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**U.S. Citizenship  
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FILE: [REDACTED]  
EAC 04 080 50767

Office: VERMONT SERVICE CENTER

Date: **NOV 16 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:

SELF-REPRESENTED

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.

*Mari Johnson*

*S* 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 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 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 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 earned sustained national or international acclaim at the very top level.

This petition, filed on January 24, 2004, seeks to classify the beneficiary as an alien of extraordinary ability in "Rhythmic Gymnastics Sports." The petitioner submitted documentation pertaining to the beneficiary's career as a competitive rhythmic gymnast in China. This documentation indicates that the beneficiary last competed as an athlete in 1998. The beneficiary's career summary states:

Since my official retirement in 1998, I have dedicated myself to the development of rhythmic gymnastics of youngsters; and with my rich athletic experience and certain scientific technical methods, I have had a great opportunity to coach athletes in a wide variety of programs in recreational, performance and competitive rhythmic gymnastics and aesthetics.

There is no evidence showing that the beneficiary, age twenty-four 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 petitioner to submit “clear evidence that the alien is coming to the United States to continue work in the area of expertise.” In this case, the beneficiary’s intention to continue work in the sport of rhythmic gymnastics is not entirely clear. For example, Part 6 of the I-140 petition, “Basic information about the proposed employment,” lists the beneficiary’s job title as “Assistant Professor.” Under “Nontechnical Description of Job” it states: “Participate in the planning & delivery of edu. programs, courses and service that will aid students to achiev [sic] their edu [sic] goals.” From this description, there is no indication that the beneficiary will be involved in rhythmic gymnastics.

In a January 19, 2004 letter accompanying the petition [redacted] Vice President of the American Education Center, states:

This letter is submitted on behalf of [the beneficiary] as the first employment-based preference Priority Worker, Alien of Extraordinary Ability in Rhythmic Gymnastics Sports. The following information explain how [sic] [the beneficiary] is an individual with the very top professional proficiency, and therefore, qualified to be classified as the first employment-based preference priority worker.

The letter then discusses the beneficiary’s eligibility under three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), but it does not explain how the beneficiary’s work in the U.S. will involve rhythmic gymnastics.<sup>1</sup>

On appeal, the petitioner submits a February 29, 2005 letter from [redacted] stating:

You may be right the beneficiary should filed [sic] for E1-1 classification as an athlete in rhythmic gymnastics sports, not as an Assistant Professor. Please notes [sic] that the beneficiary is already grant [sic] the title of as an Associate Professor since last Oct.

As an athlete in rhythmic gymnastic sports, the beneficiary is the very top of her field of endeavor.

\* \* \*

The beneficiary’s top level of the skill is a key to help our organization to set up the international education exchange program in the sports field.

As an Associate Professor, the beneficiary has been participating in the planning and delivery of educational programs, courses and service that had aid [sic] the students achieve the educational goals. The beneficiary has 3 students achieved [sic] the national golden medal as following [sic]:

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<sup>1</sup> The record includes a Form I-797B, Notice of Action, indicating that the alien was the beneficiary of an approved H1-B nonimmigrant petition that authorized her to work in the United States for the petitioner, American Education Center, from June 1, 2003 to May 30, 2006 (EAC 03 156 53273). The petitioner, however, has submitted no evidence of the beneficiary’s employment activities for the American Education Center since the start of this authorized period.

letter then lists the names of four Chinese rhythmic gymnasts (Shu Cheng Yi, Qiao Tan, Yang Xie Jiao, and Kang Si Si) and their respective accomplishments at competitive events in 2002. We note, however, that these athletes are from the Chengdu Physical Education College of Sichuan Province, not the American Education Center in Flushing, NY. While asserts that the beneficiary has successfully coached Chinese athletes from the Sichuan Province, her letter still does not adequately explain how the beneficiary's work in the U.S. will involve rhythmic gymnastics. The ambiguous information provided in letter does not address the beneficiary's past, present, or future duties at the American Education Center and how they relate to the sport of rhythmic gymnastics. We will further address the beneficiary's intention to continue working in her area of expertise in the U.S. at the conclusion of this decision.

In this case, athletic competition is clearly not the field in which the beneficiary seeks to continue working in the United States.<sup>2</sup> A substantial portion of the documentation submitted by the petitioner relates to the beneficiary's work as a rhythmic gymnastics coach. While a competitive 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 plain language of section 203(b)(1)(A) of the Act statute requires the petitioner to establish that the beneficiary has earned "sustained national or international acclaim." In the present case, the beneficiary's career as a competitive rhythmic gymnast ended in 1998. Since that time, the beneficiary has worked as a rhythmic gymnastics coach in China and Canada. In such a situation, where the beneficiary 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 evidence showing that the beneficiary received national and international awards as a competitive rhythmic gymnast during the mid-1990's. We note, however, that these awards were based on

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<sup>2</sup> In her career summary, the beneficiary specifically states that she officially retired from competition in 1998.

the beneficiary's abilities as an athlete. Such awards do not establish that she has earned 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 beneficiary may be considered as comparable evidence for this criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). Here, it is important to evaluate the level at which the beneficiary 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.

The petitioner submitted a letter from Diao Zaizhen, Chief of the Artistic Gymnastics & Aerobics Dancing Department, Gymnastics Sports Managing Center, National Physical Culture Bureau, and Director of the Artistic Gymnastics Committee of the China Gymnastics Association, who states:

[The beneficiary] engaged to act as a coach of the Artistic Gymnastics Team of Sichuan Province in 1998. She trained a lot of outstanding youngsters contestants [sic] of artistic gymnastics by using her experiences and scientific methods. [REDACTED] a member of her team, won second place of the single item in the national youngsters competition.

There is no indication that a second place at a "national youngsters competition" represents success at the highest level of competition in the sport of rhythmic gymnastics. The petitioner must show that gymnasts under the beneficiary's tutelage have won competitions at the highest level, rather than competitions limited to a particular age group or lesser skill level.

The petitioner also submitted a document listing the "best achievements" of four of the beneficiary's athletes from the Sichuan provincial team in China (Shu Cheng Yi, Qiao Tan, Yang Xue Jiao, and Kang Si Si). The document bears the signatures of each of these athletes. We note, however, that all of the achievements listed occurred in 2002. According to the beneficiary's career summary (submitted on appeal) and her Form G-325A, Biographic Information, she was working as Head Coach of York Rhythmics and Kalev Estienne Gymnastics in Ontario, Canada from July 2001 to August 2002.<sup>3</sup> Therefore, the above gymnasts have provided a listing of their achievements for a period of time when the beneficiary was not acting as their coach. The record includes no evidence showing the specific dates of tutelage of these athletes or evidence showing that the beneficiary accompanied them to the 2002 Chinese National Rhythmic Gymnastics Championships as their official coach. Nor has the petitioner submitted first-hand evidence of their actual awards.

In this case, the petitioner has failed to establish that rhythmic gymnasts directly under the beneficiary's tutelage have won national or international titles at the highest level of the sport (i.e., the senior or elite level). We further note that subsequent to August 2002 when she left York Rhythmics and Kalev Estienne Gymnastics, there is no evidence indicating that the beneficiary has continued to coach gymnasts who compete at the national level. Without evidence showing that the beneficiary's gymnasts have successfully

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<sup>3</sup> The career summary and Form G-325A indicate that the beneficiary last worked for the Sichuan Province team in April 2000.

competed at the national level or above over a sustained period leading up to the petition's filing date, we cannot conclude that she satisfies this criterion as a coach.

*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.*

In order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>4</sup>

The petitioner submitted incomplete translations of eight newspaper clippings from *Sichuan Daily* and *Sichuan Sports*. Pursuant to 8 C.F.R. § 103.2(b)(3), however, any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation that the translator has certified as complete and accurate. The published pieces submitted by the petitioner were not accompanied by full English language translations and were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Only two of the articles included the date of publication as required by the regulation. Furthermore, we note that the plain wording of this criterion requires "published materials about the alien." According to the partial translations, it is apparent that the beneficiary herself was not the primary subject of the published material. If the beneficiary or her accomplishments were not the main subject of these articles, then such articles fail to demonstrate her individual acclaim. We further note the petitioner has not shown that the preceding publications have substantial national readership. In conclusion, we find that the evidence presented by the petitioner is not adequate to show that the beneficiary has been the primary subject of sustained major media attention.

*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 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 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.

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<sup>4</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

The petitioner submitted a "Judge Certificate" issued on November 9, 1999 by the Sports Committee of the People's Republic of China stating that the beneficiary was granted the "title of Rhythmic Gymnastics Judge of class A."

The petitioner also submitted a September 25, 2003 letter from Zhou Xiao Qin, Chinese Senior Rhythmic Gymnastic Coach and International Referee, who states:

According to the stipulations of Chinese Gymnastics Association, the R.G. referee's classification are listed as below:

The highest class: International Judge  
The second class: National Judge at class A  
The third class: National Referee at class B  
The third class: National Referee at class C

Letter bears no address, phone number, or any other information through which he may be contacted. Further, according to his letter, above and beyond the beneficiary's class A classification there exists the "highest class" of International Judge. The petitioner does not explain how being a "second class" judge indicates that the beneficiary is one of that small percentage who have risen to the very top of her field. *See* 8 C.F.R. § 204.5(h)(2). There is no evidence showing that the beneficiary has served as a judge at the same level as Zhou Xiao Qin.

further states:

Since 1998 till 2000, [the beneficiary] has altogether judged four R.G. competitions at national or provincial level; the record of her referee's working experiences is listed below:

May 2000, Chengdu, Sichuan Provincial R.G. Competition for Primary & Secondary School Students;

April 2000, Nanning, National R.G. Championship;

Sep. 1999, Shanghai, National R.G. Championship;

Jul. 1998, Deyang, R.G. Competition of Sichuan Provincial Games

The record includes no further information about these competitions or the specific event categories judged by the beneficiary. 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 specific events judged by the beneficiary involved athletes at the highest level of the sport as opposed to athletes at the junior, intermediate, or novice levels. There is no evidence (such as a printed program) showing the names or the level of expertise of the athletes evaluated by the beneficiary. Further, we note the absence of contemporaneous published material or national publicity surrounding the beneficiary's involvement at the competitions. Without evidence showing that the

beneficiary's activities at these competitions involved evaluating top gymnasts at the national level, we cannot conclude she meets this criterion.

In addition to the above deficiencies, we note that the statute and regulations require the beneficiary's acclaim to be sustained. Subsequent to 2000, there is no evidence showing that the beneficiary has served as a rhythmic gymnastics judge in the United States or China.

Review of the record does not establish that the beneficiary 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 beneficiary's achievements set her significantly above almost all others in her field at the national or international level. 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.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The record, however, includes no evidence detailing plans on how the beneficiary intends to continue working in the sport of rhythmic gymnastics in this country.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

**ORDER:** The appeal is dismissed.