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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC 01 242 52268 Office: CALIFORNIA SERVICE CENTER Date: FEB 06 2003

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)

IN BEHALF OF PETITIONER:

[redacted]

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 Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations 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.

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 to 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 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 Service 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.

Counsel states:

> [The petitioner] is one of the best Sepak Takraw players in the world. Sepak Takraw is a skill ball game originating from Asia. It combines the teamwork of volleyball, the dexterity of soccer and the finesse of badminton. As the captain and the top player of China Sepak Takraw Team, he attended many important world championship competitions and has excellent achievements. [The petitioner] was also the captain and top player of Guangxi Nanning Sepak Takraw Team. . . .

> Without any doubt, he is an extraordinary outstanding talent in the field of Sepak Takraw.

Materials in the record indicate that sepak takraw is similar to volleyball, except it is played with a woven rather than inflated ball, and as in soccer, players are not allowed to touch the ball with their hands or arms.

Counsel states "Sepak Takraw will become one of the games in [the] Olympic Games," but counsel does not specify when this will take place, nor does counsel provide any evidence that the sport has indeed been slated for inclusion as an Olympic event. Counsel adds that sepak takraw "has always been one of the important aspects of human civilization and culture of the world," but again provides no evidence to support this rather broad assertion. It would appear that, if sepak takraw were "one of the most important aspects of human civilization," it would not be necessary to describe the sport. Background evidence in the record indicates that the sport of takraw "has been played in Thailand and Malaysia for over 500 years" but has existed in its current form for only about 50 years. The materials offer no indication as to how widely the sport is played outside of Thailand and Malaysia, let alone to establish that the sport "has always been one of the important aspects of human civilization and culture of the world." The same background materials indicate that "the U.S. National Takraw Championships are open to any team of 3 players with U.S. citizenship." This assertion strongly suggests that the sport is extremely obscure and rarely played in the United States, if the only criterion for participating in the national championships is that the team contains three U.S. citizens.

The record demonstrates that the petitioner has competed at the national level, but this in itself is not sufficient evidence of extraordinary ability or sustained acclaim. Supplementary information at 56 Fed. Reg. 60899 (November 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."

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). 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 which, counsel claims, meets 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.*

Counsel states that the petitioner has won "numerous" nationally and internationally recognized prizes and awards, including the gold medal at the King's Cup Sepak Takraw World

Championship in 1992. The petitioner, however, submits no documentation of his receipt of most of the claimed prizes. Instead, the petitioner submits photographs, some of which depict medals, others of which show the petitioner holding trophies. None of these photographs show legible inscriptions on the medals or photographs. These photographs cannot be considered adequate documentation that the petitioner won the prizes claimed in his captions that accompany the photographs.

Certificates from the Sports Commission of the People's Republic of China indicate that the petitioner received the "Quality Test Competition First Prize" and the "Sportsmanship and Morality Award" at the 1991 National Youth Sepak Takraw Competition. Another certificate from the same commission indicates that the petitioner "was awarded the Fourth Prize" at that competition. The petitioner has not established the significance of a "Fourth Prize" certificate, an important concern because in many athletic competitions (such as the Olympic Games) only the top three athletes or teams are awarded medals or prizes. Other documents indicate that the Chinese team, for which the petitioner competed, placed fourth out of eight competitors at the tournament.

In a request for further evidence, the director inquired as to how the "Sportsmanship and Morality Award" reflects on the petitioner's skill and acclaim as an athlete. In response, counsel acknowledges that the award "does not reflect petitioner's ability as an athlete. However, it helps to show the petitioner's fine qualifications a good sportsman should deserve." At issue is not whether the petitioner is "a good sportsman," but rather the extent to which he has earned sustained (rather than momentary) national or international acclaim as a top athlete in his sport.

The Chinese Sepak Takraw Association has prepared a list of championships that the petitioner has purportedly won, but this list is not contemporaneous documentation from the actual entities that awarded the prizes. While the petitioner claims to have won national championships in 1993, 1994, and 1995, he has submitted no documentation from those years, despite his retention of documentation of his fourth-place finish in 1992.

A certificate from the National Sepak Takraw Championship Organizing Committee indicates that the petitioner won the "Sportsmanship and Morality Award" at the 1999 National Sepak Takraw Championship. The certificates do not indicate whether or not the petitioner and his team actually won the competitions, and the petitioner has not established the significance of the awards documented by the certificates.

The Nanning Sports Working Team named the petitioner "Outstanding Athlete" in 1992 and "Outstanding Coach" in 1997. These awards appear to be local, restricted to members of the Nanning team.

> *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 petitioner submits six exhibits under this criterion, including programs from competitions. These materials are distributed at the events themselves rather than circulated nationally or internationally. The programs establish that the petitioner competed at world championship events in 1992 and 1996, but they do not constitute major media.

Counsel also cites a document entitled "The Players List of Prize[s] for Single Technique and Fighting," indicating that the petitioner won "the Prize for Fighting" at the 1992 World Youth Sepak Takraw Championship. This single photocopied page contains no indication that it was published in any major national or international media.

The petitioner submits copies of several articles from the *Nanning Evening Newspaper*. From its title, this paper appears to circulate locally in the city of Nanning. The petitioner has not shown that the paper has significant national or international circulation. Several of the articles mention the petitioner only to identify him as a member of a team. Other articles describe matches in which the petitioner's team played, but the petitioner himself is not mentioned in these articles.

> *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.*

A certificate from the Nanning Sports Working Team states that the petitioner was named Outstanding Judge of 1996 "for his extraordinary achievement in 1996's national judgment work." This vague document lacks verifiable details, such as specific events at which the petitioner served as a judge. Just as a document stating that the petitioner won an unidentified prize would not satisfy the criterion relating to prizes and awards, this document offering only the general statement that the petitioner acted as a judge cannot suffice to fulfill the pertinent regulatory criterion. Also, the petitioner has not shown that a local entity (such as the team for which he had played) has authority to attest to judging work at the national level.

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

The petitioner submits documentation from the Chinese Sepak Takraw Association, showing that the petitioner was captain of the Guangxi Nanning Sepak Takraw Team in 2001. This documentation lists various competitions in which the petitioner is said to have participated, but participation in competitions is not inherently an original athletic contribution of major significance in the field. Even if an athlete wins a significant prize or award, prizes and awards are covered by a separate criterion and thus winning an event is not presumptively a major contribution.

Witnesses from the city of Nanning assert that the petitioner was a skilled and successful player when he competed between 1989 and 1996, but the record does not show that the petitioner has made specific contributions that have affected the sport as a whole or set him apart from others who have played at the same level. Because all of these letters are from Nanning, they do not establish that the petitioner has continued to enjoy acclaim or recognition outside of Nanning.

The only witnesses outside of Nanning are individuals who have worked closely with the petitioner. Mao Junsheng, head coach of the sepak takraw team at Tianjin Sports College, states that he invited the petitioner "to help me with the management of the team and acted as a coach and player in Baodeli Team." An unsigned letter from the Physical Education Department of China University of Political Science and Law (where the petitioner studied in the late 1990s) indicates that the petitioner "was a top player on the sepak takraw team of our university," serving "as the assistant coach and captain of the team" and winning a student championship.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner submits a photograph of himself playing sepak takraw, and several posed team photographs. Athletic competitions are not artistic exhibitions or showcases; otherwise, every athlete who has participated in a spectator sport would meet this criterion.

The director denied the petition, noting that the petitioner had considerable success in the early 1990s but has not shown sustained acclaim at the required national or international level. The director also indicated that the petitioner has not satisfactorily demonstrated that he will continue to work in the field. The petitioner's future plans consist of little more than a vaguely-expressed plan to conduct "market research" and then "draft a detailed plan," concentrating his efforts in California where sepak takraw has been growing in popularity. The director stated that the record does not show that the petitioner has acted as a coach, and therefore his intention to work as a coach is entirely speculative.

On appeal, the petitioner submits a brief from counsel and two new letters. Tsung Wung, captain of the USATakraw National Team in Fresno, California, offers the "professional opinion that [the petitioner's] coaching would greatly improve the skills of professional players in the U.S. at the year 2008 Olympic" Games. In addition to the lack of evidence that sepak takraw will be an Olympic event in 2008, the record contains nothing from Olympic authorities to indicate that competition will be open to "professional players." Although there are exceptions, many Olympic events are open only to amateurs. Tsung Wung asserts "[t]here is no other person in the U.S. who is more qualified than" the petitioner.

Another unsigned letter from the Chinese Sepak Takraw Association, indicating that the petitioner was one of four coaches for China's sepak takraw team, which won a gold medal at the Thai King's Cup World Sepak Takraw Championship in 1997. This association has asserted that the King's Cup is the most important international sepak takraw competition in the world, but the association has produced no evidence to establish the degree of interest in this competition outside of the athletes who actually participate in the events. Also, the award is Thai in origin, and therefore assertions from Chinese officials to the effect that the petitioner won Thai awards are necessarily second-hand at best.

Counsel states that, from the wording of the director's request for evidence, "it is presumed" that the petitioner has satisfied five other criteria, including criteria which the petitioner had not previously claimed to have satisfied. Clearly, if the director had found the petitioner to have

satisfied five of the ten criteria at 8 C.F.R. 204.5(h)(3), then there would have been no basis for the denial of the petition. Counsel's assertion is based on a false premise. While the director made specific requests pertaining only to the petitioner's awards, the director also instructed the petitioner to "submit additional evidence relating to at least three of the categories shown in the regulations." Thus, on its face, the director's notice indicated that the initial evidence was not sufficient (otherwise, it would have been unnecessary to "submit additional evidence").

Counsel asserts that the petitioner has amply satisfied the criterion pertaining to prizes and awards. As noted above, the record contains minimal primary documentation of these awards, which despite their claimed international prestige appear to have produced little documentation, requiring newly created certificates generated years after the fact. Even then, these certificates are not from the entities that granted the awards.

Even if we were to find that the petitioner has satisfied the criterion regarding receipt of national or international prizes or awards, such a finding would address only one criterion. The record, for reasons addressed above, is deficient regarding the other claimed criteria. The record demonstrates that the petitioner had a successful career as a sepak takraw player, which ended circa 1996, and suggests that the petitioner has coached at high levels although documentation regarding the petitioner's coaching work is sparse, and contemporaneous documentation is entirely absent from the record. The statute, cited above, clearly calls for "extensive documentation" of acclaim. Documentation which exists because of an alien's acclaim is more timely and persuasive than evidence which is created after the fact for the specific purpose of supporting an immigrant petition. A petition that relies heavily on the latter type of evidence (as this petition does) suggests that minimal documentation existed before the petitioner began preparing the petition documents.

The regulation at 8 C.F.R. 103.3(a)(2)(vii) requires a petitioner to request, in writing, additional time to submit a brief, and to explain why additional time is necessary. On the I-290B appeal form, counsel did not request additional time, specify how much time would be needed, or explain the need for an extension. Instead, counsel simply indicated that a brief accompanied the appeal form itself. Nearly six months after the filing of the appeal, the petitioner has submitted seven additional letters, all printed on the same off-yellow paper.

One of these letters is a second letter from Tsung Wung, identified here as president of the USATakraw Association, who asserts that the petitioner "has been practicing with us in our training center in Fresno, CA for half a year, driving approximately 500 miles between Los Angeles and Fresno each trip." Tsung Wung indicates that the team needs the petitioner for an upcoming major competition in the Philippines.

Tsung Wung's letter is concerned entirely with coaching work in Fresno with which the petitioner was not involved at the time he filed the petition in July 2001. The petitioner's work with the team did not begin until "half a year" before the December 2002 date of the letter, i.e. June 2002, when the petitioner filed the appeal. If the petitioner was not already eligible at the time he filed the petition, his coaching work a year later cannot retroactively establish eligibility even if the petitioner had shown that the coaching work had won him national recognition (which

it has not). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. *See Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The remaining six letters, signed by various "National Team Players," are exactly and entirely identical except for the names signed at the bottom of each letter. All six letters begin with the phrase "I am the Captain of American Sepak Takraw Team." It is extremely unlikely that these individuals all wrote exactly the same letter, each independently printing it in the same typeface on the same colored paper (and all claiming to be "the Captain" of the same team). Rather, the letters were almost certainly prepared by an unidentified third party for the witnesses to sign. Given that all of these individuals claim to be the captain of the same team, the letters would have negligible credibility and weight as evidence even if they had not been submitted months after the appeal, with no advance indication that they were forthcoming.

The record, taken as a whole, indicates that the petitioner was a talented sepak takraw player who has had more recent success as a coach but does not demonstrate the national, even international, renown that counsel claims the petitioner has earned. The petitioner relies, to excess, on second-hand declarations from a handful of sources rather than on the "extensive documentation" demanded by statute and contemplated by regulation.

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. Review of the record, however, does not establish that the petitioner has distinguished himself as a player or 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 petitioner's achievements set him significantly above almost all others in his 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.

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.