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B-2

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: AUG 01 2006  
WAC 05 112 54270

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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 director further concluded that the petitioner had not established that she was coming to the United States to continue working in her claimed area of expertise.

On appeal, counsel questions the “integrity of the adjudication process,” but fails to address all of the director’s concerns.

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 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 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). Initially, counsel asserted that the petitioner “helped led [sic] the National Team to win numerous international awards, including” a silver medal at the 1992 Barcelona Olympic Games. 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). Dennis Janzen of Fresno Pacific University asserts that the petitioner “helped lead the Chinese women’s team through the 1992 Barcelona Olympic Games.” The record does not support the implication that the petitioner received an Olympic silver medal. An unsigned list of the petitioner’s accomplishments from the China Volleyball Association indicates that in 1992, the petitioner placed 7<sup>th</sup> at the Olympics. While the petitioner submitted photocopies of her Olympic credentials and what appears to be an Olympic button from the 1992 games, the petitioner did not submit a photograph of a silver medal or any media coverage of her winning an Olympic medal. The petitioner’s membership on an Olympic team, however, is notable and will be considered below.

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>1</sup>

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

Between 1986 and 1994, the petitioner won medals at several Chinese championships, including at the Chinese National Championships in 1986, 1988, 1989, 1990, 1991, 1992 and 1994 and at the Seventh National Games in 1993. During the same period, the petitioner won medals at several international competitions, including the 1991 World Cup in Japan, the International Challenge competition in 1992, the Asia Championships in 1993 and the World Championships in Hong Kong, also in 1993. While these awards are persuasive evidence relating to this criterion, they do not establish the petitioner’s sustained acclaim in March 2005 when the petition was filed.

In the United States, as a student at Fresno Pacific University, a member of the National Association of Intercollegiate Athletics (NAIA), the petitioner received the following:

1. Most Valuable Player, NAIA, 2001 and 2002;
2. 2003 NAIA Volleyball Championship;
3. 2002 Volleyball Champion, Golden State Athletic Conference;
4. Member, NAIA All-Tournament Team, 1999, 2001 and 2002;
5. Member, American Volleyball Coaches Association (AVCA) All-America Team, 1999, 2001 and 2002;
6. Final Four, NAIA National Championship, 2001 and 2002;
7. Member, 1999 All Regional Team, Region II; and

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

8. Runner Up, National Championship, 1999.

The petitioner also received certificates from the American Volleyball Coaches Association in recognition of the above accomplishments and team plaques from Fresno Pacific University.

The director concluded that the NAIA recognition carried less weight than comparable recognition with the National Collegiate Athletic Association (NCAA). The director's discussion of this criterion includes an assertion that counsel's cover letter references the petitioner as a soccer player. On appeal, counsel questions the director's basis for concluding that the NAIA is a lower level league and notes the inclusion of 330 member institutions.<sup>2</sup> The petitioner submits information about the NAIA indicating that it began in 1937 as a tournament for smaller colleges. The materials note that some professional athletes have emerged from the NAIA. Counsel further asserts that he made no reference to soccer in his cover letter and questions the director's integrity for making such a claim.

We acknowledge that counsel's cover letter that accompanied the instant petition makes no reference to soccer. The director appears to be referencing the cover letter that accompanied a previous petition filed by the petitioner, WAC 04 133 51860. In the cover letter submitted with that petition, page 8, counsel does refer to the petitioner as a soccer player. While the director erred in stating that counsel made the same mistake in the cover letter accompanying the instant petition, counsel's alleged reference to the petitioner as a soccer player is not the basis of the director's decision. As such, we need not withdraw the director's entire decision for this one error.

Regarding the petitioner's collegiate awards, the issue is not whether athletes competing in the NAIA have subsequently gone on to enjoy acclaim in the field. Rather, the issue is whether the NAIA tournaments are sufficiently recognized nationally. Counsel asserts that the director provided no basis for concluding that the NAIA is a lesser league than the NCAA. The petitioner, however, bears the burden of demonstrating that her awards are nationally recognized. The petitioner submitted no evidence that the NAIA enjoys comparable media coverage to other collegiate tournaments, such as evidence of coverage of NAIA games in major sports magazines with a national circulation.

Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

Thus, even those players in the top league are not automatically presumed eligible for this exclusive classification. Thus, playing in a league that is not the top league carries even less weight.

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<sup>2</sup> According to the NCAA's website, [www.ncaa.org](http://www.ncaa.org), the NCAA has 1,024 active members.

In light of the above, the petitioner has not established that she meets this criterion with evidence of *sustained* acclaim as of the date of filing in March 2005.

*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.*

Counsel initially asserted that the petitioner meets this criterion through her membership on the China National Team (through membership in the Chinese Volleyball Association), playing for an NAIA team and her selection as Most Valuable Player and for the "All-American team." The director concluded that the petitioner had not established the membership criteria for the Chinese Volleyball Association. Counsel does not directly address this criterion on appeal.

Membership on a national team, as opposed to one of several major league teams, can serve to meet this criterion. As discussed above, however, the petitioner must demonstrate *sustained* acclaim. According to the materials submitted on appeal, NAIA requires only that incoming freshman have graduated in the top half of their class, achieved a minimum SAT or ACT score and have attained a grade point average of at least 2.0 in high school. These are not outstanding achievements.

We acknowledge the petitioner's selection for All American and All Tournament "teams." The petitioner, however, has not addressed the director's concern that the NAIA does not have the same national recognition as the NCAA other than to question the basis of that concern. As stated above, the record lacks evidence that NAIA teams receive comparable media coverage to NCAA teams. Being selected among the 330 NAIA teams carries less weight than a similar selection by the NCAA, which has more than three times as many members.

In light of the above, the petitioner has submitted little evidence of *sustained* acclaim relating to 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.*

The petitioner submitted several news articles in unidentified Chinese newspapers, another foreign-language article, sports coverage on college websites and articles that appeared in the *Fresno Bee*. As noted by the director and uncontested by counsel on appeal, the record does not contain any evidence regarding the circulation of these papers or translations of the foreign-language articles. At the very least, the *Fresno Bee* appears to be a local paper. Moreover, most of these articles are reporting the results of competitions in which the petitioner played. They are not articles primarily about her. The exceptions appear to be a 1999 article in an unidentified foreign language newspaper and some of the articles in the *Fresno Bee*. As stated above, however, the *Fresno Bee* appears to be a purely local paper

and the record does not contain any evidence regarding the unidentified foreign language publication. Thus, the petitioner has not established that she meets this criterion.

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

Counsel initially asserted that the petitioner was an “elite” member of the China National Team. Jenny Ping Lang, Head Coach of the U.S. National Women’s Volleyball Team, in a letter that contains near identical language to a letter from the petitioner’s coach at Fresno Pacific University, asserts that the petitioner’s key role for the Chinese team is evidence from her most valuable player award. The record contains no recognition from China as a most valuable player and Ms. Lang professes no first hand knowledge of the petitioner’s role for the China National Team.

Regarding her role on Fresno Pacific University’s team, the record contains confirmation of the petitioner’s selection as a member of All American and All Tournament teams as well as most valuable player recognition. These certificates do not reflect that the petitioner was prospectively selected to play a leading role for the team, such as team captain.

The director concluded that the petitioner had contributed to the success of winning teams and, thus, that she meets this criterion. We cannot agree.

Volleyball is a team sport, and we cannot conclude that every member of the team that wins a team championship plays a leading or critical role above and beyond the other members of the team. There is no evidence that the petitioner was a team captain or held some equivalent role on the Chinese National Team. Recognition for past achievements, such as “most valued player” relates more to the first criterion, which we have already addressed. In addition, membership on a type of “all-star” team relates more to the second criterion, which we have also already addressed.

In light of the above, the petitioner has only satisfied two criteria as an athlete, and even that evidence is not persuasive of *sustained* acclaim in March 2005.

Finally, the regulation at 8 C.F.R. § 204.5(h)(5) provides:

*No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, 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.

The director noted the lack of evidence that the petitioner intends to continue in her field of claimed expertise. We note that the petitioner is in the United States pursuant to a student visa, pursuing a degree in “international business/trade/commerce.” Counsel does not address the director’s concern about the lack of evidence of the petitioner’s future plans.

The record contains no evidence that the petitioner intends to continue competing. Even if the petitioner were to seek work as a coach, the petitioner has no documented experience coaching. Thus, she not only cannot meet three criteria as a coach, she cannot demonstrate that she has an established successful history coaching at the national level. Thus, even if we had concluded that the petitioner met three criteria as an athlete, her lack of coaching experience would preclude us from concluding that coaching is within her field of expertise.<sup>3</sup>

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 volleyball player 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 shows talent as a volleyball athlete, but is not persuasive that coaching is within her area of expertise. 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.

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<sup>3</sup> 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.