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Immigration and Naturalization Service

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



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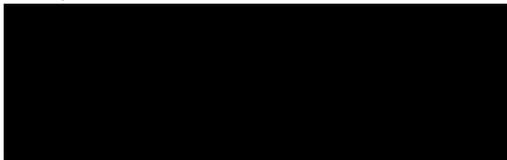
Date: APR 29 2002

IN RE: Petitioner:  
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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

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, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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 as a coach. The director determined the petitioner had not established that the beneficiary qualifies as an alien of extraordinary ability in her field of endeavor, coaching.

On appeal, counsel argues that the beneficiary's one-time achievement (Olympic medals) as an athlete is sufficient to warrant the approval of the petition. Despite this stance, counsel also submits evidence relating to the beneficiary's coaching accomplishments.

We reject counsel's argument that an athlete can demonstrate extraordinary ability as a coach solely through her achievements as an athlete. Moreover, coaching is not necessarily within every extraordinary athlete's area of expertise. This decision will first consider whether the petitioner has established the beneficiary's acclaim as a coach. Subsequently, we will discuss whether the beneficiary has sustained her previous acclaim as an athlete through her coaching.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the Service regulations at 8 C.F.R. 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a gymnastics coach. The petitioner is a gymnastics training center.

The regulation at 8 C.F.R. 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award.

In her initial brief, counsel argued that the petitioner has documented major, internationally recognized awards because the beneficiary won three Olympic medals (a team gold medal in 1976, another team gold medal in 1980, and an individual bronze medal for the uneven bars). The petitioner, however, seeks to classify the beneficiary not as an extraordinary gymnast, but rather as an extraordinary coach. As such, the beneficiary's medals demonstrating extraordinary ability as a gymnast cannot, by themselves, demonstrate the beneficiary's eligibility for the classification sought.

Even if the petition sought to classify the beneficiary as an extraordinary competitive gymnast, 8 C.F.R. 204.5(h) requires the beneficiary to "continue work in the area of expertise." The beneficiary, however, intends to work as a coach in the United States. While a gymnast and a coach certainly share knowledge of gymnastics, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise.

The petitioner submits evidence relating to several of the ten lesser criteria. It is insufficient, however, to merely submit evidence relating to three criteria; the evidence submitted for each criterion must demonstrate, contribute to, or be consistent with sustained national or international acclaim. The record contains evidence relating to 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.*

In addition to the beneficiary's three Olympic medals, the petitioner submitted evidence that the beneficiary also won two World Cup gymnastic medals, in Spain (1977) and Brazil (1978), and placed second in the 1981 World Cup competition. The petitioner also submitted evidence of other lesser national and international awards. These awards, however, were all based on the

beneficiary's ability as a gymnast. These awards cannot establish that the beneficiary has sustained national or international acclaim as a coach.

It is not clear that significant awards exist for gymnastics coaches. Nationally or internationally recognized prizes or awards won by a coach's students, however, can be considered comparable evidence for this criterion under 8 C.F.R. 204.5(h)(4). On appeal, the petitioner submits a letter from [REDACTED] President of USA Gymnastics. He indicates that the beneficiary coached [REDACTED] who participated in junior and regional championships, and [REDACTED] USA Gymnastics Region VI Balance Beam Champion and [REDACTED] All-Around for the year 2000 and qualifier to the 2000 USA Gymnastics Junior Olympic National Championship. Regional competitions are, by definition, neither national nor international. Moreover, qualifying for a championship is not a prize or award as the competition has yet to take place. Regardless, these events took place following the petition's January 7, 2000 filing date. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971).

*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.*

The petitioner asserts that the beneficiary meets this criterion by competing in the Olympics as a member of the Soviet Olympic team. While a team is not an "association," we could consider such evidence as comparable under 8 C.F.R. 204.5(h)(4) because membership in an Olympic team is the result of multi-level national competition, supervised by national experts. There is undeniable prestige in membership on an Olympic team. Once again, however, the beneficiary was selected for the team based on her ability as an athlete, not a coach. Thus, her membership on the Soviet Olympic team, long before she was active as a coach, cannot establish that the beneficiary has national or international acclaim as a coach.

The petitioner submits the beneficiary's membership card for USA Gymnastics. In order 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, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, memberships in an association that judges membership applications at the local chapter level do not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association cannot satisfy the criterion, because the key issue is membership requirements rather than the association's overall reputation. The record does not reflect that USA Gymnastics requires outstanding achievements

for its members in the manner of highly exclusive associations such as (for example) the U.S. National Academy of Sciences.

*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 evidence of published material about the beneficiary's accomplishments as a gymnast, but not as a coach. The petitioner submits an upcoming book chapter in Women's Gymnastics, A History, which chronicles the beneficiary's career as a gymnast and concludes with a brief discussion of the beneficiary's decision to begin coaching upon the birth of her daughter. This material was unpublished at the time of filing and thus it did not constitute published material. See Matter of Katigbak, *supra*.

On appeal, counsel submits a newspaper article in the Fairport Community News naming the beneficiary as the coach of two gymnasts who were selected for the Talent Opportunity Program. As stated above, the evidence for each criterion must be evaluated as to whether it demonstrates sustained national or international acclaim in the alien's field.

The article submitted on appeal is primarily about the beneficiary's students, not the beneficiary, and is not in a major newspaper. Finally, the article was published after the date of filing and cannot establish the beneficiary's eligibility at the time of filing.

*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.*

In an occupation where "judging" the work of others is an inherent duty of the occupation, such as a coach, instructor, teacher (including graduate student teaching assistants), professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim. Instead, a petitioner must demonstrate that the alien's sustained national or international acclaim resulted in her selection to serve as a judge of the work of others. Similarly, the competition or contest must be on a national or international level. For example, judging a national athletic competition carries greater weight than judging a county-wide competition.

The petitioner submits evidence that the beneficiary is an officially recognized "skill evaluator" for USA Gymnastics. The petitioner did not submit evidence of the requirements for designation as a "skill evaluator." The record contains no evidence that the beneficiary's notoriety as a coach has resulted in her being selected as a judge in any national level gymnastics competition.

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

The petitioner does not allege that the beneficiary meets this criterion, however, the record contains evidence which relates to this criterion and warrants discussion. In order to establish major significance, the petitioner must show that the alien's contribution has demonstrably influenced the alien's field at a national or international level. While the beneficiary's achievements as a competitive athlete are undeniable and she has embarked on a successful coaching career, the record contains no evidence that she is among the most influential gymnastics coaches currently active in the field. For example, the petitioner has not submitted any evidence that other choreographers or coaches have adopted the beneficiary's style of choreography or coaching techniques. The record includes evidence that the Guinness Book of World Records lists the beneficiary as the only woman to win two World Cup overall titles in gymnastics. Holding a record can constitute as a major contribution since the record is something to which other athletes aspire. This achievement, however, is a competitive one, and does not establish that the beneficiary is a nationally acclaimed coach.

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

In order to establish that the alien performed a leading or critical role for an organization or establishment with a distinguished reputation, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization as a whole. The beneficiary began her coaching career in what was then the Soviet Union, but the record contains little documentation of the beneficiary's role there or the reputation of the gym where she worked. The beneficiary then coached gymnastics in Belfast, Northern Ireland, apparently choreographing the floor routines for their 1994 Commonwealth Games team. The record contains little information on the reputation of the Belfast team or the beneficiary's role with that team in relation to other coaches (if any).

The record reflects that the beneficiary is working for the petitioning organization. The petitioner was selected in 1995 as the location of the Training Opportunity Program (TOPS), a national training program. New York Governor George Pataki's letter congratulating the petitioner on its selection asserts, "it is a tribute to you and to your program that this function will be held in Rochester." The petitioner asserts:

The [TOPS] Program was developed by USA Gymnastics, the sole national governing body for gymnastics in the United States, to identify talented athletes early in their development and to groom those athletes for the Olympic games. USA Gymnastics officials thus attend and preside over the program. Their presence and the continuing presence of the TOPS program at our facility reflects our facility's prominent standing.

The petitioner also hosted the U.S. Classic, the final opportunity for gymnasts to qualify for the 1999 John Hancock U.S. Gymnastics Championships where the finalists for the World

Championships in China were selected. The finalists from that competition go on to the Olympics. The petitioning center has also trained young gymnasts who have competed in the Special Olympics World Summer Games. The owner of the petitioning center has received considerable attention for her own role in the Special Olympics.

The record adequately establishes that the petitioner is an organization with a distinguished reputation. The record further reflects that the beneficiary plays a leading and critical role for the Petitioner as their head coach. Thus, the beneficiary 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.*

In its initial letter in support of the petition, the petitioner asserts that it plans to employ the beneficiary as a coach with a salary of \$31,000. In 1999, the beneficiary earned \$30,543. The petitioner submits evidence that the beneficiary's salary is higher than that of other instructors at the petitioning facility and twice the prevailing wage for "Level I Instructors and Coaches" in the Rochester area. The petitioner, however, must demonstrate that the beneficiary's salary is high when compared with the most experienced and well-known gymnastic coaches around the country, including national team and Olympic team coaches. Local prevailing wage figures do not meet this standard.

*Comparable Evidence under 8 C.F.R. 204.5(h)(4).*

While 8 C.F.R. 204.5(h)(4) allows for comparable evidence, a petitioner must demonstrate that the regulatory criteria are not applicable to the alien's field. Where an alien is simply unable to meet three of the regulatory criteria, the use of comparable evidence is inappropriate. In this case, as national awards for coaches are far rarer than for athletes, we accepted as analogous prizes awarded to athletes coached by the alien.

As further evidence of the beneficiary's successful coaching career, the petitioner submits several letters on appeal regarding the beneficiary's abilities as a coach. [REDACTED] states:

Besides [the beneficiary's] prowess as a Gymnast she has also excelled in her ability as a Gymnastics coach. She has now begun coaching Gymnastics in the U.S. and is considered to be one of the top professional coaches in this country. I consider her to be a Gymnastic Coach of world class caliber. There have only been a handful of coaches in the world who have achieved this status. In her current position as Head Coach at [the petitioning center] she has accelerated several athletes to National Level Competition.

[REDACTED] is arguably one of the best-known gymnastics coach in the United States who works independently of the beneficiary. His letter, which suggests he was familiar with the



There is no question that the beneficiary has earned acclaim as an extraordinary athlete. The beneficiary has won three Olympic medals, including an individual bronze medal. She has won numerous other significant medals as a gymnast. Were the beneficiary coming to the United States to continue as a gymnast, the petitioner would have met its burden with the Olympic medals alone. Nevertheless, as stated above, these medals are not evidence of a one-time achievement in the field of coaching. As acknowledged by one of the beneficiary's references, excellence as an athlete does not always lead to excellence as a coach, and the petitioner has not shown that success as a coach is dependent on prior experience as an athlete in the same sport. The medals are relevant to the beneficiary's coaching expertise, as they clearly establish that the beneficiary has an excellent and profound understanding of the sport. The beneficiary's medals, however, were awarded in 1976 and 1980. A petitioner must establish that the beneficiary's national or international acclaim has been sustained. The beneficiary in this case has been coaching for several years since she stopped competing as a gymnast. In such a situation, where the alien has had ample time to establish a reputation as a coach, the petitioner must show that the alien has earned sustained national or international acclaim based on the alien's achievements as a coach rather than her prior reputation as an athlete. As discussed above, the petitioner has not established that the beneficiary meets three of the regulatory requirements based solely on her coaching abilities.

Even if the beneficiary's acclaim as an athlete were more recent, the record does not reflect that she had sustained that acclaim at the time of filing through coaching at a national level. The record contains a letter from the President of the Republic of Belarus, who states that the beneficiary worked "at the top-class scholl [sic] and with the national team of the Republic Belarus as choreography coach." As discussed above, the beneficiary currently coaches at an organization with a distinguished reputation, and did so at the time of filing. Subsequent to the date of filing, two of the beneficiary's students were selected for the TOPS program where the beneficiary continued as their coach. Only 60 gymnasts nationally were selected for this program which grooms young gymnasts for potential Olympic competition. The beneficiary's students, however, were selected for TOPS after the petition was filed.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, 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 beneficiary has distinguished herself as a coach 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 her field. The evidence indicates that the beneficiary shows talent as a coach, but is not persuasive that the beneficiary's achievements set her significantly above others in her field. Finally, the petitioner has not sustained recent acclaim as an athlete through coaching at a national level. Thus, she has not established that her area of expertise includes coaching. Therefore, the petitioner has not established the beneficiary's 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.