)(i). The initial submission neither establishes the significance of this award nor explains why the petitioner received it. According to the petitioner's *curriculum vitae*, the petitioner was not a head coach until 1989. He claims to have been deputy head coach of the Liaoning Province team from 1976 to 1983, but in 1984, he was a first-year student at Shenyang Institute of Physical Education and he does not claim to have been coaching at that time.

Counsel states that the petitioner "has successfully trained a number of world table top tennis players," including several world champions. The only evidence submitted initially to support this claim is a letter from Wang Nan, who identifies herself as the winner of two consecutive World Table Tennis Championships.

Counsel states that the petitioner is the head coach of the Liaoning Province table tennis team, which has won several national championships under the petitioner's direction. Awards won by athletes under the direction of a coach are not awards presented directly to the coach, but the coach typically deserves a share of the credit for a team's success. Considering the above, and also the apparently small number of coaching awards, we can consider significant team awards to be comparable evidence of the coach's acclaim pursuant to 8 C.F.R. 204.5(h)(4).

The above being said, the sparse documentation of the petitioner's initial submission contains no evidence to support counsel's assertions. A 1987 certificate in the record indicates that the petitioner is a table tennis coach at Liaoning Physical Education School. There is no evidence that the Liaoning provincial team is based at the school, and there is no documentation of the team's performance. Counsel's assertion that the "Liaoning Provincial Table Tennis Team has been the cradle of China's best table tennis players" is wholly uncorroborated.

Counsel asserts that the petitioner is a member of the China Table Tennis Association and the China Science and Technology Association, but nothing in the initial submission corroborates that claim. The petitioner's *curriculum vitae* listing such memberships amounts to an assertion by the petitioner, rather than documentary evidence to support such an assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel states that the petitioner has coached national teams in the United Arab Emirates and Kuwait as well as highly successful teams in China. The initial submission contains a copy of a contract between the petitioner and the U.A.E. Table Tennis Association, naming the petitioner as "Coach of U.A.E. National Team (Men/Youth and Juniors)." There is no documentation from the team in Kuwait. The petitioner also submits photographs of himself with several unidentified persons, whom counsel states are members of various national teams. Such photographs have minimal probative value. One photograph, said to depict "the players of the UAE National Table Tennis Team after a competition in Hungary," shows several females although the petitioner's contract seems to indicate that the petitioner coached male players. Two of the players are wearing T-shirts with English-

language legends ("Big Fun Table Tennis" and "92.1 GOLD – The BEST Oldies") which do not readily identify them as Arabs in Hungary.

Counsel states that the U.A.E. and Kuwait teams performed well in international competitions, but the initial submission contains no evidence to support this assertion.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. In response, the petitioner has submitted additional documentation and a statement from counsel. Counsel asserts that the petitioner meets five of the ten regulatory criteria at 8 C.F.R. 204.5(h)(3).

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

Although the initial submission contained documentation of an award the petitioner received in 1984, this criterion is not one of the five that counsel discusses in response to the director's request for further evidence.

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 states that the petitioner "has been recently accepted as Coach of American Table Tennis Team." Counsel's wording implies that the petitioner is now the coach of the U.S. national team. The record contains a copy of a letter from Mark Nordby, National Coaching Chairman of USA Table Tennis, addressed to the petitioner. Mr. Nordby states "[w]e greatly appreciate the time you took to complete a state level exam. You will now be included on the list of our certified coaches as well as our online database of coaches at www.usatt.org." This letter indicates that the petitioner is one of many certified table tennis coaches, but completion of "a state level exam" does not represent an outstanding achievement. The letter contains no indication that the petitioner has actually secured a position as the coach of any team in the United States. We note that the petitioner has been certified at the State level, which is the third of five hierarchical certification levels. The two higher levels are Regional and National.

Counsel repeats the earlier claim that the petitioner "is a member of Chinese Table Tennis Association. This is the highest and most authoritative national organization in the field of table tennis. Only the players and coaches in the field whose achievements have been nationally recognized would be accepted as a member by this prestigious association." To corroborate this assertion, the petitioner must submit documentary evidence showing not only that he is a member of the association, but also that the association will only admit nationally recognized players and coaches. 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.

Counsel states that the petitioner "and his coaching achievements were frequently reported by media, especially when he was the chief-coach of the table tennis teams of United Arab Emirates, Kuwait, and Russia." Counsel asserts that most of these articles are unavailable because the petitioner did not retain them. We can only consider the published materials actually in the record. The unsubstantiated assertion that more articles exist, published at an unspecified time in unidentified newspapers, carries no weight.

Counsel refers to "[o]ne newspaper report in Russian," along with a photograph of the petitioner standing next to "a Russian newsman." The article does not include the title of the publication, the date, or an English translation. The author appears to be identified in Cyrillic characters. On its face, the article fails to meet the plainly worded requirements of the regulation. A photograph of the petitioner standing next to an unnamed person whom counsel identifies as "a Russian newsman" is not published material about the petitioner, nor does it even suggest the existence of published material about him.

Submitted with the petitioner's response, but not mentioned in the exhibit list or in counsel's accompanying statement, is a copy of an untranslated article from the *Chinese-American Post* dated October 13-19, 2000. Because the article has no translation, we cannot determine its content or the purpose underlying its submission.

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

The petitioner submits copies of articles he had written, which appeared in *Liaoning Sports Science & Technology* in 1985 and *Liaoning Sports* in 1992. Counsel asserts that many more articles exist but the petitioner does not have copies to submit. Pursuant to the regulation, we can only consider those articles for which evidence of publication exists. In this instance, both of the publications name Liaoning Province in their titles, suggesting that the publications are provincial rather than national or international. Publications without significant national or international circulation cannot contribute to national or international acclaim because the readership exposed to such publications is neither national nor international.

Counsel states that one of the criteria that the petitioner fulfills is "Invitation to be Coach by Foreign Countries." There is no such criterion in the regulations. Coaching at a national or international level would appear to fall most readily under this criterion:

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

As noted above, the petitioner has submitted documentation that he was coach of the U.A.E. national table tennis team. Counsel refers to that documentation, and to invitation letters from the

University of Calgary and "a Japanese table tennis association." Counsel states that no translation of the Japanese-language letter is available, in which case we have no evidence that the letter is in fact an invitation to serve as a coach at a national or international level.

The letter from Mike Boyles, supervisor of the University of Calgary's Intramural Sports Program, invites the petitioner "to be the visiting coach at the University of Calgary from April, 1999 to March, 2000." Mr. Boyles advises the petitioner "you may have to secure your own funding during the visiting period." It is not immediately apparent that an invitation for temporary employment, for which the petitioner may have to secure his own funding, is evidence of sustained acclaim. There is no evidence that the petitioner actually accepted the invitation.

The only national-level position for which the petitioner has produced first-hand documentation is his position as coach of the U.A.E. national team. The record does not establish the distinguished reputation of that team. The record contains no documentation from Kuwait, nor does the record support counsel's new assertion that the petitioner "was the chief-coach of the table tennis team . . . [in] Russia." Even the petitioner's own *curriculum vitae* mentions no such position, nor does it leave open any time period in which he could have acted in that capacity. It merely indicates that Russia is one of several countries in which the petitioner has traveled.

Coaching a provincial team that routinely wins or places highly in national competitions would also satisfy this criterion, but the record contains no first-hand evidence that the petitioner is head coach of the Liaoning provincial team or that that team is one of China's top teams.

Beyond the above criteria, the petitioner submits four letters from figures in table tennis. One of these letters is a copy of the previously submitted letter from Wang Nan. For three of these individuals, the petitioner submits a "summary of achievement record downloaded from Internet." The petitioner does not indicate that any Internet source has documented his own achievements, despite what counsel claims is the petitioner's status as one of China's top coaches. The record does not identify the web site from which the petitioner obtained the printouts in the record.

Kong Linghui, identified as a world champion and Olympic gold medallist, states that his "teammates . . . were all students of" the petitioner, but he does not state that he himself was. Mr. Kong states "[m]any table tennis players [the petitioner] trained got excellent achievements under his training. For instance, at the 45th World Table Tennis Contest . . . China won the Silver Medal of Men's Team."

Ma Lin, one of the petitioner's students, states that he won an individual silver medal as well as contributing to the team's silver medal at the 45th World Table Tennis Contest. Mr. Ma states "[m]y current achievements in the field of table tennis playing owe a lot to [the petitioner's] training," and demonstrate that the petitioner "is truly a world class table tennis coach."

The final witness is Zhang Qi, identified as the former physician of an Olympic track and field champion. Dr. Zhang's standing to attest to the petitioner's reputation in the field of table tennis is not clearly established. Dr. Zhang identifies some of the petitioner's former students and

asserts that the petitioner "was also employed as a head coach by many club table tennis teams of foreign countries."

The statute demands "extensive documentation" of sustained acclaim, a requirement reflected in the broad variety of evidence described in 8 C.F.R. 204.5(h)(3). Witness letters do not constitute extensive documentation. While such letters can verify certain aspects of the petitioner's claim, they cannot suffice to corroborate the kinds of claims for which first-hand documentation should be readily available.

The director denied the petition, citing the lack of evidence to substantiate many of the petitioner's fundamental claims. The director concluded that, by coaching champion players, the petitioner has made contributions of major significance, thus fulfilling the criterion at 8 C.F.R. 204.5(h)(3)(v), even though the petitioner had never expressly claimed to have fulfilled that particular criterion.

On appeal, counsel repeats previous unsubstantiated claims, but offers nothing to support them. For instance, counsel again refers to the petitioner's position as head coach of the Kuwait National Team, a claim for which no evidence can be found in the record. Counsel also makes new claims, for example discussing details of the China National Table Tennis Team, and the process by which coaches are selected to travel overseas and coach other national teams. Like most of counsel's previous claims, the record contains no documentary evidence to corroborate these claims. Counsel has not established personal expertise in the organization of the highest levels of Chinese table tennis, nor has counsel even identified the sources of the information presented on appeal. As we have already stated, the assertions of counsel do not constitute evidence.

Counsel discusses the petitioner's position as a coach of the U.A.E. national team, and the director's conclusion that the team does not have a distinguished reputation. Rather than producing documentation to show that the team has won international competitions (as counsel had initially claimed), counsel asserts "Rome is not buil[t] in a day," and states that "a couple of years" is not enough time for the team to reach major proficiency, even under a top coach. The regulation requires a distinguished reputation, and if the team does not have such a reputation, it simply fails to meet the regulation and the precise reason for that failure is irrelevant.

Regarding the minimal documentation of published material about the petitioner, counsel asks that the Service "be understanding and give high value to the media report evidence" even though most of the articles about the petitioner "were simply read, appreciated, and then thrown away." We cannot disregard the regulation, which requires the petitioner to submit "published material about the alien," rather than simply an attorney's assurance that such material once used to exist. Furthermore, while it is understandable that the petitioner did not retain copies of every article about him, the petitioner has not shown that new copies of these articles are unobtainable, for example through libraries or the publishers of the material. We cannot give evidentiary weight to counsel's assurance that the petitioner would have submitted many more articles, if only he had had the foresight to retain them.

Counsel states "the petitioner has been recently awarded a state level table tennis coach certificate and a coach patch by the U.S. Table Tennis Association." This material establishes only that the petitioner has been adjudged competent to act as a coach in the United States; it does not demonstrate or imply that USA Table Tennis views the petitioner as one of the top coaches in his field. The petitioner's certification is at the middle level rather than the highest. Furthermore, all other arguments aside, the petitioner was not certified until April 18, 2001, over three months after he filed his petition in January 2001. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998), and 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. Pursuant to the above case law, the petitioner's April 2001 certification cannot, even in the best of circumstances, retroactively demonstrate that the petitioner was already eligible as of January 2001, if the evidence in existence as of January 2001 was not sufficient to support such a finding.

If all of counsel's claims were substantiated by first-hand documentary evidence, the petitioner would have a much stronger claim of eligibility for the immigrant classification he seeks. This classification, however, is highly restrictive, and both the statute and regulations make it abundantly clear that a petitioner seeking this classification must present extensive documentation of the alien's eligibility. Subjective assurances that the petitioner does not have such evidence, or witness letters containing assertions for which there is no reason that first-hand documentation would not be available, cannot overcome the strict evidentiary requirements. The fact that counsel has made specific claims that even the petitioner himself seems to contradict – such as the claim that the petitioner was head coach of a national team in Russia – serves only to raise questions of credibility regarding the myriad other unsubstantiated claims and assertions in the record.

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 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 record lacks crucial evidence to support claims 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.