



DB

U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File: EAC-99-168-53519

Office: Vermont Service Center

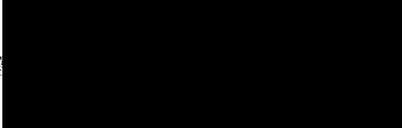
Date: 18 SEP 2001

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

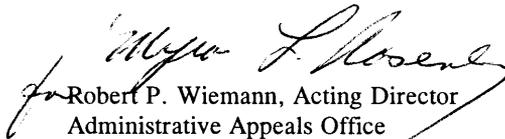
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant 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 school. The beneficiary is a former gymnast and gymnastics coach. The petitioner seeks classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), as an alien with extraordinary ability in athletics, in order to continue to employ him in the United States as a gymnastics coach for a period of one year at a salary of \$400 per week.

The director denied the petition conceding that the petitioner had established that the beneficiary has extraordinary ability in athletics, but that it had not established that he would be employed to continue work in the area of extraordinary ability in the proffered position.

On appeal, counsel for the petitioner submitted a brief and additional documentation.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

8 C.F.R. 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The issue raised by the director in this proceeding is whether the position of coach for the petitioner constitutes continuing work in the area of extraordinary ability.

The petitioner is a gymnastics school. The beneficiary is described as a native and citizen of Romania who has been an Olympic-level gymnast and gymnastics coach for 15 years.

The director denied the petition stating that petitioner had not established that the position of coaching children's gymnastics constituted continuing work in the area of extraordinary ability.

The O-1 classification is intended to be highly restrictive available only to the small percentage of athletes who have risen to the very top of their field of endeavor. 8 C.F.R. 214.2(o)(3)(ii).

In evaluating a claim of eligibility for O-1 classification as an athletic coach, the Service must distinguish between positions teaching/coaching a sport for recreational or introductory purposes and teaching/coaching a sport for high-level competition purposes where extraordinary ability is required and demonstrated. The former is not considered qualifying for O-1 classification, the latter is considered qualifying.

On appeal, counsel submitted a letter from the petitioner stating, in part, that:

He is coaching young athletes that who are in secondary stages of Olympic training and are quickly approaching the final stages. We have earned 8 state Championships in the past year due to the Olympic level coaching skills of Mr. [REDACTED]...The only way a young athlete can obtain an Olympic goal is to progressively train with the proper techniques and skills at the lower levels (which requires an expert with extensive knowledge) so as to excel through the sport of gymnastics. Our champion athletes are level 8 gymnasts. They are 2 levels away from their elite status which would qualify them for international competitions and possibly the Olympics.

After a careful review of the record, it must be concluded that the petitioner has not established its claim that the position is qualifying for an alien in O-1 classification. The petitioner failed to submit any evidence documenting the meaning of the terms "secondary stage training," or "level 8" gymnastics, or explaining the specific requirements for international Olympic-level competition in gymnastics. A school whose students compete at the state-wide level, is not necessarily evidence that the school is primarily engaged in the training of young athletes in extraordinary ability-level competition. Absent documentation specific to the field of gymnastics and additional supporting evidence, the Service is unable to evaluate the petitioner's uncorroborated statements.

It is noted that the petitioner submitted the required labor-group consultation from the United States Gymnastics Federation/USA Gymnastics (USGF). The USGF verified that the beneficiary is an alien of extraordinary ability in gymnastics and in coaching gymnastics. However, the USGF did not verify that the petitioning gymnastics school is primarily involved in coaching young athletes at the level of extraordinary ability. Such verification is required by the regulation in that it states that the consultation must address the "nature of the work to be done."

While the regulations are silent on what constitutes continuing work in the area of extraordinary ability in athletics for a coach, this is normally interpreted as a school/gym/training facility that is primarily oriented towards international athletic competition and/or Olympic-level competition. The petitioner has not established that its facility is primarily involved in athletics at the extraordinary ability level. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The denial of this petition is without prejudice to the filing of a visa petition on behalf of the beneficiary for any other visa classification for which he may be eligible.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.