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FILE: EAC 03 051 50987 Office: VERMONT SERVICE CENTER Date: ~~Aug~~ 12 2005

IN RE: Petitioner: 
Beneficiary:

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:



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, Vermont 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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(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 into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in athletics as a gymnastics coach and claims to have been a member of the former Soviet Union Olympic gymnastics team. The record indicates that the petitioner is employed as coach at Gymnastique Incorporated, a gymnastics club in Long Island, New York.. The director found the record did not establish that the petitioner had earned the sustained acclaim requisite to classification as an alien with extraordinary ability. On appeal, counsel submits a brief and additional supporting documents. Counsel's claims and the additional evidence do not overcome the deficiencies of the petition and the appeal will be dismissed.

We first note that an alien who seeks to enter the United States as a coach under the extraordinary ability classification cannot rely solely on acclaim as an athlete. However, given the nexus between competing and coaching, 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, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. Accordingly, we review the evidence in this case under this standard. We address counsel's claims and the evidence submitted in the following discussion of the regulatory criteria relevant to the petitioner's case.

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

On page six of his appellate brief, counsel claims "the petitioner was a member of the Soviet Olympic Team and as such more that [sic] adequately satisfies the first criteria [sic]." Although several of the petitioner's support letters also refer to him as a "former Olympian," the record contains no corroborative evidence of the petitioner's participation in any Olympic games. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record contains a certificate issued by the "Board of the Physical Education and Sport affiliated with the USSR's Board of Ministers," which attests that the petitioner was "awarded a qualification of a Foreman of Sport of the USSR in the field of Athletic Gymnastics from the 22nd Day of December, 1981." The record contains no evidence to explain the significance of this certificate or the criteria for designation as a "Foreman of Sport." Even if the petitioner's certificate was a nationally recognized prize or award for gymnastic excellence in the former Soviet Union, it alone would not meet this criterion. The certificate was issued over 20 years before this petition was filed, and would only demonstrate the petitioner's past acclaim as an athlete.

The record is also devoid of any evidence that the petitioner has sustained his alleged past acclaim as an athlete through his subsequent work as a gymnastics coach. Nationally or internationally recognized prizes or awards won by a coach's students can be considered comparable evidence for this criterion under 8 C.F.R. § 204.5(h)(4). Yet in this case, the petitioner submitted no evidence that any of his students have won national or international competitions. In fact, the record indicates that the petitioner's students have only competed on the local, state or regional level. On appeal, the petitioner submitted a letter from his employer [REDACTED] President of Gymnastique Incorporated who explains that the petitioner has trained two gymnasts who "were level 10 athletes in the 2003 and 2004 competitive season within the USA Gymnastics nationally and internationally recognized program. They are both now training for the Elite team and hope to qualify to National and International competition this year." Three support letters submitted with the petition also state that the petitioner formerly worked as a coach at [REDACTED] Gymnastics Center where he coached two state champions and his students represented South Carolina at the South East Regionals. Hence, the record indicates that the petitioner has not coached students competing internationally or on the national level in the United States.

Several of the petitioner's support letters also note that the petitioner earned a Master's degree from the Dnepropetrovsk State Institute of Physical Education where he worked as a coach and teacher before coming to the United States. The record contains a Diploma awarded to the petitioner in 1988 from the Dnepropetrovsk State Institute of Physical Education which states, "By the decision of the State Examination Board from the 30th Day of June, 1988 [the petitioner] was qualified as a Teacher of Physical Education." The diploma is affixed with the emblem of the Soviet Union. Despite this professional qualification, the record is devoid of any evidence of the petitioner's actual coaching in the former Soviet Union or that any of his former students won

any national or international competitions, prizes or awards. Accordingly, the petitioner does not meet this criterion.

(iii) Published material 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.

The petitioner submitted three documents as evidence of his eligibility under this criterion. The first document is an excerpt from an article entitled "Offer Catches Gymnast Off-Balance" dated August 16, 1996 by an unnamed author and from an unidentified source. The excerpt features a photograph of the petitioner with one of his students. The article is about the petitioner's student and her plans to train with coach [REDACTED]. The petitioner is identified as one of his student's two current coaches: "Her coaches, [the petitioner] and [REDACTED] guide her through her routines. [The petitioner], a Russian, coaches her on tumbling, bars and vault." The submitted excerpt does not further mention or discuss the petitioner or his coaching. The submitted copy of this article does not comply with this criterion. The author and source of the article are not identified and the record is devoid of any evidence that the article was published in a nationally circulated newspaper or other major media.

The second document is an article entitled "Local Gymnast Raises the Bar" and is dated March 30, 2000 from an unidentified source. The article discusses the performance of one of the petitioner's students at the South Carolina state competition. The article mentions the petitioner as the student's "other coach." There is no evidence that this article was published in a professional, major trade publication or other major media.

The last article is entitled "Local Gymnasts Train with Olympic Gold Medal Winner" and is dated November 20, 1997 from an unidentified source. The article discusses the visit of 14 students from [REDACTED] Gymnastic Center to the gymnasium of [REDACTED] who won five gold medals as a Russian gymnast at the 1988 Olympics. The petitioner is mentioned only in the article's last sentence: "Local coaches Oleg Redikartsev and Svetlana Antrapovia accompanied the girls." Again, there is no evidence that this article was published in a professional, major trade publication or other major media.

On page seven of his appellate brief, counsel claims, "Newspapers constitute an [sic] 'other major media' and satisfy this third criteria [sic]. The newspaper articles demonstrate that [the petitioner's] students have achieved national recognition due in large part to his training and guidance." As discussed above, the two articles and one excerpt from an article only identify the petitioner in passing as the coach of the featured students. The documents do not discuss the petitioner or his coaching. Moreover, none of the articles state that any of the petitioner's students have participated in national competitions and none of the articles' sources are documented as nationally circulated newspapers. Accordingly, the petitioner does not meet this criterion.

(iv) 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 a gymnastics coach, the petitioner has undoubtedly judged the work of his students and their competitors at various tournaments. However, duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine to the occupation itself. In this case, the petitioner has submitted no evidence that he has served as a judge in a manner significantly outside the duties of his employment in a manner reflective of sustained national or international

acclaim. In her letter submitted on appeal, Dawn Wilensky (the petitioner's employer) requests that we “[p]lease also note that under Title 8 Section (IV) [the petitioner] is an internationally recognized judge and coach.” The record is devoid of any documentation to corroborate this claim. Again, simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165. Accordingly, the petitioner does not meet this criterion.

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

On appeal, counsel claims that the petitioner “has imparted unique techniques, maneuvers and a training regiment which maximizes his students’ potential and gives them the ability to succeed at levels of success, previously not attainable. The petitioner’s unique perspective and methodology are well illustrated by the recommendations of his peers and from current and former students.” The petitioner initially submitted four support letters from his employer; other gymnastic professionals, several of whom are former Olympians; and one handwritten thank you note from his student, “Jaime.” On appeal, the petitioner submits an additional three letters from other gymnastic coaches, a second letter from his employer, and letters from six of his students’ parents. While such letters provide relevant information about an alien’s experience and accomplishments, they cannot by themselves establish the alien’s eligibility under this criterion because they do not demonstrate that the alien’s work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner’s contributions.

In her first letter, the petitioner’s employer, ██████████ explained that because of the petitioner’s “international gymnastics experience, he brings skill knowledge as well as psychological knowledge of how to prepare athletes for local, sectional, national and eventually international competitions.” ██████████ further states that the petitioner’s “successful coaching ability is renowned. He, himself, was a national level gymnast on the team for the Ukraine. He coached the Russian Olympic athletic gymnastics team from the beginner to the Olympic level athlete.” As discussed above under the first criterion, the record contains no evidence of the petitioner’s participation in the Olympics or any other international competitions as a gymnast. The record is also devoid of any evidence that he coached the Russian Olympic gymnastics team.

The other support letters praise the petitioner’s abilities in general terms, but do not identify any specific, major contributions that he has made to his field as either a gymnast or a gymnastics coach. ██████████ of Planet Gymnastics, simply states that the petitioner’s “ability to communicate with kids, his technical knowledge, his devotion, and his professionalism are among some of his qualities.” Sorin and Teodora Cepoi, Owners of Dynamic Gymnastics, say the petitioner “has gained the respect of the entire gymnastics community through his coaching and teaching professionalism. His coaching repertoire combine [sic] a great support, motivation and discipline[,] a combination that produces not only great athletes, but fine young citizens as well.”

██████████ World of Gymnastics Incorporated, states, “In the United States [the petitioner] was a major force in developing young athletes in the sport of artistic gymnastics. He was a valuable asset to the Beach Team Tumblers (Head Coach 1995-2001), where he has brought the necessary skills and commitment needed for upper level training. [The petitioner] gives his gymnasts necessary confidence, proper technique,

physical and psychological skills.” The record contains no documentation of the petitioner’s position or accomplishments as a coach for the “Beach Team Tumblers.”

On appeal, the petitioner submits additional letters from [REDACTED]-Owner of Galaxy Gymnastics and from [REDACTED] Galina Petrounik of Gymnastique. These letters repeat verbatim much of the text from the letters of [REDACTED] submitted with the petition. This repetition suggests that the letters’ language is not the authors’ own and detracts from the letters’ probative value.

On appeal, the petitioner also submits letters from the parents of six of his students. The parents all praise the petitioner and credit him with the improvement of their daughters’ skills and advancement. None of the letters indicate that any of the students have competed beyond regional championships. While these letters attest to the petitioner’s valued work as a coach for these students, none of the parents describe any specific coaching skills or techniques of the petitioner that constitute major contributions to his sport.

The only other evidence of the petitioner’s gymnastic achievements are the diploma and “Foreman of Sport” certificate previously discussed under the first criterion, a “National Safety Certification” presented to the petitioner by USA Gymnastics, and a certificate from the Woodward Visiting Coaches Educational Program for the Summer of 2000. The petitioner’s diploma simply attests to his education and certification as a physical education teacher in the former Soviet Union. As explained under the first criterion, the record does not explain the significance of the petitioner’s “Foreman of Sport” certificate and the petitioner submitted no documentation that his designation as a “Foreman of Sport” evidenced a major contribution to his field. Similarly, counsel claims on page two of his appellate brief that the petitioner’s certificates shows that “[h]e is certified in the United States and was certified in the USSR to teach and train gymnasts at the highest levels.” The record does not support that claim. The petitioner’s diploma only states that he was qualified to teach physical education. It does not state that he was certified to teach gymnasts at the highest levels. The USA Gymnastics certificate only demonstrates that the petitioner has completed “all the requirements pertaining to the USA Gymnastics National Safety Certification Program.” It does not certify the petitioner as a gymnastics coach and the record contains no evidence that this safety certification is only granted to coaches already certified by USA Gymnastics. Finally, the petitioner’s Woodward certificate indicates that he attended and completed a summer educational program for visiting coaches. The record contains no evidence to explain the significance of this certificate or document that this program certifies gymnastics coaches at the highest levels in the United States.

Despite the support letters’ praiseworthy descriptions of the petitioner’s gymnastic skills and accomplishments, the record contains no corroborative evidence that he has made major contributions to his sport as either an athlete or a coach. Accordingly, the petitioner does not meet this criterion.

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

On page eight of his appellate brief, counsel contends that the director “failed to acknowledge that the petitioner’s abilities ‘are showcased or are on exhibit’ at each local, regional and national gymnastics competition that his students participate in.” Even if we considered evidence of the petitioners’ students’ participation in gymnastic competitions as comparable evidence of his eligibility under this category pursuant to 8 C.F.R. § 204.5(h)(4), he would not meet this criterion. The petitioner’s students in the United States have only competed in local, state and regional competitions, as evidenced by the petitioner’s support letters from other gymnastic professionals and the parents of some of his students as well as the two newspaper articles and the excerpt from a third article. The record is devoid of any evidence that he has coached gymnasts at the national

or international level. Despite the claims of some of the support letters, the record also contains no corroborative evidence that the petitioner was a gymnastics coach in the former Soviet Union or Russia prior to his arrival in the United States. The record thus does not establish that any of the petitioner's students have participated in national or international competitions that would reflect the petitioner's sustained acclaim as a coach. Accordingly, he does not meet this criterion.

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

In her second letter submitted on appeal, the petitioner's employee [REDACTED] states that the petitioner "has established himself as an important asset to our business, without him our business would incur a huge financial blow and possible bankruptcy." She further claims that the petitioner has "taken command of our 70 student gymnastics girls' competitive team, bringing them to local, state, regional and National level championships." Yet the record contains no evidence that the petitioner has coached students at any national championships. [REDACTED] also explains that the petitioner teaches "over 20 hours a week of private lessons for high level athletes and is in demand for many more hours. As stated in the enclosed letters, these parents would seek training at other 'Olympic Gyms' possibly out of state in order to continue their children's 'Olympic dreams and college scholarship possibilities.'" Letters written by the parents of three of the petitioner's students affirm that their daughter's goals include participating in the Olympics and obtaining college scholarships.

While the record may indicate that the petitioner plays a critical role for Gymnastique, the petitioner submitted no evidence that Gymnastique has a distinguished reputation. In her first letter [REDACTED] stated that her club's "reputation for quality, professional gymnastics and our success with our participants has created and allowed us to tap into [the] rapidly growing [gymnastics] market." In her second letter, Ms. [REDACTED] states that she and her partner have "achieved [their] goal" of having "the first Olympic Training Center in New York State." Yet the record is devoid of any evidence that Gymnastique has coached or trained any Olympic gymnasts and the petitioner submitted no other evidence to support the alleged reputation of Gymnastique. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165.

The record also fails to document any of the petitioner's former roles as a gymnast or gymnastics coach. The petitioner submitted no evidence of his purported participation in the Olympics as a gymnast or of his coaching in the former Soviet Union. The record also contains no documentation of the petitioner's previous coaching positions in the United States. [REDACTED] states that she worked with the petitioner at Terry and Don's Gymnastics Center and that "[h]is technical knowledge and his devotion to his work helped our team improve its position on all levels of competition in the state of South Carolina." [REDACTED] of Planet Gymnastics, affirms that the petitioner worked as "head coach in Terry and Don's Gymnastics, where he brought up two state champions and his students represented South Carolina at the South East Regionals." Sorin and [REDACTED] Owners of Dynamic Gymnastics, also affirm the petitioner's success as a coach at the Center. Yet the record contains no corroborative evidence of the petitioner's work at Terry and Don's Gymnastics Center or of the Center's reputation. Accordingly, the petitioner does not meet this criterion.

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The Form I-140 lists the petitioner's annual salary as "\$70,000.00 plus" and [REDACTED] first letter stated that she would "employ [the petitioner] at an annual salary in excess of \$70,000.00 per year." Yet the record contains no evidence of the petitioner's income or that his compensation is significantly higher than other gymnastic coaches or comparable to coaches at the very top of his field. Accordingly, the petitioner does not meet this criterion.

On appeal, counsel also states, "At a minimum, the various recommendations constitute 'comparable evidence to establish the beneficiary's eligibility'" and cites an unpublished AAO decision for the proposition that the "totality of the evidence" may establish an alien's "overall pattern of sustained acclaim and extraordinary ability." Counsel's claim is unmerited for two reasons. First, we have considered the petitioner's support letters as evidence of his eligibility under six of the seven criteria discussed above and we have noted that several of the letters were written by former gymnasts who were Olympic champions. Second, counsel's reliance on an unpublished AAO decision is misplaced. Pursuant to 8 C.F.R. § 103.4(c), designated and published decisions of the AAO are binding precedent on all Service employees in the administration of the Act. However, unpublished decisions have no such precedential value.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the petitioner is a gymnastics coach who is well regarded and highly valued by other gymnastic professionals, his employer and his students. However, the record does not establish that the petitioner has achieved sustained national or international acclaim as a gymnast or a coach placing him at the very top of his field. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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.