



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: LIN-03-177-50029 Office: NEBRASKA SERVICE CENTER

Date: OCT 07 2004

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.

Mari Johnson

R Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

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 did not dispute the petitioner's evidence of national acclaim, but determined the petitioner had not established that she was coming to the United States to continue working in her field of expertise.

On appeal, counsel asserts that the petitioner continues to swim and is pursuing coaching opportunities. Counsel supports his arguments with precedent and non-precedent decisions and evidence of the petitioner's recent swimming accomplishments.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

This petition, seeks to classify the petitioner as an alien with extraordinary ability as a swimmer. The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. The director did not question any of the evidence submitted, acknowledging the petitioner's national acclaim in China. The director did note that the petitioner has not qualified for the U.S. Olympic team and is not pursuing that goal. On appeal, counsel correctly notes that international acclaim is not required. As further noted by counsel, the petitioner continues to win medals at national U.S. competitions,

most recently placing third in the 2004 Masters Swimming Short Course National Championships in Indianapolis. Thus, the petitioner's sustained acclaim is not at issue.

8 C.F.R. § 204.5(h) requires that the petitioner seek to "continue work in the area of expertise." At the time of filing, the petitioner was studying for her Master's degree in Social Work. In response to a request for additional documentation, the petitioner indicated that she was performing her optional practical training as a community development researcher/practitioner. This work involved operating a swimming-based community development program. Thus, her social work was integrated with her area of expertise, swimming. Moreover, the petitioner continued to compete at that time and still does so.

On appeal, the petitioner asserts that she is no longer able to obtain funding for her community development program, but is pursuing work as a coach in addition to continuing to compete. As stated above, the petitioner submitted her 2004 competition results. Counsel argues that coaching is sufficiently related to swimming. We do not agree. While a swimmer and a coach certainly share knowledge of swimming, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002). The court noted a consistent history in this area. While counsel's argument on that point is not persuasive, as stated above, the petitioner continues to swim in competitions. Thus, we find that the director erred in concluding that she does not intend to continue in her field of expertise.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.