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**U.S. Citizenship
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FILE: WAC 03 184 54314 Office: CALIFORNIA SERVICE CENTER Date: **AUG 31 2005**

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)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) 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.

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 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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on May 29, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a "Rhythmic Gymnastics Coach." Documentation in the record indicates that the petitioner has been serving as a rhythmic gymnastics instructor at the Specialized Youth Sports School of Olympic Reserve #5 in Astrakhan City, Russia since 1994.

The petitioner submitted a letter from Jan Exner, Rhythmic Program Director, USA Gymnastics, who states: "The United States Gymnastics Federation/USA Gymnastics is the exclusive national governing body for the sport of gymnastics in the United States." The petitioner also submitted information from USA Gymnastics' website, which states:

In 1962, the International Gymnastics Federation (FIG) officially recognized rhythmic gymnastics as a sport. . . . The United States sent their first delegation to the Rhythmic World Championships in 1973.

The rhythmic individual all-around competition was added to the Olympic Games in 1984. In 1996, the rhythmic group event was added as a medal-sport at the Olympic Games for the first time.

The petitioner submitted documentation pertaining to her career as a competitive rhythmic gymnast in Russia. This documentation indicates that she last competed in 1991. There is no evidence showing that the petitioner, age twenty-five at the time of filing, remains consistently active at the national or international level as a competitive rhythmic gymnast.

The regulation at 8 C.F.R. § 204.5(h) requires the beneficiary to “continue work in the area of expertise.” As noted by counsel and as indicated under Part 6 of the I-140 petition, athletic competition is not the field in which the petitioner seeks to continue working in the United States. In this country, the petitioner clearly intends to work as a coach. While a rhythmic gymnast and coach certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competing and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. Ziglar*, 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.

The statute requires the petitioner to establish *sustained* national or international acclaim. In the present case, the petitioner’s career as a competitive rhythmic gymnast ended in the early 1990’s. Since 1994, the petitioner has worked as a rhythmic gymnastics coach. In such a situation, where the petitioner has had ample time to establish a reputation as a coach, she must show that she has earned sustained national or international acclaim based on her achievements as a coach rather than her prior reputation as an athlete.

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 pertaining 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.

The petitioner submitted a letter from G.E. Lukina, Director of the Specialized Youth Sports School of Olympic Reserve #5, Astrakhan City, Russia, who states: “In 1987 [the petitioner] became a winner of all-union tournament. In 1991 she became a champion of Russia in group routine and a Master of Sport.”

The petitioner submitted a certificate issued by the "Department of Education of the Russian Republic of the Soviet Union" in October 1987 stating that she won "first place in the Rhythmic Gymnastics Championship of the Soviet Union among juniors." At the time, the petitioner was only ten years old. A "junior" level award is not an indication that an individual has reached the "very top of the field of endeavor." There is no indication that the petitioner faced national competition from throughout her entire sport, rather than only her approximate age group within her sport.

The petitioner submitted a photocopy of a first place medal alleged to be from the 1991 Russian National Championships. In a letter responding to the director's request for evidence, counsel states: "[The petitioner's] group at this national championship in 1991 was judged against the top teams from all other regions and [the petitioner's] team was judged to be the best." We note that this award was a team award rather than an individual award. While a team award certainly does not preclude eligibility under this criterion, the petitioner must still demonstrate that her achievements at this competition played a primary role in her team's victory. Large-scale athletic competitions such as a national championship typically issue event programs listing the order of events, the name of each specific event, the names of all of the participating athletes, and their competitive ranking. At a competition's conclusion, results are usually provided indicating how each participant performed in relation to the other competitors in his or her athletic events. The petitioner, however, has provided no first-hand evidence of the scoring results for this competition showing that she played a predominant or leading role in the her team's overall victory. Nor is there evidence showing that this competition included athletes above the junior level.¹

The petitioner submitted an identification certificate issued by the Government Committee of the USSR for Culture and Sport reflecting her designation as a "Master of Sports" in rhythmic gymnastics. In a letter accompanying the petition, counsel states: "The number 268,009 represents the total number of "Master of Sport" designations ever awarded in the Soviet Union and including all sports. On December 15, 1991, only 268,008 other athletes in the entire Soviet Union . . . had received this designation." In a letter responding to the director's request for evidence, counsel further states:

The "Master of Sport" designation takes many years of successes in competitions to achieve; . . . is granted only to top athletes who have demonstrated superiority in their respective sports; and is awarded only after application of a complex system of "points" through which the athlete is judged against her peers, taking into account the significance of the events, the awards won at the events and the ranking of the individual athlete. The rank "Master of Sport" is just below "International (World Class) Master of Sport" which in turn is below only "Olympic Champion."

While the petitioner has submitted proof of her designation as a Master of Sport, first-hand evidence of the official requirements for this designation has not been provided. Without documentary evidence to support his claims, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

¹ The petitioner was only fourteen years old when this competition took place.

In addition to the above deficiencies, we cannot ignore that the petitioner's 1991 national team award and her "Master of Sport" designation were based on her ability as an athlete. These awards do not establish that she has sustained national or international acclaim as a coach. It is not clear that significant awards exist for rhythmic gymnastic coaches; however, nationally or internationally recognized prizes or awards won by individuals or teams coached by the petitioner may be considered as comparable evidence for this criterion under 8 C.F.R. § 204.5(h)(4). Here, it is important to evaluate the level at which the petitioner acts as a coach. A coach who has an established a successful history of coaching top athletes who win titles at the national level or above has a credible claim under this visa classification; a coach of intermediates or junior-level athletes does not.

In response to the director's request for evidence, the petitioner submitted a letter from [REDACTED] Vice President of the Rhythmic Gymnastics Federation of Russia, stating that [REDACTED] "a student of [the petitioner], received a bronze medal at European Championship in 1997." On appeal, the petitioner submitted a letter from [REDACTED] who states: "Under [the petitioner's] supervision, I have finished third on European Championship in group routine in 1997 in Greece, as well as champion on international tournament in Bulgaria in 1998." The record includes evidence showing that [REDACTED] received "a bronze for rope" at the "Senior AA" level at the fifth annual San Francisco Rhythmic Invitational, an international competition held in 1998. A crucial omission from the record, however, is evidence showing that the petitioner accompanied Irina Chaplygina to the preceding competitions as her primary coach.

The petitioner also submitted evidence indicating that she "trained the World Champion among Juniors, [REDACTED]. On appeal, the petitioner submitted a letter from [REDACTED] who states: "Under [the petitioner's] supervision I became the World Champion among club teams on junior level in 2000 in Japan and have earned the title "Master of Sports on International Level." The record includes evidence showing that [REDACTED] received the highest all-around score at the "Junior AA" level at the San Francisco Rhythmic Invitational in 1998. Clearly, the Junior level does not represent the highest level of competition in the sport of rhythmic gymnastics. The petitioner must show that gymnasts under her tutelage have won in competitions at the highest level, rather than competitions limited to a particular age group or skill level.

In response to the director's request for evidence, the petitioner submitted official results from five rhythmic gymnastics tournaments that took place in Russia in 2004 (exhibits marked J, K, L, M, and N). This evidence came into existence subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Furthermore, there is no indication that these results related to senior level competitions rather than junior level competitions.

On appeal, the petitioner submitted a letter from [REDACTED] mother of [REDACTED] who states that her daughter actively participated in rhythmic gymnastics with the petitioner from 2002 to 2005. [REDACTED] states that the petitioner "helped prepare Anastasia for major competitions when Anastasia was in Russia." [REDACTED] does not state that the petitioner is her daughter's primary coach, nor does she provide the specific dates of her daughter's tutelage in Russia. The record lacks evidence showing that the petitioner has regularly trained Anastasia Torba or accompanied her at national or

international competitions (as her official coach). The petitioner's appellate submission includes evidence showing that [REDACTED] placed third in the All-Around Junior Category at the 11th annual San Francisco Rhythmic Invitational in 2005. Aside from not reflecting competition at the highest level of rhythmic gymnastics, this evidence came into existence subsequent to the petition's filing date. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak* at 45, 49.

Other than [REDACTED] who enjoyed some measure of success at the international level in 1997 and 1998, there is no indication that any other rhythmic gymnasts directly under the petitioner's tutelage have won national or international titles at the highest level of the sport (i.e., the Senior level) subsequent to the late 1990's and leading up to the petition's filing date of May 29, 2003. We cannot ignore the statute's requirement for evidence of *sustained* national or international acclaim. Without evidence showing that the petitioner's gymnasts have consistently won national or international titles at the highest level over a sustained period, we cannot conclude that the petitioner satisfies this criterion as a coach. In this case, the evidence is not adequate to show that the petitioner has earned *sustained* national or international acclaim in the years proximate to the filing date through coaching top athletes or teams to championships at the national level or above.

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.

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. Furthermore, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

In response, to the director's request for evidence, the petitioner submitted a November 9, 2004 letter from [REDACTED] Vice President, National Federation of Rhythmic Gymnastics, certifying that the petitioner "is a member of the Federation of Rhythmic Gymnastics of Astrakhan Region and is a member of the National Federation of Rhythmic Gymnastics as per Contract of January 5, 2004." There is no evidence showing that the petitioner held membership in either organization as of the petition's filing date. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak* at 45, 49. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date. Aside from the issue of the date that this evidence came into existence, we note that the record contains no evidence of the bylaws or official membership requirements for the Federation of Rhythmic Gymnastics of the Astrakhan Region or the National Federation of Rhythmic Gymnastics to demonstrate that these organizations require outstanding achievement as an essential condition for admission to membership.² Nor is there any evidence showing that the petitioner was evaluated by

² The petitioner submitted a letter from the Specialized Youth Sports School of Olympic Reserve #5 in Astrakhan City (marked as exhibit R) explaining that membership in the National Federation of Rhythmic Gymnastics "is awarded only to the coaches whose students have received a gold, silver, or bronze medal in the Russian National Championship, the

experts at the national or international level, rather than the regional level, in consideration of her admission to membership.

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.

As previously noted, 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 petitioner’s participation as a judge must be evaluated in terms of these requirements. For example, judging an Olympic competition is of far greater probative value than judging a local age-group competition.

The petitioner submitted a letter from the “Physical Training and Sport Committee” of the “Administration of the Astrakhan region” confirming the petitioner “took part in International rhythmic gymnastic competition [REDACTED] from 28 till 31 of October 2001 as a referee.” The record contains no further information about this competition or the specific event categories judged by the petitioner. Section 203(b)(1)(A)(i) of the Act, however, requires extensive documentation sustained national or international acclaim. It has not been shown that the events refereed by the petitioner at this competition involved athletes at the senior level as opposed to athletes at the junior, intermediate, or novice levels. To satisfy this criterion, the petitioner must show that the competition is at the national or international level and involves top gymnasts in the sport. The one-sentence discussion of the petitioner’s participation is not adequate to demonstrate her national or international acclaim.

In response to the director’s request for evidence, the petitioner submitted three certifications (exhibits marked T, U, and V) issued by the following individuals:

1. [REDACTED] Head Judge and Judge of the National Level, and [REDACTED] Main Assistant of the Head Judge and Judge of the National Level
2. [REDACTED] Head Judge and Judge of the National Level, and [REDACTED] Main Assistant of the Head Judge and Judge of the National Level
3. [REDACTED] Head Judge and Judge of the National Level, and [REDACTED] in Assistant of the Head Judge and Judge of the National Level

The above certifications state that the petitioner served as a judge and as an assistant of the Head Judge at competitions held in January, May, and November of 2004. This evidence, however, came into existence subsequent to the petition’s filing date. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak* at 45, 49. Subsequent developments in the petitioner’s career cannot retroactively establish eligibility as of the filing date. The petitioner offers no explanation as to how she was able to serve as a judge at events where the athletes whom she coaches were among the competitors. Nor is there any evidence showing that the petitioner has served as a judge on the same level as the individuals listed in items 1 through 3 above.

European Championship or the World Championship competitions.” Official membership information originating from the National Federation of Rhythmic Gymnastics itself is of greater probative value than second-hand information provided by the petitioner’s immediate employer.

The petitioner also submitted a November 9, 2004 letter from [REDACTED] Vice President of the Rhythmic Gymnastics Federation of Russia, stating that “the certification documents of [the petitioner] as a Certified Judge State Category is [sic] currently being processed in the Awards Department of the Federal Agency of Athletics, Sports and Tourism of Russia.” This evidence also came into existence subsequent to the petitioner’s filing date. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak* at 45, 49. Based on this letter, it is apparent that the petitioner was not eligible to judge at the “State Category” or national level until some time after November 2004.

Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases.

Counsel notes that between 1992 and 1994 the petitioner toured multiple countries performing in a gymnastics exhibition entitled “Calisthenics Constellation.” Counsel states: “This production was an international exhibition designed by [the petitioner’s] mother, [REDACTED] a World Champion in Gymnastics, to demonstrate the artistic features of the sport of Rhythmic Gymnastics along with other gymnastics disciplines at venues around the world to expose the sport to the public.” There is no evidence showing that the petitioner has performed in such an exhibition subsequent to 1994, therefore, she has not sustained her prior acclaim as a performer.

The AAO has consistently found that this particular criterion is more appropriate for visual artists (such as sculptors and painters) rather than for public performers. Acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. The record contains no evidence showing that the petitioner’s performances as a leading or principal performer drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner.

Nevertheless, we cannot ignore that the petitioner in this case seeks classification as a rhythmic gymnastics coach rather than as a gymnastics performer. Publicly performing artistic gymnastic routines is clearly not the field in which the petitioner seeks to continue working in the United States. We find that the petitioner’s evidence fails to satisfy this criterion.

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

We withdraw the director’s finding that the petitioner’s evidence is adequate to fulfill this criterion. In order to establish that she performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

Counsel asserts that the petitioner has performed in a leading or critical role for the Specialized Youth Sports School of Olympic Reserve #5 in Astrakhan City, Russia.

The petitioner submitted a letter (marked exhibit 5) from the school’s director, [REDACTED] stating: “From 1994 [the petitioner] has been working in SDUSHOR No. 5 as rhythmic gymnastics coach. Now she is

training a school team in group routine for theirs [sic] participation in Russia championship in December of 2001.”

In a letter responding to the director’s request for evidence, counsel states the petitioner “presently holds the position of Senior Instructor.” The record, however, does not indicate the date of the petitioner’s appointment to the Senior Instructor position. Subsequent developments in the petitioner’s career cannot retroactively establish that he was already eligible for the classification sought as of the filing date. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak* at 45, 49.

A subsequent letter from G.E. Lukina (marked exhibit X) states:

[The petitioner] is trusted to train gymnasts for the Russian National Team. There are a total of 38 coaches at SYSOR and only five of them are in charge of the training programs for the highest level gymnasts. [The petitioner’s] sparking coaching talent and artistic approach of the training process have helped her to attain the leading role at one of the oldest and most respected gymnastic schools in Russia.

In this case, the record does not adequately document the petitioner’s role as coach from 1994 to 2003. G.E. Lukina does not indicate whether the petitioner trains gymnasts for the junior national team or the senior national team. The evidence of record indicates that the petitioner works primarily in the youth category. Nor does [REDACTED] state that the petitioner is the head coach of School #5’s overall rhythmic gymnastic training program. The vague statements offered by [REDACTED] do not adequately distinguish the petitioner’s role from that of the other rhythmic gymnastics coaches at School #5. It has not been adequately established that the petitioner’s role as a coach at School #5 is any more important than that of the other coaches or senior instructors. Nor has the petitioner provided official statistics showing that from 1994 to 2003 students under her direct tutelage consistently outperformed their competitors from the other specialized youth sports schools in Russia or won a greater percentage of championships at the senior national level.

For the above reasons, we find the petitioner has not established that she has performed in a leading or critical role for a distinguished organization, or that her involvement has earned her sustained national or international acclaim.

On appeal, counsel argues the director erred by not finding that certain evidence constituted 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 evidence prizes awarded to athletes coached by the petitioner.

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 in this case has failed to demonstrate that she meets at least three

of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished herself 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 is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.