



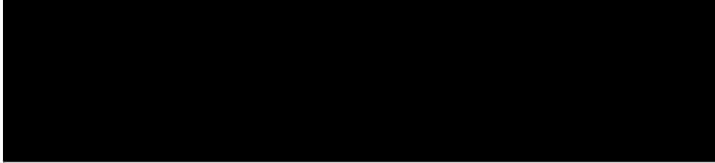
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U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC-01-071-54069 Office: California Service Center Date: JUL 18 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

IN BEHALF OF PETITIONER



Public Copy

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

Myra L. Rosenberg
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California 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 current 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 employ him in the United States as a gymnastics coach for a period of three years at a salary of \$36,000 per year.

The director denied the petition finding that the petitioner had not established that the beneficiary satisfied the regulatory criteria as an alien with extraordinary ability in athletics.

On appeal, counsel for the petitioner argued that the beneficiary does satisfy the requirements as shown in the consultation letter from the United States Federation of Gymnastics.

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 beneficiary has the requisite extraordinary ability in athletics as defined in this type of visa proceeding.

The beneficiary is described as a native and citizen of Belarus. The petitioner did not provide a detailed resume of his career in athletics. The petitioner asserted that the beneficiary is a former gymnast, that he has coached in many international competitions, that he is currently a coach at the Republican Center of Physical Culture and Sport in Belarus, and that he has coached two members of the Belarus national team.

The director denied the petition finding, in part, that the evidence was insufficient to establish that the beneficiary was recognized as having risen to the "very top" of the field of gymnastics as required by 8 C.F.R. 214.2(o)(3)(ii).

On appeal, counsel argued, in pertinent part, that the beneficiary has extraordinary ability in athletics, is recognized as such in the favorable consultation letter from the United States Gymnastics Federation (USGF), and that he has published four professional articles on training gymnasts.

Counsel's argument is not persuasive. First, the petitioner failed to provide a detailed account of the beneficiary's career achievements as an athlete or an athletic coach. Simply going on record without supporting documentary evidence, is not sufficient for purposes of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Second, the petitioner failed to submit any published material showing that the beneficiary has achieved international recognition as a gymnastics coach of extraordinary ability. It is noted that the Belarus national team is widely recognized as one of the world's best gymnastics teams, however, the petitioner failed to establish that the beneficiary has competed as a member of the team or has formally coached the team.

Here, there is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. 214.2(o)(3)(iii)(A) or that he satisfies at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B). There is no evidence of having won significant competitions, no evidence of significant media recognition, and no indication of having commanded a high salary.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for extraordinary ability classification, the statute requires proof of "sustained" national or international acclaim and proof that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized. Merely having competed in, or won, some gymnastics

competitions or having coached gymnasts who have won competitions is not a sufficient basis for O-1 classification. A petitioner must demonstrate that the alien is widely recognized as being at the "very top" of the field of endeavor. Accordingly, the petitioner has failed to overcome the director's concerns.

It is noted that the petitioner submitted the required labor-group consultation from the USGF. The USGF asserted 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."

Section 101(a)(15)(O)(i) of the Act requires that the alien seek to enter the United States to continue work in the area of extraordinary ability. 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 Service must distinguish between positions teaching/coaching a sport for recreational or introductory purposes and teaching/coaching a sport for high-level competition purposes. The petitioner has not established that its facility is primarily involved in coaching athletics at the extraordinary ability level. Therefore, it cannot be concluded that the beneficiary seeks admission in order to continue work in the area of extraordinary ability.

The denial of this petition is without prejudice to the filing of a new petition under alternate provisions of the Act.

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.