



U.S. Citizenship
and Immigration
Services

B2

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: DEC 03 2009
SRC 09 059 51803

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

M. Deadrack
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on April 28, 2009, and is now before the Administrative Appeals Office (AAO) 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 necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, the petitioner argues that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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 she has sustained national or international acclaim at the very top level.

This petition, filed on December 16, 2008, seeks to classify the petitioner as an alien with extraordinary ability as gymnastics coach. Aside from her activities as a gymnastics coach, the record includes evidence showing that the petitioner competed in gymnastic tournaments from the late 1980s to 1999. However, according to a letter, dated December 11, 2008, from the petitioner submitted with Form I-140 and Part 6 of Form I-140, "Basic information about the proposed employment," the petitioner is seeking work in the United States as a gymnastics coach. Subsequent to 1999, there is no evidence indicating that the petitioner, age 34 at the time of filing, has remained active as a gymnastics competitor at the national or international level. The statute and regulations require the petitioner's national or international acclaim to be *sustained* and that she seeks to continue work in her area of expertise in the United States. See sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a gymnastics competitor and an instructor certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and gymnastics instruction 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. In the present matter, there is no evidence showing that the petitioner has sustained national or international acclaim through achievements as a gymnastics competitor subsequent to 1999 or that she intends to compete here in the United States. Further, the evidence is clear that the beneficiary intends to work as a gymnastics instructor. While the petitioner's athletic accomplishments as a gymnastics competitor are not completely irrelevant and will be given some consideration, ultimately she must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through her achievements as a gymnastics instructor and coach.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "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). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).¹

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

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

On appeal, the petitioner claims eligibility for this criterion based on her position as the "team leader coach" of [REDACTED] who are all members of the [REDACTED] team that participated in the [REDACTED] and the [REDACTED] in Anaheim, CA in 2003. In addition, the petitioner states that she was the co-coach of [REDACTED] who placed 8th in [REDACTED] at the 2002 [REDACTED] 5th in beam at the 2002 [REDACTED] 5th place in floor exercise at the 2003 World Cup, and qualified and competed for Bulgaria at the 2004 Olympics in Athens, Greece. The petitioner also submitted the following:

1. Diploma from the [REDACTED] indicating that the petitioner participated as a team leader from April 18-21, 2002;
2. Biography and competition results from [REDACTED]
3. Letter, dated May 20, 2009, from [REDACTED]
4. Letter, dated May 19, 2009, from [REDACTED]

The submitted documentation fails to establish that the petitioner, or an athlete coached by the petitioner, has received nationally or internationally recognized prizes or awards for excellence. Based on the submitted documentation, the highest finish for [REDACTED] was 5th place at the 2002 [REDACTED]. We do not consider two fifth place finishes of athletes coached by the petitioner to be at a level of expertise indicating that the petitioner is one of that small percentage who have risen to the very top of her field of endeavor. Similarly, while qualifying and competing at the 2004 Olympics is a noted accomplishment, the petitioner failed to establish that [REDACTED] medaled at those Olympics.

Notwithstanding the above, while the letter from [REDACTED] indicates that the petitioner worked with [REDACTED] the record fails to reflect that she coached these individuals, the petitioner won any nationally or internationally awards or prizes based on her coaching of these individuals, or these individuals won nationally or internationally awards or prizes. Moreover, the copy of the diploma submitted by the petitioner reflects that she participated as a team leader at the 2002 [REDACTED]. No other documentation was submitted by the petitioner establishing her coaching experience with the above-mentioned individuals. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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)). We also note that the petitioner submitted a letter of recommendation from [REDACTED] former head coach of the [REDACTED] men's team, which indicated that the petitioner was a gymnastics coach in the sports club, "Levski," and a gymnastics coach for the junior [REDACTED] team. Regardless, the petitioner failed to establish that her coaching abilities for either of these local or junior organizations garnered any nationally or internationally recognized prizes or awards.

Accordingly, the petitioner has not established that she 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.

On appeal, the petitioner submitted a letter, dated May 20, 2009, from [REDACTED] Vice President of [REDACTED] and a letter, dated May 27, 2009, from [REDACTED]. As the record reflects the petitioner's claim of team leader of the Bulgarian National team, we will also consider that membership under this criterion.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Regarding the letters, they indicate that the petitioner is currently a coach at the [REDACTED] Center, which is affiliated with USA Gymnastics. The petitioner also submitted a membership card from USA Gymnastics indicating that the petitioner is a "professional member." However, the petitioner failed to submit any documentary evidence establishing the requirements for professional membership with USA Gymnastics. Furthermore, the letter from [REDACTED] also indicates "[t]he fact that she worked with the [REDACTED] in Bulgaria is precisely why she has the specific training to coach our younger girls." The record reflects that the petitioner's previous and current coaching abilities have been limited to younger girls and junior teams.

In general for athletics, being a member of a national team competing at nationally and internationally recognized tournaments and championships may satisfy the requirements for this criterion. For example, membership on a national gymnastics team competing at the Olympics would generally demonstrate the outstanding achievement required to sustain national or international acclaim. However, in this case, the petitioner has claimed eligibility for this criterion based on the participation as a team leader of a junior team in Bulgaria and current coach at a gymnastics training facility for younger girls. We find that membership with junior teams or local clubs does not indicate that the petitioner is a member of any organization that requires outstanding achievement as judged by recognized national or international experts and is not indicative of the petitioner as "one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2).

Accordingly, the petitioner has failed to establish that she meets this criterion.

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 director concluded that the submitted documents were about the petitioner's performance as a gymnast and not as a coach. On appeal, the petitioner submitted a list of 11 articles from www.intlgyrnast.com consisting of the title, date, and a brief summary mentioning the names of

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation." The list of articles submitted by the petitioner does not contain the authors of the articles as required under 8 C.F.R. § 204.5(h)(3)(iii). Further, the petitioner failed to submit full articles for each of the 11 articles; instead the petitioner submitted summations for 11 of the articles. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). Because the petitioner failed to comply with 8 C.F.R. § 204.5(h)(3)(iii), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner also submitted an article entitled, [REDACTED] dated August/September 2003, by [REDACTED] stating that [REDACTED] won the women's all-around titles at the Bulgarian championships. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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." The submitted articles are not published material about the petitioner, but rather about [REDACTED]. The submitted articles do not mention the petitioner, her abilities as a coach, or how her coaching contributed to the success of any of these individuals. In addition, the petitioner failed to submit any documentary evidence establishing that any of these publications are professional or major trade publications or other major media.

Accordingly, the petitioner has not established that she meets this criterion.

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.

On appeal, the petitioner submitted credentials indicating that the petitioner served as a judge at the 19th [REDACTED] from September 8-12, 2005, in Istanbul, Turkey and at the Artistic [REDACTED] from December 13-14, 2003, in [REDACTED]. The petitioner also submitted a letter from [REDACTED] President of the Bulgarian Gymnastics Federation, dated March 16, 2009, stating that the petitioner successfully passed a course to become a national level judge in the national category and international brevet category. [REDACTED] also indicates that the petitioner served as a judge at the 5th [REDACTED] "Aphrodite" in 2001, [REDACTED] Junior Championships in December 2003, and the 19th [REDACTED] in Turkey in 2005.

The petitioner failed to submit any documentary evidence establishing the stature and prestige of these tournaments and championships, the selection criteria to be a judge, and the talent and caliber of the competitors she judged at these tournaments and championships. Further, at least one of these tournaments appeared to be a junior championship.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “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). For example, evaluating the work of accomplished gymnasts as a member on a national panel of experts is of far greater probative value than evaluating the work of junior gymnasts.

Accordingly, the petitioner has not established that she meets this criterion.

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

On appeal, the petitioner refers to the previously mentioned reference letters from [REDACTED] and [REDACTED] states that the petitioner’s “contribution will contribute to the shortage of gymnastics coaches currently experienced in the United States.” [REDACTED] states that “[t]he techniques for coaching that [the petitioner] used in training me are of great value to me in my current coaching position.”

The reference letters fail to identify a specific, original athletic contribution of major significance made by the petitioner as a coach in gymnastics. In this case, the reference letters submitted by the petitioner are not sufficient to meet this regulatory criterion. We note that the above letters are all from individuals who have worked or interacted with the petitioner. While such letters can provide important details about the petitioner’s credentials, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have “sustained national or international acclaim” necessitates evidence of recognition beyond the alien’s immediate acquaintances. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Further, USCIS may, in its discretion, use as advisory opinion statements as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner’s personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. See *id.* at 795. Thus, the content of the writers’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of any

immigration petition are of less weight than preexisting, independent evidence or original contributions of major significance that one would expect of an individual who has sustained national or international acclaim at the very top of the field. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contribution of major significance, we cannot conclude that she meets this criterion.

Accordingly, the petitioner has not established that the beneficiary meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

On appeal, the petitioner claims that her participation as a "team leader coach" of the junior Bulgarian National team and personal coach for [REDACTED] serves as evidence of the display of her work in the field at artistic exhibitions or showcases. The petitioner also refers to the previously mentioned diploma, letter from [REDACTED] letter from [REDACTED] Magazine.

The plain language of this regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vii) indicates that it is intended for visual artists (such as sculptors and painters) rather than for coaches such as the petitioner. In athletics, acclaim is generally established by competing in tournaments and championships and most competitions take place in a public forum. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner's and her students' participation in national and international competitions has previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). The petitioner failed to establish that her involvement with the junior [REDACTED] team and [REDACTED] is evidence of her work at artistic exhibitions or showcases.

Accordingly, the petitioner has not established that she meets this criterion.

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

On appeal, the petitioner claims:

[The petitioner] has submitted numerous documents that establish her as a coach who stands out in performing leading and critical roles for both the Bulgarian Gymnastics Federation and USA Gymnastics. She has also submitted evidence that she has coached athletes who have competed for significant national and international awards under her tutelage.

The petitioner does not refer to any specific documents. Further, as previously discussed in several of the criteria above, the record is unclear as to the specific position and role the petitioner played with the Bulgarian National team, let alone the Bulgarian Gymnastics Federation. In addition, the record fails to reflect that the petitioner's current position as coach of junior athletes in a local training center is a leading or critical role for an organization with a distinguished reputation. For example, we would be

more persuaded if the petitioner was the president or director of USA Gymnastics rather than as a girls team head coach at [REDACTED]. In this case, the documentation submitted by the petitioner does not establish her positions or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. In addition, the petitioner failed to submit any documentary evidence establishing that any of these organizations have a distinguished reputation.

Accordingly, the petitioner has not established that she meets this criterion.

Finally, we note that the petitioner is currently in O-1 nonimmigrant visa status. While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. at 597. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d at 1090.

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) of the Act, and the 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.



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ORDER: The appeal is dismissed.