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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

B2

APR 13 2004

[redacted]

FILE: EAC 02 143 51609 Office: VERMONT SERVICE CENTER Date:

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:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The petition 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.

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 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 seeks to classify the petitioner as an alien with extraordinary ability as a water polo player. 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 played on several water polo teams since his early teens, and is currently a member of the St. Francis Water Polo Club in New York. Through counsel, the petitioner has submitted evidence that, he 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 meets this criterion based on his receipt of the Best Player of Tournament award in 2000, a 1994 Medal for Fair-Play at the Balkan International Tournament, a 1990 award for Best Scorer at the national championship for youths, and a 1986 award for Best Scorer at the national championship for children. As evidence, the petitioner submitted photocopied photographs of a medal and two cups. The photocopy of the medal is accompanied by a translation that identifies it as a medal from the International Tournament of the Balkan States for Fair-Play to the petitioner in 1994. The photocopies of the cups contain translations showing that they are from the Bulgarian Water Polo Federation, for best scorer during the "Republican" Championships in 1990 and 1986. The translations do not mention the petitioner and are assumed to be translations of the engraving on the cups, although the photocopies do not reveal such engraving. The translation accompanying the photocopied photograph of the 1990 cup also indicates it was for "Juniors – elders."

In response to the director's request for evidence (RFE) dated December 31, 2002, counsel submitted a document entitled "Sports Carrier," ("Career") about the petitioner that was prepared by Mr. Nilolay Smilev, Executive Director of the Bulgarian Water Polo Federation. The document appears to be a synopsis of the petitioner's career as a water polo player. Mr. Smilev reports that in the 2000 International Championship, the petitioner's team, with him as captain, won first place and the petitioner was "reported for the best player of the Tournament." There is no evidence that the petitioner won an "award" as best player. Mr. Smilev's compilation of the petitioner's statistics and awards confirms the other awards that counsel states the petitioner received. Mr. Smilev also submits a statement confirming the petitioner's receipt of the Best Scorer Award in the national championships for children and youth and indicating that the "Best Scorer" award is significant in the professional career development of a water polo player. Mr. Smilev does not, however, indicate the source of the statistics that he compiled, and no independent evidence exists in the record to substantiate his information regarding the awards or the petitioner's playing statistics. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Further, we note the limited nature of the competition in the national championships. According to Mr. Smilev's compilation, the 1986 competition was for the Children Sport School and was limited to youths born in 1972 and 1973 in the town of Kradzhali. The 1990 award is also limited to "juniors." In neither case did the petitioner compete against the very best water polo players, regardless of age. This award does not reflect that the petitioner was one of the few water polo players at the top of his profession. The petitioner submits no evidence of the selection criteria or the significance of the "Fair-Play" award. The petitioner did not establish that these are nationally or internationally recognized awards for excellence in the field.

The evidence does not establish that the petitioner 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.

To demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

Counsel states that the petitioner meets this criterion based on his status as a member and player of various water polo teams. Competitive sports teams are not considered associations within the meaning of this criterion. Furthermore, contrary to counsel's assertions, no evidence in the record establishes the criteria for selection to each of the teams of which the petitioner was a member. Counsel submits no other evidence of the petitioner's membership in associations within the meaning of this criterion.

> *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.*

In order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

As evidence of this criterion, the petitioner submits several documents accompanied by partial English translations. The regulation at 8 C.F.R. § 103.2(b)(3) requires that documents submitted in a foreign language "shall" be accompanied by a full English translation. Several of the translations are labeled "Extract from a feature" and do not identify the name of the media from which the article was taken. One "extract" contains no date and two others reflect only the year of publication. Further, the "extracts" reveal the articles to be about the petitioner's team and the results of its competition. The petitioner is mentioned only briefly as his statistics are listed. In response to the RFE, the petitioner submitted an article describing his team's win at a competition, and in which the petitioner is mentioned and appears in the accompanying photograph. The translation does not identify the media in which the article appeared or the date that it appeared. Counsel identifies the paper as the *Corriera Della Sera*; however, the assertions of counsel are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Another translation accompanies a photograph in which the petitioner is identified as the best scorer in the championship. The media in which this photograph appeared is also not identified nor is the photograph dated. The evidence provided does not show these articles to be about the petitioner, and there is no evidence that these articles were published in major media, or professional or major trade publications.

A 1989 article that appeared in the newspaper *Sport* does not mention the petitioner but carries a picture identified by the translator as the petitioner. However, the picture as it appears in the newspaper does not appear to carry a caption. A caption of a picture that appears in another extract from *Sport* identifies the

petitioner. However, the edition of the newspaper is not established although the translation indicates that it was a picture of the petitioner at the 1995 "playoffs." Another article that appeared in a 1998 edition of *Sport* mentions that the petitioner was not playing with the team when it lost a game because he was away getting married. These articles are not about the petitioner and his work. In his cover letter accompanying the petition, counsel states that there have been "numerous" articles written abut the petitioner's team and his individual achievements but because of the expense, only a "few samples" were provided. The articles accompanied by insufficient translations under the regulation may not be considered. The evidence provided does not satisfy the requirements of this criterion.

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

In his letter accompanying the petition, counsel asserts that the petitioner meets this criterion based on the televised proceedings of the competitions in which he participated and in news highlights during the sports segments of the news. Counsel lists five international competitions that he states were televised. However, counsel provides no corroborative evidence that these competitions were televised. Further, we note that the wording of this criterion strongly suggests it is for visual artists such as sculptors and painters. It is the nature and purpose of sports teams to play before an audience, and virtually every athlete will exhibit his or her work in this manner. Counsel did not address this criterion further on appeal, and we find that it is not established by the evidence in the record.

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

In order to meet this criterion, the petitioner must not only establish that he played a leading or critical role within an organization but also that the organization has a distinguished reputation. The petitioner claims to meet this criterion based on his performance as a player and team captain on his water polo teams. Counsel submits a list of 36 awards won by teams on which the petitioner was a member. As evidence, the petitioner submits photocopied photographs of medals and awards for 32 of these competitions. As with the individual awards, a translation that identifies the various awards or inscriptions accompanies the photocopies. Only one document lists the petitioner as a recipient of the award. Mr. Smilev of the Bulgarian Water Polo Federation also verified the receipt of most of these awards. However, as noted above, Mr. Smilev does not indicate the source of the information in the document he provided, nor is there independent corroborating evidence to substantiate that the petitioner's team received all of the awards named. A review of the statistics provided by Mr. Smilev indicates that the petitioner was a consistently high scorer with the teams and contributed significantly to their success. As he provided no substantiation of these statistics, the petitioner has not established that he played a critical role in an organization.

The record does not establish that the teams on which the petitioner played enjoy distinguished reputations. Although the team awards, if sufficiently proved, may lend some credence to the reputation of the teams, the evidence does reflect if the number of these awards is significant compared with other teams. No other evidence regarding the reputation of the teams in the water polo or sports community or in the public at large appears in the record. The record does not establish that the petitioner meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

As evidence that he meets this criterion, the petitioner submitted a copy of his contracts with the Slavia Water Polo Club. For the years October 1990 to October 1992, his contracted salary was 4,200 leva and for October 1990 to October 1995, 6,000 leva. The petitioner also submitted a statement from Stoyan Alexandrow, senior coach for the club, in which he states that the petitioner was one of the "best-paid" athletes in the club. A certificate from the accountant for the club indicates that the petitioner's salary during the stated time frames was higher than that of the average salary for the club's athletes. Counsel also states that the petitioner meets this criterion based on his bonus of an apartment in 1992. Additionally, counsel states that the petitioner's scholarship to attend the Central Sports High School is evidence that he meets this criterion. A scholarship is awarded to finance study at a particular institution and is not remuneration for services as required by this criterion.

In order to meet this criterion, the petitioner must show that his salary is significantly higher in comparison with others in the field, and not just in comparison with fellow teammates. The petitioner submits no evidence of his salary since 1995. Counsel states that the petitioner receives no salary for his work in the United States. The statute and regulation require that the petitioner demonstrate sustained acclaim. The evidence submitted in support of this criterion does not establish that the petitioner's salary was significantly high compared with others in water polo, nor does it evidence sustained acclaim.

Other comparable evidence.

The regulation at 8 C.F.R. § 204.5(h)(4) states: "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." While the regulatory language would seem to preclude 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 10 criteria specified by the regulation, we will briefly address the additional evidence the petitioner submitted under this provision.

The petitioner submitted letters from others in the sport of water polo. They attest to the petitioner's skills as a player and the success of the teams on which he has played. He is described as an "excellent" water polo player and one of the "best performing waterpolo competitors in Bulgaria." Jose Maria Abarca, an Olympic Water Polo Champion, describes the petitioner as a "great player who distinguished himself with excellent technique, great speed and leadership skills," all of which contributed to his "astonishing scoring abilities." While the petitioner's supporters speak highly of his skill, they do not describe him as being among the top percentage of players in water polo.

Beyond the decision of the director, we note that the petitioner has not established that he intends to continue working in his expertise upon his entry into the United States. The regulation at 8 C.F.R. § 204.5(h)(5) states, in pertinent part:

> [T]he 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.

The petitioner is a water polo player, and competed professionally in Bulgaria. He submitted a letter indicating that there are no professional water polo teams in the United States. He stated that, if his visa preference classification petition is approved, he will engage in lectures and clinics. He also indicated that he had been in talks with the coach of the St. Francis College water polo team about the possibility of a position as an assistant coach.

While the player and the coach share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in federal court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Nevertheless, recently this office has recognized that there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is appropriate. In a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the petitioner's area of expertise. Specifically, in such a case we will consider the level at which the alien acts as coach. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not.

The petitioner has submitted no evidence to establish that he has taught or coached at any level. Thus his stated intention to do either upon approval of his visa classification petition does not establish that he intends to continue working in his area of expertise.

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 her field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a water polo player 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 his field. The evidence indicates that the petitioner is a talented water polo player, but is not persuasive that the petitioner's achievements set him significantly above

almost all others in his 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 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.