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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

[redacted]

File: WAC 01 242 51529 Office: California Service Center Date: FEB 27 2003

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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.

Elizabeth Hayward

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.

It is noted that the petitioner was initially represented by attorney [redacted] On October 25, 2002, [redacted] withdrew as counsel. In this decision, the term "prior counsel" shall refer to [redacted]

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 that she has earned 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). It should be reiterated, however, that the petitioner must show that she has earned sustained national or international acclaim at the very top level.

This petition, filed on April 30, 2001, seeks to classify the petitioner as an alien with extraordinary ability as a "women's basketball coach." The wealth of the petitioner's documentation pertains to her career as a basketball player in Poland from 1979 to 1989. The documentation submitted reflects that the petitioner has not actively competed since the 1980's. There is no evidence that the

petitioner, age forty-three at the time of filing, has sustained any previous acclaim as a competitive basketball player at the national or international level. Even if the petitioner sought classification as an extraordinary basketball player, 8 C.F.R. § 204.5(h) requires the alien to "continue work in the area of expertise." The petitioner, however, seeks employment not as an extraordinary basketball player, but, rather, as an extraordinary coach. As demonstrated by the evidence provided by the petitioner and indicated under Part 6 of the I-140 petition, playing basketball is clearly not the field in which the petitioner seeks to continue working.

While related, coaching and playing are different areas of expertise that require somewhat overlapping but nevertheless very distinct skills. Thus, competitive athletics and coaching are not the same area of expertise. As such, the petitioner's evidence pertaining to her career as a basketball player, by itself, cannot demonstrate the petitioner's eligibility for the classification sought. This decision will consider whether the petitioner has established national or international acclaim as a basketball coach. We will also examine whether the petitioner has sustained her previous acclaim as an athlete through her coaching.

The record reflects that the petitioner entered the United States in 1990. Therefore, when considering whether the petitioner has earned sustained acclaim (national or international), it is entirely appropriate to examine her reputation in the United States as well as in her native Poland. The petitioner has had ample time to establish a reputation as a basketball coach in the United States.

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, 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 submitted a translated certificate, which stated: "For A. Kowalska as best player in Women Basketball Tournament 'Odra Cap' Brzeg 15-16 March 1980." In explaining this award, prior counsel stated: "During the regional tournament in Europe, March 15 and 16, 1980, [the petitioner] was awarded the best player for her fine sportsmanship and excellence in athletic performance." 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). Prior counsel described the event as a "regional tournament in Europe," but we cannot ignore that according to the petitioner's resume, the petitioner played for the "Club Stal" in Brzeg, Poland from 1978 to 1981. Based on the vague, limited information provided, it has not been shown that this award rises to the level of national or international recognition. For example, the petitioner offers no evidence of media coverage

associated with her receipt of this award. Local or regional recognition in Poland would not satisfy this criterion.

The petitioner also submitted photocopies of eight banners and one trophy from various tournaments throughout Europe. This evidence was not accompanied by certified translations, nor did it indicate how the petitioner's team placed in these tournaments. By regulation, any document containing foreign language submitted to the Service shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Without complete translations, the record is not clear as to whether the banners and trophy were awarded for participating in the tournaments rather than for actually winning them. Awards based solely on participation would not satisfy this criterion.

In this case, the petitioner's evidence falls well short of demonstrating her receipt of nationally or internationally recognized prizes or awards as a women's basketball player. It must be emphasized that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The petitioner cannot demonstrate eligibility under this criterion by submitting vague information about the petitioner's athletic recognition.

We note here that the awards submitted by the petitioner were all based on her ability as a basketball player. These awards cannot establish that the petitioner has sustained national or international acclaim as a basketball coach. It is not clear that significant awards exist for basketball coaches. However, nationally or internationally recognized prizes or awards won by teams or individuals coached by the petitioner can be considered as comparable evidence for this criterion under 8 C.F.R. § 204.5(h)(4). The petitioner in this case has offered no evidence showing that her coaching skills have produced national or international basketball champions.

Finally, the statute requires the petitioner's acclaim to be sustained. The petitioner, however, has offered no evidence of her receipt of any prizes or awards since 1989.

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 submitted a certificate from the Polish Basketball Federation stating that the petitioner played for the Polish women's national team from 1979 to 1983. Also submitted was evidence of the petitioner's membership on the 1980 Polish Olympic team. While a team is not an "association," we could consider such evidence as comparable under 8 C.F.R. § 204.5(h)(4) because membership in an Olympic team is the result of multi-level national competition, supervised by national experts. There is undeniable prestige in membership on an Olympic team. However, the petitioner was selected for the team based on her ability as a basketball player, not as a basketball coach. Thus, the petitioner's membership as player on the Polish Olympic team cannot establish that she has earned national or international acclaim as a coach.

We further note that the petitioner has offered no evidence indicating that she has coached or played at the national, international, or professional level since the 1980's.

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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. An alien cannot earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but they qualify as major media because of significant national distribution, unlike small local community papers.

The petitioner submitted newspaper clippings from the sports sections of various local newspapers in Poland. The majority of these articles appear to reflect local, rather than national, media coverage. Furthermore, many of the articles devote only a few sentences to the petitioner. The plain wording of the regulation requires the petitioner to submit "published materials about the alien," and articles that barely even mention the petitioner would not satisfy this criterion.

All but one of the petitioner's newspaper clippings are from the late 1970's and early 1980's. The petitioner submitted an article from a Polish language newspaper published in New York. The article is devoted to the Second Annual Polish Art Festival (1993) that took place at the Polish Culture Center in Greenpoint, New York, and is not about women's basketball. The translation provided by the petitioner lists the petitioner among several guests in attendance at the festival. The translation also describes the petitioner as "a well known basketball player from Poland." A brief mention in an article appearing in a publication circulated among members of the Polish-speaking community of New York is hardly indicative of national or international acclaim.

The petitioner has not demonstrated that she has garnered sustained attention from major national media such as a magazine like *Sports Illustrated*. Furthermore, none of the articles provided describe the petitioner's activities as a basketball coach. The petitioner's articles fail to show that she has garnered sustained national or international acclaim as a basketball player or coach.

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.

In an occupation where "judging" the work of others is an inherent duty of the occupation, such as a coach, instructor, teacher, professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim. Instead, a petitioner must demonstrate that the alien's sustained national or international acclaim resulted in

her selection to serve as a judge of the work of others. Similarly, the competition or contest must be on a national or international level. For example, judging a national competition carries greater weight than judging a citywide competition.

The petitioner's resume and supporting documentary evidence indicates that the petitioner worked as a physical education teacher and basketball coach at the Zespol Szkol Ogolnoksztalcacych No. 2 School. Prior counsel argues that the petitioner's coaching and teaching of youths at a local school "can be considered as the role of judge in the profession" under this criterion. We disagree with counsel's assertion. Using counsel's logic, any coach instructing his or her team members would satisfy this highly restrictive criterion, thus rendering it meaningless. In this case, the petitioner provided guidance and instruction to young students rather than officiating or judging basketball players in an independent, objective capacity at the national or international level. The petitioner's coaching of students was a duty inherent to her employment as a physical education instructor and, therefore, it cannot satisfy this criterion.

On appeal, the petitioner's arguments address specific statements from the director's decision. The petitioner states: "The Service has mistakenly required that I have both national and international acclaim when the requirement specifically allows... either national or international acclaim."

The director's decision stated: "The petitioner has demonstrated that she was... successful at one time in women's basketball while playing in tournaments in Europe. However, it has not been demonstrated that she is among the best of the very best throughout the world."

The decision also stated: "Basketball is a field of endeavor that is international in scope. However, it must be established that the petitioner is at the pinnacle of his/her field worldwide."

We agree with the petitioner's statement that an alien can establish eligibility under this classification without submitting evidence of international acclaim. Pursuant to the statute and regulations, an alien may establish eligibility under this classification by submitting evidence of sustained national acclaim. The director cannot impose a more stringent standard by requiring the petitioner to present evidence that she is "among the best of the very best throughout the world" or "at the pinnacle of her field worldwide." However, the director may have simply been addressing prior counsel's claim that the petitioner had demonstrated international acclaim through her participation in various European basketball tournaments.

We note that while the director focused some attention on the petitioner's lack of international acclaim, the wording of the decision was not limited solely to such a finding. The director specifically stated: "The petitioner has not demonstrated that she has continued to sustain her national or international acclaim or that her level of expertise as an individual is one of that small percentage who has risen to the very top of her field of endeavor." Therefore, while the wording of parts of the director's decision could certainly be improved, the decision is not so flawed as to undermine the grounds for denial. The petitioner disputes the director's above statement arguing that no such requirements exist in the statute. It should be noted, however, that the director's

statement in this instance was grounded in the pertinent Service regulations. The Service regulation at 8 C.F.R. § 204.5(h)(2) defines 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."[1] Furthermore, the Service regulation at 8 C.F.R. § 204.5(h)(3) requires the petitioner to show that she has earned "sustained national or international acclaim and that her achievements have been recognized in the field of expertise."

Finally, we disagree with the petitioner's contention that the statutory requirement of "sustained acclaim" reflects past tense and therefore an alien need not make a showing that he or she has maintained national or international acclaim through the time of filing.

In this case, the petitioner has failed to submit evidence demonstrating sustained national or international acclaim as a basketball coach or player since coming to the United States in 1990. While the petitioner may have enjoyed some notoriety as a basketball player in Poland in the late 1970's and throughout the 1980's, the record lacks evidence demonstrating the petitioner's national or international acclaim as a basketball coach in Poland or the United States.

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in her field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every basketball player or coach who has competed at the national or international level is among the small percentage at the very top of the field. 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."

While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even compete at the national or international level, without reaching the top of the field.

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. The petitioner has failed to demonstrate receipt of a major internationally recognized award, or that she meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

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[1] In a statement accompanying the petition's filing, prior counsel cited this definition.

A review of the record does not establish that the petitioner has distinguished herself as a basketball 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 set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established her 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.