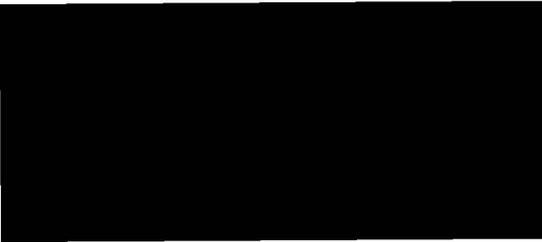




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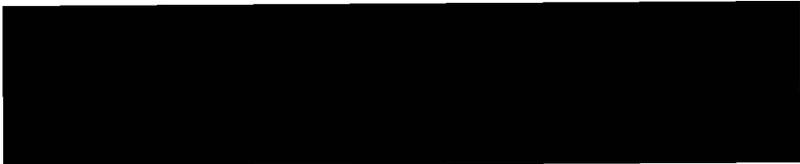
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FILE: WAC 03 140 54194 Office: CALIFORNIA SERVICE CENTER Date: JUN 12 2006

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:



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, 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 to classify the beneficiary 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 that the beneficiary’s sustained national or international acclaim. Specifically, the director concluded that the beneficiary met only two of the ten regulatory criteria, of which an alien must meet at least three. In conclusion, while the director acknowledged the submission of evidence demonstrating some recognition, the director concluded the evidence did not rise to the level of sustained national or international acclaim.

On appeal, the petitioner overcomes one of the director’s concerns. Specifically, the petitioner submits additional evidence regarding the selection process for the beneficiary’s government subsidy.

On March 24, 2006, this office issued a notice of intent to dismiss advising the petitioner of derogatory information discovered by this office. The notice afforded the petitioner 30 days in which to respond. As of this date, more than 60 days later, this office has received no response. As the petitioner has been advised of the derogatory evidence and afforded an opportunity to address that evidence, such evidence may be used in our evaluation of the merits of the appeal.

More specifically, an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

For the reasons discussed below, we fully concur with the director’s final conclusion on page 5 that while the petitioner submitted evidence that the beneficiary “has some recognition or acclaim, the petitioner has not provided sufficient evidence to clearly<sup>1</sup> establish *sustained* national or international acclaim.” (Emphasis added.) We also find that the petitioner has not demonstrated the beneficiary’s reasonable intent to continue working in his area of expertise or that his entry into the United States will substantially benefit prospectively the United States.

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 --

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<sup>1</sup> We acknowledge the proper standard is preponderance of the evidence and do not read the director’s vernacular use of “clearly” as an articulation of the higher clear and convincing evidentiary standard.

- (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 the beneficiary has *sustained* national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a track and field 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.

In considering whether the beneficiary enjoys *sustained* acclaim, this office noted that the record contained no evidence after mid-2001, although the petition was filed in April 2003. In an effort to determine whether the beneficiary enjoyed any sustained recognition in his field as of April 2003, this office searched the Internet for more recent accomplishments by the beneficiary or his athletes. This office discovered a November 1, 2001 article in the *People's Daily* revealing that four athletes from Shanxi, including the beneficiary's star athletes, and their coaches, including the beneficiary, were banned from the Chinese National Games upon the discovery of \$24,100 worth of performance enhancing drugs in the hotel room of the team's doctor. Our Internet search revealed no additional stories indicating that the beneficiary had been exonerated and permitted to resume coaching at other events.

On March 24, 2006, we issued a notice of intent to dismiss, noting the above information and enclosing the story in the *People's Daily*. We allowed 30 days in which to respond. The petitioner did not do so. The above information reveals that the beneficiary had not sustained any acclaim he may have once enjoyed as of the date of filing.

Finally, the beneficiary's ban from his area of expertise over a year prior to the submission is material to whether the beneficiary's recognition in his field was sustained as of the date of filing, whether the beneficiary reasonably intends to continue in his field of expertise and whether the beneficiary will substantially benefit prospectively the United States. Thus, the concealment of this ban was a concealment of a material fact and seriously compromises the credibility of the evidence of record.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). With these considerations in mind, we will evaluate the evidence as it relates to the regulatory 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 submitted evidence that the beneficiary received local honors and that, on June 27, 2001, the State Council of the Republic of China granted the beneficiary a special government subsidy. The director determined that the petitioner had failed to establish the criteria for granting such a subsidy. On appeal, the petitioner submits evidence that such subsidies are limited to professional sports coaches who meet the following two conditions:

- i. His or her students have won a gold, silver or [bronze] medal at [an] Olympic, World Championship or World Cup; or have won a gold medal at an Asian Games competition; or have superceded an Olympic record or the world record which has been recognized by the international organization in that sports [sic]; and
- ii. The coach has trained the qualified student for the consecutive two years during the four years before his students attained the qualifying achievements as described in paragraph (i) above.

The petitioner also submitted evidence that the beneficiary's students have won several national and international awards. Thus, the petitioner has overcome some of the director's concerns regarding this criterion on appeal. As stated above, however, the director did acknowledge in his conclusion that the beneficiary has some recognition, but concluded that it did not rise to the level of sustained acclaim. None of the evidence relating to this criterion dates from after the middle of 2001. Thus, while the type of evidence is persuasive, it is not evidence of the beneficiary's sustained acclaim in April 2003 when the petition was filed. As discussed above, the petitioner has not challenged our evidence that the beneficiary was banned from the national games in China in 2001. Thus, the evidence submitted to

meet this criterion, while persuasive of the beneficiary's recognition prior to late 2001, is not evidence of sustained acclaim in 2003.

*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.*

The director concluded that the beneficiary's coaching for various teams could not serve to meet this criterion as the teams were not associations. Counsel does not contest this conclusion in the new brief submitted on appeal. We find consideration of the beneficiary's role as a coach for distinguished teams is better considered under the leading or critical roles criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii).

*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 published materials about Olympic delegations and competition results, some of which mention the beneficiary by name. We acknowledge that the director erred in concluding that none of the published material is about the beneficiary and in stating that the translations were not certified. That said, counsel is not persuasive on appeal in asserting that the materials need only be about the alien's work, and not the alien himself. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) specifies that the materials must be "about the alien . . . relating to the alien's work." Most of the materials in the record that are about the beneficiary appear in regional publications and in large dictionaries featuring numerous Chinese personalities. Articles in local publications cannot serve to meet this criterion. Appearing as one of thousands, or even hundreds of other successful individuals in a frequently published directory is not evidence of national acclaim.

We acknowledge the submission of a translation for a September 2000 article about the beneficiary from "Xinhua Net." The translation of this article, however, is not accompanied by the original foreign language document. Regardless, in November 2001, as we advised the petitioner, the *People's Daily* published a highly negative article reporting the beneficiary's ban from the national games based on doping allegations. We cannot conclude that Congress intended those with negative press coverage and, thus, negative acclaim, to qualify for the exclusive classification sought. As such, any positive value the Xinhua Net article might carry is more than outweighed by the negative publicity in November 2001. As discussed above, the petitioner was advised of this information and offered an opportunity to respond, including by submitting evidence that the beneficiary was exonerated and reinstated within the sport. The petitioner failed to do so.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

*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 director concluded that the beneficiary meets this criterion based on his duties as a coach. The evidence submitted to meet a given criterion must be evaluated as to whether it is indicative of or uniquely consistent with national or international acclaim. Duties inherent to the alien's occupation cannot serve to meet this criterion. It is inherent to the occupation of coach to evaluate one's students. Not every coach enjoys national or international acclaim. As such, we must withdraw the director's finding that the beneficiary's coaching responsibilities can serve to meet this criterion.

The record does contain evidence that in 1998, the beneficiary was selected to serve on the Evaluation Committee for the Senior Sports Coaches in Shanxi province. Given the lack of evidence relating to accomplishments after mid-2001, however, we cannot consider the 1998 selection as evidence of sustained acclaim in 2003 when the petition was filed.

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

The director concluded that the evidence was insufficient to establish that the beneficiary's coaching techniques were original or constitute contributions of major significance in the field of track and field. Counsel does not contest this conclusion on appeal.

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

The director acknowledged the beneficiary's authorship of scholarly articles in the field but concluded that without evidence of the circulation of the publications in which the articles appeared, the petitioner could not establish that the articles appeared in major media. On appeal, counsel asserts that the articles appeared in professional publications, as is clear from the covers of the publications.

The petitioner authored articles in 1996 and 2000 in *Field and Track*, published by the China Athletics Association. We acknowledge that the regulation at 8 C.F.R. § 204.5(h)(3)(vi) uses the phrase "professional or major trade publications or other major media." The use of the phrase "or *other* major media," (emphasis added) suggests that the alternative must also constitute major media. On the other hand, because "major" modifies "trade" and not "professional," it could be argued that the professional publications need not be "major." The ultimate standard for the classification sought, however, is national or international acclaim. Thus, it is the petitioner's burden to demonstrate that the evidence is indicative of or consistent with national or international acclaim. Authorship in a professional publication that does not enjoy national circulation is not persuasive. We will not presume national circulation from the fact that the publication is published by the China Athletics Association. In light of the above, the petitioner has not overcome the director's legitimate concerns.

Moreover, the articles were published in 1996 and 2000 and are not evidence of sustained acclaim in April 2003, when the petition was filed. As such, the petitioner has not established that the beneficiary meets this criterion.

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

Counsel does not contest the director's finding that the record contains no evidence relating to this criterion, which applies to the visual arts.

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

The director found that the beneficiary's services as an Olympic coach for China at the 2000 Olympics serves to meet this criterion and we concur with that finding insofar as it is indicative of the beneficiary's recognition in 2000. As discussed above, the director also found that while the evidence demonstrated the beneficiary's recognition, it did not establish his sustained national or international acclaim. The record contains no evidence of the beneficiary's roles after the middle of 2001 and, as stated above, the petitioner has not responded to evidence we obtained revealing that the beneficiary was banned from the national games in November 2001. As such, while the evidence submitted is persuasive for 2000, it is not indicative of sustained acclaim in 2003, when the petition was filed.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

Counsel does not contest the director's finding that the record contains no evidence relating to this criterion.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

Counsel does not contest the director's finding that the record contains no evidence relating to this criterion.

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 beneficiary has distinguished himself as a track and field coach to such an extent that he may be said to have achieved *sustained* national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the beneficiary enjoyed some earlier recognition as a track and field coach, but is not

persuasive that the beneficiary's recent achievements set him significantly above almost all others in his field.

As evidence to meet the evidentiary requirements at 8 C.F.R. § 204.5(h)(5) regarding the alien's intent to continue working in his area of expertise, the petitioner submitted the beneficiary's statement of intent to work as a coach at schools at various levels and athletic clubs. While such evidence might fall within the type of evidence required by the regulation, in this matter, the beneficiary was banned from the national games in China based on doping allegations. The petitioner has been offered an opportunity to respond to this derogatory evidence and has failed to do so. The record contains no evidence that the beneficiary would be able to secure employment in his area of expertise without concealing his ban in China. Thus, we are not persuaded that the petitioner has established that the beneficiary reasonably seeks to enter the United States to continue working in his area of expertise.

Further, as stated above, the statute requires that the alien's entry to the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A)(iii) of the Act. While there are no evidentiary requirements for this provision in the regulations, we are not precluded from addressing this statutory requirement where evidence suggesting no prospective benefit exists. The petitioner was afforded an opportunity to respond to our concerns that the beneficiary was banned from the national games in China based on doping allegations. Given this record, we are not persuaded that the beneficiary's entry into the United States will substantially benefit prospectively the United States.

For the above stated reasons, considered both in sum and as separate grounds for denial, 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.