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U.S. Citizenship and Immigration Services

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[redacted]

FILE: LIN 02 261 50156 Office: NEBRASKA SERVICE CENTER Date: MAY 06 2004

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.

Elizabeth O'Brien

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office 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 pertinent regulations 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.

The petitioner is a volleyball coach. Counsel states:

> Petitioner is an internationally recognized volleyball coach and player. While in China he had been a member of China Junior Olympics National Team and a member of Beijing Men's Volleyball Team who enjoyed a reputation of excellence as a core player. . . . He began his coaching career [in] 1993 serving as Assistant coach for the World All-Star Professional Women's Volleyball Team and as Technique Coach for Beijing Professional Men's and Women's Volleyball Teams from 1994 through 1996. Since he came to the United States in August 1996, he has been serving as Assistant and Head Volleyball Coach for both Men's and Women's Volleyball Teams of Palm Beach Atlantic College and Columbia College. . . . He has been offered a position as Assistant Volleyball Coach for Emporia State University in Kansas.

The petitioner was also a student until 2002, earning a bachelor's degree at Columbia College and a master's degree at Palm Beach Atlantic College.

The record contains conflicting information regarding the date of the petitioner's arrival into the United States. Counsel, as stated above, claims that the petitioner "came to the United States in August 1996." On the Form I-140 petition, the petitioner claims to have arrived on January 14, 1997. A letter from the former executive head coach of the Beijing Volleyball Team states that the petitioner coached the Beijing Women's Volleyball Team until July 1997. A certificate in the record, from Columbia College, is dated April 1997, strongly casting doubt on the claim that the petitioner coached a Beijing team at that time.

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 asserts that the petitioner, as a coach, has guided several teams to several championship titles. The record shows that Columbia College teams won National Association of Intercollegiate Athletics (NAIA) national titles in 1998, 1999 and 2000 while the petitioner was an assistant coach for the women's team and a member of the men's team.

[redacted] and [redacted] who each claim to have held various leadership titles in the Chinese Volleyball Association, attest that the petitioner won several national prizes and honors in China as a coach. They state that, in 1995, the petitioner "was awarded . . . National Employee of the Year in Sports to honor his contribution to volleyball," as well as a "Certificate of Extraordinary Achievement in Sports by the National Sports Commission. This is the highest honor the country gives to the players or coaches with outstanding contributions." The record does not contain actual copies or translations of these certificates.

In another joint letter, [redacted] and [redacted], who write under the letterhead of the Volleyball Association of the People's Republic of China, state that the petitioner coached the Beijing Women's Volleyball Team to a championship victory at "the Jakarta Cup of the World Friendship Volleyball Invitational Tournament," but they do not mention the awards and honors listed in the letter by [redacted] and [redacted]

[redacted] who claims to be a former official of the Volleyball Association of the People's Republic of China, the World Volleyball Federation and the Asian Volleyball Federation, states "[t]he title of National Master . . . is the highest honor a sportsman can receive for achievement in the People's Republic of China. . . . There are only two recipients of this award annually." This assertion seems to contradict the claim that the "Certificate of Extraordinary Achievement in Sports . . . is the highest honor the country gives." The witness letters indicate that the petitioner has won two different awards, each of which "is the highest honor" in Chinese athletics, but neither of which is mentioned in any other witness letter despite its supposed prominence. These discrepancies underscore the importance of first-hand documentary evidence, which is generally preferable to witness assertions when it comes to issues of objective fact such as the issuance of significant national awards and honors.

The director requested additional evidence about the petitioner's claimed awards and their significance. The petitioner's response consists primarily of new copies of previously submitted documents and photographs.

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.

Counsel asserts that the petitioner has satisfied this criterion. The record contains articles about the various college teams that the petitioner has served as a player and/or coach. While the articles identify the petitioner, and some contain brief quotations from him, the articles are not "about the alien" as required by the regulations. Furthermore, the petitioner has not established a degree of media coverage commensurate with national or international acclaim. The newspapers that carried the above articles are all local publications based in Columbia, Missouri, including the campus newspaper.

The director informed the petitioner that the initial submission showed only "local or regional media accounts." In response, counsel provides background information about the *Columbia Daily Tribune* (described as "a well-established 20,000+ circulation Midwest daily") and the *Columbia Missourian*, which "is published every morning except Saturdays and the day after Christmas." Counsel does not establish, or even claim, that either of these newspapers circulates widely outside of Columbia, Missouri. Therefore, the petitioner has not rebutted the director's finding. The petitioner's media coverage has amounted to brief mentions in the newspapers of one city.

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

Counsel states "Petitioner's original contributions of major significance in the field of his endeavor are explained in the testimonial letters from nationally and internationally well-known coaches and players." These individuals are mostly players whom the petitioner has coached, or officials of colleges or clubs where the petitioner has coached and/or played. The only exception is [redacted] president of the NAIA Volleyball Coaches Association, who states that she worked with the petitioner at the 2000 NAIA National Championship, which was held at Palm Beach Atlantic College while the petitioner was studying and coaching there. Ms. [redacted] asserts that the petitioner "played an integral part of assisting with the tournament," and that the petitioner "has developed an expertise in the sport that makes him invaluable to both coaches and players." The other witnesses write favorably of their experiences with the petitioner, and praise his skills as a coach and as a player. Such praise, while clearly sincere, does not demonstrate sustained national or international acclaim.

Simply coaching a successful team is not necessarily a contribution of major significance. Other regulatory criteria address championship victories, and the leading role that a coach plays for his or her team. The petitioner must demonstrate specific achievements that stand out in the field, e.g., record-setting achievements such as an unparalleled winning streak, a consistent record of unusually lopsided victories, and so on. Also acceptable could be evidence of original, innovative coaching methods that have had a profound, measurable impact on the team, and which have been widely emulated throughout the field at a national or international level. The achievements must also be directly attributable in large part to the alien seeking classification as an alien of extraordinary ability; the fact that a team enjoys success while the petitioner is involved with that team does not automatically imply that the petitioner is responsible for that success.

Assertions by the petitioner's employers and pupils that the petitioner is among the finest coaches they have encountered are not persuasive. The statutory and regulatory standard is national or international acclaim, which by definition must extend beyond the petitioner's own employers and players.

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

Counsel asserts that the petitioner meets this criterion by acting as a coach or assistant coach for teams that have won, or placed highly, at national championship competitions.

The director denied the petition, stating that the petitioner has not met any of the four criteria that he claims to have satisfied. The director stated that the petitioner did not personally receive the team awards won in the United States, and that the petitioner's Chinese awards appear to be for his work as a player rather than as a coach, or else the evidence is insufficient to allow any conclusion in this regard. The director stated that "regional publications" in Columbia, Missouri, do not establish media coverage on a national scale, and that favorable witness letters do not document original contributions of major significance. The director also concluded that "the position of Assistant Coach is not synonymous with 'a leading or critical role,'" and that the petitioner has not shown that the teams he has coached qualify as organizations with distinguished reputations.

Counsel, on appeal, argues "[t]here is no international award issued to coaches. The best evidence to prove the achievements of the coach is the receipt of champions [sic] by the athletes he trained." 8 C.F.R. § 204.5(h)(4) does permit the submission of comparable evidence when a given criterion does not readily apply to an alien's occupation. It is reasonable to conclude that an award presented to a team reflects on the abilities of the coach, and the record shows that the petitioner has received some trophies engraved with his name, in conjunction with these team awards. Furthermore, a coach undeniably has a leadership role within an athletic team, an assistant coach somewhat less so but still sufficient to qualify as a leading role. Performing such services for a national championship team appears sufficient to meet this criterion. Thus, there is reason to believe that the petitioner has satisfied two of the criteria as a coach rather than as a player.

That being said, we must consider the evidence as a whole. At the time he filed the petition, the petitioner had been in the United States for six years, a very substantial period of time, and yet he has primarily acted as an assistant coach, with a brief period as an interim head coach. Some of this can be attributed to the fact that the petitioner was a student, rather than a faculty member of the colleges where he coached, but this does not explain the nature of the job offer from Emporia State University, where the petitioner accepted an offer to serve as an assistant coach. Documents show that the job offer from Emporia State University is temporary, lasting 44 weeks, and contingent in part on the continued employment of the current head coach: "Should the current head coach cease in his/her employment, this appointment may be terminated."[1] It is difficult to conclude that the petitioner is nationally acclaimed as a top coach, when he has rarely served as a head coach at the national level. The petitioner has acted as the head coach at a lower level, coaching a volleyball club composed of high school-age players, but this team has had only regional success. The petitioner has rarely occupied the top tier of coaching at any one institution, let alone in the field as a whole.

The petitioner submits additional letters and documents on appeal. Stephanie Schleuder, president of the American Volleyball Coaches Association, praises the petitioner's "exceptional skill and professionalism" and asserts "I believe there are many coaching opportunities for someone with his expertise." Similar sentiments appear in the letter from [redacted] director of Education, Disabled, Grassroots and Beach

[1] While some Emporia State University officials maintain that they seek to continue to employ the petitioner, informal letters of this kind do not and cannot supersede formal documentation in the record, which specify the temporary nature of the appointment.

Volleyball for USA Volleyball.[2] Such statements do not show that the petitioner is nationally acclaimed as one of the very top coaches in the country. Furthermore, the statute requires "extensive documentation" of sustained acclaim, a burden that cannot be met primarily through the statements of witnesses whom the petitioner has selected.

Other letters offer general praise, or relate primarily to activities that the petitioner has undertaken following the petition's filing date. A petitioner must establish eligibility at the time of filing; subsequent developments cannot retroactively establish eligibility if the petition was not already approvable at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Even then, the petitioner has not shown that his most recent work demonstrates sustained national or international acclaim.

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 volleyball 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.

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[2] Mr. Kessel states that the petitioner "is truly an asset . . . to Columbia College," although the petitioner had ceased coaching for Columbia College in May 1999, four years before Mr. Kessel's letter of May 2003.