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**U.S. Citizenship
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FILE: [Redacted] **Office:** TEXAS SERVICE CENTER **Date:** **JAN 09 2008**
SRC 06 189 50703

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:

SELF-REPRESENTED

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, Texas 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, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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 he has sustained national or international acclaim at the very top level.

This petition, filed on May 16, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a baseball player and coach. At the time of filing, the petitioner was coaching the Jiangsu Baseball Team. The petitioner played for the Shanghai Golden Eagle baseball team from 2002 to 2005.

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 an Honor Certificate from the Tianjin Institute of Physical Education stating that he was "evaluated as the Excellent Pitcher in the National Youth *Softball* Tournament in 1991." [Emphasis added.] The petitioner's field of endeavor, however, is baseball rather than softball.

The petitioner submitted a "Certificate of Athlete" issued by the Tianjin Sports Committee on "June 10, 1991" stating: "[The petitioner] achieved the champion in the National Winter Training Competition in Dec. 1991, through evaluating, he has reached the standard of Grade 2 Athlete and hereby is conferred the title of Grade 2 Athlete." This certificate bears an issuance date of "June 10, 1991" but states that the petitioner "achieved the champion in the National Winter Training Competition in Dec. 1991." The Certificate of Athlete bears an issuance date six months prior to the date in which the training competition allegedly occurred. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Even if the petitioner were to resolve this inconsistency, the petitioner's accompanying "Achievement Record of Athlete" reflects that the National Winter Training Competition was a "Youth Baseball" event.¹

With regard to the preceding youth awards earned by the petitioner, such awards are not evidence that the petitioner "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). CIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.² Likewise, it does not follow that a baseball player or coach who has had past

¹ The petitioner, born on March 16, 1977, was age 14 in December 1991.

² While we acknowledge that a district court's decision is not binding precedent outside of the district in which the case arose, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a

success playing or coaching at the youth level should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”

The petitioner submitted an Honor Certificate from the Tianjin Institute of Physical Education stating that he was evaluated as the Excellent Batter in the National Baseball Tournament in 1995. There is no evidence showing the level of expertise of the players who competed in this tournament. Nor is there evidence showing that this award is nationally or internationally recognized in the petitioner’s field.

The petitioner submitted a certificate from the State Sports Administration conferring him with the title of “Top-Notch Player” on December 31, 1998, but there is no supporting evidence that this honor is a nationally or internationally recognized prize or award for excellence in the petitioner’s field.

The petitioner submitted a certificate for Second Place in the 8th National Baseball Game in the People’s Republic of China (October 1997), but record includes no supporting evidence as to the significance and magnitude of this event. There is no evidence that this second place certificate is a nationally or internationally recognized prize or award for excellence in the petitioner’s field.

The petitioner submitted National Competition Reward Certificates indicating that his team (Shanghai) earned fourth place at the 2002 National Baseball Championship and fifth place at the 2004 National Baseball Championship. There is no evidence that a fourth or fifth place acknowledgment is a nationally or internationally recognized prize or award for excellence in the petitioner’s field.

On appeal, the petitioner submits an “Achievements Certificate” from the Shanghai Sports Bureau stating that his Shanghai team placed third in 2002 and fourth in 2003, 2004, 2005 in China Baseball League competition. According to published material submitted by the petitioner entitled “Regular Games’ Results of China’s Baseball League for 2005,” the China Baseball League had a total of six teams. The record, however, includes no evidence of the petitioner’s receipt of nationally or internationally recognized prizes or awards for his team’s third and fourth place results.

With regard to the awards submitted by the petitioner for this criterion, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, the petitioner has not submitted evidence showing that his awards commanded national or international recognition consistent with national or international acclaim at the very top of his field.

professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that CIS’s interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

Aside from the petitioner's receipt of prizes or awards as a baseball player, nationally or internationally recognized prizes or awards won by teams coached directly by the petitioner can also be considered for this criterion. The record, however, includes no evidence that the teams the petitioner has coached have won nationally or internationally recognized prizes or awards.

In light of the above, the petitioner has not established that he 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 evidence showing that he competed as a member of the China Baseball League's All-Star Baseball Team and as a member of the national team representing China at the 2003 Baseball World Cup in Cuba. Given the level of accomplishment required to secure a place on these baseball teams, it appears reasonable to conclude that they are the functional equivalent of an association of the type contemplated by this criterion. Therefore, we concur with the director's finding that the petitioner 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 several articles printed in Chinese language publications. The English language translations accompanying these articles were incomplete and not properly certified. 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. Further, the majority of the articles were not primarily about the petitioner and their dates and authors were not provided as required by the plain language of this regulatory criterion. In several instances, the name of the publication in which the articles were printed was not specified. The record also lacks sufficient evidence that the articles mentioning the petitioner were published in professional or major trade publications or other form of major media.

In light of the above, 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.

The petitioner submitted letters of support from his coaches [REDACTED], who coached the petitioner when he was a member of the National Youth Baseball Team, and [REDACTED], Chief Coach of the Shanghai Baseball Team. Their letters describe the petitioner as a talented and dedicated baseball player, but they do not specify exactly what the petitioner's original contributions to baseball have been, nor is there an explanation indicating how any such contributions were of major significance in his sport.

The petitioner also submitted a letter of support from [REDACTED], President, Dynasty Sports Marketing, stating:

One of my companies, Dynasty Sports Marketing, founded the China Baseball League (CBL) in 2002. [The petitioner] participates as a professional baseball player for the Shanghai Eagles in the China Baseball League . . . and has won all-star honors as a pitcher as well as donating his time making personal appearances at several of our "Swing for the Wall" youth development clinics where he has demonstrated not only technical knowledge but also a warm compassion for dealing with young players.

The China Baseball Association (official governing body for baseball in China) has recognized [the petitioner's] unique skills and selected him for the China National Baseball Team where he has distinguished himself as a dedicated team player.

During these past four years, [the petitioner] has shown great initiative in projects related to the development of the Olympic sport of baseball in China. He is the founder of a baseball fan club that has branches throughout China and has been a strong catalyst in helping participation in baseball grow by more than 500% over this period. To support his fan club, [the petitioner] launched a very successful website and regularly communicates the latest baseball information through a highly professionally produced electronic newsletter.

Through his above efforts, Sam has played a major role in the rapid development and growth of baseball in China.

An October 25, 2005 article in *Oriental Sports Daily* states the petitioner's website "has about 2000 registered members." We acknowledge that the petitioner may have fostered interest in his sport through his baseball fan club and participation in youth development clinics, but it has not been established that this work represents original contributions of major significance in his sport. The record does not indicate the extent of the petitioner's influence on others in his field nationally or internationally, nor does it show that the field has somehow changed as a result of his work. For example, there is no evidence that the 500% participation growth in Chinese baseball was primarily attributable to the petitioner's work rather than Tom McCarthy's company's establishment of the Chinese Baseball League.

With regard to the letters of support, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a baseball player or coach who has sustained national or international acclaim. Without extensive documentation

showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

The petitioner submitted evidence showing that he played for the Shanghai Golden Eagle Baseball team from 2002 to 2005. The petitioner's appellate submission included information from the Shanghai Sports Bureau indicating that the Shanghai team placed third in 2002 and fourth in 2003, 2004, 2005 in China Baseball League competition. According to published material submitted by the petitioner entitled "Regular Games' Results of China's Baseball League for 2005," the China Baseball League had a total of six teams. The preceding evidence is not sufficient to demonstrate that the petitioner's team had a distinguished reputation by finishing in the bottom half of the league in three out of four baseball seasons. Nor has the petitioner submitted comprehensive player statistics from 2002 through 2005 distinguishing his play from that of his fellow teammates. For example, the petitioner has not submitted pitching statistics comparing his earned run average to that of the other pitchers on his team. Nor has the petitioner submitted evidence showing that he had greater offensive production than his teammates (through statistics such as his batting average, number of home runs, or number of runs batted in). As such, the record lacks documentation showing that the petitioner's role was leading or critical for the team.

The petitioner submitted evidence showing that he was selected to coach the Jiangsu Baseball Team in 2006. The record, however, includes no competitive statistics or other evidence establishing that this team has a distinguished reputation. For example, the petitioner has not submitted evidence showing that this team has consistently finished among the top teams nationally.

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

In this case, the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) 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 petitioner submitted a May 10, 2006 document, entitled "Migration Plan to the United States of America," stating:

First of all, I will join the American professional baseball games. American professional baseball games are divided into the Major League Baseball and the Minor League Baseball that could be roughly divided into ten levels. Teams of the Minor League Baseball are actually the second teams of their Major League Baseball teams. Although I'm now already qualified to join the Major League Baseball, I can start from the Minor League Baseball, considering that I lack experiences of playing in the U.S. I have made the preparatory contacts with some of the baseball teams of California who responded positively to my performances before and my abilities and welcomed me to development in the U.S. through various ways. I believe this is the moment of opportunity that I can grasp and start showing and proving my talents with my abilities and performances. I will also learn the language and the local culture background of America while working and playing games. I believe that with my hardworking, I will be as glorious in the American baseball games as Yao Ming who has been so successful in the Houston Rockets!

The petitioner's "Migration Plan" lacks sufficient details of his plans for playing professional baseball in this country and does not represent "clear evidence" of his work intentions in the United States. The petitioner fails to specify the name of any professional baseball team in the United States that is actively recruiting him for their roster. Nor has the petitioner specifically identified the names of his "preparatory contacts" with major or minor league California baseball teams. While the petitioner's "Migration Plan" expresses his desire to continue playing professional baseball in the United States, an October 25, 2005 article in *Oriental Sports Daily* states:

[The petitioner], from a major pitcher of Shanghai Baseball Team, to a reliever with few opportunities to be on the field, used words of "as colorful as the rainbow" to describe his twenty years of baseball career in his curtain call speech.

* * *

With the thoughts of "just try," he took part in the Ninth National Games and then the Tenth, another eight years passing by as he struggled.

Before he played in the Tenth National Games [October 2005], [the petitioner] had decided to retire. Because he had been 28 years old, an age could not afford another four years of persistence, [the petitioner] was satisfied or even much happy to end up his baseball career

In light of the above, the record contains no clear evidence that the petitioner has positioned himself to play or coach professional baseball in this country. As such, there is no clear evidence that the petitioner will continue work in his area of expertise in the United States.

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). The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have

in making the initial decision except as it may limit the issues on notice or by rule."). *See also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.