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U.S. Citizenship and Immigration Services

[redacted]

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FILE: WAC 03 067 50432 Office: CALIFORNIA SERVICE CENTER Date: APR 26 2004

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.

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.

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 has 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.

This petition, filed on December 24, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a badminton player and coach. 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.

While the badminton player and the badminton coach may share knowledge of the sport, the two rely on very different sets of basic skills. Thus, the AAO has held that 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. If the petitioner has demonstrated extraordinary ability as an athlete, we will consider the level at which she has successfully coached.

In his request for evidence (RFE) dated July 29, 2003, the director informed the petitioner that her field of endeavor is international rather than national in scope, and requested the petitioner to submit evidence of her sustained acclaim at the international level. This is an erroneous interpretation of the statute and regulation. Section 203(b)(1)(A) of the Act states that aliens of extraordinary ability in the sciences, arts, education, business, or athletics who have demonstrated sustained national or international acclaim may be eligible for visa preference classification. The statute does not state that individuals in certain fields of endeavor are required to demonstrate international acclaim. The term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documentation to establish that an alien has sustained national or international acclaim in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The regulation does not provide that sustained acclaim in some fields of endeavor can only be met at the international level. By requiring the petitioner to demonstrate sustained international acclaim, the director imposes a standard higher than that set by statute, and applies the criteria more narrowly than the regulation requires.

The director also requested the petitioner to submit advisory opinions regarding the petitioner's qualifications as an alien of extraordinary ability. While opinions from recognized national or international experts in the field would certainly help the petitioner's case, the regulation does not require that the petitioner submit certain forms of evidence in order to prove her case. The regulation does not require that the petitioner submit an advisory opinion as is required for the O nonimmigrant alien of extraordinary ability at 8 C.F.R. § 214.2(o)(5)(ii).

Counsel asserts that the director's initial RFE was "too broad, general and catch-all to provide a reasonable basis" for the petitioner to "intelligently" prepare her case. Notwithstanding the all-inclusive nature of the RFE, the record reflects that the petitioner was afforded a reasonable and meaningful opportunity to respond and provide evidence that she believes meet the regulatory criteria.

The director's statement that the "submission of documentation to satisfy three or more of the criteria . . . does not in and of itself establish eligibility as an alien of extraordinary ability," is unclear and may be misleading. Clearly, if the petitioner submits evidence that satisfies three of the regulatory criteria, she will qualify for the visa classification. However, the petitioner must do more than submit evidence addressing at least three of the criteria. The evidence in support of each criterion must qualitatively satisfy the criterion.

The director also indicated that the petitioner must establish eligibility for visa classification preference by clear and convincing evidence. However, neither the statute nor the regulation establishes a clear and convincing standard as the burden of proof in these proceedings. The burden on the petitioner is to establish the alien's extraordinary ability with extensive documentation of sustained national or international acclaim.

While we note the deficiencies in the director's decision, we concur with his final analysis. CIS maintains the authority to affirm decisions that, although based on incorrect grounds, are deemed correct decisions on other grounds within the power of CIS to formulate. *See Helvering v. Gowran*, 302 U.S. 238 (1937); *Securities Comm'n v. Chenery Corp.*, 318 U.S. 80, 88 (1943); and *Chae-Sik Lee v. Kennedy*, 294 F.2d 231 (D.C. Cir 1961), *cert. denied*, 368 U.S. 926 (1961).

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.*

The petitioner submits a list of 42 awards that she won as a badminton player, and one that was won by a team she coached. As evidence, the petitioner submitted photographs of medals and cups and identified them as having been won by her at various competitions. As noted by the director, nothing in the photographs establishes that the petitioner won the medals. Counsel asserts that evidence substantiating that the petitioner won these awards are contained in the newspaper articles presented and the information on the International Badminton Federation's (IBF) website. Counsel acknowledges that the IBF website contains information only for the past 15 months. Thus the value of providing the website address and "instructing" CIS on how to access the information about the petitioner is of very little evidentiary value. On appeal, counsel submits two pages from the IBF website that simply identifies the petitioner, that she played for the People's Republic of China and listed her competitor identification numbers. The documents do not identify any awards won by the petitioner. Counsel also submitted a copy of a September 15, 2003 letter to the IBF, requesting the petitioner's full performance record. Counsel noted that as of the date of the appeal, the IBF had not responded to the request. As of the date of this decision, three months after the date of the appeal, counsel has submitted no additional evidence regarding the petitioner's record.

The translations of the newspaper articles submitted by the petitioner do not comply with the provisions of 8 C.F.R. § 103.2(b)(3), which requires that documents submitted in a foreign language must be accompanied by

a full English translation. Despite counsel's assertions, however, most of the articles do not provide corroborative evidence that the petitioner won the medals claimed. Most of the articles generally describe the competition or state that a particular team won a certain competition. The petitioner is not mentioned in most of these articles and it cannot be simply assumed that she participated on the teams that won various competitions.

The April 18, 1990 edition of the *Yangcheng Evening News* contained an article reporting that the petitioner had won a gold medal in a doubles competition at the China National Youth Badminton Games. An article from the June 14, 1991 edition of the *Guangzhou Daily* reported that the petitioner made "great contributions" to her team winning the China National Badminton Women's Team Championships. Several papers, including the August 23, 1993 edition of the *Yangcheng Evening News* reported on the petitioner's receipt of a bronze medal in the singles competition at the 7th China National Games. Other publications, including the November 9, 1994 edition of the *Guangzhou Daily* also reported that the petitioner won first place in a singles competition at the 9th China Guangzhou Provincial Games. The November 15, 1994 edition of that same newspaper contained a photograph of the petitioner with the caption that she had won three gold medals. The September 29, 1996 edition of the *Yangcheng Evening News* reported that the petitioner won a silver medal in the doubles competition.

The petitioner submitted certificates indicating that she won the following awards: fifth place in a singles group and fifth place in a doubles competition at the 1992 China National Badminton Championships; a silver medal in a doubles competition at the National Youth Badminton Games in 1993; seventh place in a mixed doubles group at the 9th China Guangdong Provincial Sports Meeting in 1994; fifth place in doubles competition at the 1994 China "Shuanggou Cup" National Badminton Good Athletes Doubles Competition; and a gold medal in the doubles and a silver medal in the mixed doubles at the 3rd China National University Badminton Championships in 1998. The petitioner also submitted a certificate indicating that the China Guangdong Provincial Sports Committee presented her with the Award for Outstanding Progress as a New Star in 1996.

A document, which appears to be a program of a competition between England and China, lists the petitioner as one of the players for China, and indicates she placed third in the women's singles at the 1993 National Games. There is no indication as to which "National Games" the statement refers.

A letter of recommendation from [redacted] a former badminton coach for the Guangdong provincial badminton team, and the petitioner's former trainer, enumerated 13 competitions in which the petitioner had won awards. Mr. [redacted] does not specify the records that he relied upon when compiling his list of the petitioner's accomplishments.

Several of the awards for which the petitioner submits corroborating evidence indicate they were presented on a local or provincial level, such as at the Guangzhou and Guangdong Provincial competitions and the National University Championships. The evidence establishes that the petitioner won awards, either in the singles category or in doubles play at national competitions in 1990, 1992, 1993, and 1994, and local or regional awards in 1996 and 1998. The petitioner's evidence does not substantiate that she has won national or international awards as a badminton coach.

The petitioner also submits a photocopy of a medal that she states she received upon her selection as a member of the China National Master Sportspersons. Mr [redacted] and another of the petitioner's former coaches [redacted] state that this is one of the highest honors for a Chinese athlete. However, the petitioner submits no evidence corroborating her receipt of this medal.

While the record reflects that the petitioner meets this criterion as a badminton player, the evidence does not substantiate that the petitioner meets this criterion as a badminton coach.

> *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.

The petitioner claims to meet this criterion based on her participation as a player and coach of several badminton teams. Membership on a competitive sports team is not membership in an association as required by this criterion.

The petitioner also submits an "Honorary Certificate of Registration on Who is Who in China." If the petitioner is identified as the recipient of the certificate, that information is contained in the wording of the document that is not translated from Chinese. Further, there is no evidence that this "honorary membership" requires any special achievement beyond "years of hard work."

The petitioner also claims to meet this criterion based on her designation as "China National Master Sportsperson." However, there is nothing in the record to indicate that the petitioner's designation as a "Master Sportsperson" is also membership in an association.

The evidence does not establish that the petitioner meets this 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.

As noted above, the petitioner provides only summary translations of the news articles submitted in support of this criterion. The regulation requires that documents in a foreign language must be accompanied by full English translations. Also as noted previously, the translations provided indicate that many of the articles report on competitions and various teams' performances in those competitions. Several mention the petitioner as a competitor or mention her receipt of an award, as discussed above. However, the summary translations do not provided evidence that the articles were about the petitioner. The articles discussing the petitioner's receipt of a silver medal at the 1996 China National Badminton Championships that appeared in the September 28 and September 29, 1996 editions of the *Yangcheng Evening News*, and the September 29, 1996 edition of the *Guangzhou Daily*, contain the most lengthy discussion of the petitioner. However, as a full translation of the article was not provided, it is unclear whether the article was about the petitioner or discussed her performance only in context with other winners in the competition.

Additionally, only one article can be determined to have appeared in major media. An August 22, 1993 article from the *Xinhua News Agency* reported on the 7th China National Games, and reported that the petitioner won the bronze medal in her competition. The petitioner submitted no evidence that the other media in which the articles appeared are major media, or major trade or professional media. The evidence does not establish that the petitioner meets this criterion.

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

The petitioner claims to meet this criterion based on her participation in various badminton competitions. The wording of this criterion indicates it is intended for those in the visual arts such as sculptors and painters, rather than for athletic performances or coaching. Further, given that athletic competitions are almost always performed before audiences, every athlete displays his or her work in this manner, and such competitions are not necessarily indicative of acclaim. The petitioner has not submitted any evidence that indicates that she meets criterion.

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

In order to meet this criterion, the petitioner must show that she played a leading or critical role for an organization or establishment and that the organization or establishment had a distinguished reputation.

To establish that the petitioner meets this criterion, counsel cites the petitioner's participation as a player and coach of the various badminton teams and her "membership" in the "China National Master Sportsperson." As evidence, the petitioner submits photographs of various medals and of herself in different scenes. As noted previously, the photographs are identified only by the petitioner's statements, with no other evidence in the record to establish their authenticity. 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). Further, the photographs alone do not establish that the petitioner played a critical or leading role in any organization or establishment.

The petitioner appears to have played on championship badminton teams. However, the evidence submitted by the petitioner in support of this petition does not establish that the cited awards were won by teams on which she played or her role in assisting the teams in winning those awards.

The petitioner's former coaches credit her with establishing winning teams for the Guangdong Yingtian Sports Equipment Co. Ld. and the Guangzhou Hualing Air-Conditioning Equipment Co. Ld. While as a coach, the petitioner may have played a leading role in these companies' badminton teams, no evidence establishes that she performed a leading or critical role for the companies. The record does not reflect the nature of these companies or how a badminton team fits within the corporate structure. Further, no evidence establishes that these organizations have a distinguished reputation, within or outside of the sport of badminton.

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 badminton 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 indicates that the petitioner was a talented badminton player prior to her injury, but the evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. The evidence does not establish that the petitioner has enjoyed similar success as a badminton coach. 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.