**U.S. Department of Homeland Security**
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U.S. Citizenship and Immigration Services

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APR 1 4 2004

FILE: WAC 03 064 50170 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. The petition is now before the Administrative Appeals Office (AAO) 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:

> [T]he 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 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.

The petitioner, according to counsel, was an "outstanding gymnast" and has been "very successful as a gymnastics coach." This petition seeks to classify the petitioner as an alien with extraordinary ability as a gymnastics coach. 8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise."

The petitioner submitted a signed agreement indicating that upon her receipt of authorization to work in the United States, she will be employed as a gymnastics coach.

While the gymnast and the gymnastics coach share knowledge of the sport, 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 *Lee 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 such that we can conclude that coaching is within the petitioner's area of expertise. Specifically, in such a case we will consider the level at which the alien acts as coach. A coach who has 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). 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.

Through counsel, 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.*

Counsel states that the petitioner meets this criterion based partially on her award in 1990 of the title "International Grade Master of Sports," which counsel states was in recognition of the petitioner's achievements at the 10th Asian Games, the 25th World Gymnastics Championships and the 24th Olympic Games. As evidence, counsel submits a copy of a certificate by the Physical Culture and Sports Commission of the People's Republic of China. There is no evidence that this certificate conveys more than an honorary title to the petitioner. The evidence does not establish that the title is a national or internationally recognized award.

The petitioner submitted evidence that her gymnastics team won first prize in team competition in the 10th Asian Games in 1986. The evidence reflects that the Asian Games are an international competition held every four years for over 50 years. In 1986, there were 27 countries represented with over 4,800 participants. The petitioner submitted a copy of a photograph of the medal she won and a copy of the "diploma" of the first place award. The record does not establish how the team won first place, does not indicate the petitioner's score or her standing in the competition. While the record establishes that the Asian Awards are internationally recognized awards, no evidence establishes that the petitioner received an individual award for her performance.

The petitioner also submitted copies of photographs of medals that counsel states she won at the 1986 DTB Cup International Gymnastic Invitation Games and the 1987 World Sports Fair. 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). The medals do not reference the petitioner by name nor do they indicate the basis for the awards. Counsel submits no other evidence of the petitioner's receipt of these medals or any information regarding the competitions in which they were awarded, although one appears to have been awarded in Stuttgart, Germany and the other in Tokyo, Japan.

The petitioner also claims to meet this criterion based on a fourth place award by her gymnastics team at the World Gymnastics Championships in 1987. As evidence, counsel submits a copy of the "diploma" recognizing the team as a fourth place winner in the team competition. Counsel submits evidence that the World Gymnastics Championships have existed since 1903, and are now held annually except in an Olympics year. The organizer and parent of the competition is comprised of 128 member nations. The evidence establishes the awards at the World Gymnastics Championships are internationally recognized awards for excellence. As with the Asian Games, however, the petitioner submits no evidence of the team composition or of a significant role she played on the team. The petitioner submits a copy of a "diploma" from the same competition showing that she placed seventh in the vault competition. This provides minimum evidence that she may have contributed points in the events for which the team won fourth place.

Counsel also states that the petitioner was the champion in the floor exercises and horse vault at the 1987 6th National Games. As evidence, she submitted photographs, which she states are of the petitioner competing in the floor exercises competition, on the winners platform as vault champion and of the gold medal won by the petitioner as vault champion. Counsel submits no other evidence to substantiate the petitioner's receipt of the medal or of winning the competitions. As noted above, the assertions of counsel are not evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.[1]

Counsel also submits a copy of a certificate from the 24th Olympics held in 1988, recognizing the petitioner as a winner in the team category that placed sixth in the competition. As with the Asian Awards and the World Gymnastics Championships, the petitioner's specific contribution to her team's performance is not in evidence. There is no evidence that the petitioner took home the gold, silver or bronze award in any individual gymnastics competition.

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[1] Counsel submits partially translated pages from the 9th National Games of the People's Republic of China and highlights results from the 7th, 8th and 9th Games. As these results do not mention the petitioner, the proposed evidentiary value of these documents is unclear, unless they have been submitted to establish the stature of the games.

Additionally we note, as did the director, that the petitioner has not presented any evidence that she has won any national or international awards as a gymnast since 1988, thus the evidence does not establish that she has sustained any acclaim she once may have enjoyed as a gymnast. Further, the petitioner submitted no evidence of having won a national or international recognized award as a coach of gymnastics.

Counsel asserts that the petitioner has trained several individuals and teams who have become national or international champions. As evidence, counsel submits letters of reference from two world champion gymnasts who attest that the petitioner trained particular individuals who won gymnastic competitions. Counsel also submitted a letter from Kui Yuanyuan, who states she was trained by the petitioner and, as a result, won the women's floor exercises at the 32nd World Gymnastics Championship, and the balance beam at the World-Cup Gymnastic Competition in 1997. Ms. Yuanyuan also states the petitioner trained another world champion, Bi Wenjing. The petitioner submits no substantiating evidence that the petitioner trained the other individuals named nor does she submit evidence that any of these individuals named won the competitions stated. 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).

Counsel submits a letter from the principal of the Shihch'uan National Primary School in Taiwan, who states that the petitioner was invited to coach at the school from July through September 1999, and that she enabled the school to "win successively the group general champion at the National Games in 1998 and 1999." It is unclear how three months of coaching in 1999 assisted the school in winning competitions in 1998. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The evidence does not establish that the petitioner meets this criterion.

> *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.*

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. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

In response to the director's request for evidence (RFE) dated July 23, 2003, counsel stated that the petitioner meets this criterion based on her selection as a "National Team Member" of the Chinese National Gymnastic Team. According to Ming Ming Yang, a former coach of the team, the "National Team Member" recognition is an honorary title reserved for those who have outstanding achievements at national and international competitions. Mr. Yang does not indicate that those who receive the designation become members of an association. The evidence shows that this is a special distinction for those on the team who score well and is not evidence that the petitioner meets this criterion. The petitioner's membership on award winning teams is discussed further below under a separate criterion.

*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 order to meet this criterion, published materials must be primarily about the petitioner and 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. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

To establish that she meets this criterion, the petitioner submitted articles from the October 11, 1985 edition of the *Newspaper Tonight*. The first is a summary translation ("an abstract") of an article that announces the petitioner as a gold medal winner at the First National Juvenile Sports Meet.[2] The second article describes the petitioner's performance during the competition. The petitioner also submits an undated article from the same newspaper, which describes her preparation to compete in the 24th World Championship competition in 1986. The evidence submitted by counsel about the newspaper indicates it is regional rather than national in nature, and thus does not establish that the newspaper is major media.

The petitioner also submitted a copy of an article from the November 27, 1987 edition of the *Tianjin Daily*, which announces that two athletes, including the petitioner, won gold medals at the 6th National Games. The other winner is mentioned; however, the article is primarily about the petitioner. Although the evidence submitted indicates that the newspaper's overall circulation is worldwide, it also indicates that it is a local newspaper and its readership is generally regional (North China). The evidence does not establish that, like the *New York Times*, the *Tianjin Daily* has a significant national or international distribution.

A copy of the March 14, 1988 edition of the *Sports Newspaper* generally discusses the gymnastic movements of the petitioner and another athlete as "new and difficult." The evidence submitted about this newspaper reflects that it is a national sports newspaper. A copy of an article that appeared in *China Times* discusses the petitioner's four months coaching period in Taiwan. Although the article is undated, a separate attached masthead carries a 2002 copyright date. Counsel submits a partial translation of an unidentified web page that states that the *China Times* is the number one newspaper in Taiwan. The petitioner also submitted an undated article from the *Liberty Times*, discussing her arrival to coach in Taiwan. There is no independent evidence in the record establishing that either the *Liberty Times* or the *China Times* are major media.

The record reflects that the petitioner had a degree of national acclaim as a young gymnast, although most of the acclaim was concentrated at the local or regional level. The record does not reflect that the petitioner has experienced any recent acclaim as a gymnast. The evidence submitted of the petitioner's expertise as a coach in support of this criterion is minimal and contained in undated publications. The articles appear to cover only a brief period of time, and the evidence does not establish that they were published in major media, or professional or major trade publications. The petitioner has not established that she meets this criterion as a gymnastics coach.

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[2] This translation does not comply with the provisions of 8 C.F.R. § 103.2(b)(3), which requires that documents in a foreign language must be submitted with a full English translation.

*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.*

As evidence of this criterion, the petitioner submitted a copy of a National-Class Referee Certificate issued in 1992. Counsel asserts that the petitioner has since refereed in many domestic competitions, but submits no corroborating evidence. As noted above, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Two award-winning gymnasts, who submitted letters of reference on behalf of the petitioner, Mr. Li Ning, a 1984 Olympic gold medallist, and Mr. Li Xiaoshuang, a 1992 and 1996 Olympic gold medallist, echo counsel's words. However, the petitioner submits no primary evidence that she has refereed any competitions, and there is no indication that she has refereed on a national or international level. As noted previously, going on record without supporting documentary evidence does not meet the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra.* The evidence does not establish that the petitioner meets this criterion.

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

In response to the RFE, counsel claims the petitioner meets this criterion based on the outstanding achievements of those she has coached. As evidence, counsel asserts that two members of the China National Team won individual honors in international competition and two from the Taiwan Gaoxiong Gymnastic Team won local and regional honors. As noted previously, counsel submitted corroborating evidence that the petitioner coached only one of these individuals. Counsel also states that teams coached by the petitioner won national and local competitions, including the 2001 Taiwan National Games; however, no evidence in the record corroborates counsel's statement. Counsel submitted a web page on Team China and its quest for gold at the Olympics held in Sydney, Australia. The article mentions some of the individuals the petitioner states she coached; however, the petitioner is not mentioned as their coach nor does the information substantiate that the individuals won the awards.

Also as noted above, the petitioner submitted letters of reference from two Olympic gold medal winners. They both state the petitioner "used to be an outstanding gymnast." Mr. Ning states the petitioner's skills made it possible for "athletes to quickly raise their skill levels and win championship[s] at various competitions." Mr. Xiaoshuang describes the petitioner as an outstanding coach with "patience & conscientiousness." They each named two gymnasts that the petitioner coached who won in competition. However, neither establishes that the petitioner has contributed significantly to gymnastics or to coaching. It is noted that several of the competitions identified as having been won by the petitioner's students are local or regional school events. Although counsel states that one of the petitioner's students obtained "runner-up" on the uneven bars at the 1996 Olympics and one won first place at the World Gymnastic Championship and the World-Cup Gymnastic Competition, no corroborating evidence appears in the record. Additionally, awards won by athletes coached by the petitioner are considered under a separate criterion. Coaching an athlete to win at a major competition does not automatically establish that the coach has made a contribution of major significance to the field. There is no evidence that the petitioner has developed an innovative teaching method widely used by others or that she has made a contribution of major significance to gymnastics or to the coaching of gymnastics.

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

Counsel states that the petitioner has authored a "few professional gymnastic thesis [sic] all of which have been published in national well-respected publications." As evidence, she submits summary translations of two of these articles. As noted above, the regulations require that any documents submitted in a foreign language must be accompanied by a full English translation. The first article submitted by the petitioner was published in the May 1999 edition of the *Journal of Shanghai Physical Education Institute* and analyzes the methods used by China to select its gymnasts. The other article was published in a 1995 *Information on Events of Olympic Games* and purports to be a "Survey and Analysis of Women's Gymnastic Floor Exercises Contest" during the 1995 National Gymnastic Championship. Counsel submits an uncertified translation of a web page, which indicates that the *Journal of Shanghai Physical Education Institute* has become one of the "main publications in the sphere of physical education and sports theories in china [sic]," and that it has been "accepted as the core journal of Chinese edition in P.E. and sports category." Counsel submits no further evidence on the *Information on Events of Olympic Games*. The statute and regulation require extensive documentation to establish eligibility for visa classification preference as an alien of extraordinary ability. The petitioner's publication of two articles is not sufficient to meet the standards set by the statute and regulation. Further, the evidence is insufficient to establish that either of these publications is a professional or major trade publication as required by this criterion.

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

Counsel states that this criterion is satisfied by the petitioner's membership on the Chinese National Gymnastic Team, her designation as a "National Team Member," and by her coaching skills, which have led to national and international awards for those she coached. As discussed above, although the petitioner was a member of the gymnastic teams that won team awards at the 10th Asian games, the 24th World Gymnastics Championships and the 24th Olympic Games, no evidence of record, with the exception of her 7th place standing at the World Gymnastics Championship, reveals her role in the team's successes at these various events. There is no evidence that she played a leading or critical role for the Chinese National Gymnastic Team. Additionally, there is no evidence that she has played a leading or critical role as a coach for the China National Team. There is no evidence in the record that she was the head gymnastics coach for the team or that she brought critical skills to the training process. While the Chinese gymnastics teams have enjoyed success in many international competitions, there is no evidence that that success can be primarily attributed to the petitioner, either as a gymnast or as a coach.

*Other comparable evidence.*

The regulation at 8 C.F.R. § 204.5(h)(4) states: "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." The evidence indicates that the petitioner was a member of the China National Gymnastics Team that won several nationally and internationally recognized team awards, including a 6th place finish at the 24th Olympics. Although the petitioner was the recipient of the awards only as a team member, and the evidence was not applicable under the first criterion, we find that these awards are appropriately considered under this provision. We further find that the evidence is sufficient to establish that the petitioner meets this provision as a gymnast. However, no evidence establishes that the petitioner meets this provision as a gymnastics coach.

Evidence of awards received by those the petitioner has coached is properly considered under this provision. Counsel asserts that two of the petitioner's students have won international gymnastics competitions. Additionally, Kui Yuanyuan attributed the petitioner's coaching to her success in winning competitions at the 32nd World Gymnastics Championship and the World-Cup Gymnastic Competition. As noted previously, no evidence in the record substantiates either of these statements. Statements alone, without accompanying documentary evidence, are insufficient to meet the petitioner's burden of proof. *Matter of Treasure Craft of California, supra.*

The petitioner does not meet the requirements of this provision.

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 her field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a gymnast or a 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 achieved a measure of success as a teenage gymnast, but is not persuasive that the petitioner's achievements as a coach set her significantly above almost all others in her field. 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.