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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

*ADMINISTRATIVE APPEALS OFFICE*
*425 Eye Street, N.W.*
*BCIS, AAO, 20 Mass, 3/F*
*Washington, DC 20536*

[redacted]

File: WAC-01-242-52268 Office: California Service Center Date: AUG 19 2003

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER:

**PUBLIC COPY**

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

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. On appeal, the AAO concurred with the director's conclusion.

On motion, the petitioner, through prior counsel, submitted new documentation. Prior counsel asserted that more first hand evidence related to the King's Cup Sepak Takraw Wold Championships in Thailand would be forthcoming. Subsequently, the petitioner's current counsel submitted a brief and additional materials.[1] 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation that allows a petitioner to submit new evidence in furtherance of a previously filed motion. Thus, it is within our discretion whether or not to consider the most recent documentation. In the interest of rendering a comprehensive decision, and in light of our failure to address two of the petitioner's earlier claims in our previous decision, we will consider all the documentation in the record.

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.

[1] Substitution of counsel occurred when the petitioner filed the most recent G-28 with the Bureau under the provisions of 8 C.F.R. § 292.4.

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 Bureau 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.

This petition seeks classification as an alien with extraordinary ability in sepak takraw, a volleyball-type sport where the players use their feet. The petitioner is currently coaching this sport. In the introduction of its decision, the AAO questioned counsel's assertions regarding when sepak takraw would become an Olympic event and the sport's history. The AAO also concluded that the minimal requirements for competing in the U.S. National Takraw Championships (a team of three U.S. citizens) suggested that the sport was "extremely obscure and rarely played in the United States." These comments, however, are clearly not the basis of the AAO's decision, which goes on to discuss the regulatory requirements in detail. The materials submitted on motion regarding the growing popularity of sepak takraw do not establish the petitioner's claimed acclaim arising from his participation in the sport.

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 that, he 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.*

Initially, the petitioner submitted a blurred photograph of a medal and photographs of himself allegedly receiving a trophy at the 1992 "Choose Cup" youth competition, another trophy at the 1992 King's Cup, and a plaque and trophy as part of the Chinese National Team in 1997. The petitioner also submitted certificates for "Quality Test Competition 1st Prize" at the 1991 National Youth Sepak Takraw Competition issued by the Sport Commission of China; the 1991 "Sportsmanship and Morality Award" at the National Youth Sepak Takraw Competition also issued by the Sports Commission of China; the same award issued by the National Sepak Takraw Championship Organization Commission in July 1999; fourth prize at the 1991 Cup National Speak Takraw Championship issued by the Sports Commission of China; and "Outstanding Athlete" in 1992 issued by the Nanning Sports Working Team.

The petitioner claimed more prestigious prizes, but as evidence of those awards submitted only a certificate from the Chinese Sepak Takraw Association dated February 10, 2001. The association indicated that the petitioner was "a top player and the captain *of the Guangxi Nanning Sepak Takraw Team*." (Emphasis added.) The certificate further indicates that the petitioner began his formal training in 1989, joined the national youth team in 1992 and joined the national team later the same year. The association further asserted that in 1992 the petitioner won first prize in an individual competition,

placed fourth at the First World Sepak Takraw Championships, ranked fourth at the Thai King's Cup, and won the individual competition of B-Group at the same competition. According to the association, in 1993, 1994, and 1995 the petitioner was ranked champion at national team and individual competitions. The association does not identify any of these competitions or their location. The association finally claims that in 1996 the petitioner was ranked third in both the team and individual competitions at the 12th Thai King's Cup before leaving to study at the China University of Political Science and Law in that same year.

The petitioner also submitted letters that provided somewhat inconsistent information. While the letters confirm that the petitioner was the top player and team captain for the Nanning sepak takraw team, the awards information is somewhat different. Junhui Song and a representative of the Nanning Sports Working Team both assert that the petitioner won a gold medal at the 1994 10th Thai King's Cup, whereas the certificate from the Chinese Sepak Takraw Association does not mention this award. The letters are also internally inconsistent, referencing both three and four individual national championships allegedly won by the petitioner. Junsheng Mao asserts that the petitioner was admitted to the China University of Political Science and Law in 1999 and, during the same year, assisted Mr. Mao coaching the Baodeli Team.

In response to the director's request for additional documentation, the petitioner submitted a February 26, 2002, certificate from the Chinese Sepak Takraw Association. The new certificate indicates that the petitioner was the top player on the *national* team since 1992 and served as team captain in 1994 and 1996. As stated above, in the previous certificate, the association indicated only that the petitioner had been top player and team captain for *the local Nanning team*. The association then lists four group match national championships and three team event national championships the petitioner allegedly won during the 1992 through 1995 period. The association still fails to identify the name or location of these competitions. In addition, the association now indicates that the petitioner was champion of Group B at the Thai King's Cup in 1991, although the petitioner did not join any national team until 1992. In addition, the association is internally inconsistent, asserting in its introduction that the petitioner was national team captain in 1994 and 1996 but indicating that the petitioner was team captain in 1992 in its subsequent discussion of individual awards. Finally, while previously asserting that the petitioner left the national sepak takraw team in 1996 to study, the association now claims that the petitioner coached the national team from February 1997 through December 1998. We note that certificates from the China University of Political Science and Law reflect that the petitioner attended that institution from September 1998 through July 2000, and that he was a player, assistant coach, and team captain during those years.

The director concluded that the 1992 medal was won at a youth competition and that the remaining certificates were more akin to honorary recognition than competitive awards for competition. On appeal, prior counsel noted that the 1992 medal was not awarded at a youth competition and references the awards listed in the certificate from the Chinese Sepak Takraw Association.

The AAO concluded that the photographs and the list of championships prepared by the Chinese Sepak Takraw Association were insufficient evidence of the petitioner's alleged awards and prizes. The AAO noted that the photographs did not show "legible inscriptions" on the medals or trophies.

The AAO further noted that the list from the Chinese Sepak Takraw Association, which included rankings at the Thai King's Cup, was "not contemporaneous documentation from the actual entities that awarded the prizes." The AAO acknowledged that the record contained certificates for some accomplishments, such as the "Sportsmanship and Morality Award" at the 1991 National Youth Sepak Competition, but concluded that the record did not establish the significance of these honors. The AAO questioned the petitioner's claims to have won awards after 1992, noting that while the petitioner had certificates and photographs of medals and trophies awarded prior to 1992, the petitioner had no certificates or photographs of medals awarded after that time despite the claimed significance of the competitions.

On motion, the petitioner submitted a better photograph of his 1992 gold medal awarded at the 8th King's Cup in Thailand. While this medal could be considered a lesser international award, a petitioner must demonstrate sustained acclaim at the time of filing, in this case, April 30, 2001. On motion, the petitioner still has not provided any contemporaneous evidence of awards presented after 1992. Specifically, the record does not contain the certificates for any awards issued after 1992, any photographs of medals with a legible inscription dated after 1992, or media coverage, major or minor, of the petitioner's rankings after 1992. The record contains no evidence establishing the Chinese Sepak Takraw Association's first hand knowledge of the petitioner's accomplishments. For example, the record contains no evidence that the International Sepak Takraw Federation recognizes the association. As stated above, the record also includes a 1999 sportsmanship award from the National Sepak Takraw Championship Organizing Committee. The record does not establish the relationship between these entities. Nor has the petitioner established which entity selects the national team members and captains and, thus, would have better first hand knowledge of the petitioner's participation. Moreover, the inconsistencies in the record discussed above raise credibility issues regarding the claims of the Chinese Sepak Takraw Association.

While a petitioner need not meet every criterion or even a specific criterion, the lack of even minor media coverage after 1992 is notable. If the petitioner's participation in the youth "Choose Cup" in 1992 is worthy of media coverage, the petitioner has not explained why no media, even local media, covered his participation in the national and international competitions he claims to have won.

Later in its decision, the AAO noted that even if the Service (now the Bureau) accepted that the petitioner had met the awards criterion, it was one criterion. As stated above, a petitioner must meet three to establish his eligibility.

> *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.*

Although prior counsel specifically claimed this criterion on appeal, the AAO failed to discuss the evidence relating to this criterion. We will do so now. While the claims of the Chinese Sepak Takraw Association are inconsistent, its claim that the petitioner was on the national team in 1992 is supported by the gold medal awarded to the petitioner in 1992 at the 8th Thai King's Cup.

A team is not an association. Nevertheless, selection to play on a national team can serve as comparable evidence to meet this criterion under 8 C.F.R. § 204.5(h)(4). As with the awards, however, even if we accepted the claims of the Chinese Sepak Takraw Association, the petitioner has not been a team member since 1996. Thus, as with the awards, the evidence for this criterion does not establish that the petitioner continued to enjoy sustained acclaim as of the date of filing, April 30, 2001.

*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 AAO found that the petitioner had not established that he had attracted the attention of the major media. Neither the petitioner, prior counsel, nor counsel contests this finding on motion and we affirm our previous discussion on this issue.

*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 AAO concluded that a certificate from a local team regarding judging did not serve to establish that the petitioner had judged the work of others at the national level. Neither counsel, prior counsel, nor the petitioner challenges this conclusion on motion and we affirm our initial conclusion on this issue.

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

The AAO concluded that the record did not establish that "the petitioner has made specific contributions that have affected the sport as a whole or set him apart from others who have played at the same level."

In its conclusion, the AAO noted:

> The statute, cited above, clearly calls for "extensive documentation" of acclaim. Documentation which exists because of an alien's acclaim is more timely and persuasive than evidence which is created after the fact for the specific purpose of supporting an immigrant petition. A petition that relies heavily on the latter type of evidence (as this petition does) suggests that minimal documentation existed before the petitioner began preparing the petition documents.

On motion, the petitioner, through prior counsel, submitted a letter signed by four members of the USA Takraw team attesting to the petitioner's importance to the team, a separate letter with similar claims signed by the President of the USA Takraw Association, and Internet materials regarding the Thai King's Cup and the history of takraw. The President of the USA Takraw Association also states:

> We are sorry about the unclear statement[:] "The US National Championship is open to any team of 3 players with US Citizenship." We meant to stated [sic] that, any three top teams will be consider as USA National team for the next up coming world championship tournament simply because each country has 3 sets of 3 players in order to participate in the team event or else will have to participate as single competition.

First, the letters provide only vague claims that the petitioner has contributed to the sport. Moreover, the submission of additional letters prepared in support of the petition does not overcome the AAO's stated concern that the record relied heavily upon such evidence instead of contemporaneous evidence of acclaim.

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

The AAO concluded that athletic competitions are not artistic exhibitions or showcases. Neither counsel, prior counsel, nor the petitioner contests that conclusion on motion and we affirm our previous conclusion on this issue.

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

Prior counsel asserted on appeal that the petitioner met this criterion. The AAO, however, failed to address this criterion in its previous decision. While counsel does not discuss this criterion on motion, in light of our previous failure to address prior counsel's argument we will briefly discuss this criterion now.

Initially, the Chinese Sepak Takraw Association and the petitioner's references claimed only that the petitioner was the team captain of the local Nanning team. While the Chinese Sepak Takraw Association later claimed that the petitioner was also team captain of the national team, its assertions are inconsistent regarding whether the petitioner was team captain in 1992 or 1994 in addition to 1996. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In light of the inconsistencies in the record, we cannot conclude that the petitioner played a leading or critical role for an organization with a distinguished reputation nationally. Moreover, even if we accepted that the petitioner was the team captain of the national team in 1996, the record contains no evidence that the petitioner has sustained any acclaim he may have at that time up until the date of filing.

*Continuing to work in area of expertise*

Even if we were to conclude that the petitioner had national acclaim as an athlete back in 1997, the record does not reflect that he sustained that acclaim as an athlete after that time. Moreover, the

petitioner seeks to work as a coach in the United States. 8 C.F.R. § 204.5(h) requires the petitioner to establish that he is seeking to "continue work in the area of expertise." While a sepak takraw player and a coach certainly share knowledge of sepak takraw, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

*Id.* at 918. The court noted a consistent history in this area. The petitioner does not claim, and the record does not demonstrate, that the petitioner meets three of the above criteria as a coach. Nevertheless, recently this office has recognized that there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is appropriate. 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 at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. Specifically, in such a case we will consider the level at which the alien acts as coach. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not.

The record is inconsistent regarding the petitioner's coaching history. Initially, Junsheng Mao asserted that the petitioner worked as an assistant coach for the Baodeli Team in 1999, during the same period the petitioner was studying and playing at the China University for Political Science and Law. While the Chinese Sepak Takraw Association initially asserted that the petitioner left to study in 1996, the petitioner submitted a 1997 certificate from the Nanning Sports Working Team honoring the petitioner as an outstanding coach. The subsequent claim by the Chinese Sepak Takraw Association that the petitioner coached the national team from February 1997 through December 1998, including during the team's win at the Thai King's Cup, is unsupported by the record. For example, the record does not contain programs crediting the petitioner as a coach for the national team or even confirming the team's win in 1997. Moreover, it is not clear why the petitioner received a *local* certificate commending his coaching if he was coaching for a *national* team at the time. Moreover, the claim that the petitioner coached the national team through December 1998 is contradicted by the certificate from the China University of Political Science and Law indicating that the petitioner began his studies there in September 1998. In light of the above, we cannot conclude that the record reveals that the petitioner has sustained any acclaim he may have had as an athlete as a coach.

In summary, the record is mostly supported with local media coverage, honor certificates ending in 1992 and assertions from individuals and associations attesting to alleged accomplishments after 1992. The assertions regarding the petitioner's accomplishments after 1992 are inconsistent. Nothing submitted on motion alters the AAO's initial assessment of the evidence.

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 takraw player or 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 evidence indicates that the petitioner shows talent as a takraw player and coach, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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 these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

**ORDER:** The AAO's decision of February 6, 2003 is affirmed. The petition is denied.