

U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[Redacted]

File: EAC 02 092 50470 Office: VERMONT SERVICE CENTER

Date: NOV 21 2003

IN RE: Petitioner: [Redacted]
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:

[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 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.

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Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 the sciences and 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, counsel states that a brief is forthcoming within 30 days. To date, over a year after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands. We note that there is no indication that counsel participated in the preparation or filing of the appeal.

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

Counsel asserts that, because the petitioner's field is that of sports science, he qualifies as extraordinary in the sciences and in athletics. The record, however, contains no evidence that the petitioner himself is an athlete. We will consider the petitioner's work to fall under the sciences.

The petitioner's field involves the use of scientific techniques to optimize athletic training methods and, thereby, athletic performance.

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 which, 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.

Counsel asserts that the petitioner received nine qualifying awards in 1994 and 1995, during which time the petitioner was a graduate student at Beijing University of Physical Education. Six of the awards were issued within a span of two months, from September 16 to November 18, 1994. Most of the awards appear to recognize the petitioner's work as a journal editor, or as an analyst of sports science articles, rather than as a researcher in his own right. The petitioner is no longer a journal editor, nor does the record establish any demand for his services as an editor at any United States journal. The petitioner has not established that any of the awards are significant national awards in sports science or any other field.

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.

Counsel observes that the beneficiary has acted as the editor of three sports science journals in China. Certificates in the record indicate that the beneficiary "served as a judge on the panel of journal quality assessment during the years when he worked as an editor of the journal of Beijing University of Physical Education." The petitioner submits untranslated excerpts from various journals, apparently intended to establish his position as an editor. Without translations, we cannot evaluate this evidence. One page that is translated shows that the petitioner was the "Layout Designer & Editor" of the *Journal of Beijing University of Physical Education*. Several other editors are named. The petitioner has not established the degree of control he had over the journal's content (as opposed to its layout). As noted above, the petitioner was a graduate student at Beijing University of Physical Education while he was an editor at this journal. It is not clear how many other editors were students.

The petitioner served as a judge at National Physical Education College and University Journal Evaluation Committee Conferences between 1990 and 1997. As noted above, the petitioner himself served as an editor while a student. From its name, the National Physical Education College and University Journal Evaluation Committee appears to deal with journals published at colleges and universities. If these journals are published by students such as the petitioner was at the time, then the petitioner was at best judging the work of other students. To be a student is not a field of endeavor;

rather, it is training for future engagement in a field of endeavor. Furthermore, the petitioner judged the work of editors rather than the work of researchers.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submits copies of several articles, published in various Chinese journals between 1993 and 1997. The petitioner also gave conference presentations during the same period. The petitioner was a graduate student during much of this time. Over four years had elapsed between the publication of the petitioner's last article in November 1997 and the filing of the petition in January 2002. The petitioner does not explain why he appears to have ceased producing published articles.

While a researcher's published work may lead to national or international acclaim, it does not follow that publication automatically bestows a measure of such acclaim upon the authors. The petitioner must establish the impact or recognition of his published work; it cannot suffice for him to show that the articles exist, or to offer general information about journals or publications in his field as a whole. In this instance, the petitioner has shown only that he has written a number of articles and presentations over a span of four years, followed by another span of four years with no apparent publications.

The petitioner has submitted letters from two witnesses, both of them professors at Beijing University of Physical Education. [REDACTED] states that the petitioner "is a pioneer on training issues of men's basketball for home and guest game[s]. He has conducted a series of studies, which first address the pre-season and in-season training, the control of the volume and intensity, and periodic arrangement and has produced a significant impact on his field." Prof. [REDACTED] states that one of the petitioner's articles "has received considerable attentions and has become an indispensable reference in the field," and that the petitioner has earned an "extensive national reputation in sports science." [REDACTED] offers the similar assertion that the petitioner's "publications have become very important references in sports science, and he has become a top-level researcher in sports training in China." The record contains no objective, documentary evidence to show that the professors' opinions of the petitioner's work are shared outside of Beijing University of Physical Education.

The petitioner has been in the United States since September 1997, over four years before the filing of the petition in January 2002. The initial submission includes no evidence, however, that the petitioner's years of research in the United States have earned recognition approaching what the petitioner is said to have garnered in China. The petitioner's initial documentation stops in 1997, the year he left China.

The director instructed the petitioner to submit additional evidence. In response, the petitioner has submitted two further witness letters. Both witnesses are professors at the University of Georgia, where the petitioner had completed his doctoral studies in 2001. To this extent, the letters continue an already-established pattern of providing letters from the faculty of universities where the petitioner has studied.

Professor [REDACTED] discusses the petitioner's past work and states "the important editorial position he held, the articles he published, and the awards he received have made him a top level individual in sports science in China. I believe that he will continue to be successful in the U.S." Professor [REDACTED] offers the nearly identical assertion that "the important editorial position he held, the research papers he published, and the awards he received have made him to become one of top level individuals in sports science in China. I believe that he will continue to be successful in the U.S." [REDACTED] states that the petitioner's "dissertation research is on the cutting edge of his chosen topic," but says little about this topic apart from the general assertion that "teach[ing] people new motor skills rapidly . . . continues to be a very important field of study in exercise science and physical education in the U.S."

The director denied the petition, stating that, while the evidence shows that the petitioner "has had better than average success in his field," the evidence falls short of demonstrating sustained national or international acclaim. On appeal, the petitioner asserts that his "awards and honors" and "experience as a judge should not be ignored." There is no indication that the director "ignored" this evidence. Rather, the director considered this evidence and found it wanting with respect to establishing sustained national or international acclaim.

On appeal, the petitioner offers several arguments and claims about his awards, articles, and judging work, but the petitioner's claims do not constitute evidence. As noted above, most of the petitioner's awards are editing awards and say more about the petitioner's skills as an editor than as a sports science researcher. Because the record is devoid of evidence that the petitioner is, or will be, an editor in the United States, these prizes are not relevant. Similarly, the beneficiary's judging work consisted of judging the work of editors rather than sports science researchers.

The petitioner, on appeal, claims to have fulfilled several additional criteria, not originally claimed in the initial filing:

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 states that he "was an official member of the National Journal of Sports & Physical Education Society. . . . All members are highly recognized editors in the field of Journals of Sports & Physical Education." The petitioner submits documentation of his membership in the association, but he does not establish that the association requires outstanding achievements as judged by recognized experts. Once again, this association deals not with sports science researchers, but editors of sports science journals.

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 demonstrates that the Sport Information Resource Centre in Canada published an abstract of one of his research articles on the SPORT Discus database. Published articles often include abstracts, brief summaries of the findings set forth in the articles. An abstract is not published material about the alien. Materials in the record show that SPORT Discus is “a comprehensive reference library” rather than a carefully selected compilation of the very best research in the field.

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

The petitioner states that he “was the co-founder of Chinese Fitness (Japanese Edition) and performed a leading role in the establishment of Chinese Fitness. Chinese Fitness is China’s only Japanese journal in sports science & physical education and . . . has gained international reputations both in Japan and China.” The petitioner does not corroborate his claims regarding the international reputation of *Chinese Fitness*. Once again, the petitioner couches his achievements in terms of editing and publishing rather than actually conducting research in sports science.

The petitioner’s reputation as a researcher appears to have been largely limited to the universities where he studied. Whatever success he may have had as an editor of sports science journals, there is no indication of any demand for his services as an editor in the United States. The petitioner completed his doctorate only months before the filing of his petition, and therefore had only just begun his actual career in earnest at the time of filing. Whatever recognition the petitioner had earned in China prior to 1997 did not follow him to the United States during the subsequent years. The petitioner has not been unsuccessful in his field, but the evidence does not warrant a finding of sustained acclaim or extraordinary ability.

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 sports science researcher 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 is not persuasive that the petitioner’s achievements set him significantly above almost all others in his field at a national or international level. 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.