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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

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER  
SRC 08 022 52602

Date:

NOV 18 2009

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.

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).

  
Perry Rhew  
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. The director also questioned whether the petitioner sought to enter the United States to continue working in her area of claimed expertise, swimming.

On appeal, counsel submits a brief and additional evidence. 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 she has 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 athlete/coach." 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. The petitioner has submitted evidence that, she claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>1</sup>

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The director concluded that the petitioner meets this criterion. The most recent award in the record before the director, however, was a second place finish at the National Spring Swimming Tournament in Guangzhou, China, on January 11, 2005. This award predates the petition by two years and nine months, which is not consistent with *sustained* national or international acclaim. On appeal, the petitioner did submit evidence that she continues to compete as a student at the University of the Pacific. The competition results provided on appeal, however, mostly postdate the filing of the petition and cannot be considered. See 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Regardless, the record lacks evidence that the Big West Conference or the Nike Cup hosted at the University of California, Irvine, are national events. The petitioner's profile on the school's website, submitted on appeal, does indicate that she earned an "individual championship" and a second place finish in the 2006-2007 academic year, but the competition where the petitioner earned these results is not provided.

In light of the above, while the petitioner has earned lesser nationally or internationally recognized prizes or awards, it is worth noting that the evidence submitted to meet this criterion is not indicative of or consistent with *sustained* national or international acclaim in October 2007 when the petition was filed.

*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 initially submitted her February 23, 2000 International Sports Master Certificate issued by the National Sports Bureau of China. Counsel initially asserted that this certificate was being submitted to meet the awards criterion. The petitioner also submitted the time standards for each stroke required for certification as an International Sports Master. The times must be recorded at a national competition or above. Counsel asserted that this certification places the petitioner among the top 72 swimmers in China, a country of 1.3 billion. We will not compare the petitioner with every person

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

living in China, including the majority of Chinese who do not swim competitively. Regardless, 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). Nothing in the record suggests that only 72 swimmers were accorded International Sports Master status in China.

Although counsel did not initially assert that the certificate was submitted to meet this criterion, the director concluded that the certification was the result of a regional evaluation and, thus, could not serve to meet this criterion. On appeal, counsel notes that the standard times must be recorded at national events and questions how the director determined that the certificate was only regional recognition. Counsel reiterates the unsupported claim that there are only 72 International Sports Master swimmers in China.

We concur with counsel that the certificate is apparently based on results at national competitions. While the petitioner submitted notable time limits for certification as an International Sports Master, the petitioner was so certified in February 2000, before she had received any of the national awards contained in the record, the earliest of which is dated May 2000. If the petitioner's certification merely qualified her to compete at national or international events, we are not persuaded that such qualification is an outstanding achievement. Regardless, the certificate is not a "membership" in an "association" and, thus, cannot be considered under this criterion.

In light of the above, the petitioner has not demonstrated 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.*

The petitioner initially submitted several published articles reporting competition results, including the petitioner's results. The director concluded that these articles were not "about" the petitioner relating to her work and, thus, could not serve to meet this criterion. On appeal, counsel contests the director's conclusion and notes the new submission of a new article from 2000. As this article was not before the director, we cannot conclude that the director erred in failing to consider it.

The new article appeared in *Swimming Quarterly* in 2000. The issue was printed by the Scientific Research Committee of the China Swimming Association and the Guangzhou Sports Institute. The article appears to be an interview about the petitioner's training regimen with the petitioner's coach. The summary translation submitted indicates that the "rest of the article talks about the other team members and the training methods of the whole Guangdong Provincial Sports Team."

Counsel does not specifically contest the director's conclusion that the articles submitted initially are not "about" the petitioner relating to her work and we concur with the director. The new article, while including more information about the petitioner's training regimen, cannot serve to meet this criterion.

First, the article dates from 2000 and cannot be considered evidence of *sustained* national or international acclaim in October 2007 when the petition was filed. Notably, the record contains no evidence relating to this criterion or any other criterion postdating 2005, more than two years before the petition was filed. Second, the record does not contain evidence that *Swimming Quarterly* is a professional or major trade journal or other major media. The photocopy of the issue submitted contains no bar code or ISBN or ISSN number. The petitioner did not submit any evidence of the circulation or distribution of this "publication." Finally, the petitioner submitted only a "selected" translation, suggesting that the article is about the training regimen for the entire team rather than the petitioner individually.

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

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

As evidence to meet this criterion, counsel initially referenced a letter from [REDACTED] of the Guangdong Swimming Center and the petitioner's rank as 274 in the world for the 200 meter back stroke. [REDACTED] lists the petitioner's swimming awards and states that she is "one of the best athletes in the field of swimming in China." The director concluded that the evidence submitted was insufficient to meet this criterion.

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.

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.

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,<sup>2</sup> we cannot conclude that the petitioner meets this criterion.

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

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<sup>2</sup> 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.

Review of the record, however, does not establish that the petitioner has distinguished herself as a swimmer or coach 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 indicates that the petitioner shows talent as a swimmer, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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 regulation at 8 C.F.R. § 204.5(h)(5) provides:

*No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by 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.

(Bold emphasis added.) The petitioner submitted a statement asserting that she intended to continue as swimmer in addition to working as a coach. She states that "with the help of my friends in the US, I will be able to secure a job as a swimming coach and hit the ground running in continuing my swimming career." She does not identify these "friends" or how they would be able to secure her employment as a swimming coach or competitor.

The director noted the petitioner's stated intention to coach and concluded that the petitioner had not demonstrated any experience, let alone acclaim, as a coach. On appeal, counsel notes that the petitioner continues to compete as a swimmer. The petitioner submits evidence that, as a college student, she continues to compete in collegiate swim events.

We concur with the director that competitive athletics and coaching are not the same area of expertise.<sup>3</sup> The petitioner's statement is insufficiently detailed to explain how she will continue to compete as a swimmer or even a coach once she is no longer a student, which is not employment.

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.

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<sup>3</sup> See *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002).