U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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APR 13 2004

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson
for 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 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.

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 field of expertise are set forth in the 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 earned sustained national or international acclaim at the very top level.

This petition, filed on March 24, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a "Women's Soccer Player/Coach."

In a letter accompanying the petition, counsel states:

> [The] [p]etitioner, a native and citizen of Dalian, China, has earned a reputation and recognition in the field as a national and international soccer player. [The] [p]etitioner's own participation in team play began over 17 years ago. As a center forward for Dalian Women's Soccer Club Team, they won the national championship in 1987. A year later, she was selected to play for the distinguished Chinese National Women's Soccer Team. One of her well-known and celebrated peers in women's soccer, the New York Power's Hong Gao, observed "[a]t the time, she was the youngest player ever to play for the Chinese national women's team and serve as its team captain."
>
> By 1990, [the] petitioner was the national team's captain, leading them to competitions and championships on the world stage, including...appearances at the World Cup, the Asian Cup, the Asian Games, and the World University Games.... [The petitioner] has played over 100 games as a member of the women's national team, representing China in international play. [From] 1997 to 1999, she played professionally in Japan...
>
> * * *
>
> [The] [p]etitioner began coaching in 1999.... As head coach of the Dalian Female Youth Soccer Team, she led the team to win third place at the Nike Cup in Shanghai in April 2000 and second place in the National Female Youth Soccer Competition [in] October 2000. Due to her success, she was named [assistant] coach of Dalian Women's Soccer Club Team, a team where she had begun her soccer career.

The statute and regulations require the petitioner's acclaim to be *sustained.* The record reflects that the petitioner has been residing in the United States since May 2001. At the time of filing, the petitioner was pursuing a degree in Business Administration and playing soccer at Notre Dame de Namur University (NDNU). Given the length of time between the petitioner's arrival in the United States and the petition's filing date, it is reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner, now age 33, has had ample time to establish a reputation in the sport of soccer here in this country.

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 states: "[The] petitioner can establish sustained national or international acclaim through a one-time achievement, namely her receipt of major international soccer awards, prizes, and honors." The regulation permitting eligibility based on a single award must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. Examples of one-time awards which enjoy truly international recognition include the Nobel Prize, the Academy Award, and (most relevant for athletics) the Olympic Gold Medal. These prizes are "household names," recognized immediately even among the general public as being the highest possible honors in their respective fields. It has not been shown that the petitioner's soccer awards, which will be further addressed below as lesser internationally recognized prizes or awards, enjoy immediate international recognition on a par with the universally-known awards described above. In this case, the record contains no evidence showing the petitioner has ever played on a team that earned an Olympic medal or that won a "World Cup" (Federation International Football Association) soccer championship.

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.*

Evidence contained in the record shows that teams on which the petitioner played earned gold medals at the 11th Asian Games (1990), the 8th Asian Cup (1991), 9th Asian Cup (1993), 12th Asian Games (1994), and 10th Asian Cup (1995). However, while the record indicates that the petitioner has received national and international recognition as a soccer player for the Chinese National Team in early to mid-1990's, there is no evidence establishing that her previous acclaim as an athlete has been sustained.

According to her resume, the petitioner played professional soccer in Japan for the "Lovely Ladies of the Suzuyo Shimizu Football Club" from 1997 to 1999, a team that took second place in the 1998-1999 season. The record, however, contains no evidence of the team's second place award or evidence showing that the petitioner played a major role in the team's victories during that season. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

We note here that the above awards were all based on the petitioner's ability as a soccer player. These awards do not establish that she has sustained national or international acclaim as a coach. Therefore, in the present case, we must separately examine whether the petitioner has demonstrated her extraordinary ability as a soccer coach. It is not clear that significant awards exist for soccer coaches; however, nationally or internationally recognized prizes or awards won by teams coached by the petitioner may be considered as comparable evidence for this criterion under 8 C.F.R. § 204.5(h)(4). Here, it is important to evaluate the level at which the petitioner acts as coach. A coach who has an established a successful history of coaching top athletes who win titles at the national level or above has a credible claim under this visa classification; a coach of intermediates or novices does not.

The record contains a certificate from the Asian Football Confederation, dated August 13, 2000, stating that the petitioner participated in its "Intermediate-level Coach Certificate Class from July 16, 2000 to August 13, 2000." Also submitted was an "Intermediate Level Coach Vocation Training Certificate" listing the petitioner's "Occupation/Title" as that of "Beginner" (2000). The petitioner's "'B' License" from the Asian Football Confederation (2000) was also provided. Also presented were an identification card and a photograph showing that the petitioner participated in the Nike Cup "youth" soccer competition.

A letter from Qun Zhang, a coach for the Dalian Soccer Club in China, states:

> During her time as a head coach of the Dalian Female Youth Soccer Team, [the petitioner] led the team to win third place in the "Nike Cup" in Shanghai in April 2000 and second place in the National Female Youth Competition in October 2000. Later, she became assistant coach of [the] Dalian Women's Soccer Team and assisted the team to win [sic] fourth place at the National Women's Soccer Competition.

The record contains no first-hand evidence of, or published media coverage regarding, the specific awards described in the preceding paragraph. Moreover, in regard to the "youth" soccer awards, the petitioner must show that her teams have earned national or international awards when competing at the highest level of competitive soccer, not just players within a particular age group. For this reason, we cannot conclude that the "youth awards" mentioned in Qun Zhang's letter, in combination with the petitioner's coaching credentials from 2000, would elevate her to the very top of the coaching field. Qun Zhang also mentions that the petitioner briefly served as "assistant coach" of the Dalian women's team, but, according to his letter, that team finished only fourth place at the National Women's Soccer Competition.

Aside from the unsupported claim that "Lovely Ladies of the Suzuyo Shimizu Football Club" took second place in a Japanese professional league in the 1998-1999 season, the record contains no evidence of any qualifying nationally or internationally recognized awards (the petitioner's youth team awards are not acceptable) won by teams for which the petitioner has played or coached from 1996 through the petition's filing date. Without evidence showing that the petitioner's soccer teams have won nationally or internationally recognized awards in recent years, the petitioner has failed to establish her *sustained* acclaim as soccer player or coach.

On appeal, the petitioner submits an "Honorary Award" presented by the Dalian Soccer Club (2001) naming her best coach at its "annual training competition." This coaching award is institutional, rather than national or international, in scope.

> *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 letter from Yuan-An Ma, the current Chief Coach of the Chinese National Women's Soccer Team. He states:

> [The petitioner] was recruited in 1988 as the major Sweeper. Since then, she has participated and contributed in many international competitions representing China. She played and...won the championship in the following games: 1990 and 1994 Asian Olympic and 1991, 1993, and 1995 Asian Cup.
>
> [The petitioner] attended the first World Cup in 1991. She led the Chinese Women's Soccer Team to play and [sic] the 2nd World Cup in 1995. Her performance in this and other international competitions has earned her [a] reputation and recognition in the soccer arena and within the Chinese Soccer Association. [The petitioner] qualified as the number one Sweeper in China. She has represented the Chinese National Team in many international competitions.

Other documentary evidence confirms the petitioner's participation as an integral part of the Chinese National Soccer Team from 1990 to 1995. 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 on a country's World Cup soccer team is the result of multi-level national and international competition, supervised by national experts. There is undeniable prestige in representing one's country at the World Cup Soccer Championships. However, the petitioner last competed at this top level of competition in 1995. NDNU, where the petitioner has played on an athletic scholarship since 2002, competes in the California Pacific Conference of the National Association of Intercollegiate Athletics

(NAIA). The NAIA is the national governing body for approximately 350 small-college athletics programs in the United States. It is immediately apparent that the NAIA's California Pacific Conference, in relative terms, is far less competitive than the Women's United Soccer Association (WUSA) or top conferences within the NCAA (National Collegiate Athletic Association) Division I program. An article from the *San Mateo Daily Journal* provided by the petitioner on appeal demonstrates this point. The article, dated October 21, 2003, states: "Stanford and Santa Clara have been among the nation's NCAA elite. Now Notre Dame de Namur is making its bid for recognition in the NAIA ranks." Also provided on appeal are rankings (dated November 4, 2003) showing that NDNU's women's soccer team is ranked 4th among teams in the NAIA (exhibits #3a and #3b). While it is not clear whether counsel or the petitioner was attempting to deliberately mislead Citizenship and Immigration Services (CIS), it is noted that separate rankings shown in exhibits #3c and #3d of the appellate submission relate to the University of Notre Dame in Indiana ("The Fighting Irish") rather than NDNU.

In essence, the petitioner has gone from playing soccer at the World Cup level to now playing as a sophomore in a relatively obscure small-college athletic conference in California. The record contains no evidence showing that the petitioner, in her capacity as a player at NDNU over the last two years, has sustained her acclaim at the national or international level of competitive soccer.

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

Documentation contained in the record indicates that the petitioner was selected to "serve as team captain of the [Chinese] national team." We accept that the Chinese National Women's Soccer Team qualifies as an organization with a distinguished reputation and that the petitioner played a leading role as its team captain during the early 1990's.

In this matter, while the petitioner has apparently satisfied three of the ten lesser criteria through her activities as an soccer player in China during the early to mid-1990's, there is no evidence showing her *sustained* acclaim as a soccer player or coach proximate to the petition's filing date of March 24, 2003. As stated previously, the regulations require *sustained* national or international acclaim. Here, the petitioner has not shown that she has sustained her previous acclaim from China after coming to the United States in 2001. While the petitioner need not demonstrate that the evidence for every criterion continues through 2003, the petitioner must provide some evidence indicative of acclaim proximate to the date of filing.

Aside from the issue of sustained acclaim, the director decision's also questioned whether the documentation presented was adequate to satisfy the regulation at 8 C.F.R. § 204.5(h)(5), which requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise."

In a her "Statement of Future Plans," the petitioner states:

> To continue my career in the soccer field as well as to benefit the prominence of U.S. soccer in the world, my goal is to continue to play and coach soccer in the U.S. whether for professional team or in academia. I will dedicate myself to do the best and contribute to the development and growth of women's soccer in the U.S.

While playing soccer for a professional team in the U.S. would satisfy the above regulatory requirement, the petitioner offers no evidence to suggest that U.S. professional teams are interested in the retaining petitioner's talents. Instead, the petitioner, now age 33, is enrolled in an undergraduate business degree program at a

small four-year college where she also plays soccer as a student. We find that the petitioner's stated goal of playing soccer "in academia" for a college in the NAIA does not constitute continuing "work in the area of expertise." Because the petitioner seeks an employment-based visa, she must demonstrate that her primary occupation and source of income in the United States will derive from her skills as a soccer player. It is noted that the petitioner has been residing in the United States since 2001. The petitioner, therefore, has had a reasonable amount of time to demonstrate that she will continue working in her area of expertise. The record contains no substantive evidence showing that the petitioner has actually engaged in, or positioned herself to serve in, employment as a soccer player at the top national level here in the United States. For an appropriate comparison, we refer to the letter from Hong Gao, who represented the Chinese National Women's Soccer Team at the Olympic games in 1996 and 2000 and earned a silver medal in 1996. According to her letter, Hong Gao has been "playing for the Women's United Soccer Association (WUSA) in the United States from 2001 to [the] present" as a goalkeeper for the New York Power. The petitioner, however, has provided no documentation indicating that U.S. teams are interested in having her play soccer at that level. Based on the evidence provided by the petitioner and her activities since coming to the United States, we find no "clear evidence" to support the conclusion that the petitioner will continue to work and support herself in the U.S. primarily through her skills as soccer player.

Joe Silveira, Director of Soccer, NDNU, states:

> [The petitioner] came to NDNU in the spring of 2002. After enrolling in curses, she began dedicatedly working towards mastery of the English language and a degree in business.... Last semester, [the petitioner] made the University President's list of top scholars and was named a National Association of Intercollegiate Athletics (NAIA) Academic All-American.
>
> [The petitioner] has been and invaluable asset to NDNU Women's Soccer Team. Last year, [the petitioner] was named an Honorable Mention All-American Athlete by the NAIA. This year she was named the [California Pacific] league's Most Valuable Player...We anticipate offering her a coaching position with our team.

Both Joe Silveira and the petitioner mention the possibility of her working as a college coach, but there is no "clear evidence" that the petitioner has positioned herself to work in such a capacity. The petitioner's intention to coach is not in dispute; the record shows that the petitioner has declared this intention in a letter to CIS and that Joe Silveira "anticipates offering her a position." More relevant is the issue of whether employment as a soccer coach will be the petitioner's primary occupation and source of income in the United States. In this case, it is certainly reasonable to require evidence that the petitioner will continue to support herself principally as a coach (rather than coaching in her spare time while attending college or supporting herself through unrelated employment). The petitioner, now a full-time student at NDNU, has not provided clear evidence showing that she will be able to support herself as a U.S. soccer coach.

Beyond the issue raised in the preceding paragraph, we again note that the petitioner has not demonstrated extraordinary ability as a coach. 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 majority of the substantive evidence in this case, however, relates to the petitioner's prior activities as a soccer "player" at the national or World Cup level rather than her success as a "coach" of top athletes at the national level. As was noted in the letter from Qun Zhang, the petitioner's head coaching experience was limited to Chinese youth soccer players. We find that none of her achievements or credentials as a coach is sufficient to establish that she is among the top soccer coaches in the United States or China. While a soccer 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. In the present case, the petitioner's expertise as soccer player during the 1990's does not imply that she also has expertise as an extraordinary coach. Without evidence showing that the petitioner has established a successful history of coaching top athletes who compete regularly at the national level, we cannot accept that coaching for a small-college athletic program would constitute "continuing work in the area of extraordinary ability."

In this case, the petitioner has failed to submit evidence demonstrating her *sustained* national or international acclaim as a coach or player since coming to the United States. While the petitioner may have enjoyed some national attention in China during the early 1990's, the record lacks evidence demonstrating her acclaim (national or international) as a player or coach from 1996 through the present.

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. A review of the record does not establish that the petitioner has distinguished herself as a soccer player or coach to such an extent that he may be said to have achieved *sustained* national or international acclaim. Nor has the petitioner provided qualifying evidence to adequately satisfy the regulation at 8 C.F.R. § 204.5(h)(5). 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.