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**NOV 23 2004**

FILE:



Office: TEXAS SERVICE CENTER Date:

SRC 03 184 51358

IN RE:

Petitioner:



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:



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, 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.

The petitioner filed her appeal on March 30, 2004, challenging the director's factual statements regarding her entry into the United States in 1993.<sup>1</sup> The petitioner did not request additional time to submit a brief and/or additional evidence by checking one of the applicable boxes. More than six months later, on October 14, 2004, counsel entered his appearance and requested an additional 60 days in which to submit a brief.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. The petitioner did file a timely appeal. The regulation at 8 C.F.R. § 103.3(a)(2)(vii) provides that a petitioner or her counsel may submit a written request for additional time to submit a brief. The AAO may "for good cause shown, allow the affected party additional time to submit one." In this matter, counsel did not contact this office requesting additional time until more than six months after the appeal was filed. That counsel was only retained recently is not good cause for granting a request filed so long after the filing of the appeal itself. The petitioner was represented by prior counsel at the time of filing and prior counsel prepared the petitioner's response to the director's request for additional documentation. The petitioner's decision to file the appeal by herself and retain new counsel several months after the appeal was filed does not warrant a seven-month extension of the 30-day period automatically granted to file a brief as provided on the Form I-290B.

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.

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<sup>1</sup> The reference to "1993" on the last page of the decision appears to be a typographical error as the remainder of the decision discusses her entry in 2003. We concur that the record contains no evidence of an entry in 1993.

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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a springboard diver. 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 that, she claims, meets the following criteria.<sup>2</sup> We will discuss the evidence submitted for each criterion claimed. The director, however, concluded that any acclaim the petitioner may have had in 1996 was not sustained as of the date of filing the petition in 2003. We will analyze this conclusion after the evidence is discussed.

*Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner won the following awards:

1. Two Third Place awards in synchronized diving at the International Competition in Koln, Germany in November and December 1995;
2. First, second and third place in the one-meter springboard competitions, second and third place in the three-meter springboard competitions and third place in the 10-meter platform competition at the West German Spring Open Championship in May and June 1995;
3. First place in the one-meter springboard competition at the Georgian National Championship in 1993;
4. Third place in the three-meter springboard competition at the 1991 Sport Games in Georgia;
5. First place in the one-meter and three-meter springboard competitions at the Georgian National Championship in 1990;
6. Second place in the one meter springboard competition at the Georgian National Championship in 1989; and
7. Second place in the one-meter springboard competition at the Georgian National Championships in an unspecified year.

Although the petitioner competed at the 1996 Summer Olympics in Atlanta, Georgia, the record does not reflect that she won any medals at that time. The petitioner did not provide evidence of more recent awards in response to the director’s request for evidence of any awards after 1996.

*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.*

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<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

As evidence to meet this criterion, the petitioner submitted evidence of her membership with the Federation Internationale de Natation. The petitioner, however, submitted no evidence regarding this federation or its membership requirements. Nevertheless, we note that the record establishes that the petitioner was a member of the Georgian Olympic team in 1996. Unlike major league teams, an Olympic team is a single national team consisting of the top athletes in the nation. Thus, we find this membership to be comparable evidence relating to this criterion. As with awards, however, the petitioner submitted no evidence relating to this criterion after 1996.

*Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The petitioner submitted four newspaper articles, one in the *Moultrie Observer* dated August 23, 1995 and three in unidentified foreign-language papers on unidentified dates. Prior counsel did not assert that any of the articles were published after 1996 in response to the director's request for published material after that time. Moreover, the petitioner did not provide any evidence of the circulation of the newspapers that published these articles. As such, the petitioner has not established that any of them constitute major media.

*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.*

The petitioner did not claim to meet this criterion until responding to the director's request for additional documentation. The petitioner submitted a certificate from the Georgian Aquatic Sports National Federation asserting that in 2000, the petitioner was "the referee on the republic tournaments" and that in 2001 "she was given an occupation of international category referee, at the same time she began intensive training for [the] 2004 Olympic Games." Prior counsel asserted that as a referee, the petitioner judged the performance of other divers and needed "hard-earned credentials." 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 certificate does not specify what the petitioner's duties were as a referee; specifically the certificate does not assert that the petitioner actually scored dives at significant competitions. Moreover, the certification does not reflect how long the petitioner served as a referee after 2001, if at all. The petitioner listed no employment during the previous five years on her Form G-325A and entered the United States in February 2003. The petition was filed June 19, 2003.

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

Initially, prior counsel asserted that the petitioner "has achievements of major significance in the sport of diving." In support of that assertion, prior counsel lists the petitioner's participation in the 1996 Olympics and the 1995 Europa Cup, the petitioner's 26<sup>th</sup> place finish at the World Cup and 8<sup>th</sup> place finish in the 1993 European Championships. Awards have their own criterion and the petitioner's Olympic team membership has been considered above. We cannot conclude that the petitioner's participation in competitions where she did not win awards is a contribution of major significance to the field. The petitioner has not submitted evidence that she has set a world record or otherwise contributed significantly to the sport of diving as a whole.

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

In response to the director's request for additional documentation, prior counsel asserted that the petitioner played a leading or critical role for the Georgian Olympic Diving Team. We have already considered the petitioner's membership on that team above. We cannot conclude that every athlete on an Olympic team plays a leading or critical role for that team.

As discussed above, the most persuasive evidence relates to awards pursuant to 8 C.F.R. § 204.5(h)(3)(i) and memberships pursuant to 8 C.F.R. § 204.5(h)(3)(ii). Thus, even if we did not consider whether the petitioner had "sustained" any acclaim she may have had, she has only met two criteria. A petitioner must demonstrate that she meets three in order to establish eligibility. Moreover, the record contains no evidence relating to any of the three criteria after 2001, and the "referee" position in 2001 has not been adequately explained. On appeal, the petitioner focuses on the director's discussion of when she entered the United States. The basis of the director's decision, however, is that she failed to demonstrate any recognition in the field after 1996. The petitioner does not address this issue on appeal and we concur with the director on this issue.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a diver 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 at the time of filing. 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.