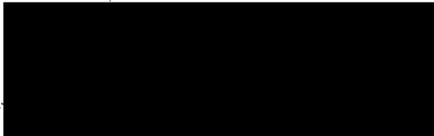




B2

U.S. Department of Justice
Immigration and Naturalization Service

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



Public Copy

File: [Redacted] Office: Nebraska Service Center Date:

JUN 6 2001

IN RE: Petitioner: [Redacted]
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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

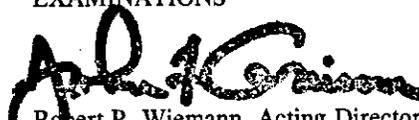
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 which 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 which 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, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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 that she seeks to enter the United States to continue work in the area 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.

8 C.F.R. 204.5(h)(5) states:

No offer of employment required. Neither an offer for employment in the United States nor a labor certification are required for this classification; however, the 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 pre-arranged 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's sustained acclaim as a handball goalkeeper is not at issue in this proceeding. The petitioner has documented a long and successful history as a handball goalkeeper, winning several national and international medals including a bronze medal in the 1988 Olympic Games. The sole issue in contention in the director's decision is whether the petitioner has established that she is

coming to the United States to continue work in the area of expertise.

On appeal, counsel contends that the director relied on an unacceptably narrow interpretation of the petitioner's area of expertise, and asserts that the petitioner's acclaim arose from strategic and training skills as well as her work as a goalkeeper.

The petitioner's initial submission, filed with the petition on November 10, 1998, establishes that the petitioner, born in 1959, joined the national-level handball team "Spartak" in 1977, and competed nationally and internationally as a goalkeeper for Spartak and for national teams representing the Soviet Union until 1989. The petitioner played for Yugoslavia from 1990 to 1994, and rejoined Spartak in the now-independent Ukraine in 1997. Counsel states "[a]lthough she planned only to coach, [the petitioner] found that her skills had not declined. . . . [The petitioner] was named to the Ukraine national team, which is eligible to compete in the 1998 World Championship Games."¹ The initial record contains no documentation showing that the petitioner has worked in any capacity other than as a goalkeeper.

On August 17, 1999, the director instructed the petitioner to submit further evidence. The director raised several issues which did not surface in the subsequent decision, and we conclude that the director was satisfied with the petitioner's response in regard to those issues. The director also instructed the petitioner to submit evidence that the petitioner seeks to enter the U.S. to continue work in the area of expertise, as required by 8 C.F.R. 204.5(h)(5).

In response, the petitioner has submitted a statement outlining her plans and goals. This statement reads, in part:

I am not satisfied with achieved success. I want to make further progress. My dream and the next step is to lead my own sport team and my [proteges] to the same sport's results. I really can do it. I have unique [training] materials . . . [from] the period of preparation of our national team for high level competition such as Olympic Games in Moscow (Gold medals 1980) and Olympic Games in Seoul (Bronze medals 1988).

My first activity would be to offer all my skills to the national team of the USA. You know the Olympic Games in Sydney 2000 is already waiting for competitors. During the years of my sport career I collected a lot of special diagrams, schemes, exercises which will help to improve common and special

¹Counsel's letter, dated November 9, 1998, appears to have been written before the 1998 World Championship Games had taken place.

training, physical and tactical preparation of the sportsmen. . . .

My second intention in the USA would be to set up the sport school for children who will hoist an American flag in the future championships.

The petitioner submits copies of training materials which, she states, she had prepared for the aforementioned competitions. In a letter to the U.S. Handball Association, the petitioner identifies herself as "a member of the Ukrainian National Team, both as a player and as a coach."

In denying the petition, the director stated:

The alien petitioner was requested to submit evidence that she was coming to the United States to continue work in her area of expertise. . . .

From the evidence submitted, it must be concluded that the alien petitioner is coming to the United States in a coaching position. Even though the alien petitioner or counsel has not specifically stated it, it appears to this Service that those are the intentions of the alien petitioner. The regulations clearly require that the alien petitioner continue in her area of expertise in order to be eligible for an approval under this classification. The alien petitioner's area of expertise is as a handball goalkeeper. Therefore, it appears that the alien petitioner does not qualify for the requested classification.

On appeal, counsel acknowledges the lack of job offer letters and prearranged contracts, stating that such plans are "too speculative given current delays in INS processing," but observes that the petitioner "did provide a letter detailing her plans on continuing her work in the United States." Counsel asserts that, in this letter, the petitioner offered "all of [her] skills" to the U.S. handball team, which would necessarily include her skills as a goalkeeper in addition to her training and tactical abilities.

In a subsequent brief, counsel argues that "the Service erroneously concluded that the Alien Petitioner was coming to the United States in a coaching position, a position that the Service claimed was not in [the petitioner's] area of expertise. The Service narrowly construed that her area of expertise is as a Handball Goalkeeper."

Counsel defines the petitioner's area of expertise more broadly, as "the sport of Handball," and notes that the petitioner "is actively involved both as a player and as a coach in her current position." Counsel states that the petitioner "was not in a position to inform potential employers as to when she would be able to come to this

country, [and therefore] she gave a very broad statement regarding her plans."

The petitioner submits a new letter from Michael Cavanaugh, executive director of USA Team Handball, who states:

[The petitioner] has expressed strong sentiments that she is eager to assist USA Team Handball with youth development programs through coaching and/or player clinics. She has indicated that she intends to settle in the Cleveland, Ohio area and that she intends to start a club there.

Despite counsel's earlier claim that the petitioner "would eagerly offer [her abilities as a player] to the U.S. National Team," Mr. Cavanaugh limits his comments to "coaching and/or player clinics." Mr. Cavanaugh, in referring to the petitioner's communication with his organization, appears to refer to the petitioner's aforementioned letter to the U.S. Handball Association. In that letter, the petitioner stated that she is "available to coach and assist in any way possible," but does not specifically express any intention of playing as a goalkeeper. Her repeated references to youth programs and training suggest that the petitioner anticipated a career on the "sidelines" rather than actively competing. Regardless of the source of Mr. Cavanaugh's information, he does not indicate any interest in employing the petitioner as a goalkeeper. He also states "we do not presently have paid positions within our organization to support full-time coaches," although they would welcome the petitioner's participation to whatever degree is feasible and states that the organization "would assist her with her organizational efforts in Cleveland."

S.V. Perepelyak, director of the Spartak Handball Club for which the petitioner played, states that the petitioner was the team's "playing trainer" from 1977 to 1999 (presumably not including documented breaks of several years during that time). Other officials involved with handball in Ukraine assert that the petitioner's training work contributed to the team's ongoing success.

Counsel asserts that the petitioner's "added duties in the Ukraine in terms of playing, coaching, and training is a continuation and extension of the work as a goal keeper. . . . Thus, it is only natural that [the petitioner] continues to extend her expertise in the sport of handball."

The petitioner's acclaim in Ukraine was as a goalkeeper who actively competed in national and international-level games and tournaments. Certainly the goalkeeper is involved in formulating team strategy, in much the same way that a quarterback may direct plays in football, but it does not follow that the petitioner has earned sustained acclaim as a strategist or trainer.

The petitioner has stated that she intends to found a "sport school for children," which involves a very different skill set from what is involved in keeping an already-assembled national team in top playing form. The fact that the two activities fall under the broad banner of "handball" does not mean that the petitioner's acclaim as a player in an Olympic-level team establishes her extraordinary ability as the administrator of a children's school.

With regard to the petitioner's stated intention to work with handball at a national level, the ambivalent response from the national organization calls into question how much of a role the petitioner would be able to play for that organization. There again, the letter from Mr. Cavanaugh states that the petitioner intends "to assist USA Team Handball with youth development programs." The petitioner's activities from the late 1970s onward were primarily concerned with top-level active competition, rather than youth development programs. The petitioner's intended activities in the United States differ in both kind and degree from the activities which won her lasting acclaim in Ukraine. While many athletes go on to success in other sports-related capacities after retiring from active competition, such success is not guaranteed or automatic, and the petitioner has not yet established major success or acclaim in the activities in which she intends to engage in the United States.

The evidence indicates that the petitioner has enjoyed spectacular success as a handball goalkeeper, but there is no indication that the petitioner has significant experience, let alone national acclaim, establishing children's schools and youth development programs. There is no indication that any U.S. handball team seeks to engage the petitioner as a goalkeeper, and indeed no evidence that the petitioner seeks to continue as a goalkeeper apart from counsel's interpretation of an ambiguous passage in one of the petitioner's letters. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(ii) 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.