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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]

MAY 13 2003

File: WAC-01-073-54218 Office: California Service Center Date:

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, 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 petitioner indicated her intention to work as a volleyball coach upon completion of her degree. The director determined the petitioner had not established the sustained national or international acclaim as a volleyball coach necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel notes that the director did not challenge the petitioner's assertion that she is an extraordinary athlete and argues that requiring extraordinary ability as a coach is "just purely a mistake made by the Service [now the Bureau] under the law."

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 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 she has sustained national or international acclaim at the very top level.

Initially, the petitioner submitted evidence that she was a student at Fresno Pacific University where she competed on the school's volleyball team. In response to the director's request for additional documentation, however, the petitioner indicated that upon completion of her degree, she intended to

seek employment as a coach. Fresno Pacific University expressed an interest in hiring the petitioner as an assistant coach. Thus, while an athlete can hardly be expected to compete as an athlete indefinitely, it is clear that the petitioner intends to work as a volleyball coach.

8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." The petitioner, however, intends to work as a coach in the United States. While a volleyball player and a coach certainly share knowledge of volleyball, 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 *Ziglar 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. 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 has acted as a coach. A coach with an established 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 coach or as an athlete. If the petitioner has demonstrated extraordinary ability as an athlete, 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). Initially, counsel asserted that the petitioner was "one of the key players on the Chinese team which won an Olympic silver medal at the 1992 Barcelona Olympic Games." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). [redacted] of Fresno Pacific University asserts that the petitioner "was one of the starting players on the Chinese team which won the Olympic silver medal at the 1992 Barcelona Olympic Games." The record does not support the implication that the petitioner received an Olympic silver medal. An unsigned list of the petitioner's accomplishments from the China Volleyball Association indicates that in 1992, the petitioner placed 7th at the Olympics. While the petitioner submitted a photograph of what appears to be an Olympic button from the 1992 games, the petitioner did not submit a photograph of a

silver medal. The petitioner's membership on an Olympic team, however, is notable and will be considered below.

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.

Between 1986 and 1994, the petitioner won several Chinese championships, including the Chinese National First Class Championships in 1986, 1988, 1989, 1990, 1991, and 1992, the Seventh National Games in 1993 and the National Championships in 1994. During the same period, the petitioner won several international competitions, including the 1991 World Cup in Japan, the International Challenge competition in 1992, the Asia Championships in 1993, and the International Championships also in 1993. In the United States, as a student at Fresno Pacific University, the petitioner was honored as a First Team All American after leading Fresno Pacific to the national championship match in 1999. While not all of the awards are fully documented, the record adequately establishes that the petitioner meets this criterion as an athlete.

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 record contains sufficient evidence that the petitioner was a member of the China National Team and the Chinese Olympic team. Such membership is sufficient to meet this criterion as an athlete.

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 submitted several news articles in the *Wenhui News*, the *China Sports Paper*, *Sports Field*, the *Renmin Ribao*, the *Yangcheng Evening News*, the *Ball Paper*, and the *Fresno Bee*. The record does not contain any evidence regarding the circulation of these papers. At the very least, the *Fresno Bee* appears to be a local paper. Moreover, most of these articles are reporting the results of competitions in which the petitioner played. They are not articles primarily about her. The exceptions appear to be the November 12, 1991 article in the *Ball Paper*, although the petitioner did not provide a complete translation, and a November 28, 1999 article in the *Fresno Bee*. As stated above, however, the *Fresno Bee* appears to be a purely local paper and the record does not reflect that the *Ball Paper* constitutes major media. Thus, the petitioner does not meet this criterion.

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

As evidence to meet this criterion, counsel references photographs of the petitioner playing in major competitions. We have already recognized that the petitioner has won lesser national and international awards or prizes. The record does not explain how merely competing, even at the national or international level, constitutes a contribution of major significance to the field of volleyball. Thus, the petitioner has not established that she meets this criterion.

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

Counsel references the petitioner's certificates of awards and honors as evidence to meet this criterion. We have already acknowledged above that the petitioner's awards meet the awards criterion and that the petitioner's membership on the Chinese National Team meets the membership criterion. The petitioner must demonstrate something above awards as a member of a team in order to also meet this criterion. In other words, volleyball is a team sport, and we cannot conclude that every member of the team that wins a team championship plays a leading or critical role above and beyond the other members of the team. There is no evidence that the petitioner was a team captain or held some equivalent role on the Chinese National Team.

Regarding her role on Fresno Pacific University's team, the record contains the following certificates: confirmation of the petitioner's selection as a member of the Region II All-Region Team, certification of the petitioner's recognition as an All American, First-Team, and certification for an unspecified achievement from the Golden State Athletic Conference. These certificates do not reflect that the petitioner was prospectively selected to play a leading role for the team, such as team captain. Recognition for past achievements, such as "most valued player" relates more to the first criterion, which we have already acknowledged the petitioner meets. In addition, membership on a type of "all-star" team relates more to the second criterion, which we have also already acknowledged that the petitioner meets.

In light of the above, the petitioner has only satisfied two criteria even as an athlete. As the petitioner has no documented experience coaching, she not only cannot meet three criteria as a coach, she cannot demonstrate that she has an established successful history coaching at the national level. Thus, even if we had concluded that she met three criteria as an athlete, her coaching inexperience would preclude us from concluding that coaching is within her field of expertise.

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 coach to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a volleyball athlete, but is not persuasive that coaching is

within her area of expertise. 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.