

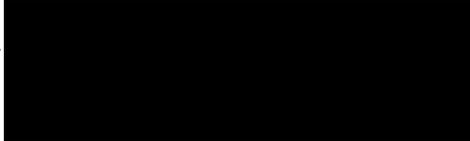


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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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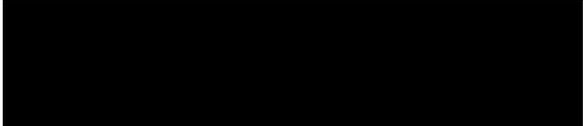


File: EAC 00 068 50315 Office: Vermont Service Center Date: 25 MAR 2002

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:



Public Copy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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 is a gymnastics instruction facility. It 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. The director determined the petitioner had not established that the beneficiary has earned 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 Service 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 the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on December 27, 1999, seeks to classify the beneficiary as an alien with extraordinary ability as a gymnastics coach. 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, the petitioner claims, meets the following criteria.

We note the beneficiary entered the United States in 1997. The beneficiary did not obtain his National School Sports Coach Diploma until 1995; thus, he appears to have spent half of his full-time coaching career in the United States. Therefore, when considering whether the beneficiary has earned sustained acclaim, it is entirely appropriate to examine his reputation in the United States as well as in his native Romania.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submits two letters from Becky Riti, International Relations Coordinator of the United States Gymnastics Federation/USA Gymnastics, the national governing body for the sport of gymnastics in the United States. The initial letter, submitted at the time of filing, stated that the United States Gymnastics Federation was "not able to confirm the individual facts indicated in the supplied documents," but could offer an advisory opinion regarding the petitioner's credentials. The initial letter offered limited evidence indicating only that the beneficiary had been "involved in gymnastics at a high level in Romania" and had recently produced "national level gymnasts." The second letter, dated October 19, 2000, provided the following additional information:

For over fifteen years, [the beneficiary] has been involved in national and international level gymnastics. As a gymnast he represented Romania in both the 1992 and 1994 European Championships, in 1993 at the Balkan Games he captured the silver medal (Team), and he participated successfully in at least twenty other international competitions.

While the letters do not mention any individual awards won by the beneficiary, according to his resume, the beneficiary has won numerous medals as a "member of the Romanian **Junior** National Team from 1983 to 1993." Other than a brief listing of the beneficiary's gymnastics medals appearing on the resume, the petitioner has offered no further documentary evidence regarding the medals. The significance and importance of these awards are not self-evident. The petitioner must provide evidence to establish that the medals enjoy significant national or international stature. The beneficiary, born in 1975, appears to have won several gold and silver medals on the rings, vault, parallel bars and high bar while a member of the Romanian **Junior** National Team. However, what is not clear from the listing of the beneficiary's medals earned from age nine to eighteen is whether these were "age group" awards, thus limiting the competition to other children who were the beneficiary's own age, or overall national titles in each event. Further, the term "Junior National" does not seem to suggest competition at the very top level of the sport. The vague and limited evidence submitted regarding the petitioner's medals fails to demonstrate his performance as a top Romanian or international gymnast.

The petitioner, however, seeks to classify the beneficiary not as an extraordinary gymnast, but, rather as an extraordinary coach. Therefore, the beneficiary's alleged receipt of various medals as a gymnast in order to demonstrate his extraordinary ability is not the only factor to be considered in determining his eligibility for the classification sought. Even if the petitioner 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 provides various certificates awarded to the beneficiary including a Certificate of Merit for Outstanding Gymnastics Coaching presented at the Regional Championship in 1999, a Merit Award for Gymnastics Coaching presented by an instructor from a New York State School in 1999, and a President’s Award for Educational Excellence presented by the Lakeland School Principal in 1999. These awards presented to the beneficiary are local or regional rather than national and are unable to satisfy this criterion.

The petitioner also provides various diplomas, certifications, and participation certificates received by the beneficiary. These documents do not constitute national awards in the petitioner’s field of endeavor. They simply reflect the beneficiary’s completion of training courses or his presence as a coach at various sporting events. The documents offer no meaningful comparison between the beneficiary and the most experienced and practiced in the field.

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). The second letter from Becky Riti of the United States Gymnastics Federation indicates that the beneficiary coached Kristen Bloom, who participated in the 1999 Junior Olympic National Championships (Level 10) and received a silver medal on the uneven bars. The letter also reflects that three other of his gymnasts placed 41st, 44th, and 55th in the all around competition. The letter also indicates that five other gymnasts “qualified” to the 1999 Junior Olympic National Championships (Level 9). The petitioner has offered no explanation regarding what Levels 9 and 10 represent in women’s gymnastics. Further, simply qualifying for participation in the competition at the Junior Olympic National Championship does not constitute the receipt of a national prize or award.

While one of the beneficiary’s gymnasts has received a silver medal at the **Junior Olympic National Championships**, the record does not show that the petitioner’s athletes win a disproportionate quantity of medals when compared to other gymnasts. Further, the petitioner has not submitted evidence that the beneficiary’s gymnasts have competed on the national or “elite” level. The coaching of a single **Junior Olympic Medalist**, while a credit to the beneficiary’s skills, is insufficient to satisfy this criterion. By comparison, the Gymnastics Directors at Dynamic Gymnastics, former Olympic Competitors Sorin Cepoi and Teodora Ungureanu, the beneficiary’s supervisors, “were head coaches in France at the ‘LaGrenobloise’ Gym which won the second place team in the French Nationals for four years.” Further, according to the Dynamic Gymnastic’s brochure, the LaGrenobloise Gym was the only team in France to have three full teams compete in the National Championships. The brochure also states: “Their gymnast, Chloe Maigre, competed in the Barcelona Olympics and was an Individual National French Champion. Accomplishments such as these are examples of evidence sufficient to satisfy this criterion. The beneficiary, on the other hand, appears to be in the early stages of his coaching career. Given the greater length of time

that Sorin Cepoi and Teodora Ungureanu have coached at Dynamic Gymnastics and their more prominent roles, one could reasonably assume that they played a greater part in the training and preparation of the gymnasts for the 1999 Junior Nationals. Dynamic Gymnastic's own brochure states that gymnastic skills are learned slowly and progressively: "Improvements in gymnastics are experienced in time, not in a week or month." According to the letter from Constantin Petrescu, the beneficiary did not commence employment with the petitioner until February 1998.

The letter from Becky Riti further mentions results from the 2000 Region VI Championships and 2000 Junior Olympic National Championships. Regional competitions are, by definition, neither national nor international. Regardless, both of these events took place following the petition's December 27, 1999 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). The evidence submitted fails to satisfy 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.

Counsel states that the beneficiary is a member of USA Gymnastics and the International Federation of Gymnastics. The petitioner submits the beneficiary's Romanian coaching diploma, a current USA Gymnastics Professional Membership card, a second USA Gymnastics card stating that the association "recognizes [the beneficiary as having completed all the requirements for National Safety Certification," and a judge's permit from the International Federation of Gymnastics which expired on December 31, 1996. The Romanian coaching diploma reflects completion of the beneficiary's training, not membership in an association. According to the permit from the International Federation of Gymnastics, the permit may be removed from "any judge who does not follow the regulations of international judges and does not pass the test for international meets and judges." The petitioner has not submitted any further evidence to reflect the membership criteria for these associations. The record does not contain the associations' bylaws, constitutions, or any other objective documentation to establish the associations' membership requirements.

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 level, 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.

Information provided through a telephone call to USA Gymnastics Member Services reveals that membership is open to individuals who are at least eighteen years of age, coach athletes participating in official gymnastics events in the United States, have a United States address, pay a nominal fee, and complete a national safety certification course once every four years.

In sum, there is no evidence to indicate that these organizations require outstanding achievements of their members or that the beneficiary was judged by national or international experts in consideration of his membership.

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 a single photograph with an accompanying caption appearing in a 1999 issue of the *Patent Trader*. This local newspaper from New York State does not qualify as major media. The plain wording of the regulation requires the petitioner to submit "published materials about the alien," and a captioned photograph that barely even mentions the alien cannot satisfy this criterion. Because the statute demands national or international acclaim, the petitioner cannot satisfy this criterion unless he has been the subject of coverage in major national or international publications. Local newspapers and regional magazines with limited circulation do not constitute major media in this regard. The evidence submitted fails to satisfy this criterion.

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.

The petitioner submits a judge's permit from the International Federation of Gymnastics that expired on December 31, 1996. The permit reflects four levels of qualification as judge: Level I, Level II, Level III, and Expert. It is not clear at what level the beneficiary was permitted to judge. According to a judge's action log accompanying the permit, the beneficiary judged a single competition at the age of eighteen in 1993, but the judging level is not shown. The regulation at 8 C.F.R. 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the beneficiary's participation as a judge must reflect these requirements. Without clear evidence that the beneficiary has judged competitions at the "expert" level, his judging of a single event in 1993 fails to demonstrate national or international recognition at the very top of the gymnastics field. The petitioner has not submitted evidence under this criterion to set the beneficiary apart from others in the field. Further, we note the absence of evidence that the beneficiary has judged on a national or international level since his arrival in the United States in November 1997.

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

The petitioner submits letters from various witnesses attesting to the beneficiary's skills as a gymnastics coach. Becky Riti, International Relations Coordinator for USA Gymnastics, states: "The United States Gymnastics Federation recognizes [the beneficiary's] excellence in coaching gymnastics at the state, regional and national levels in both the United States and Romania, and his international expertise in competing and coaching at the world level in Romania." However, we note an absence of supporting documentation pertaining to the beneficiary's coaching efforts in Romania.

Bob Winter, Director of the American-Romanian Friendship Gymnastics Program, devotes the majority of his letter to discussing Romania's impressive record of producing Olympic-caliber gymnasts. He briefly describes the petitioner as "an extremely efficient and knowledgeable coach." Bob Winter adds: "I requested that [the beneficiary] conduct a clinic in the Romanian style of gymnastics for my gymnasts at the Rye, New York Y.M.C.A. The girls were thrilled with the ease at which they learned difficult moves in such a short time."

Warren Rosenberg, Dean of the School of Arts and Sciences at Iona College, offers a summary of the beneficiary's coursework and practical experience. He recognizes the beneficiary as "a person of professional standing in the field of physical education and specialty occupation of exercise and sports science in gymnastics." He concludes that the beneficiary's training and experience is "of significant importance to his field." However, similar to the above witnesses, he offers no specific evidence of the petitioner's accomplishments as a coach in Romania.

Constantin Petrescu, Director of the International Gymnastics Camp in Stroudsburg, Pennsylvania, was a member of the Romanian Team for the 1972 Olympics, 1973 World Championships and 1973 World University Games. He also served as coach of the Junior Romanian Team and has actively coached and taught at private schools and colleges throughout the United States.

I first met [the beneficiary] many years ago when he was a member of the gymnastics team at the Sport School Club Bistrita, in Bistrita, Romania. He was an outstanding competitor, competing regularly in all major junior gymnastics events. Following his own competitive career, [the beneficiary] became a gymnastics coach, and in 1994 he was employed as a Gymnastics Teacher and Coach of the Sport School Club Bistrita in Romania. In a short period of time, he obtained excellent results, due to his determination and tenacity in developing young talent. He has gained the respect of the entire gymnastics community through his coaching and teaching professionalism. Due to his results and his professionalism, [the beneficiary] was employed as a gymnastics master coach at the Dynamic Gymnastics Center in Mohegan Lake, New York. Having very good results at the state, regional and national levels with his gymnasts, [the beneficiary] is looking forward to the 2004 Olympics Games with his very talented young gymnasts, Olympics future stars.

I have become a strong supporter of [the beneficiary] because of his high degree of discipline, dedication, and hard work. His coaching repertoire combines a great deal of

support, motivation, and discipline, a combination that produces not only great athletes, but fine young citizens as well.

I recommend [the beneficiary] very highly as a great asset, both as a person and as a teacher or coach. He will be a welcome addition and will contribute a great deal to any group or association.

Bela Karolyi, USA Gymnastics Olympic Team Coach from 1984 through 1996, coached Olympic and World Champions such as Mary Lou Retton, Nadia Comaneci, Teodora Ungureanu (the beneficiary's colleague at Dynamic Gymnastics), Kerri Strug and Dominique Moceanu. He states:

In May 1999, at the Junior Olympic National Championship in Austin, Texas I observed with particular attention the performances of gymnasts from Dynamic Gymnastics coached by [the beneficiary]. These American gymnasts performed on a level which demonstrated a particular finesse instilled by the Romanian style of coaching which has rewarded me with a great deal of success.

I firmly believe that [the beneficiary] would be an immeasurable value to our American gymnasts as we strive to maintain our high status in the world of gymnastics. There is one of the [beneficiary's] students whom I believe is a strong candidate for our Olympic team in the year 2004.

Because [the beneficiary's] first work in America has been in the gym of my former student and Olympic Silver Medalist, Teodora Ungureanu, I have observed his coaching skills first hand. While his name and accomplishments may not yet be instantly recognizable, I certainly consider him as one of a very few coaches who have the top skills to take American gymnasts to the Olympic level. He will soon rise to prominence on the American scene, I am sure, and am asking that you give him this opportunity.

We cannot ignore that at least three of the witnesses and the beneficiary's fellow coaches at Dynamic Gymnastics appear to have earned considerably more prestige and authority than the beneficiary in the gymnastics community. While the witness letters are useful in describing the beneficiary as a coach, they offer insufficient evidence to demonstrate his lasting or wide-ranging impact on the sport of gymnastics that is critical to a demonstration of sustained national or international acclaim. Reputation by association with prominent coaches cannot suffice to establish that the petitioner himself enjoys national or international acclaim. While the beneficiary has attracted the favorable attention of two highly prominent gymnastics coaches, his fellow coaches at Dynamic Gymnastics, and a Y.M.C.A. gymnastics program coordinator, simple comparison of their achievements with those of the petitioner shows that the petitioner has not amassed a record of accomplishment which places him at or near the top of his field. The assertions of respected witnesses, such as Bela Karolyi and Constantin Petrescu, indicating that the petitioner has a promising future does not establish eligibility, for the regulations clearly call for evidence that the petitioner already enjoys major success and acclaim. In fact, Bela Karolyi states that the beneficiary's "name and accomplishments may not yet be instantly

recognizable.” A number of witnesses have asserted that the petitioner is very talented, and that his services are sought after. However, the use of phrases such as “will contribute” or “will soon rise to prominence” seem to suggest that he has not yet reached the top of his field. Such attestations cannot meet the extremely high threshold of extraordinary ability.

The above letters are from impressive experts whose opinions are important in the field of gymnastics. Section 203(b)(1)(A)(i) of the Act, however, requires extensive documentation of sustained national or international acclaim. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

Without question, the beneficiary shows promise as a coach. However, the petitioner has not yet produced any gymnasts earning elite or national titles, or spots on the Romanian or United States Olympic teams. The beneficiary has more than likely contributed to the skills of the gymnasts earning medals at the **Junior** Nationals in Levels 9 and 10. However, beyond Levels 9 and 10, there exists the “elite” or national level that has thus far eluded the beneficiary’s gymnasts. It should be noted that the record fails to address the precise distinction between national and junior national competitions. In sum, the evidence of record does not reflect that the beneficiary, as a coach, has contributed significantly more to his sport than have most other gymnastics coaches in Romania or the United States.

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

Counsel refers to the letter from Becky Riti and the captioned photograph appearing in the *Patent Trader*. The captioned photograph barely even mentions the petitioner. It pictures the beneficiary, another coach, and a thirteen-year-old gymnast who placed first on the beam in the New York State Championships, Level 8. It should be noted that Level 8 is followed by three higher levels of competition: Levels 9, 10 and elite. This captioned photograph, addressed under a previous criterion, offers no specific details about the beneficiary’s role as a coach and is insufficient to demonstrate his leading or critical role within the petitioning organization.

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 his coaching career in Romania, but the record contains little documentation of the beneficiary’s role there or the reputation of the gym where he worked.

The beneficiary then came to the United States to coach for the petitioner. The record contains little information on the distinguished reputation of the petitioner other than its own brochure. According to a letter accompanying the initial filing, the petitioner incorporated as Dynamic Gymnastics on August 1, 1995. While the petitioner's gymnasts have captured the state championship and received medals at the Junior Olympic National Championships in Levels 9 and 10, the organization does not yet appear to have produced any elite national champions or Olympic qualifiers. On appeal, the petitioner states: "We have been recognized by USA Gymnastics as the gymnastics club in the United States with the greatest potential. Articles regarding our achievements are attached." However, the record contains no such articles. 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, the petitioner has not provided specific evidence regarding the beneficiary's role as a coach in relation to the other coaches employed by the petitioner. The petitioning organization is owned by Nancy Brophy. Sorin Cepoi and Teodora Ungureanu serve as its Gymnastics Directors. The beneficiary's role as leader within this organization has not been demonstrated. The petitioner has provided no evidence to indicate that the beneficiary has ever served as a head coach, or performed a critical role in the coaching of elite national champions or Olympians.

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

At the time of filing, the petitioner indicated that the beneficiary was receiving a salary of \$32,500 per year, plus housing expenses of \$600 per month. 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. The record offers no comparison to demonstrate that the beneficiary commands a high salary in relation to others in the field.

It must be emphasized that merely submitting evidence intended to address at least three of the criteria is not necessarily sufficient to demonstrate that the beneficiary has sustained national or international acclaim at the very highest level. The petitioner must clearly establish that he is within the small percentage of coaches at the very top of the sport of gymnastics.

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, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner has failed to demonstrate receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

A review of the record does not establish that the beneficiary has distinguished himself as a gymnastics 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 indicates that the beneficiary shows talent as a gymnastics coach, but is not persuasive that his achievements set him significantly above other coaches in the sport. 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.