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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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BCIS, AAO, 20 Mass., 3/F
Washington, D.C. 20536

B2

[redacted]

File: WAC 02 161 51678 Office: California Service Center Date: JUL 18 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)

IN BEHALF OF PETITIONER:

[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, 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.

The regulation at 8 C.F.R. § 204.5(h)(5) states, in pertinent part:

> ...the petition must be accompanied by clear 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.

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, filed on April 15, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a softball player/coach. 8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." The petitioner has submitted two letters detailing her plans on how she intends to continue her work in the U.S. In a letter accompanying the petition, the petitioner states: "With the experiences and techniques I possess, I feel strongly confident that I have the ability to be a coach for a softball team." In response to the director's request for evidence, the petitioner submitted a second letter, stating: "I am a former key member of the of the National Women's Softball Team of China and now a coach of the [redacted].. I am fully confident that I will train and produce a group of high-level softball athletes.... I will organize a professional softball training center." Thus, the petitioner intends to work as a coach in the United States.

While a softball player and coach certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, playing and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. Ziglar,* 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. 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 a successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not. Thus, we will examine whether the petitioner has demonstrated her extraordinary ability as a player or as a coach. If the petitioner has demonstrated the beneficiary's extraordinary ability as a softball player, we will consider the level at which she has successfully coached.

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, counsel 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 letter from [redacted] He states that as member of the Chinese National Team, the petitioner received the following awards:

1997: Champion of Beijing International Women's Softball Invitational Tournament, 3rd Place in American Challenge Series, and 3rd Place in the South Pacific Classic

1998: Champion of 13th Asian Games, 3rd Place in the Canadian Cup Tournament, and 4th Place in the World Women's Softball Championship (pre-Olympic qualifier)

1999: Champion of 7th Asian Softball Tournament

2000: 4th Place in the 27th Olympic Games in Australia, 2nd Place in the Canadian Cup Tournament, and 2nd Place in the Japan Challenge series where she was also named "Best Pitcher"

In addressing the petitioner's awards, the director's decision stated:

> Although some of these awards and/or prizes do appear to have national or international significance, they are not awards and/or prizes won solely by the petitioner herself. The awards and or prizes won by the petitioner were a team effort. The petitioner, therefore, needed to submit evidence on her behalf that would establish her acclaim on a national or international level on a sustained basis outside of her team activity.

On appeal, counsel argues that the awards received by the petitioner should not be given any less weight simply because they were team, rather than individual, awards. We agree with counsel because the petitioner in this case has established that her play directly contributed to the team's success. The supporting documentary evidence shows that from 1993 to 2000 the petitioner regularly pitched for the top women's softball team in China. The director's statement requiring further evidence of recognition "outside of [the petitioner's] team activity" imposes an excessive standard. While the record would have certainly been strengthened by further evidence of the petitioner's individual awards (such as her being named "Best Pitcher" at the Japan Challenge Series), we find that her regular role on the team, combined with the all-star level at which she competed, would not diminish the significance of the team awards listed above.

That being said, the director's statement that the petitioner herself must "establish acclaim on a national or international level on a sustained basis" raises two other important issues. First, the record contains no evidence of any national or international competitions won by the petitioner or her team subsequent to 2000, thus raising questions regarding her sustained acclaim as a player. Secondly, it is noted that all of the awards submitted by the petitioner were based on her ability as a softball player. These awards do not establish that the petitioner has sustained national or international acclaim as a coach. It is not

clear that significant awards exist for softball coaches. However, nationally or internationally recognized prizes or awards won by teams or individuals coached by the petitioner may be considered as comparable evidence for this criterion under 8 C.F.R. § 204.5(h)(4). The petitioner indicates that she is coaching the Tianjin Women's Softball Team, but she has not provided any evidence showing a past record of success as a coach at the national level. We cannot ignore the absence of national or international awards won by the petitioner or teams that she has coached from late 2000 through the petition's filing date.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. In addition, it is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of her membership in the Chinese Softball Association. According to a document from the association, its memberships are evaluated at the local level. The document states: "If an athlete wins good scores in a juvenile or youth group competition, he will enter the professional team of the province or the city.... He will become a member of the sport association of the province or city. At the same time, he meets the basic requirement for the national association..." In view of the foregoing, we find that the petitioner's Chinese Softball Association membership would not satisfy this criterion.

The petitioner submitted a letter from [redacted] He states: "[The petitioner] entered the [redacted] In 1993 she entered the national team. Since then she has participated in many national and international competitions.... She has contributed to the Chinese Women's Softball Team making great achievements." Other documentary evidence confirms the petitioner's participation as pitcher on the Chinese team in the 2000 Olympics held in Sydney, Australia. 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 pitcher, not as a coach. Thus, her participation as a player on the Chinese national team would not establish that she has earned national or international acclaim as a coach (the profession in which she seeks employment in the United States).

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 would not 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 would qualify as major media because of significant national distribution, unlike small local community papers.

The petitioner submitted six newspaper clippings accompanied by partial English language translations of four sentences or less. Also submitted were a few captioned newspaper photographs with no translations at all. By regulation, any document containing foreign language submitted to the Bureau 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, it cannot be determined that the petitioner is the main subject of the articles, or that she was featured because of her achievements as an extraordinary softball player. The newspaper articles seem to devote only a few brief sentences to the petitioner. The plain wording of the regulation, however, requires the petitioner to submit "published materials about the alien," and articles that barely even mention her would not satisfy this criterion. In this case, the petitioner has not demonstrated that she has captured sustained attention from major national media. Furthermore, none of the articles provided describe her activities as a coach. In sum, the evidence provided fails to show that the petitioner has sustained national or international acclaim as a softball pitcher or coach.

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

The petitioner submitted letters from [redacted] former coaches of the Chinese National Team. Their letters detail the petitioner's career as a player and describe her as a "star member" of the national team. These letters also provide a listing of the petitioner's awards (which have already been addressed under a previous criterion). Without evidence comparing the petitioner's career statistics (rather than those from just one tournament) to those of other national team pitchers, the petitioner has not shown that her athletic achievements constitute a contribution of major significance to her sport. Certainly, it is not unreasonable to require comparative evidence in addition to the simple catalogue of the petitioner's achievements as a player provided in the witness letters. We further note that the petitioner's witnesses discuss only events that predate the petitioner's work as a coach. The visa classification sought by the petitioner, however, is limited to aliens who have already established national or international acclaim in the occupations that they seek to practice in the United States. In this case, no evidence of the petitioner's national acclaim as coach has been submitted. In sum, the record does not show that any of the petitioner's coaching or athletic accomplishments are widely recognized as rising to the level of a

contribution of major significance in her sport.

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

Counsel states that the petitioner's participation in softball competitions in various countries would satisfy this criterion. This claim is not persuasive. The wording of this criterion indicates that it is intended for visual artists, such as sculptors and painters, rather than for athletic performance or coaching. Furthermore, given that softball games are virtually always played before an audience, every softball player displays her work in this manner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

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

In order to establish that the alien performed in a leading or critical role for an organization or establishment with a distinguished reputation, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment.

Counsel argues that the petitioner played a critical role in leading her teams to victory in national and international competitions. We accept that the Chinese National Women's Softball team qualifies as an organization with a distinguished reputation. However, in order to satisfy this criterion, the petitioner must also show that her role and contributions as player were more important than that of her fellow team members. Evidence provided by the petitioner suggests otherwise. For example, the petitioner provided documentation from the International Softball Federation's website indicating that another pitcher on her team threw more innings and achieved a better earned run average at the 2000 Olympic competition in Sydney. [redacted] (ranked number four) pitched 14 innings and faced 49 batters while the petitioner (ranked number ten) pitched 7 innings and faced 22 batters. It could easily be said that Lihong Wang was the team's leading pitcher and that she played a more critical role on the national team.

Beyond the decision of the director, the statutory language at section 203(b)(1)(A)(ii) requires an alien seeking to enter the United States to "continue work in the area of extraordinary ability." The petitioner's intention to coach is not in dispute; the record shows that the petitioner has declared this intention in two letters to the Bureau. More relevant is the issue of whether employment as a softball coach will be the petitioner's primary occupation and source of income in the United States. Because the petitioner seeks an employment-based immigrant classification based on her ability to coach, it is reasonable to require evidence that the petitioner will continue to support herself principally as a coach (rather than coaching in her spare time while supporting herself through unrelated employment) once in the United States. The evidence now in the record fails to show that the petitioner will continue to support herself primarily through her skills as a softball coach after entering 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 softball 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 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 that 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.

A review of the record does not establish that the petitioner has distinguished herself as a softball 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 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. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.