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U.S. Citizenship
and Immigration
Services

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DR

MAR 11 2005



FILE: LIN 04 216 53865 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



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

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.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a gymnastics academy. The beneficiary is a gymnastics coach. The petitioner seeks O-1 classification of the beneficiary, as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ him in the United States as the head coach for its' girls team for a period of three years.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has received sustained national or international acclaim and is one of a small percentage who have risen to the very top of his field of endeavor, gymnastics coaching.

On appeal, counsel for the petitioner submits a brief.

Section 101(a)(15)(O)(i) of 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.

The regulation at 8 C.F.R. § 214.2(o)(1)(ii)(1) requires the beneficiary to "continue work in the area of extraordinary ability." The beneficiary intends to work as a coach in the United States. While a gymnast and a coach certainly share knowledge of gymnastics, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 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.

Id. at 918. The court noted a consistent history in this area. Nevertheless, recently this office has recognized that there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is appropriate. 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, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the petitioner's area of expertise. Specifically, in such a case we will consider the level at which the alien acts as coach. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not. Thus, we will examine whether the petitioner has demonstrated her extraordinary ability as a coach or as an athlete. If the petitioner has demonstrated extraordinary ability as an athlete, we will consider the level at which she has successfully coached.

The regulation at 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.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

- (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
- (B) At least three of the following forms of documentation:
 - (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 - (2) 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;
 - (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
 - (4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
 - (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
 - (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
 - (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The beneficiary in this matter is a 41-year old citizen of Kyrgyzstan. The evidence on the record indicates that the beneficiary last entered the United States as a B-2 nonimmigrant alien on December 7, 2003.

After a careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial of the petition. The record is insufficient to establish that the beneficiary is an alien with extraordinary ability in athletics.

First, 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). Nor is the record persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

For criterion number one, the petitioner asserts that the following awards satisfy this criterion:

- 1976 – 3rd Place – International Artistic Tournament, Bruno, Czech Republic.
- 1994 – 2nd Place, Good Will Games in Sport Aerobics, St. Petersburg, Russia.
- 2000 – Honorary Diploma from the Republican Children's and Youth's Sport School of Artistic Gymnastics and Acrobatics of Olympic Reserve, Bishkek, Kyrgyzstan.

The petitioner failed to establish the significance of these awards. There are only two awards, one of which appears to be in the field of aerobics. The awards must be in the beneficiary's field of endeavor in order to establish that he has sustained acclaim in that field.

The Honorary Diploma is not an award or prize. The diploma states that it was issued to reward "longstanding and conscientious work."

The beneficiary does not satisfy this criterion.

In cases such as this, where alien athletes/coaches seek O-1 classification, Citizenship and Immigration Services (CIS) will consider as comparable evidence, the success of athletes coached by the alien.

On appeal, the petitioner stated that the beneficiary trained [REDACTED] [sic] for the Asia Championships in China in 1996 and Korotkova Alexandra for the World Championships held in 2004. "[The beneficiary] prepared [REDACTED] the Nelly Kim Championships held in Shimkent in 2000 at which Ms.

Gubanova won third place on the vault . . . and has been the coach for Raimbekova I, Nedbailo T and Le E who are international champions in both individual and all-around competitions.” As corroborative evidence, the petitioner submitted a letter from the Artistic Gymnastics Federation letterhead outlining the above experience, a translated third place award to Cristina Gubanova and a certificate for participation to Korotkova Alexandra. In review, the petitioner failed to establish that the beneficiary’s gymnasts have achieved significant recognition; hence, the evidence is insufficient to establish the beneficiary’s acclaim.

For criterion number two, the petitioner asserts that the beneficiary’s membership in the Gymnastics Federation of the Kyrgyz Republic and the USA Gymnastics Organization satisfies this criterion. The director determined that the petitioner failed to establish that these organizations require outstanding achievements of its members. According to USA Gymnastics website, it has more than 13,000 professional and instructor members.¹ There is no indication on the website that it requires outstanding achievements of its members.

The petitioner submitted a translation of a certificate titled the Artistic Gymnastics Federation Republic of Kyrgyzstan dated February 2000 indicating that the beneficiary was Vice President of the organization. It is not clear whether the “Gymnastics Federation of the Kyrgyz Republic” and the “Artistic Gymnastics Federation of the Kyrgyz Republic” are one and the same or two different organizations. Regardless, the petitioner failed to submit evidence of the membership requirements of this organization(s). The beneficiary does not satisfy this criterion.

For criterion number three, the petitioner submitted one newspaper article about the beneficiary and his daughter. The article states the following:

Smock of Fatherland is Grief for an Sportsmen.

Kirghiz sportsmen abandon their country because they do not have any chance to realize their potential in their native country. Gennady Samsonov left the country [even though] he was only artistic gymnastics trainer who worked with boys. He was invited to Kazakhstan where he left with his family and a daughter Alexandra who is a gymnastics champion of Republic of Kyrgustan.

[Sic]. The evidence is insufficient to satisfy this criterion. First, one article is not evidence of sustained acclaim. Second, this article is not evidence of the beneficiary’s acclaim. The article is clearly a human-interest piece rather than about the beneficiary’s acclaim in his field of endeavor. The beneficiary does not satisfy this criterion.

For criterion number four, the petitioner asserts that the beneficiary satisfies this criterion because he was certified as a National Judge in the Elite Category in Gymnastics in February 2002 and because he has judged and refereed twelve gymnastic competitions. The petitioner further states that the beneficiary served as “head judge” in numerous competitions. The petitioner submitted a letter stating the prerequisites for becoming a National Judge: hold a position of head judge or assistant head judge not less than 3 times, participate in 2 seminars with international judges, and present independently not less than 2 seminars for judges of first category. The

¹ See <http://www.usa-gymnastics.org/statistics/stats-memshippcategories.html>, accessed as of March 11, 2005.

petitioner has failed to establish that the beneficiary was selected to act as a judge on the basis of sustained national or international acclaim and recognition for his achievements. The beneficiary does not satisfy this criterion.

On appeal, the petitioner asserts that the beneficiary has made significant and original contributions to the field. In support of this assertion, the petitioner lists the beneficiary's qualifications, work experience and awards. The petitioner failed to explain how the beneficiary's qualifications, work experience and awards constitute an original contribution of *major significance* in the field. Clearly not every qualified and experienced gymnastics coach makes a significant original contribution to the field by virtue of his or her qualifications and experience. Awards are addressed in relation to a different criterion. The beneficiary does not satisfy this criterion.

No evidence was provided in relation to criterion number six.

For criterion number seven, the petitioner asserts that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation as follows:

- Vice President of the Artistic Gymnastics of the Republic of Kyrgyzstan.
- Honorary Diploma from the Republican Children's and Youth's Sport School of Artistic Gymnastics and Acrobatics of Olympic Reserve.
- Sole Certified National Judge in the Elite Category by the Federation Sport Gymnastics of the Republic of Kyrgyzstan.

The petitioner failed to submit any evidence to establish that these organizations have a distinguished reputation. Further, the petitioner failed to establish that the beneficiary played a critical or essential role for these organizations. The beneficiary does not satisfy this criterion.

For criterion number eight, the petitioner indicates on appeal that it has offered to pay the beneficiary an annual salary of \$57,000. The petitioner previously indicated on the Form I-129 petition that it intended to pay the beneficiary an annual salary of \$25,000. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The petitioner also submitted evidence to establish that the beneficiary had received high salaries in the past. The petitioner provided CIS with a letter stating that the beneficiary earned a salary of 2,500 som as head trainer and 7,000 som as a physical trainer. The petitioner submitted a translated page titled "information" that states that the "average salary of workers in the Republic of Kyrgustan is 2000 som." It is not clear if the petitioner is comparing the beneficiary's wage against all workers in his home country or against fellow gymnasts. To evaluate whether the salary is high, CIS needs to compare it to the median and highest wages offered nationwide to gymnastic coaches. The beneficiary does not satisfy this criterion.

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.

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ORDER: The appeal is dismissed.