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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 14 2007

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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.

Naura De
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

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. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner meets only one of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), of which an alien must meet at least three.

On appeal, counsel argues that the petitioner's evidence satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Counsel further states:

[The petitioner] has risen to the top of the coaching profession in the sport of gymnastics as interpreted by the leading experts in the sport. [redacted] four USA Gymnastic officials, and [redacted] Publisher of *International Gymnast*, the foremost magazine in the world on the sport. As a gymnast, [the petitioner] was a two-time Olympian, as a coach he sat on the National Technical Panel for Belarus, coached the Belarus National Men's and Women's teams. He left the 2000 Belarus Olympic Team to take a position with Swiss Turners, in the United States to train the 17 year old twins [redacted] and [redacted] to prepare them for the Olympics. Two of [the petitioner's] athletes for [redacted] and the [redacted] twins competed well in the Olympics with [redacted] getting fifth place. [The petitioner] obtained an O-1 visa to continue work with Swiss Turners. He assisted [redacted] in becoming the most decorated male gymnast in history, as he won the World Championship All-Around in 2003 and the Olympic Gold in 2004. The Belarusian Olympians, [redacted], USA Gymnastic officials and experts in the field all attributes [sic] [redacted] and his other athlete's [sic] success to the coaching of [the petitioner]. [The petitioner] is a member of the United States Elite Coaches Association, an organization that requires outstanding achievements of their members, as judged by recognized experts.

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 he has sustained national or international acclaim at the very top level.

This petition, filed on March 7, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a gymnastics coach. At the time of filing, the petitioner was employed by Swiss Turners Gymnastics Academy in West Allis, Wisconsin, where he has worked since 2000. A January 16, 2006 letter of support from [REDACTED] Director and Head Team Coach, Swiss Turners Gymnastic Academy, states:

[The petitioner] is currently coaching national team athletes to compete in international competitions such as the World Championships, Pan-American Championships, and the Olympic Games. The competition is of the very highest caliber in the world and to be successful Swiss Turners requires its world class gymnasts to be coached by individuals who have coached at the highest international levels.

In his stint at Swiss Turner, [the petitioner] was instrumental in helping [REDACTED] to win the Gold Medal for the all-around in the 2003 World Championships. This is an extremely impressive and rare feat as no other American male had won the gold medal for all-around in the World Championships before this. Much of [REDACTED] success can be attributed to the expert coaching that [the petitioner] provided him. In fact, it has only been since [the petitioner's] arrival to Swiss Turners and his coaching had been applied to [REDACTED] and [REDACTED] gymnastics that they began to win medals at the World Championship level. [The petitioner's] expertise was clearly the difference.

A July 21, 2006 letter of support from [REDACTED] former Head Women's Senior National Team Coach, Belarus Gymnastics Association, states:

[The petitioner] held the position of coach for the Belarus Senior National Women's Team from 1998 until 2000, having previously been a Men's Senior National Team Coach from 1996 to 1998. As a National Team Coach [the petitioner] worked very closely with our top elite athletes to prepare them for competition at the highest international meets, including World Championships and the Olympic Games. [The petitioner] developed gymnasts [REDACTED] and [REDACTED] who successfully competed in the 2000 Olympic Games.

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. We find that the petitioner's evidence satisfies the following three 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 as a gymnast he earned the following:

1. Credential declaring him "Master of Sports International Category . . . in Gymnastics" of the Republic of Belarus (1994).
2. Silver medal from the Russian Gymnastics Federation at "the international tournament 'World Stars -96' in exercises on parallel bars."
3. Bronze medal from the Russian Gymnastics Federation at "the international tournament 'World Stars -96' in exercises on pommel horse."
4. First place medal from the Ministry of Sports and Tourism for winning the Belarusian National Cup in Gymnastics, Compulsory and Optional Programs (1996).
5. First place medal from the Federal Committee of Belarus on Physical Fitness and Sport for winning the Republican Gymnastics Competition (1996).

As required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that his national or international acclaim has been sustained. The record reflects that the petitioner has been coaching for several years since he stopped competing as a gymnast in the mid-1990's. There is no evidence showing that the petitioner, age 33 at the time of filing, remains active at the national or international level as a competitive gymnast. In such a situation, where the petitioner has had ample time to establish a reputation as a gymnastics coach, the petitioner must show that he has sustained national or international acclaim based on his achievements as a coach rather than his prior reputation as a competitive athlete. Further, the regulation at 8 C.F.R. § 204.5(h)(5) requires the beneficiary to "continue work in the area of expertise." As noted by counsel and as indicated under Part 6 of the I-140 petition, athletic competition is not the field in which the petitioner seeks to continue working in the United States. In this country, the petitioner clearly intends to work as a coach. While a competitive gymnast and a coach certainly share knowledge of the sport, 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. Thus, while the petitioner's accomplishments as a competitive acrobatic gymnast are not completely irrelevant and will be given some consideration, ultimately he must demonstrate sustained national or international acclaim as a coach. As such, the petitioner's awards demonstrating his record of success as a gymnast cannot serve to meet this criterion.

It is not clear that significant awards exist for gymnastics coaches; however, nationally or internationally recognized prizes or awards won by athletes coached by the petitioner may be considered as comparable evidence for this criterion pursuant to 8 C.F.R. § 204.5(h)(4). Here, it is important to evaluate the level at which the petitioner acts as a coach. A coach who has 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 intermediate or novice-level athletes does not.

A December 26, 2005 letter from [REDACTED], Senior Men's National Team Coordinator, USA Gymnastics, states:

As the Senior National Team Coordinator for all of men's gymnastics in the United States I work closely with all of our top athletes and their coaches. Moreover, I am in a unique position in the gymnastics world to offer an unbiased expert opinion as to what would qualify a coach to be an individual of extraordinary ability in his field.

In the United States we have tens of thousands of male gymnasts. Of that vast pool only 30 make our Junior National Team each year and only 14 make our Senior National Team. From that pool we select only six athletes to compete on our World Championships or Olympic Teams each year. Of that group **we have had** only four male gymnasts win individual World or Olympic Medals in the past 20 years. [REDACTED] won the Gold Medal on high bar at the 1992 Olympics, [REDACTED] won the Silver Medal on parallel bars at the 1996 Olympics, [REDACTED] won the Gold Medal on the parallel bars at the 2001 World Championships and finally [REDACTED] won the Bronze Medal on floor exercise at the 2002 World Championships, [REDACTED] also won the Gold Medal in the All-Around and on the floor exercise at the 2003 World Championships, and he won the Gold Medal in the All-Around and the Silver Medal on the high bar at the 2004 Olympic Games in Athens. So of all the individual World Championship and Olympic medals won in the last 20 years, [REDACTED] has won more than 60% of them. In fact [REDACTED] is our most successful American male gymnast of all time. He is the only American male gymnast to ever win the World and Olympic All-Around Gold Medals.

As my picture portrays, creating a gymnast of [REDACTED] success is a phenomenal accomplishment. His incredible development was a team effort, due primarily to the dedicated work of his two coaches, [REDACTED] and [the petitioner]. . . . [The petitioner] came to America with outstanding credentials having been an Olympic Team member for the country of Belarus in 1996 and then a Sr. National Team Assistant Coach first for the men's team from 1996-1998 and then for the women's team from 1998-2000. His experience of not only competing at the world's highest levels but also, in helping to develop World and Olympic competitors for Belarus gave him an expertise that was to prove invaluable in [REDACTED] and [REDACTED]'s development. Up to that period neither [REDACTED] nor [REDACTED] had won any World or Olympic medals. While the line between competing well at the World Championships or Olympics and winning a medal can be a separation of only a few hundredths of a point, the level of work and expertise to eclipse that difference has seldom been attained in this country. After [the petitioner] joined their coaching staff the change and advancement in [REDACTED] and [REDACTED]'s gymnastics was not only dramatic, but also historic.

An April 30, 2001 letter from [REDACTED] whose accomplishments are described above, and [REDACTED] 2000 and 2004 U.S. Olympic Team Member and Medalist, 2002 and 2003 Floor Exercise U.S. National Champion, and 2003 World Artistic Gymnastics Team Silver Medalist, states: “[The petitioner] coached us for several months before the Olympic Games in September of 2000 and helped us get there and succeed there.” A subsequent letter from [REDACTED] and [REDACTED], dated December 23, 2005, states: “From 2001 through 2003 [the petitioner] continued to participate in our coaching I, [REDACTED] was the 2003 World Champion and 2004 Olympic Champion in the All-Around event in Gymnastics (among other titles). [The petitioner] was a part of my victories and can . . . continue to help other U.S. gymnasts”

most recent letter of support, dated July 19, 2006, provides more significant details about the petitioner’s involvement in his competitive success. [REDACTED] states:

I was selected to the 2000 U.S. Olympic Gymnastics team at seventeen years of age. To prepare for the games, [the petitioner], a former Olympian, left his position as a Belarus Senior National Women’s team coach to train myself and my twin brother [REDACTED] who also made the team, along with our regular coach [REDACTED]

[The petitioner] was invaluable in his contributions to my success at those Olympic Games. Specifically, he was able to help me refine my front handspring double front vault, he helped me make my Kovacs (double back over the bar and recatch), release skill more consistent on the high bar, as well as, clear up some technical problems I was having on the pommel horse. [The petitioner] also really helped me improve my strength on the still rings going into the Olympic Games and most importantly he was able to help [REDACTED] and I in our mental preparation for the biggest competition of our lives.

Based upon this knowledge I was prepared to compete in the Olympics where I finished 14th in the All-Around and [REDACTED] finished 7th in the Floor Exercise.

[The petitioner] took a position with Swiss Turners to continue developing [REDACTED] and myself to towards winning medals at the World and Olympic level. The specific skills [the petitioner] taught me were as follows: My famous 3 Thatchev release sequence on the High Bar which definitely helped me have a high bar routine with enough difficulty to win the Silver Medal on high bar at the 2004 Olympic Games. He also helped me learn a higher scoring vault – the Yurchenko layout with 2.5 twists. [The petitioner] pushed us to increase our difficulty on the floor to do the world’s hardest tumbling skill at the time, a double back layout flip with 2 complete twists. [REDACTED] and myself both competed this skill successfully from 2002 to 2004. It was the most important skill in my floor exercise routine that made it possible for me to win the 2003 World Championships floor exercise title. [The petitioner] was also incredible in his knowledge of Russians on the pommel horse and was able to teach us a very important skill called a Wu Guonian, which is a travel across the horse with two full turns (a traveling Russian). The new rules for the 2001-2004 quadrennium made it essential to do peach basket work on the parallel bars in order to get a 10.0 start value. [The petitioner’s] expertise in this skill helped us to master it and made it possible for me to be an Olympic finalist on this event at the 2004 Olympic Games.

Most importantly, [the petitioner] taught us how to train like professionals, and how to plan out our training to peak at the right times. He gave us the attitude that helped us not just train, but train to win. He is truly a Master coach and we owe much to his contributions for our great success.

The petitioner also submitted evidence reflecting that he coached Belarusian National Team members (such as Olympians [REDACTED] and [REDACTED] who competed successfully at the national and international level.

In light of the above, we find that the petitioner meets this criterion.

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.

The petitioner submitted evidence of his membership in the United States Elite Coaches Association for Men's Gymnastics (USECAfMG) and a copy of the association's bylaws (including its membership requirements). A letter from [REDACTED], President, USECAfMG, states:

The number of coaches who are eligible for membership in the USECAfMG is . . . a fairly small number. Our organization currently has 50 members. Of the 2,535 USA Gymnastics registered Professional Members in the country, those eligible for the Elite Coaches Association represents approximately 1.9% of all Professional Members. This is a very elite group of coaches who are able, by virtue of their membership, to advise USA Gymnastics in the direction of the Men's Program.

The director found that the petitioner evidence meets this criterion. The director's decision stated:

The record contains evidence showing that the [petitioner] is a member of the United States Elite Coaches Association for Men's Gymnastics. The evidence indicates that membership is "Open to coaches who are current in dues and have placed a gymnast in the U.S. Gymnastics Championships any one of the two previous years, plus coaches of any petitioned gymnasts to the national team." Given the above, the evidence establishes that this criterion has been met.

We concur with the director's finding that the petitioner's evidence meets this criterion.

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

We concur with the director's observation that Swiss Turner Gymnastics has a distinguished reputation. The record further reflects that the petitioner performed in a critical role for Swiss Turner Gymnastics as a coach of its elite gymnasts.

In light of the above, we find that the petitioner meets this third criterion.

In review, while not all of counsel's assertions on appeal are persuasive and some of the concerns raised by the director in the notice of denial are valid, we find that the evidence satisfactorily meets at least three of the regulatory criteria required for classification as an alien of extraordinary ability. Pursuant to the statute and regulations as they are currently constituted, the petitioner qualifies for the classification sought. The totality of the evidence establishes the petitioner's sustained national and international acclaim and extraordinary ability as a gymnastics coach. The petitioner has also established that he seeks to continue working in the same field in the United States and that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has overcome the stated grounds for denial and thereby established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.