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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: FEB 20 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.

for Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 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 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 she has sustained national or international acclaim at the very top level.

The I-140 petition form lists the petitioner's occupation as "swimmer." A job offer letter in the record indicates that Team Weston, a swim team based in Weston, Florida, seeks to pay the petitioner $14.00 per hour as a swim 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. The petitioner has submitted evidence which, 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.*

The record shows that the petitioner participated in several international competitions from 1969 to 1976, culminating in the 1976 Olympic Games in Montreal. The petitioner won silver medals at numerous events, and

four gold medals at the 1976 Andean Swimming Championship in Guayaquil. The petitioner has amply documented her receipt of national and international awards. There is, however, no evidence that the petitioner has swum competitively since 1976, when she was 17 years old, an issue to be discussed in greater detail further below.

> *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.*

An undated article from an unidentified newspaper refers to the petitioner as "swimmer of the year," and features profiles of athletes in other sports as well. An article from another unidentified newspaper indicates that the petitioner "took all the honors of the Bogotanian swimming in the year 1975. As a consequence, she is also the greatest figure of this sport." Partial translations of undated articles from unidentified newspapers fail, for several reasons, to meet the wording of the regulatory criterion.

One article from an identifiable source is from the December 24, 1975 edition of *El Espectador*. The article lists several "athletes of the year," including the petitioner under the category of swimming. This is a different article from the other article, above, which also deemed the petitioner "swimmer of the year." The petitioner has thus provided one qualifying newspaper article, published nearly 27 years before the October 2002 filing date of the petition.

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

Contemporary documents show that the beneficiary set national records for the 100 meter backstroke (Junior Category A Ladies) in December 1973 at age 14 and 200 meter backstroke (Seniors) in June 1975 at age 15. Other documents refer vaguely to other, unidentified records.

To establish the petitioner's intended work in the United States, the petitioner has submitted a job offer letter showing that Team Weston Aquatics, a swim team based in Weston, Florida, seeks to employ the petitioner as a swim coach. Because all the evidence of the petitioner's acclaim concerns her activity as a competitive swimmer in the mid-1970s, rather than as a coach, the director requested evidence that the petitioner has "been engaged as a coach or [in] any other capacity . . . since 1976." In response, the petitioner has submitted a second letter from Tomas Victoria, aquatics director and head coach at Team Weston Aquatics. Mr. [redacted]tates:

> We offer this letter in support of [the petitioner], to whom we have offered a full time permanent position at an annual salary of $24,000.00 on the basis that she is one of a very small percentage who has risen to the top of the competitive swimming world.
>
> [The petitioner] can easily be considered to be operating in the very highest strata of competitive swimming and competitive coaching and the proof of this qualification lies in her continual recognition and demand of her services within the industry.

The record contains no first-hand evidence of any demand for the petitioner's services except for the job offer from Team Weston Aquatics. Vague references to "recognition and demand" cannot suffice.

The petitioner herself offers only a very vague description of her activities since 1976:

> Right after I attended the Montreal Olympics I toured around Colombia speaking to other young athletes about the importance of sports in your life. I also motivated other swimmers and during pert of my summer vacations I helped my coach with kids who couldn't afford a membership [in] a private club. . . .
>
> I consider myself well prepared to engage in a new stage of my life, by teaching kids to enjoy swimming just as I did. In the past months I took a course to revalidate my certificates with the Red Cross. My next step will be to enroll somewhere where I can enhance my teaching and human skills.

The director denied the petition, stating that the petitioner has not established that she is (as opposed to *was*) among the small percentage at the very top of the field. The director observed that the petitioner has not established extraordinary ability or sustained acclaim as a swimming coach. On appeal, the petitioner submits arguments from counsel.

On appeal, counsel argues that the "denial is based on an erroneous premise that the Petitioner was seeking approval as a **swimming coach**. The I-140 Petition and supporting documentation is very clear that the Petitioner is seeking approval as an extraordinary **swimmer** and not as a **swimming coach**."

The regulation at 8 C.F.R. § 204.5(h)(5) requires the petitioner to provide "clear evidence that the alien is coming to the United States to continue work in the area of expertise." This requirement reflects similar language in section 203(b)(1)(A)(ii) of the Act. The statute and regulations also require evidence showing not merely acclaim, but *sustained* acclaim. The "extraordinary ability" classification exists not to reward aliens for past achievements, but to benefit the United States by admitting aliens who are (rather than were at one time) at the top of their respective fields of endeavor. A temporary period of acclaim does not create a permanent entitlement to this classification, without consideration for intervening years or events.

The petitioner's initial submission is silent as to the petitioner's activities after 1976. The petitioner does not claim that she still swims competitively, and there is no evidence at all that the petitioner seeks to enter the United States as a swimmer (rather than as a swimming coach). The petitioner's statement, quoted above, does not refer to any prior coaching experience at all. Rather, her reference to coaching as "a new stage of [her] life," and her assertion that she plans to take courses to "enhance [her] teaching . . . skills," indicate that the petitioner is new to coaching. Tomas Victoria's unsubstantiated assertion that the petitioner is in great demand as a coach is unsubstantiated, and his proffered salary of $24,000 per year does not suggest a large number of competing bids for the petitioner's services. As noted above, the director had previously requested evidence that the petitioner has "been engaged as a coach or [in] any other capacity . . . since 1976." The petitioner's response to that specific request included no evidence of the petitioner's past coaching activities, nor even any specific claim that the petitioner had ever worked as a coach. Given the evidence then available, the director did not err in finding that the beneficiary's success as a swimmer, over a quarter century ago, does not qualify her for an immigrant visa to begin a new career in the United States as a swimming coach.

In the initial appeal, filed on June 20, 2003, counsel states that a supplemental submission is forthcoming within 30 days. The AAO received a supplemental submission on September 24, 2003, three months after the filing of the appeal. The Form I-290B Notice of Appeal advises the petitioner that an extension beyond 30 days "may be granted only for good cause shown," pursuant to regulations at 8 C.F.R. § 103.3(a)(2)(vii). Counsel did not request any further extension in advance, nor did counsel show good cause for such an extension. The new submission is accompanied by a brief note, "Petitioner hereby supplements the record," dated

September 24, 2003, with no explanation as to why this submission took over 90 days instead of the 30 originally requested.

Some of the documentation in the latest submission concerns the petitioner's record as a swimmer from 1969 to 1976. The petitioner's record as a competitive swimmer is not at issue, and therefore this evidence does not bear detailed discussion, except to provide still more evidence that the petitioner's competitive career ended in 1976. Other materials, however, refer to the petitioner's work as a swimming instructor in the early 1990s.

The director, on April 28, 2003, had specifically requested evidence of the petitioner's past work as a swimming instructor. The petitioner failed to provide such evidence, and did not explain why such evidence was not being submitted. We need not devote significant time to this same evidence, now untimely submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). In the interest of thoroughness, we will briefly discuss this material.

A newly submitted letter indicates that the petitioner worked at the Italian Center of Bogotá "from February 1991 to March 1996 . . . with lessons in general, managing and implementing all water sports." A letter from Swim Service, also based in Bogotá, indicates that the petitioner "worked at our institution from February 1991 to October 1995, having carried out different positions such as: Swimming Teacher for Toddlers, Swimming Trainer and Coordinator of Programs and specific programs." Both of these letters are dated early June 2003, with no explanation for their untimely submission over three months later.

The above letters establish that the petitioner has five years of experience as a swimming instructor, but there is no indication that she taught or coached at the national or international level, or otherwise maintained or regained the level of acclaim that she had achieved in the first half of the 1970s. These documents do not shed light on the petitioner's employment after March 1996. In conjunction with a concurrently filed adjustment application, the petitioner has submitted a Form G-325A Biographic Information sheet. A section of this form instructs the petitioner to list her employment for the past five years (in this case, 1997-2002). The only employment listed is the petitioner's position as an assistant manager at "Aroflex Lida." The record contains no other information about the position, the company, or the nature of the work. The petitioner has, by this time, been provided ample opportunity to establish her work history as a swimming instructor, and has provided only an untimely submission which does not demonstrate work commensurate with extraordinary ability or sustained acclaim.

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 shows that the petitioner achieved significant acclaim as a swimmer as a teenager in the first half of the 1970s, but she has not sustained this acclaim. Although the petition form identifies the petitioner's occupation as "swimmer," the record indicates that the petitioner actually seeks employment in the related but not identical occupation of swim coach, an occupation in which the petitioner has no demonstrated acclaim. 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.