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U.S. Citizenship  
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Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: JAN 08 2009

IN RE:

Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

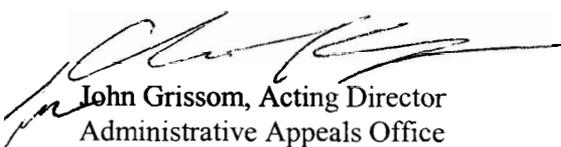
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

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 a 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).

  
John Grissom, Acting Director  
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 dismissed.

The petitioner seeks classification of the beneficiary 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 record did not establish that the beneficiary had achieved the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. The director also found the petitioner had not established that she is one of that small percentage who have risen to the very top of her field of endeavor.

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.

Citizenship and Immigration Services (CIS) 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 April 27, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a swimming coach. The record reflects that the petitioner had a successful career as a swimmer from 1990 through 2004 as a member of the Romanian national team and as a collegiate swimmer for the University of Nevada, Las Vegas (UNLV). The record indicates that the petitioner ceased swimming competitively after her collegiate career concluded. Regarding the petitioner's plans for work in the United States, a letter from counsel dated April 12, 2007 states that "she has been offered a permanent coaching position at UNLV," which she intends to accept if her visa petition is approved. The petitioner submitted a letter dated April 5, 2006 from the

Head Coach of the UNLV swimming and diving program offering her full-time employment. Thus, according to Part 6 of her Form I-140 petition, the letter from her prospective employer, and the April 12, 2007 letter from counsel, the petitioner is seeking work in the United States as a swimming coach rather than as a competitive athlete.

The statute and regulations require that the petitioner seeks to continue work in her area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Although experience as an athlete is undoubtedly relevant to coaching the same sport, the two endeavors are not identical and an alien who seeks to enter the United States as a coach under the extraordinary ability immigrant classification cannot rely solely on acclaim as an athlete. While a competitive swimmer and a coach certainly share knowledge of the sport, the two rely on a different set of basic skills. Thus, competing as a swimmer and coaching other swimmers are not the same area of expertise.<sup>1</sup>

In the present matter, the evidence is clear that the petitioner intends to work as a swimming instructor. Although a nexus exists between playing and coaching a given sport, to assume that every extraordinary athlete's area of expertise includes coaching 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 or international 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 a 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.

Before discussing the merits of the petitioner's appeal, we shall address her request that we remand to allow her to submit additional evidence. The petitioner's request is predicated upon her claim that the Request for Evidence (RFE) dated November 20, 2006 provided insufficient notice to her of required additional evidence. The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The RFE dated November 20, 2006 specifically stated that the petitioner needed to "submit evidence which clearly demonstrates that [the petitioner has] sustained national or international acclaim as a swimming coach and that [the petitioner's] achievements have been recognized as extraordinary by others in the field." Counsel claims that the petitioner was "certainly capable of providing documentary proof of the national and international acclaim achieved by swimmers under her instruction," but that she did not realize that such

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<sup>1</sup> While not binding precedent, we note that the reasoning contained in *Lee v. I.N.S.*, 237 F.Supp.2d 914, 918 (N.D.Ill. 2002), supports this interpretation:

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.

evidence was required, “because she had been told in an implied way by the District Director in his RFE that documentation showing acclaim in competitive swimming was irrelevant and that only documentation pertaining specifically to [the petitioner’s] coaching career was relevant to her application.” The November 20, 2006 RFE states that the evidence previously submitted concerning *the petitioner’s* “accomplishments and accolades as a competitive swimmer” was not dispositive of her claim for eligibility as a swimming coach and does not imply that all evidence concerning all competitive swimming is irrelevant. The petitioner’s misunderstanding as to what was required of her does not amount to a failure by USCIS to follow its regulations nor a failure to adequately place the petitioner on notice of deficiencies in her original submission.

Counsel claims that the Director’s RFE did not comply with the regulation at 8 C.F.R. § 103.2(b)(8) and violated the petitioner’s right to due process. Yet, counsel has not shown that any alleged violation of the regulation resulted in “substantial prejudice” to her. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien “must make an initial showing of substantial prejudice” to prevail on a due process challenge). A review of the record and the adverse decision indicates that the petitioner failed to present adequate evidence to meet her burden of proof and the denial of her petition was the proper result under the statute and regulations. Accordingly, the petitioner’s claim is without merit. Moreover, even if the director committed a procedural error by failing to adequately notify the petitioner, it is not clear what remedy would be appropriate beyond the appeal process itself. Counsel submits no further evidence on appeal to support her claim that the petitioner has achieved acclaim as a swimming 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 a such an award, the regulation at 8 C.F.R. § 204.5(h)(3) 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.<sup>2</sup>

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

Counsel listed a number of different accolades and awards for the petitioner’s endeavors as a swimmer including Romanian records, championships won, and competition results in her statement dated April 12, 2007; the petitioner’s resume contains the same list of accolades and awards. The petitioner submitted various news articles and certificates evidencing those accolades and awards. Those accolades and awards include participation in the 2000 Olympic games as a member of the Romanian 400 medley relay team, gold medal winner in the 200 meter backstroke at the 2003 Romanian National Championship, bronze medal winner in the

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<sup>2</sup> Only those criteria claimed to be applicable by the petitioner will be discussed, because neither the petitioner nor counsel claim to meet any of the remaining criteria and the record contains no evidence relevant to those criteria.

50 meter backstroke at the 2000 World Cup Championship, and member of the bronze medal winning 400 medley relay team at the 2000 European Championships. These accolades and awards may establish the petitioner's past acclaim as a swimmer, however, the record does not demonstrate that the petitioner sustained that acclaim in the two years preceding the filing of this petition as a swimmer or coach.

Nationally or internationally recognized prizes or awards won by athletes coached by the petitioner can be considered for this criterion. In response to the director's RFE, the petitioner submitted a letter dated February 1, 2007 from [REDACTED] head coach of the UNLV swimming and diving program stating:

[The petitioner's] real value to the UNLV swimming program stems from the fact that the training and training methods which she mastered in Romania are radically different and in my opinion, superior, to the training and training methods with which U.S. swimmers are familiar.

\* \* \*

The fact of the matter is that the teaching techniques which [the petitioner] has brought to UNLV has resulted in our swimmers performing in the backstroke at a higher level than I have seen in my entire career as a coach.

\* \* \*

In the short time that [the petitioner] has been performing as an Assistant Coach for me, the results have been staggering. One of our female swimmers improved her time by .73 seconds in the 100 meter backstroke, and by 1.65 seconds in the 200 meter backstroke. A second female improved her time by 2.42 seconds in the 200 meter backstroke, 1.46 seconds in the 200 meter individual medley, and 4.46 seconds in the 400 meter individual medley. A third female improved her time in the 100 meter backstroke by 3.01 seconds. A male conference champion improved his time by 1.48 seconds in the 200 meter backstroke. Another male improved his times by .43 seconds in the 100 meter backstroke and by .65 seconds in the 200 meter backstroke. All of the persons mentioned above were coached by [the petitioner].

Outside of this one letter, the petitioner submitted no evidence of her achievements as a swimming coach. It is noted that neither the petitioner nor [REDACTED] identified any of the swimmers referenced in [REDACTED]'s letter by name and the petitioner failed to submit any documents showing the increase in performance that supposedly occurred due to her coaching. Although nationally or internationally recognized prizes or awards won by a coach's students may be considered comparable evidence of the coach's eligibility under this criterion pursuant to 8 C.F.R. § 204.5(h)(4), the petitioner provided no evidence of prizes or awards won by her students.

The evidence submitted indicates that, as a swimmer, the petitioner won many medals in international competition, that she broke Romanian national records, and that she performed well at the collegiate level in the United States. These achievements evidence the petitioner's past acclaim as a swimmer, but the record does not demonstrate that she sustained this acclaim as an athlete or through her subsequent work as a swimming coach. 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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>3</sup>

The petitioner submitted copies of eleven Romanian newspaper articles that discuss her achievements as a swimmer. The record is devoid of documentation to verify the national or international circulation of any of the newspapers that printed the submitted articles, and the petitioner submits no other evidence that the newspapers are professional, major trade publications, or other major media publications. In addition, the translations submitted of these articles did not comply with the terms of 8 C.F.R. § 103.2(b)(3), which requires that “[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” No translation certificates appear in the record. Lastly, none of these articles were primarily “about the alien” as required by the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) as opposed to being articles about the results of all Romanian swimmers at each particular contest.

The petitioner submitted seven English language articles printed from internet sources.<sup>4</sup> As with the Romanian language articles, the petitioner submits no evidence that the publications are professional, major trade publications or other major media, publication in which would demonstrate the requisite national or international acclaim. Nor were any of these articles primarily about the petitioner as required by the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii).

The record also contains no published materials about the petitioner as a coach to demonstrate that she sustained her former acclaim as a swimmer through her subsequent work as a swimming coach. 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.*

The petitioner submitted letters of recommendation from representatives of the UNLV Swimming and Diving program, Team Rebel Aquatics, the Romanian Swimming Federation, and the Municipal Sport Club of Pitesti,

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<sup>3</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

<sup>4</sup> While Internet sites are technically accessible nationally and even internationally, it cannot be credibly asserted that every Internet site has the same degree of national or international influence. In today’s world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet and make their stories available to large electronic databases. The petitioner must still show usual circulation numbers and/or that the websites routinely attract national or international attention.

Romania. The recommendation letters focus on awards won by and achievements of the petitioner as a swimmer. These awards and achievements have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance in the field, USCIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion as they only address the petitioner's past achievements as a swimmer. For example, the letter from the Head Coach of the UNLV Swimming and Diving program stated that the petitioner "has reached that level of achievement, which in my opinion demonstrates that she is one of those small percentages of swimmers who have risen to the very top of their field as a swimmer in the backstroke category." A letter from the Head Coach of Team Rebel Aquatics states that the petitioner "has sustained national and international acclaim and her achievements are recognized as outstanding and extraordinary in this field. . . . [the petitioner] has outstanding and extraordinary ability as a swimmer." The Head Coach for the Romanian Swimming Federation stated that the petitioner "made herself known as a top athlete in Romania . . . [and] has a solid record of sustained national and international acclaim and her achievements are recognized both nationally and internationally as outstanding and extraordinary in this field [of swimming in the backstroke category]." The petitioner's swimming coach from the Municipal Sport Club of Pitesti wrote that the petitioner "became an experienced and successful athlete . . . [who] reached that level of achievement, which in my opinion demonstrates that she is one of those small percentage of swimmers who have risen to the very top of their field as a swimmer in the backstroke category."

Even if the letters concerned the petitioner's coaching abilities as opposed to her swimming abilities, the above letters are all from the petitioner's immediate circle of colleagues. While such letters are important in providing details about the petitioner's role in various competitions and teams, they cannot by themselves establish the petitioner's acclaim beyond her immediate circle of colleagues. The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a swimming coach who has sustained national or international acclaim. 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 contributions of major significance, we cannot conclude that she meets this criterion.

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

In her April 12, 2007 letter, counsel claims that the petitioner meets this criterion because she has "performed [in] and won . . . top international competitions." The plain language of this criterion reveals that it relates to the visual arts. The regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of "comparable" evidence only when the ten criteria found at 8 C.F.R. § 204.5(h)(3) do not "readily apply" to the petitioner's occupation. The record

in this case shows that at least five of those criteria apply to the petitioner's occupation. The petitioner's performance and awards at swimming competitions have been addressed under the criterion set forth at 8 C.F.R. § 204.5(h)(3)(i) above.

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

The petitioner asserts eligibility under this criterion by virtue of her participation on the national athletic team of Romania at various international swim meets, including the 2000 Olympic Games. Even if the petitioner performed in a leading or critical role for distinguished teams as a swimmer, the record does not demonstrate that the petitioner sustained her acclaim as a swimming coach. As noted above, the news articles concerning the petitioner's involvement in most of these events were from Romanian sources and not accompanied by the requisite certified translation under 8 C.F.R. § 103.2(b)(3). In addition, the petitioner submitted many certificates in the Romanian language that were not accompanied by any translation as required by 8 C.F.R. § 103.2(b)(3). The petitioner also submitted photographs of various medals, but failed to provide any identification as to which events the medals corresponded.

The record also does not demonstrate that the petitioner meets this criterion through her work for the UNLV Swimming and Diving program. As described above, the petitioner submitted a letter dated February 1, 2007 from [REDACTED] in which [REDACTED] described the petitioner's coaching and its purported results. Even if this letter evidenced the petitioner's success as a coach, the record contains no evidence that UNLV has a distinguished reputation in the petitioner's field. In addition, the petitioner serves in a subservient role to Mr. [REDACTED] as his assistant, and he explains that the petitioner "has not had an extended period of time to establish a national or international reputation as a coach beyond the years in which she sustained acclaim as an athlete." He goes on to predict that he believes "that it is inevitable that [the petitioner] will one day be offered a job as Head Coach at another swimming program at the collegiate level. She has a great future ahead of her as a college swimming coach." [REDACTED]'s letter discusses his opinions regarding future achievements that he believes that the petitioner will achieve rather than addressing how she currently plays a leading role at his institution. Similarly, the January 18, 2007 letter from [REDACTED] at UNLV, predicts that the petitioner will be a great coach in the future as the petitioner's swimming career "prepared" her for a career as a coach and that "the skills and personal qualities that make swimmers world class are largely the same as those that make coaches world class." A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Comm. 1971). Without evidence that the petitioner has already performed a leading or critical role for an organization with a distinguished reputation, we cannot conclude that the petitioner meets 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 petitioner does not specifically claim that she meets this criterion, however, as she submitted evidence bearing upon this question, we will consider her eligibility. The April 5, 2006 letter from [REDACTED] indicates that the petitioner's annual salary would be \$30,000. The record contains no documentation that the petitioner has already earned this salary or has otherwise received significantly high remuneration for her work as a swimmer or a coach. The petitioner also submitted no information indicating that such a salary would be higher than other similarly employed swimming coaches or comparable to swimming coaches at the very top of their field. Accordingly, the beneficiary does not meet this criterion.

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 beneficiary won several national and international prizes as a swimmer and participated in the 2000 Olympic Games as a member of the Romanian delegation. However, the record does not establish that the petitioner sustained her former acclaim as a swimmer through her subsequent work as a swimming coach. She 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 her 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.** This decision is rendered without prejudice to the filing of a new petition with the requisite supporting documents under section 203(b) of the Act, 8 U.S.C. § 1153(b).

**ORDER:** The appeal is dismissed.