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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 27 2005
WAC 98 237 51176

IN RE: Petitioner:
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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, California Service Center. On the basis of further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on June 24, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Form I-140, Immigrant Petition for Alien Worker, was filed on September 3, 1998. 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 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582. In *Matter of Ho*, the Board found that because "there is no right or entitlement to be lost, the burden of proof in visa petition revocation proceedings properly rests with the petitioner, just as it does in visa petition proceedings."

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 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 he has earned 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 swimming coach. We note here that a coach who has established a successful history of coaching athletes who compete regularly at the national level has a credible claim under this classification; a coach of novices who is no longer active at the national level does not. For the petitioner to show that his national acclaim as a coach is *sustained*, he must demonstrate that, during the years immediately preceding this petition's filing date, swimmers under his direction have competed successfully at the national or international 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). 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 pertaining to 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.*

On appeal, counsel states: "[The petitioner] was awarded a gold medal by the State Sports Commission of China for his outstanding achievements in the field of swimming coaching and instruction. This is the highest nationally recognized award in this field."

As evidence of this award, the petitioner submitted a photograph of what is alleged to be his medal. Above the photograph it states: "Pioneer of Physical Education of China." It has not been established that this medal represents a nationally or internationally recognized award. Contemporaneous first-hand evidence of national acclaim (such as, for example, national publicity surrounding the presentation of the award) carries far greater weight than the brief, vague statements from witnesses selected by the petitioner. The date that this medal was presented to the petitioner has not been provided, nor is there any evidence from the State

Sports Commission of China (now the General Administration of Sports) describing the significance of this award or the selection criteria for recipients. We note here that section 203(b)(1)(A)(i) of the Act demands extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence to establish that this award enjoys significant national or international stature. Simply alleging that an award is nationally recognized cannot suffice to satisfy this criterion. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner has not submitted adequate evidence to establish the degree of recognition accorded to the above award.

It is not clear that significant awards exist for swim coaches; however, national awards won by teams or individuals coached by the petitioner may be considered as comparable evidence for this criterion under 8 C.F.R. § 204.5(h)(4). While the petitioner appears to have coached a number of national swimming champions in China during the 1970's and early 1980's, the record contains no evidence showing that the petitioner has *sustained* his previous acclaim as a coach at the national level. For example, the record contains no evidence showing that swimmers coached by the petitioner have won national titles during the last decade.

> *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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national or international distribution.

On appeal, counsel states: "The self-petitioner was reported in book published by the State Sports Commission of China. This book is an official publication about the outstanding achievements of the well-known coaches and top athletes in China."

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The incomplete translation of the section in which the petitioner appeared was not certified as required by the regulation. Furthermore, there is no indication that this book devotes little more than two sentences to the petitioner or his achievements. A book of this size (268 pages), with such a limited portion devoted to the petitioner, appears to be more of a comprehensive directory than a special form of recognition limited to an elite few. We cannot conclude that the petitioner's limited entry (three lines of text on page 163) into a book of this size would constitute qualifying published material about the petitioner and his work. We further note that the date of publication and evidence showing the extent of the distribution of this publication were not provided. Nor is there any evidence showing that the petitioner has received *sustained* national media coverage during the last decade.

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

On appeal, counsel states:

> The self-petitioner served as the Chief Swim Coach for Shanghai Swim Team from 1960 to 1983. Under his training, this team won national championship for many times [sic]. Then he was appointed Chief Coach of China's National Swim Team for the 21st Olympic Games. From 1985 to 1987, he served as the general coach of the National Swim Team of Jordan.

A letter issued by the Shanghai Sports Federation provides documentary support for counsel's assertions. The petitioner also provided an identification certificate from 1981 stating that he "was entitled Swimming Coach at the national level." In addition, the petitioner provided several testimonial letters from former swimmers who describe their prior accomplishments under the instruction of the petitioner. For example, [redacted], now coach of the X-Cel Swimming Club in New Jersey, states:

> I was a national champion in the 200 meter Butterfly in China.
>
> * * *
>
> In 1979, in order to prepare us for the 22nd Olympic Games, [the petitioner] led the top members of the Shanghai Women's Swimming team to Beijing for training. During that time, when [the petitioner] was the head coach, we had outstanding records. As a result, in 1980 I achieved the record time in the nation for the women's 200 Meter Butterfly swim event. (This record had been kept for five years.)
>
> From 1980 to 1984, I remained the number one women's 200-meter Butterfly swimmer at both the Chinese National Games and Chinese National Tournament Games.

A letter [redacted] President, International Swimming Hall of Fame, refers to the petitioner as "one of the leading aquatic authorities in the Republic of China." [redacted] notes that the petitioner served as a "National Swim Team Coach of China" and "National Coach of Jordan (1985-87)."

Additional witnesses confirm that the petitioner coached members of the Shanghai Swimming Team to national titles in various swimming events during the 1970's and 1980's. The record, however, contains no evidence showing that the petitioner has remained active at the national level of competitive swimming subsequent to the 1980's. Without evidence showing that the petitioner has coached athletes to national or international swim titles sequent to the 1980's, we cannot conclude that petitioner has *sustained* his prior acclaim as a national competitive swimming coach.

Beyond the petitioner's failure to satisfy at least three of the regulatory criteria, the statutory language at section 203(b)(1)(A)(ii) of the Act requires an alien seeking to enter the United States to "continue work in the area of extraordinary ability." *See also* 8 C.F.R. § 204.5(h)(5). According to a letter from Harriet Carlisle, Vice President, Carlisle Chiropractic After Hours/Grandview Swim School, the petitioner intends to work in the United States as a youth swimming lessons instructor at a local pool in Monterey Park, California rather than as a coach of competitive swimmers at the national level. This job offer is not indicative of a reputation as a nationally acclaimed competitive swimming coach. In this instance, the petitioner has not shown that,

during the years immediately preceding this petition's filing date, he has been actively involved as a coach at the highest level of competitive swimming. Nor has the petitioner shown that he has positioned himself for employment as a national level competitive swimming coach here in the United States.

On May 1, 2001, the petitioner appeared before a CIS officer at the Los Angeles District Office regarding his Application for Adjustment of Status to Lawful Permanent Residence, Form I-485. At that time, it was determined that the petitioner did not meet the regulatory criteria for an alien of extraordinary ability and that his petition had been approved in error. The petition was then forwarded to the California Service Center for revocation of the approval of the petition.

On May 7, 2004, the director of the California Service Center issued a Notice of Intent to Revoke the approval of the petition. The notice of intent to revoke informed the petitioner that the evidence presented did not satisfy at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On June 4, 2004, the Service Center received the petitioner's response to the Notice of Intent to Revoke and it was incorporated into the record of proceeding.

On June 24, 2004, the director of the California Service Center properly revoked the approval of the petition. In *Matter of Ho*, the Board found that, pursuant to section 205 of the Act, CIS may revoke the approval of a petition "at any time for good cause shown." We find that *Matter of Ho* supports CIS' determination.

We regret that more than four years had elapsed between the approval and the revocation (the record offers no explanation for this delay). Nevertheless, section 205 of the Act specifically allows for revocation "at any time," and the pertinent regulations are silent as to the issue of elapsed time. In this case, the petition should never have been approved, and the director, upon learning of this error, essentially had no choice but to revoke the erroneous approval. The director acted appropriately, albeit belatedly, and we cannot overturn a decision that is couched in the pertinent statute, binding precedent, and regulations.

In this matter, review of the record does not establish that the petitioner has distinguished himself as swimming 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. 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 these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968), affirmed in *Matter of Estime* and *Matter of Ho*. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.