

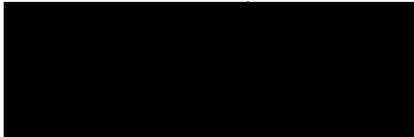


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: WAC-99-191-52086 Office: California Service Center Date: 03 MAY 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:
[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, California 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a gymnastics 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.

The petitioner claims to have placed 4th in the Fifth Beijing Municipal Games for the women's individual all around competition and to have received gold and bronze medals at the 1978 National Games. The record contains evidence of her award at the Municipal Games. The evidence regarding the 1978 competition, however, reflects that she won 4th place in vaulting and the personal "3rd class merit" in the "Gymnastics Area Competition of All-China Schools for Physical Culture and Sports." The Beijing Municipal Games are a local competition and their awards cannot be characterized as national. The director concluded that the petitioner had not submitted evidence to establish the significance of the National Games. On appeal, the petitioner submits what is allegedly a page from The History of Gymnastics in China. The translated sentences state:

From 1971, the year when the gymnastics championships were restarted throughout China to the end of 1978, China held 14 national gymnastics championships (including one national competition) and five national junior championships. Most of the excellent national gymnasts were the new contestants who stepped onto the sport platform at the beginning of the 1970s.

This information does not address the specific competitions in which the petitioner competed. Regardless, even if the petitioner had established that her awards were nationally significant, the petitioner has not received a medal since 1978. A petitioner must establish sustained national acclaim. Winning a national award more than 20 years prior to filing the petition is not evidence of sustained national acclaim. Moreover, the petitioner seeks classification as an extraordinary coach. Awards for athletic ability are not evidence of extraordinary coaching ability. While coaching award-winning gymnasts might be considered comparable evidence for this criterion under 204.5(h)(4), the record contains no evidence that any of the petitioner's students have won national or internationally recognized prizes or awards while being coached by the petitioner. (Some have gone on to win larger awards after leaving the petitioner's tutelage.) The certificate from the Beijing Xicheng District Teenagers Part-time Sports School reflects only that several of the petitioner's students have won awards in municipal (local) competitions.

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 petitioner submits a letter from the Chinese Sports Acrobatics Association verifying her membership in that association. The letter provides no information regarding the membership requirements. As such, the petitioner has not established that the association requires outstanding achievements of its general membership.

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.

As noted by the director, the petitioner did not originally claim to meet this criterion. On appeal, the petitioner submits a transcript from a radio interview from April 22, 2001. This interview took place after the petitioner filed her petition and cannot be considered evidence of her eligibility at the time of filing.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The certification from the Chinese Sports Acrobatics Association states:

[The petitioner] was a gymnastics referee of our nation. National Sports Committee conducted 1997 International Gymnastics Referee Special Training Course, [sic] Our national famous gymnastics referee GE, LIWEN recommended her, but she had decided to go to study in the U.S.

These statements are extremely ambiguous. It is unclear whether the petitioner was simply offered referee training and declined in order to go to the United States or whether she received the training. Even if she was trained, these statements do not clearly indicate that the petitioner actually performed referee or judging duties.

The record also contains a letter from the China School Sports Federation affirming that the petitioner "successfully performed the duty of referee for China School Sports Federation in the Sports Meet for the Middle School students, and contributed a lot to our organization." Even assuming that the petitioner has performed referee or judging duties, in order to meet this criterion she must establish the significance of the refereed competitions such that her selection as referee reflects national or international acclaim. Refereeing at middle school competitions is not evidence of national acclaim.

Finally, the record contains a certificate from the Beijing Teachers College of Physical Education certifying the petitioner as a gymnastic judge Grade 2 of the People's Republic of China. The record contains no evidence regarding the significance of Grade 2 certification or whether she actually judged competitions after being certified. The petitioner was also evaluated as an "outstanding judge" by the Ministry of Education. A Certificate from the Chinese Educational Department reflects that the title was based on the petitioner's attendance at the 1996 University Student Sports Game. The record does not reflect the significance of this competition.

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

As noted by the director, the petitioner did not initially claim to meet this criterion. She does not claim to do so on appeal.

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

The petitioner authored an article, "Young Children Growing up with Gymnastics Training," which *U.S. Healthy Life* published in 2000. As this article was published after the date of filing, it cannot be considered evidence of the petitioner's eligibility at the time of filing.

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

The petitioner submitted a certificate from the Gucheng Senior Vocational High School in Beijing verifying her employment as a gymnastics coach from 1983 to 1996. The petitioner also, however, submitted a letter from a former Consul at the Chinese Consulate in San Francisco affirming that the petitioner worked at the consulate from 1993 to June 1995. Regardless, the record does not reflect the significance of the petitioner's role or that the school has a distinguished reputation in gymnastics. The record also contains a certificate from the Beijing Xicheng District Teenagers Part-time Sports School reflecting that the petitioner coached women's gymnastics there from 1990 to 1992. In fact, in her letter of support, Ge Liwen indicates that the petitioner was her assistant at that school. An assistant coach at a sports school, which presumably employs several coaches and assistant coaches, cannot be considered a leading or critical role. In addition, while the certificate asserts that several of the petitioner's students won awards at Beijing municipal competitions, the reputation of the school as a whole is undocumented. Finally, the record reflects that the petitioner trained staff of the Ministry of Education for government agency competitions. As the main purpose of the Ministry of Education is not to compete in such competitions, the petitioner's training of the staff for the competition cannot be considered a leading or critical role for the Ministry.

In response to a request for additional documentation, the petitioner submitted a certificate verifying that the petitioner served as director of the gymnastics competition department at the China School Sport Federation, and was a member of the International School Sports Federation and Asian School Sports Federation. The certificate confirms that the petitioner "was responsible for preparing and presides [sic] over China Gymnastics Championships that were held in 1993 and 1996."

In his final decision, the director expressed concern that the petitioner had not claimed to have served as a director at the China School Sport Federation initially and that the petitioner was working for the United States consulate in San Francisco at the time. On appeal, counsel asserts that the petitioner directed "matters" prior to leaving for the United States and upon her return. Finally, counsel asserts that the petitioner's duties involved "advising the gymnastic coaches of China regarding the updates to the Olympic code; and suggesting new coaching techniques that would help the Chinese gymnasts improve their ranking in international competitions."

The China School Sport Federation is a member of the International School Sport Federation, a federation which organizes competitions where schools from around the world compete. The petitioner, however, has not established the significance of the championships she directed. In

discussing the petitioner's role with the China School Sport Federation, King Liang Lu, Vice Chairman of the Chinese Acrobatic Association Coaches Committee, states:

[The petitioner] helped design and organize the requirements for all team performances. These rules were utilized to meet Olympic competition requirements and provide a standard for achieving world-class standards in gymnastics. She personally critiqued the performances of many teams and reported directly to the national directors.

In light of this statement, it appears that while the petitioner was actively involved with the Federation, she was not a national director. As the function of the China School Sport Federation is to organize intramural school competitions, not every employee who organizes such competitions at the local level can be considered to have played a leading or critical role for this national organization. [REDACTED] further states, "she has also contributed greatly in developing programs to teach children gymnastics and many of [her] ideas have been incorporated into our training manuals." The only specific role Mr. Lu asserts that the petitioner performed for him is as an assistant coach. While the Chinese Acrobatic Association may have adopted some of the petitioner's ideas, an assistant coach cannot be considered a leading or critical role for an association.

Finally, as stated above, the petitioner must demonstrate sustained acclaim. The petitioner entered the United States in 1997 as a student. Since that time, the petitioner has volunteered at the American Gymnastics Club in San Francisco. Elizabeth Selig, the director and owner of this club, asserts that it is a member of the United States Gymnastics Association and that its teams have won several state, regional, and national competitions. That the club has produced successful athletes is not evidence that it has a distinguished reputation nationally. Regardless, the record does not reflect that the petitioner plays a leading or critical role for the club above and beyond the other coaches.

In addition to the evidence relating to specific criteria, the petitioner also submitted several reference letters from colleagues, prior coaches, and former students who have won competitions under new coaches which provide general praise but do not address the criteria above. Letters from those who have worked with the petitioner cannot establish that she has national acclaim beyond her immediate circle of colleagues and students. Even the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that 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 herself as a gymnastics 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 gymnastics coach, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. 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.