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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
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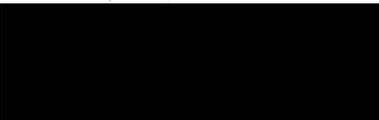
Office: CALIFORNIA SERVICE CENTER

Date: **DEC 9 - 2003**

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)

ON BEHALF OF PETITIONER:



**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 Citizenship and Immigration Services (CIS) 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, and is now before the Administrative Appeals Office 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 pertinent regulations 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 employment as a volleyball player and coach.

8 C.F.R. § 204.5(h)(5) states that "the petition must be accompanied by evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States."

The record contains none of the evidence required in the regulation cited above. Counsel discusses the petitioner's intentions:

[The petitioner] entered into the U.S. with [a] full athletic scholarship with an intention to pursue a baccalaureate degree in International Business at Fresno Pacific University. [The petitioner] has continued her work in volleyball by joining the university's women's volleyball team and competing in NAIA Women's Volleyball Championship Tournament since her entry into the U.S.A. as a nonimmigrant. [The petitioner] intends to continue playing for the university after her entry as a resident alien during her education at the university. In addition, [the petitioner] will help Fresno Pacific University and other universities in the U.S. to recruit the elite Chinese volleyball players, utilizing her connections in China and serving as a liaison between China's and America's national or collegiate volleyball programs.

The alien also has close to 10 years experience as a volleyball trainer in Turkey providing basic volleyball training for the youth. So, she will also seek employment as a volleyball trainer in sports clubs in the United States after the completion of her education at Fresno Pacific University to provide training [in] volleyball to all age groups.

The petitioner indicated on the I-140 petition form that she seeks employment as a volleyball player and coach, but counsel does not indicate that the petitioner intends to play past the collegiate level. There is no evidence that the petitioner has any prior experience "serving as a liaison between China's and America's national or collegiate volleyball programs." With regard to the petitioner's work as a trainer, the petitioner submits a letter from the Karsiyaka Sports Club in Turkey, verifying that the petitioner "has worked as a trainer in our basic volleyball school teams" from 1993 to 2001, working with the Women's Youth Team and Women's Junior Team. This, however, does not demonstrate that the petitioner has earned any acclaim as a coach or trainer, or that she has ever coached at the championship rather than the "basic" level. Counsel states that this letter from Turkey is evidence relating to "prospective employment," but a letter from an employer in Turkey does not establish a job offer, contract, or commitment with any employer in the United States.

The director instructed the petitioner to submit additional evidence, to show that the petitioner has earned sustained acclaim as a coach and to establish her future plans. In response, counsel states that, while the petitioner seeks to work "as a player and a coach," the petitioner "never claimed extraordinary ability as a volleyball coach; therefore, she should not be required to submit evidence as such." Dennis Janzen, head women's volleyball coach and director of Athletic Development at Fresno Pacific University, states that the petitioner will play with the school's volleyball team through December 31, 2006, and afterwards "will remain with the University as an Assistant Volleyball Coach."

The petitioner has not claimed or established that she will continue playing after she receives her baccalaureate degree at age 41 in 2006. The petitioner's future plans focus on coaching, and

therefore it is entirely relevant to determine whether or not the petitioner has earned sustained acclaim as a coach. Coaching volleyball and playing volleyball involve overlapping but distinct skills. The plain wording of the statute demonstrates that Congress intended for aliens of extraordinary ability to “substantially benefit prospectively the United States” through their extraordinary ability. While the petitioner has at times played in national and international competitions, she has not shown that she has coached at a comparable level. Therefore, the petitioner has not shown that her abilities as a coach are comparable to her abilities as a player.

Regarding the petitioner’s claim that she has earned sustained acclaim as a volleyball player, 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). Counsel asserts that the petitioner has met this requirement, because of “the championship title [the petitioner] won as a member of [the] Chinese national team at the Tenth World Women’s [Volleyball] Championship in 1986.” Counsel contends “[a]long with the Olympic Games and the World Cup, the World Championships is one of the three major world events in the sport of volleyball.”

Because the statute demands “extensive documentation” of acclaim, we favor an extremely restrictive interpretation of the “one-time achievement” clause. Counsel rightly names the Olympic medal, Academy Award, and Nobel Prize as examples of a qualifying major, internationally recognized award.

The petitioner submits background documentation to establish that the World Championship is a highly significant event within the sport of volleyball, but this evidence does not show that the event enjoys the near-universal recognition afforded to the international prizes named above. These awards are almost universally known, and not only among workers in the fields to which the awards pertain. Counsel acknowledges that volleyball is an Olympic sport. The petitioner bears a heavy burden to establish that the World Championship enjoys global recognition, not restricted to volleyball enthusiasts, comparable to Olympic medals in the same sport.

In response to the director’s request for further evidence and information, counsel cites previous submissions and new documentation regarding the importance of the World Championship within the field of volleyball. This does not show, however, that awards from that competition have the same universal recognition as Olympic medals. The petitioner has not shown that the World Championship has the same high public profile as the Olympic Games, which routinely attract a global television audience of millions of viewers.

Counsel cites statistics from various sources, indicating that there are millions of “licensed women volleyball players” in the world, and counsel states “[o]nly the best ones . . . were recruited by their national teams.” Counsel thus claims that selection for a national level team indicates extraordinary ability. 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."*

We further note that the petitioner has not shown that every one of the "licensed women volleyball players" engages in volleyball as her principal occupation. If an individual engages in volleyball as a hobby or part-time pursuit, while employed elsewhere, then volleyball is not that individual's field of endeavor.

Barring the alien's receipt of a major, international award to fulfill the one-time achievement clause, the regulation at 8 C.F.R. § 204.5(h)(3) outlines ten criteria, at least three of which the petitioner must satisfy to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Counsel has claimed that the petitioner meets two of these ten criteria. Counsel does not address or discuss the regulatory requirement that the petitioner must meet at least three of the 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 submits a photograph of her 1986 world championship gold medal and an accompanying certificate, as well as background documentation establishing the significance of this competition. The petitioner's medal is a qualifying prize under the regulations. The petitioner also won gold medals at the Tenth Asian Games in 1986 and the Fourth Asian Women's Volleyball Championship in 1987.

Counsel lists other honors, such as the petitioner's title of "Master Sportswoman," which are less persuasive than the above awards, but because the above awards amply qualify, we need not discuss the deficiencies regarding the other claimed awards.

We note that the above awards are all from 1986 and 1987, 15 years or more before the petition's 2002 filing date. The only claimed "award" from more recent times is the petitioner's selection as a member of the Region II All-Region Team, and later the All-Conference Team of the Golden State Athletic Conference, both in 2001. Membership on a team is not a prize or award, and the record does not establish that either of these teams won national awards in 2001. Furthermore, the potential member pool for these teams appears to have been local/regional rather than national or international.

Considering that the petitioner's future plans emphasize training and coaching rather than competition, it is significant that the petitioner claims no prizes or awards in that capacity.

In response to the director's request for further information, counsel discusses other awards that the petitioner has won. As noted above, we acknowledge the petitioner's satisfaction of the criteria pertaining to lesser national or international awards.

After discussing the petitioner's awards, counsel concludes the response letter by stating "[w]e hope that we have addressed all the issues in the [request for evidence] to your satisfaction." The

director, however, had requested further evidence regarding all of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The petitioner's response addresses only one criterion, awards.

*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 translated copies of articles from several Chinese newspapers reporting her recruitment by the Chinese Women's Volleyball Team, as well as the results of matches played by that team. Some of the articles mention the petitioner only so far as identifying her as a team member. Other articles focus on the petitioner, but these appear to derive from local Wuhan newspapers rather than national or international media.

The petitioner submits translated articles from Turkish newspapers, most of which are untitled and undated and thus fall outside the regulatory language. One article derives from a newspaper identified as the November 15, 1993 issue of *Extra*. This article describes a match between the Yesilyurt team and an unnamed "rival" in the European Federation Cup. The petitioner's name appears once in the partial translation that accompanies the article, and thus there is no indication that the article is "about" the petitioner in any meaningful sense. The record contains nothing to establish whether *Extra* is a national or international publication.

The petitioner submits three published articles from after 1993. *The Fresno Bee* published articles in late November and early December of 2001. One article reported that the petitioner had joined the volleyball team at Fresno Pacific University. The other articles report on matches, mentioning the petitioner and other team members in the course of describing the games. The petitioner has not shown that *The Fresno Bee* qualifies as major media rather than a local newspaper, or that the petitioner has attracted any media attention in the United States outside of Fresno.

The director denied the petition, stating that "the evidence in its totality" does not establish that the petitioner, as an individual, has earned sustained national or international acclaim as a volleyball player.

On appeal, counsel states:

The petitioner claims, with the support of the evidence, that

- (1) The beneficiary played in the Chinese National Team that won the championship title at the 10<sup>th</sup> Women's Volleyball World Championships, one of the three major, recognized international competitions in the sport of volleyball;
- (2) The beneficiary received China Physical Education and Sports Honorary Medal, the highest honor bestowed upon Chinese athletes who have demonstrated that they were the best in the world, either by winning world championships or by breaking world record;

- (3) There are published materials about the beneficiary relating to her work as a volleyball player in China, Turkey, and the U.S.

The director had previously requested further documentation regarding the published materials about the petitioner, thereby indicating that the existing materials were deficient. The petitioner's subsequent submission did not address this request or even mention the published materials submitted previously. In denying the petition, the director noted that most of the articles say little about the petitioner apart from identifying her as a team member.

On appeal, counsel states that the articles submitted "are only exemplary articles," and that the selection is "in no way comprehensive." 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). The regulations call for the submission of the published materials themselves. It cannot suffice for counsel simply to imply that other published materials exist. Furthermore, the submitted articles do not amount to sustained national or international coverage. Therefore, even if additional articles exist, if they are comparable to the examples submitted, they would do nothing to strengthen the petitioner's claim.

The petitioner has not shown that any of her awards reach a level of recognition accorded to the most immediately and universally recognized athletic awards such as Olympic medals. The petitioner has claimed to have met only two of the ten lesser criteria set forth at 8 C.F.R. § 204.5(h)(3), despite repeated notifications that the petitioner must satisfy at least three of the criteria, and thus the petitioner's claim is deficient on its face. Even then, the published materials in the record either mention the petitioner only in passing, or else derive from local publications rather than from major media. The petitioner plans to continue playing only in the short term, and then concentrate on coaching, but the petitioner (through counsel) concedes that she has not shown extraordinary ability or sustained acclaim as a coach.

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 volleyball player or 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 is not persuasive that the petitioner's achievements consistently set her significantly above almost all others in her field at a national or international level to the extent required by the regulations. 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.