PUBLIC COPY

B2

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: EAC 02 041 54426 Office: VERMONT SERVICE CENTER Date: FEB 14 2003

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)

IN BEHALF OF PETITIONER:

[redacted]

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

Elizabeth Hazard

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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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, specifically as a rhythmic gymnastics coach. 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.

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. Counsel contends that the petitioner has established acclaim through a one-time achievement, as well as through satisfying several of the ten lesser criteria. The record contains a considerable quantity of documents intended to support these claims; the petition was not frivolously filed with little or no supporting evidence.

Counsel asserts, on appeal, that the director failed to address this evidence. We concur with this finding. The director, in denying the petition, listed the regulatory criteria from 8 C.F.R. § 204.5(h)(3), but did not offer even a general explanation as to why the petitioner's evidence fails to meet those criteria. The director merely stated, without elaboration, that "the evidence furnished falls far short of establishing the beneficiary to be one of the very top coaches in the field today." This assertion gives the petitioner no indication of how the evidence fails to establish eligibility. The director's failure to specify the shortcomings in the record severely curtails the petitioner's opportunity to wage a meaningful appeal.

In a request for evidence issued prior to the denial, the director again listed the regulatory criteria and instructed the petitioner to submit evidence to meet those criteria, but the director did not indicate why the initial submission was inadequate. Thus, while the director has repeatedly deemed the petitioner's evidence to be insufficient, at no time has the director explained specifically why this is so.

We stress that this remand order does not contest the director's finding that the evidence is insufficient to establish eligibility. Rather, this order requires a new decision which, if adverse to the petitioner, specifies the shortcomings in the record and thus gives the petitioner a fair opportunity to remedy those shortcomings. For example, the petitioner relies primarily on her achievements as a competitive gymnast rather than as a gymnastics coach, although the record clearly indicates that the petitioner intends to work as a coach for Gold Star Gymnastics, Inc.; there is no indication that the petitioner has continued to qualify as a competitive athlete in her own right since the mid-1990s. While the petitioner's background as a competitive athlete is not irrelevant, it remains that the petitioner's prospective employment is as a coach rather than as an athlete. The

petitioner claims to have begun coaching in 1995, allowing ample time to establish some kind of track record as a gymnastics coach. The petitioner asserts that she has successfully coached gymnasts at the national level, but this assertion is vague and documentation is sparse in this regard. The petitioner could substantially strengthen this claim by providing first-hand documentation identifying the teams and/or individuals she coached, the competitions at which the athletes competed, and the athletes' final rankings at the close of those competitions.

As another example, the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence of the alien's participation as a judge. A passbook that shows that the petitioner has professional credentials as a judge demonstrates that she is qualified to judge, but it is not evidence of actual participation as a judge.

When considering this evidence, primary weight must rest on the evidence itself rather than on the petitioner's or counsel's interpretations or descriptions of that evidence. To illustrate this point, we note that counsel refers to a certificate which shows that the petitioner was "a member of the Bulgarian Olympic team" in 1996. Counsel, in describing the document, neglects a very significant detail: the same documentation shows that the petitioner did not actually compete.

For the reasons cited above, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of her position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for Examinations for review.