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20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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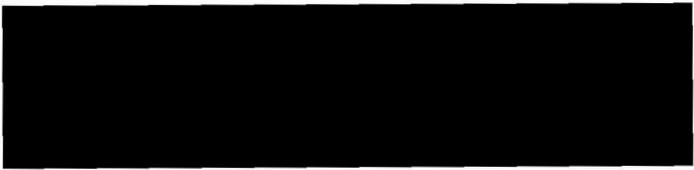


FILE: WAC 05 185 53083 Office: CALIFORNIA SERVICE CENTER Date: DEC 03 2007

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 employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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.

On appeal, counsel argues that the petitioner “has risen to the very top of her field of endeavor” and that “she is eligible to be classified as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act.”

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.

Citizenship and Immigration Services (CIS) 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, 60898-99 (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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on June 22, 2005, seeks to classify the petitioner as an alien with extraordinary ability in table tennis. 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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “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 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.*

The petitioner submitted photocopies of the following:

1. 2<sup>nd</sup> place award in the “Women’s High School Group Table Tennis” event at the 35<sup>th</sup> National Table Tennis Competition (June 25, 1989)
2. “Meritorious Award” from the petitioner’s high school principal stating: “THIS AWARD HONORS THE STUDENT FOR EXCELLENT PERFORMANCE IN TABLE TENNIS AND FOR BRINGING GLORY TO SEOUL WOMEN’S COMMERICAL HIGH SCHOOL” (February 14, 1989)
3. 1<sup>st</sup> place award in the “Women’s High School Group Table Tennis” event at the 26<sup>th</sup> National Table Tennis Competition (July 8, 1988)
4. 1<sup>st</sup> place award in the “Women’s High School Group Table Tennis” event at the 9<sup>th</sup> Seoul City Table Tennis Competition (April 16, 1988)
5. 1<sup>st</sup> place award in the “Women’s High School Group Table Tennis” event at the 24<sup>th</sup> National Student Table Tennis Competition (August 21, 1986)
6. “Meritorious Award” from the petitioner’s junior high school principal stating: “THIS AWARD HONORS THE STUDENT FOR EXCELLENT PERFORMANCE IN TABLE TENNIS AND FOR BRINGING GLORY TO MOON YOUNG JUNIOR HIGH SCHOOL” (February 14, 1986)
7. Photograph of the petitioner’s junior high school table tennis team receiving an award at an unidentified tournament (June 14, 1985)
8. 3<sup>rd</sup> place award in the “Girl’s Elementary School Multiple Match Table Tennis” event at the Seoul City Table Tennis Competition (April 16, 1982)
9. Multiple photographs of what the petitioner alleges is a 2<sup>nd</sup> place trophy from the 3<sup>rd</sup> Seoul City Table Tennis Competition Elementary School Tournament (April 15–16, 1982). The information provided by the petitioner does not specifically identify the group to which this award was presented.
10. Photograph of what the petitioner alleges is an “Outstanding Group Performance” award plaque (February 3, 1982) from the president of the Seoul Table Tennis Association. The information provided by the petitioner does not specifically identify the group to which this award was presented.

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to 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 English language translations accompanying the petitioner's award documentation were not certified as required by the regulation. Further, the preceding awards were limited by their terms to student competitors at the elementary, junior high, and high school levels. Such awards exclude older, more experienced table tennis players from consideration. There is no evidence showing that the petitioner faced competition from throughout her field, rather than only her approximate age group within that field. Thus, petitioner's receipt of the preceding awards is not an indication that she has reached the "very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). Regarding items 2, 4, 6, 8, 9, and 10, we find that these student awards reflect local recognition rather than national recognition. Moreover, we cannot ignore that the awards numbered 1 through 10 were received more than 15 years before this petition was filed and therefore they are not an indication that the petitioner's national or international acclaim in table tennis has been *sustained*.

The petitioner also submitted an April 2005 article printed from the internet site of *Korea Times Hawaii* entitled "The 12<sup>th</sup> Korean Athlete Association Table Tennis Competition, [REDACTED] Sweeps Awards Away in Singles & Doubles." The article states that the petitioner was the "women's singles first place winner" at a recreational competition held at the Palama Gymnasium in Hawaii on April 23, 2005.<sup>1</sup> Rather than submitting primary evidence of her receipt of a prize or award from this event, the petitioner instead submitted an article posted on the internet site of a local Korean-language publication mentioning her first place victory. The English language translation accompanying this article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). According to the April 2005 article, participants in this local tournament included players from Joong-ang Church, Pony Taxi, and New Hope Church. There is no evidence that an award from the 12<sup>th</sup> Korean Athlete Association Table Tennis Competition in Hawaii or that the awards listed in items 1-10 commanded national or international recognition consistent with sustained national or international acclaim in the sport of table tennis. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i), however, specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion.

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

*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 petitioner submitted a 2005 document confirming her membership in Korea's National Table Tennis Association. The English language translation accompanying this document was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence (such as membership bylaws or official admission requirements) showing that the National Table Tennis Association requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's or an allied field.

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<sup>1</sup> There is no evidence showing that this competition was officially sanctioned by the International Table Tennis Federation, the world governing body for table tennis, or USA Table Tennis, the national governing body for the Olympic sport of table tennis in the United States. See [http://www.usatt.org/organization/about\\_usatt.shtml](http://www.usatt.org/organization/about_usatt.shtml), accessed on November 14, 2007.

In light of the above, the petitioner has not established that she 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.*

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. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>2</sup>

As discussed previously, the petitioner submitted an April 2005 article printed from the internet site of *Korea Times Hawaii*, but this article is not primarily about the petitioner. Nor has the author of this material been identified as required by this regulatory criterion. Further, the English language translation accompanying this article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). The record also lacks evidence (such as circulation statistics) showing that *Korea Times Hawaii* qualifies as a professional or major trade publication or other form of major media. Finally, the plain language of this regulatory criterion requires published material about the petitioner in more than one publication. A single article about the petitioner does not meet this requirement and is not indicative of sustained national or international acclaim.

In light of the above, the petitioner has not established that she 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 regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “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). For example, judging a national competition for top athletes is of far greater probative value than judging a local competition for novices.

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<sup>2</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

The petitioner submitted what is alleged to be an English language translation of an “Official Referee Certification” issued to her by the National Table Tennis Association of Korea. The petitioner’s English language translation, however, was unaccompanied by a copy or photocopy of the original Korean language document. The record also lacks official competition rules or other evidence showing that serving as a “referee” is tantamount to participation as a judge of the work of others. Even if the petitioner were to establish that refereeing is tantamount to judging, there is no evidence of her actual participation as a judge (such as correspondence acknowledging her dates of service, a judge’s identification badge from a specific competition, or an event program listing her as a judge). The plain language of this regulatory criterion, however, requires “[e]vidence 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.” [Emphasis added.] In this case, there is no evidence showing the names of the individuals evaluated by the petitioner, their level of table tennis expertise, the specific competitive categories she judged, or any other documentation of her assessments. The benefit sought in the present matter is not the type for which documentation is typically unavailable and the statute specifically requires “extensive documentation” to establish eligibility. See section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). Further, the commentary for the proposed regulations implementing this statute provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Without substantive evidence of the petitioner’s actual participation as a judge of the work of others in her or an allied field that is consistent with sustained national or international acclaim, we cannot conclude that she meets this criterion.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). Further, there is no evidence of qualifying achievements or recognition (during the fifteen years immediately preceding the filing of the petition) showing that the petitioner has sustained national or international acclaim in table tennis in recent years.

On appeal, counsel argues that the evidence previously discussed should be viewed in light of the regulation at 8 C.F.R. § 204.5(h)(4). The deficiencies in this evidence have already been addressed under the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i) – (iv). The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence,” but only if the ten criteria “do not readily apply to the beneficiary’s occupation.” The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner’s occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Review of the record does not establish that the petitioner has distinguished herself 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 is not persuasive that the petitioner’s achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires “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 record includes no such evidence.

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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.