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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[redacted]

File: [redacted] Office: Nebraska Service Center Date: MAY 16 2003

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office 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 the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel notes that the petitioner is the beneficiary of an approved nonimmigrant visa petition in a similar classification. We do not find that an approval of a nonimmigrant visa mandates the approval of a similar immigrant visa. Each case must be decided on a case-by-case basis on the evidence of record.

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 Bureau 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 he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner 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.

8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." The petitioner, 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. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Nevertheless, recently this office has recognized that there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is appropriate. In a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. Specifically, in some cases we will consider the level at which the alien acts as coach. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not. In the instant case, however, the petitioner has been coaching since 1988. As the petitioner has had fourteen years in which to establish extraordinary ability and acclaim as a coach, we will review the evidence as to whether the petitioner has demonstrated such ability and acclaim as a coach.

The petitioner has submitted evidence that, he claims, meets 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.*

As evidence to meet this criterion, the petitioner initially claimed to be submitting a 1983 Silver Clown and a 1988 third place award from the Monte Carlo International Circus Festival. Those awards are not in the record. Regardless, those awards are for acrobatic achievement. As such, they cannot establish the petitioner's acclaim as a gymnastics coach.

As stated by the director, the awards received by one's students can be considered comparable evidence to meet this criterion as a coach. While acknowledging that one of the petitioner's students

was selected to compete on the British Columbia team at the Western Canadian Gymnastics Championships, the director concluded that the record lacked evidence that any of the petitioner's students have won nationally or internationally recognized prizes. Counsel notes that the petitioner submitted evidence of his students' accomplishments that were not considered by the director. We will consider that evidence on appeal.

The article "Glacier guys strike gold," in the *Nelson Daily News* reports that two of the petitioner's students won gold at the Jurassic Classic 2000. One won gold in men's provincial class I-11 and the other won gold in men's provincial class I-9. "Next Stop, Winnipeg" reports that another student, [redacted]received a gold medal at a provincial meet in Surrey and won a spot on the British Columbia team to compete at the Western Canadian Championship in Winnipeg. "Nelson's Golden Girl" reports that Miss [redacted]ook gold at the Winnipeg competition.

In addition, three of the petitioner's students at the Rochester Area Gymnastics Academy (RAGA) scored well in qualifiers for Level Five. One of those students won a gold medal at the 2001 State Games of America in Saint Louis where 6,000 athletes from 41 states competed. The petitioner also coached a RAGA team one to a second place Division One finish at the Midwest Amateur Gymnastics Association state meet. The team members also won individual awards.

The record is absent independent evidence regarding the significance of the competitions at which the petitioner's students won awards. Nevertheless, the record suggests that the petitioner's students are improving at an impressive level and that they are winning provincial awards and recently have achieved national awards. Thus, we find that the record adequately demonstrates that the petitioner meets 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.

The petitioner claims to have participated in the 1976 Olympic Games on the Romanian team. The director noted a discrepancy between the last name on the Olympic materials (Roussev) and the petitioner's last name on the remaining documentation (Slavenov.) Counsel does not address this discrepancy on appeal.

Regardless, the director further concluded that even if the petitioner had established his membership on the Romanian Olympic team, that membership was based on his athletic abilities, not his abilities as a coach. While not specifically stated by the director, the record contains no evidence that the petitioner belongs to any coaching associations that require outstanding achievements of their members.

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.

Initially, the petitioner submitted eight articles and photographs that appeared in newspapers. In his summary of the evidence, counsel claims that one of the photographs appears in *Sport* and one photograph and an article appear in *Sports*. A review of the actual articles, however, suggests that these articles appear in the "Sports" section of the *Nelson Daily News*. Specifically, the article "Superman arrives at Glacier Club" contains the byline "by [redacted] *Daily News Sports*." The two photographs are both credited to Mr [redacted] Three other articles by [redacted] submitted by the petitioner appear in the *Nelson Daily News*. The *Nelson Daily News* appears to be a local newspaper. The petitioner also submitted a profile of himself that appeared in the *West Kootenay Weekender* and five articles that appeared in the *Rochester Post Bulletin*. Both publications appear to be local. Finally, the petitioner submitted an article in an unidentified publication. Counsel did not identify the publication and the publication name is illegible on the copy.

The director concluded that the petitioner had not demonstrated that the articles and photographs had appeared in major media. The director also concluded that the nature of the articles, mostly coverage of competition results, was not indicative of a coach at the very top of the field. On appeal, counsel does not address the director's concern on this issue. We concur with the director that local newspapers without a national circulation cannot be considered major media.

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.

While the petitioner did not claim to meet this criterion, the director concluded that merely "judging" one's students is inherent to the position of coach. Counsel does not challenge this conclusion on appeal and we concur with the director.

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

While the petitioner does not claim to meet this criterion, we note that two articles reference a gymnastics move developed by the petitioner. While the articles indicate that gymnasts who develop new moves can have their names attached to the move, the record contains no evidence that the petitioner's name has been attached to a new move.

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

While the petitioner does not expressly claim to meet this criterion, the petitioner submitted letters discussing his roles for his various employers. Initially, the petitioner submitted a 1992 letter from [redacted] Vice Principal of a sports high school [redacted] The letter reflects that the petitioner was a sports specialist at this school and eventually served as Vice President himself. The record contains no evidence regarding the reputation of this school. In a 1996 letter, an "authorized official" confirms that from 1989 through 1990, the petitioner was a trainer in "ARTISTIC/FANCY GYMNASTICS FOR UPCOMING MALE GYMNASTS" at the Bayreuth Gymnastics Club in Toronto. [redacted] Recreational Manager at Gymnastics Mississauga, verifies that the petitioner

was a gymnastics coach at that club in 1989. [redacted] of Gymnastics Ontario states that the petitioner coached there from 1991 to 1998. While there, he served as the Provincial Team Coach for the 1998 team traveling to Ann Arbor, Michigan. Once again, the record contains little evidence regarding the reputation of these clubs.

The petitioner is currently the Director and Head Coach for RAGA. Under his direction RAGA, already a member of the Midwest Amateur Gymnastics Association, became a member of USA Gymnastics. The petitioner developed an all-male training program, the only one in southeastern Minnesota. In its first competitive season, the boys' team ranked second overall. Under the petitioner's direction, the women's team ranked second in Division One and Two, the highest achieved by the organization. It is clear that the petitioner plays a leading or critical role for RAGA. The record does not establish, however, that RAGA is an organization with a distinguished reputation nationally. The petitioner has not provided information regarding how many gymnastics clubs nationally are members of USA Gymnastics. Even if USA Gymnastics has stringent membership requirements, if hundreds of clubs around the United States have such membership, we cannot conclude that each one has a distinguished reputation. The record does not demonstrate that RAGA attracts students from around the United States or that it produces more medallists than other USA Gymnastics members.

On appeal, counsel asserts that the petitioner submitted "evidence demonstrating that his achievements as a head gymnastics coach have been recognized as extraordinary by others in the field" in response to the director's request for additional documentation. The director's request, however, in addition to discussing the general standard, requested very specific evidence relating to some of the ten criteria. For example, the director requested letters from experts outside the petitioner's circle of colleagues and evidence of the distinguished reputation of the organizations where the petitioner has coached. Yet, the only new evidence submitted consisted of letters from a parent of one of his students and others involved with gymnastics in Minnesota. Thus, the subsequent submission was not entirely responsive to the director's request.

The witness letters provide general praise of the petitioner, express admiration for his ability to get his students to excel at the rate they do, rank him in the top percentage of coaches and profess confidence that he "has the ability to coach boys to the USAG Junior Olympic National level." On appeal [redacted] asserts that the petitioner "helped [redacted] from Mississauga Gymnastics Club (several times Olympic-National Coach of Canada) to prepare his athletes for the Olympic Games." Mr. [redacted] does not, however, explain what help the petitioner provided. The record does not include a more detailed explanation from Mr [redacted] The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package would greater weight than new materials prepared especially for submission with the petition.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and 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 petitioner 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 petitioner shows talent as a gymnastics coach, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established 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.