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U.S. Department of Justice

Immigration and Naturalization Service

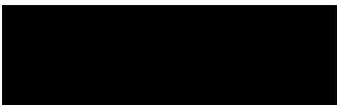
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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC 00 207 51945 Office: Vermont Service Center Date: 19 MAR 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:

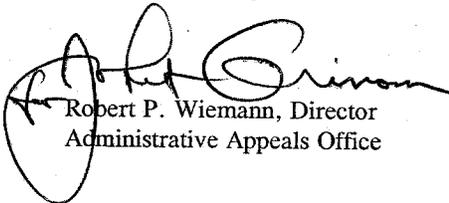
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, 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 swimming coach. In a statement accompanying the initial filing of the petition, counsel states that the petitioner "has broke[n] the Asian records in swimming for three times since 1986. And for five times, she has created China's national records and won more than ten national champions." Counsel adds that the petitioner placed fourth in the 4x100m women's freestyle relay at

the 1988 Olympics. Counsel discusses other competitions between 1987 and 1991 in which the petitioner placed highly. The petitioner appears to have stopped competing as a swimmer in 1994, and has coached at the East District Sports Club in Beijing, China, since 1995.

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 appears to be intended to meet 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.

Counsel asserts that the petitioner's 4th place finish at an Olympic event qualifies under this criterion. Counsel fails to explain how this is so, because only the top three finishers receive medals at the Olympics. Participation in an Olympic event, while prestigious, is not a prize or award in itself, but rather an opportunity to compete for such a prize.

The petitioner has won actual prizes at lesser competitions, setting some records along the way. These prizes, however, carry diminished weight because the petitioner is no longer a competitive swimmer. The value of these prizes lies in establishing the petitioner's general expertise as a swimmer.

The most recent prize that the petitioner herself has won appears to relate to her second-place finish at the Women's Individual All-Level Beijing Life-Saving Swimming Skills Competition. There is no indication that this competition was national; the prize certificate is from the Sports Committee of the Beijing Municipal Government rather than any national body. Also, there is no evidence that the petitioner seeks employment in the field of "life-saving swimming skills."

Because the petitioner is now a coach, and seeks to continue coaching after she enters the United States, the best gauge of the petitioner's ability with respect to prizes would appear to be the success of her students.

A 1995 certificate from the East City District Delegation indicates that the petitioner was "awarded the third prize for contributing to the Third Beijing Juvenile Sports Meet," which from its name appears to be a municipal rather than national or international event.

The petitioner submits two certificates pertaining to one of her students. Counsel states that the student won several gold medals "at the National Juvenile Swimming Championships held in July 1999." The certificates, however, differ in a critical detail. The first certificate, from the Chinese Swimming Association, states that the student placed first in three events "at the National Junior Swimming Championships in 1999. He broke the 100m Breast of junior swimming [sic] national record at the same Championship." The second certificate, issued by the Swimming Sports Management Center of the State General Administration of Sports, indicates that the student won three events and broke the 100m breaststroke record "at the **District Competition** of the National Juvenile Swimming Championships" (emphasis added). A prize at a district competition is neither national nor international.

The Chinese Swimming Association certificate also indicates that the same student "won the first places" in three events "at the National Junior Swimming Championships in the year 2000." Because of the serious discrepancy regarding the "District Competition," we cannot determine whether the student's 2000 victories were at the national or district level.

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.

The only membership the petitioner claims is in the Hong Kong Branch of the Royal Life Saving Society of Britain. A certificate from the society indicates that the petitioner is proficient as a lifeguard, but the record contains no evidence to establish the society's membership criteria.

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.

Several articles from China Sports Daily from the late 1980s mention the petitioner, usually in the context of identifying members of the Chinese swimming team at various international competitions. The record does not show that the petitioner's coaching activities have earned any national or international media attention.

While counsel has divided the petitioner's evidence into several categories, most of the evidence fits into the three regulatory criteria discussed above. Outside of the criteria, the petitioner submits a copy of a 1997 certificate, indicating that she holds the title of "Intermediate-Level Coach," as designated by the

Intermediate-Level Professional Title Evaluation Committee of Beijing. It is not clear how the petitioner can be widely viewed as one of the top coaches in China if she is certified only at the "intermediate" level. There is no indication that the petitioner was certified at a higher level after the 1997 issuance of this certificate.

The petitioner also submits five witness letters. Chen Yunpeng, who as head coach of the People's Republic of China swimming team was the petitioner's coach, states that the petitioner's students won several medals in 1998 and 1999. This statement is not direct documentation of the awards in question, nor is it worded precisely enough to resolve the discrepancy regarding whether the medals were at the national level, or the district level of a multi-level national competition.

Xiaodong Feng, deputy head coach of the national swimming team, discusses the petitioner's achievements as a swimmer in some detail but comments on the petitioner's coaching career only briefly, stating that the petitioner "has been involved in coaching swimming. She is a hard-working instructor, devoted to her career, and has prepared for China a large number of promising candidates for the National Team."

Wenyi Yang, gold medalist at the 1992 Olympic Games and the petitioner's former teammate, deems the petitioner a "first-ranking coach" whose "students have achieved excellent results at numerous national and Beijing-based swimming competitions." The petitioner submits a letter from another Olympic medalist, whose name does not appear in English and whose signature is written in Chinese characters. This individual states that the petitioner's "students win different kinds of medals during national Championship." Xiaoming Huang, who competed alongside the petitioner in the 1988 Olympics, states that the petitioner "has made significant contributions to the training of a new generation of Chinese swimming competitors."

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." The director specifically requested evidence of acclaim from "the past three years," to demonstrate that the petitioner's acclaim had been sustained.

In response, counsel repeats the list of competitions in which the petitioner participated in the late 1980s and early 1990s. Counsel also cites new evidence regarding the petitioner's participation in a 1996 competition. This documentation shows that the petitioner "won the third place in women's 50m freestyle" and "broke the 100m

freestyle women's record-the highest national record for workers" at the Third National Workers Sports Meet. Counsel states that this documentation shows that the petitioner's "national acclaim continues to be confirmed by her achievements," although the prize was awarded at least four years before counsel made this statement in December 2000. The record fails to establish the reputation of the National Workers Sports Meet, which took place (according to several witnesses close to the petitioner) several years after the petitioner had retired from competition and which the petitioner had not even mentioned in her initial submission.

The petitioner submits additional letters. [REDACTED] former head coach of China's national swimming team, states that "[s]ome of [the petitioner's] students have reached world level. Some have entered the national team; some have set up new national records." No specific, verifiable information is provided to support or elaborate upon this vague assertion.

Fan Yongge, publisher of The China Nationgate Times, states that the petitioner "is a familiar name among the Chinese sports community," and that three of the petitioner's students "won the first place respectively in three events at the National Juvenile Swimming Tournament held in February 2000." There have been several differing accounts regarding the achievements of the petitioner's students between 1998 and 2000, none of them from individuals who have established that they have direct standing to attest to those achievements. Because these accounts differ, we cannot arbitrarily select the account most favorable to the petitioner's claim.

The director denied the petition, stating that the petitioner has not shown that she has sustained whatever acclaim she may have earned a decade before she filed the petition. On appeal, the petitioner submits further evidence regarding her own achievements as a swimmer, as well as those of her students. The prize certificates for the petitioner's students appear to pertain to local competitions in Beijing. Other certificates involve events that had not yet taken place when the petition was filed in June 2000, and which therefore cannot establish eligibility as of the filing date. 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.

Regarding her own work as a swimmer, the petitioner submits an article which appears to indicate that she replaced one of the originally-selected team members in the 4x100m freestyle event at the 1988 Olympics.

In a statement accompanying the appeal, counsel discusses the above exhibits but does not address the director's concerns regarding the apparent end of the petitioner's own career as a swimmer.

The record shows that, as a swimmer in her own right, the petitioner was responsible for significant accomplishments, earning (among other honors) a coveted spot on China's 1988 Olympic swimming team. The record also shows, however, that the petitioner is no longer involved as a competitor at the highest levels of competition. For the petitioner to show that her acclaim is sustained at this stage of her career, she must demonstrate that in her several years of coaching, her students have consistently competed at a national or international level. The record, however, offers a somewhat ambiguous picture that indicates, overall, that her students have competed for the most part at municipal events. The record does not show that the petitioner has enjoyed more success as a coach than nearly any other coach in the country. While her own former coaches and teammates respect her skills as a swimmer and coach, there is no indication in the record that the petitioner has sustained a reputation as a top swimming coach throughout China.

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 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 enjoyed a successful career as a swimmer several years before she filed the petition, but is not persuasive that the petitioner's achievements as a coach (which is her current field of endeavor) set her significantly above almost all other competitive swimming coaches 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.