

# AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration between

Re: U.S. Olympic Committee  
-and-  
Gao Jun Chang and Lily Yip

ADMINISTRATOR: Ernestine M. Dunning, Sr. Case Manager

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## DECISION OF ARBITRATOR

The hearing was held in this matter on July 16, 1999 at the Visitor's Center Conference Room at the Olympic Training Center. Gao Jun Chang and Lily Yip and their counsel and most of their witnesses appeared by telephone conference call. Some, but not all witnesses from the USOC and USTTA were present in person. With the consent of all parties no witnesses were put under oath because of the difficulties of arranging such procedures for the various witnesses testifying by telephone. After an initial objection by counsel for Gao about late disclosure of witnesses, which was overruled, all parties elected to proceed and the hearing was held. It took place from approximately 1330 MST to 1830 MST and was closed after all parties agreed that they had nothing else to present. All parties agreed that it was essential that a speedy decision be given so the athletes could begin travel to the games by Saturday, July 16<sup>th</sup> and agreed that the arbitrator should communicate directly to them the decision. The parties agreed that a standard award was sufficient. The arbitrator reserved his decision whether to give a standard award or a modified reasoned award.

My decision is that Gao Jun Chang is properly qualified to compete on behalf of the United States at the Pan American Games and that the USATT Certification of Athletes for the 1999 Pan American Games, subsequently certified by the USOC, should not be changed.

Because I think that the arguments made on behalf of Lily Yip are sensible and appropriate, even though not sufficient to justify a change in the Certification, I elect to state briefly my reasons. The principal reason is that it seems clear that the USOC is the final authority on who is qualified to compete on behalf of the United States, and it appears that the USOC has followed appropriate processes in a manner that has ultimately been fair to the athletes in exercising that authority. The fact that Gao appears to be the best athlete based on the trials is not relevant to this decision, although it does explain the efforts made by various people to obtain necessary waiver of the citizenship requirement.

The existence of an exception to the very clear three year citizenship requirement is the beginning of most of the misunderstandings that have caused difficulty here. A clear requirement is appealing, and easy to state and administer. It also eases administration to

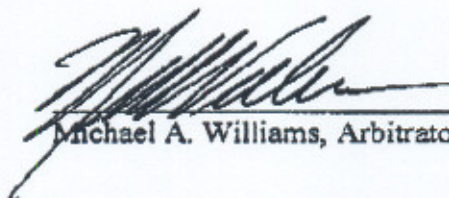


have all evidence of eligibility in writing before trials begin. The steps to achieve that by the USATT are legitimate and understandable. So is the confusion and misunderstanding that resulted from the fact that Gao Jun's eligibility was not fully documented until after the trials. The fact is, however, that the USOC did not require advance documentation and their requirements are dispositive. The actions of the USATT were legitimate and understandable and they demonstrated some willingness to be flexible, but since the final decision is that of the USOC, their conclusions are not accepted by the arbitrator.

There is a basis to be sympathetic for the athletes (including Gao Jun Chang) because the eligibility rules are not in fact simple and easily stated. Their focus is properly on the competition and it is easy to misunderstand facts and circumstances in the heat of competition. Further, the ambiguity of the circumstances surrounding Gao Jun's eligibility at the time of the trial was an unsurprising reason for the misunderstandings that were demonstrated in the testimony of a number of the witnesses. Even if the understandings of some of the athletes and the referee had in fact been correct, there was really no evidence that any athlete would have acted differently, and in fact the trials were a fair athletic contest of skill which Gao Jun won.

The fruitless appeal process through the USATT organization was undoubtedly unfortunate, but it was the result of a mistake, not bad faith. While it is disappointing to Lily Yip that in the end it was not conclusive, it cannot be the basis for the final resolution of the matter.

July 16, 1989  
Date

  
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Michael A. Williams, Arbitrator