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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

Administrative Appeals Office
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC 01 182 54600 Office: Vermont Service Center Date: MAR 11 2003

IN RE: Petitioner: [redacted]
Beneficiary:

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

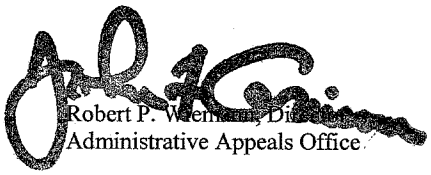
PUBLIC COPY

INSTRUCTIONS:
This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner seeks to classify the beneficiary 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 that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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.

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 evidentiary requirements 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 Bureau regulation at 8 C.F.R. § 204.5(h)(3). It should be emphasized, however, that the petitioner must show that the beneficiary has earned sustained national or international acclaim at the very top level.

This petition, filed on May 22, 2001, seeks the beneficiary's classification as an alien with extraordinary ability in the sport of ice hockey as either a coach and/or player. The beneficiary's proposed employment is not indicated on the immigrant petition. Much of the petitioner's documentation pertains to the beneficiary's accomplishments as a competitive ice hockey player in China from the late 1980's until 1998. The documentation submitted reflects that the beneficiary has not actively competed since 1998. The petitioner's statement initially submitted with the

petition indicates that "[the beneficiary] has indicated his enthusiastic interest in training and couching [sic] youngsters in ice hockey here when his language skills improve enough and if he is authorized to do so." Thus it appears that the beneficiary seeks employment as a coach.

Even if the petitioner seeks the beneficiary's classification as an extraordinary ice hockey player, 8 C.F.R. § 204.5(h)(5) requires that there be clear evidence that the alien is coming to the United States to "continue work in the area of expertise," such as letters from prospective employers, evidence of prearranged commitments, or a detailed statement by the alien indicating how he intends to continue his work in the United States. The documentation accompanying the petition indicates that the beneficiary retired as a player in 1998, and came to the United States in April 1999. He has been a volunteer coach at the Sky Rink – Chelsea Piers in New York while he has pursued English language training. While related, coaching and playing are different areas of expertise that require somewhat related but nevertheless very distinct skills. Thus, competitive athletics and coaching are not the same area of expertise. As such, the petitioner's evidence pertaining to the beneficiary's career as an ice hockey player, by itself, cannot demonstrate the beneficiary's eligibility for the classification sought. This decision will consider whether the petitioner has established the beneficiary's national or international acclaim as an ice hockey player. We will also examine whether the petitioner has earned national or international acclaim through his efforts as a 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 the alien to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that relate 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 submits several "certificates of honor" and certificates of commendation for the beneficiary's performances at various ice hockey competitions held in China. In the decision denying the application, the director gave little weight to ice hockey awards received in China because it is not a country known for expertise in this sport. We do not concur. The regulation clearly allows for the award of lesser nationally recognized prizes in the field of endeavor and does not impose an additional requirement that the country itself have a certain level of international prestige in the sport. In this case, the petitioner was selected for the Chinese National Ice Hockey Team in 1993, playing as a forward and retiring in 1998. Included among his awards are "Best Forward" in the 1993 National Ice Hockey Championships; "Best Player" in a 1995 national ice hockey tournament; "Best Forward" in a 1997 national ice hockey tournament; "Best Player" in a 1997 national ice hockey competition; and "Best Player" in a 1998 national ice hockey tournament. Inasmuch as these awards appear to be based not merely on participation, but on actual accomplishment, they appear to satisfy this criterion related to the beneficiary's performance as an ice hockey player.

We note that the awards submitted by the petitioner were based on the beneficiary's ability as an ice hockey player, and as previously noted, the evidence indicates that the beneficiary retired as a player in 1998. The awards do not establish that the beneficiary has sustained national or international acclaim as an ice hockey coach. Nationally or internationally recognized prizes or awards earned by teams or individuals coached by the beneficiary could be considered to meet this criterion. The petitioner has offered no evidence showing that the beneficiary's coaching skills have produced national or international ice hockey champions.

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 submits letters from [redacted] Senior Ice Hockey Coach of the Chinese National Ice Hockey team, and [redacted] of the Harbin City Ice Hockey Association, confirming that the beneficiary's expertise earned him a berth on the Chinese National Ice Hockey Team. While a team is not an "association," this evidence can be considered comparable evidence under 8 C.F.R. § 204.5(h)(4). However, the beneficiary's membership as a player on the Chinese National Ice Hockey team cannot establish that he has earned national or international acclaim as a coach. The record contains no evidence that the beneficiary meets this criterion as a coach.

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.

The only evidence contained in the record that relates to this criterion is an article published March 8, 2001 in the *Sing Tao Daily*, a Chinese American publication. While the focus of the article is the beneficiary and the article describes his record as an ice hockey player in China, it was published in the Chinese language in New York. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. An alien cannot be shown to have acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. The *Sing Tao Daily* article cannot be considered a major media outlet.

The petitioner has not demonstrated that the beneficiary has received sustained attention from major national or international media as set forth above. Moreover, the petitioner's article fails to show that the beneficiary has garnered sustained national or international acclaim as an ice hockey coach.

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 record contains six letters of recommendation from the beneficiary's colleagues and affiliates at the Chelsea Piers – Sky Rink, where the beneficiary has volunteered as an ice hockey coach. All

are uniformly impressed with the beneficiary's skills and engaging personality while working with the children. These letters do not establish the beneficiary's participation as a judge of the work of others in the field. In a position where "judging" the work of others is an inherent requirement of the occupation, such as a coach or teacher, simply performing one's job related duties is not evidence of national or international acclaim under this criterion. Additionally, a petitioner must show that the beneficiary's sustained national or international acclaim resulted in his selection to serve as a judge of the work of others. Similarly, the judging must be on a national or international level. In this case, the beneficiary has instructed young students locally on a volunteer basis rather than judging ice hockey competitors as the result of independent selection by experts at the national or international level. The petitioner has not established that the beneficiary meets this criterion.

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

The beneficiary's awards were discussed previously under a criterion that the beneficiary has met as an ice hockey player. The ten criteria enumerated in 8 C.F.R. § 204.5(h)(3) are intended to be distinct from one another. An award cannot meet this criterion without clear evidence that the award was given for a specific contribution of major significance, rather than in recognition of a competitive victory. Here, the record contains no evidence that the beneficiary has set a world record or attained another goal that sets a standard in the sport. The evidence fails to establish that the beneficiary's competitive and coaching accomplishments have been widely recognized as making contributions of major significance to ice hockey.

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

Participation as a player on a distinguished team is not evidence of a leading or critical role above and beyond the other athletes on the team. While the Chinese National Ice Hockey Team may be a distinguished organization, the petitioner has not established that the beneficiary exerted control or influence over the team decisions. We also note that the record contains no evidence that the beneficiary has performed a leading or critical role as a coach for a distinguished organization.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner has failed to demonstrate that the beneficiary has earned a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

A review of the record does not establish that the beneficiary has distinguished himself as an ice hockey 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. The evidence

is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established the beneficiary's 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.