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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUN 26 2009
SRC 07 233 50799

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) 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.

On appeal, counsel submits a brief. For the reasons discussed below, we uphold the director's decision.

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 into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). 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 he has sustained national or international acclaim at the very top level.

On the Form I-140 petition, the petitioner did not indicate his proposed employment in Part 6 as required. Rather, the petitioner submitted a personal statement asserting that he would like to work in

the United States as a swimming athlete and/or as a swimming coach. The director noted the petitioner's lack of coaching experience and the lack of evidence that he has prospective job prospects as a coach. On appeal, counsel asserts that the petitioner's current college coach thinks the petitioner "will be a marque [sic] national type swimmer" and submits the petitioner's page on his college team's website.

At issue, then, is whether the petitioner has demonstrated that he has extraordinary ability as a swimmer.

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). Counsel no longer asserts that the petitioner's Chinese awards, in the aggregate, served as a "one-time" achievement and we find that the one-time achievement must be a single event, namely a major internationally recognized award. 8 C.F.R. § 204.5(h)(3). We note that Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). The regulation at 8 C.F.R. § 204.5(h)(4) does not permit the submission of comparable evidence to meet this one-time achievement standard. Rather, meeting three of the ten regulatory criteria that follow is considered comparable to the one-time achievement. Significantly, multiple lesser internationally or nationally recognized awards serve to meet only one of the ten alternative regulatory criteria, 8 C.F.R. § 204.5(h)(3)(i), and, thus, cannot be considered a one-time achievement.

Barring the alien's receipt of a major internationally recognized 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 director does not appear to contest that the petitioner meets the lesser nationally or internationally recognized prizes or awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i). We find that the record supports this finding. As noted by the director, however, the evidence for that criterion ends in 2005, approximately two years before the petition was filed. Thus, the evidence submitted to meet another criterion must demonstrate acclaim more proximate to the date of filing if the petitioner is to demonstrate *sustained* acclaim as of that date.

The petitioner has submitted evidence that, he claims, meets the following other criteria.[1]

> *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.*

Initially, counsel asserted that the petitioner's title of "Sports Master," conferred in 2000, serves to meet this criterion. The director did not specifically discuss this criterion. On appeal, counsel asserts that the

[1] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

title is a "membership associated with outstanding achievement." The petitioner submits what purports to be a translation of ranking standards for the China Swimming Association. This document states that a Sports Master "must be one who has reached the standard of achievement at any national competition organized by the Swimming Sports Administrative Center, in addition to the above mentioned competitions." Counsel asserts that "only athletes who reach the standard (of a speed) at a competition at a level at the National Games can earn the title of Sports Master." The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). Counsel subsequently appears to acknowledge that the title merely qualifies an athlete to compete at the national level.

A title is not a membership in an association and counsel has not explained how this evidence is comparable to a membership in an association pursuant to 8 C.F.R. § 204.5(h)(4). Regardless, that regulation only permits the submission of evidence where a criterion is not readily applicable to the alien's field, which is not claimed in this matter.

Even if we considered this title to be comparable to a membership pursuant to 8 C.F.R. § 204.5(h)(4), the petitioner must establish that the "membership" criteria require outstanding achievements. The record does not support counsel's attestations regarding the title's "standard of achievement." Significantly, the petitioner received this title in 2000, before he had won any of the awards documented in the record. The timing is consistent with counsel's implication that the title merely qualifies an athlete to compete at the national level. Significantly, the supplementary information at 56 Fed. Reg. 60899 (Nov. 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, eligibility to compete at the national level is not an outstanding achievement. In light of the above, the petitioner has not demonstrated that he meets this criterion.

Published material 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 news coverage of events where he competed that include his own results in addition to the results of the other successful swimmers. The director concluded that the articles are not about him and did not demonstrate the petitioner's "success over others who do the same work." On appeal, counsel asserts that the articles report the petitioner's awards, which does place the petitioner above other swimmers. Counsel further notes that one article mentions that the petitioner came close to breaking a national record during one of his second place finishes.

We concur with counsel that the awards are significant. Those awards, however, have already been considered sufficient to meet the criterion at 8 C.F.R. § 204.5(h)(3)(i). To conclude that the petitioner's awards can also meet this criterion, however, would render meaningless the statutory requirement for extensive evidence and the regulatory requirement that the alien meet at least three criteria.

At issue for this criterion is whether the published material is about the petitioner. We concur with the director that the materials are about the events where the petitioner competed and cannot be credibly considered to be about the petitioner. *Accord Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

In light of the above, while the director's assertion that the articles did not set the petitioner apart from others may have confused the matter, the articles submitted cannot serve to meet this criterion as they do not meet the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii), which requires that the published materials be about the alien. Thus, the petitioner has not established that he meets this criterion.

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

Initially, counsel referenced the petitioner's November 2005 Honorary Certificate from the People's Government of Shanghai City issued in recognition of the petitioner's contribution to the 10th National Games as evidence to meet this criterion in addition to the petitioner's awards. The director concluded that the petitioner had not demonstrated that he had had a major impact on swimming such as initiating an influential new style or stroke. On appeal, counsel asserts that the petitioner's sport is judged on speed, not creativity, and asserts that [redacted] has made an original contribution of major significance without contributing a new style or stroke.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be both original and of major significance. We must presume that the word "original" and the phrase "major significance" are not superfluous and, thus, that they have some meaning. While counsel may be correct that contributions to the petitioner's field, are unlikely to include contributing a new style or stroke, we are not persuaded that merely winning awards, which fall under a separate criterion, is original or a contribution of major significance. Moreover, the petitioner has not demonstrated that the Honorary Certificate, while using the word "contribution," recognizes anything other than participation in the competition. Without more evidence as to what "contribution" the certificate recognizes, we cannot determine whether it is either original or of major significance.

We concur with the director that the contribution must be both original and have had a demonstrable impact on the field of swimming. Without evidence of a truly original contribution of major

significance, such as setting a national or world record for speed,[2] we cannot conclude that the petitioner meets this criterion.

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

Neither counsel nor the petitioner initially asserted that the petitioner meets this criterion and the director did not address it. On appeal, counsel merely asserts in his conclusion that the petitioner meets this criterion without providing any explanation as to what role counsel is referring or the organization or establishment for which the petitioner performed this role. We have already considered the petitioner's alleged contributions above. This criterion requires evidence that the petitioner was selected to perform in a role that is leading or critical for an organization or establishment as a whole and evidence that the organization or establishment enjoys a distinguished reputation nationally.

The record establishes that the petitioner has successfully competed and we have acknowledged that he meets the lesser nationally or internationally recognized awards criterion. As stated above, the "Sports Master" designation appears to merely qualify the petitioner to compete at the national level and does not appear to represent a specific leading or critical role for an organization or establishment with a nationally distinguished reputation. The record lacks evidence establishing the basis of the Honorary Certificate from Shanghai City. Ultimately, the record contains no evidence that the petitioner was selected to perform as team captain or in another leading or critical role beyond team member for an organization or establishment with a nationally distinguished reputation.

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 have risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a swimmer 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 petitioner shows talent as a swimmer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in 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 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.

[2] Or, as in the case with the swimmer named by counsel on appeal, [redacted] setting a record for the most Olympic gold medals at a single Olympics.