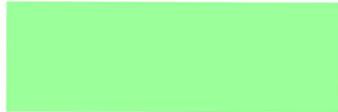


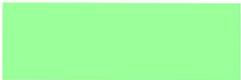


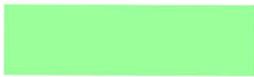
U.S. Citizenship  
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Services

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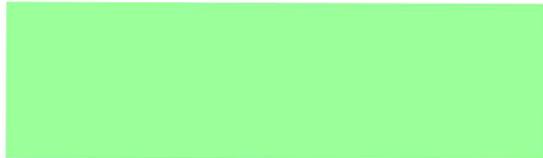
DATE: **SEP 24 2014** Office: NEBRASKA SERVICE CENTER

FILE: 

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

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**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which 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 as a gymnastics coach. Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien, as initial evidence, can present evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i)-(x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. The director determined that the petitioner failed to establish eligibility for the exclusive classification sought as a gymnastics coach.

On July 14, 2014, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), we issued a notice advising the petitioner of conflicting biographical information contained in the record. In response to the notice, the petitioner submitted sufficient evidence to overcome the inconsistencies.

On appeal, the petitioner submits a completed Form I-290B, Notice of Appeal or Motion, a "certificate" from the [REDACTED] outlining the petitioner's awards as a competitor and confirming one year of employment for her "club" team as a coach of junior gymnasts, a job offer letter for the part-time position of assistant coach with [REDACTED] and a letter from a colleague at [REDACTED] which attests to three years of employment. In part 3 of the Form I-290B, the petitioner asserts that "evidence of a 'one time achievement (that is a major internationally recognized award)' is sufficient to demonstrate extraordinary ability."

In Part 6 of Form I-140, Immigrant Petition for Alien Worker, the petitioner listed her job title as "Gymnastics Coach." In addition, page 1 of the cover letter submitted with the petition states that the petitioner "is seeking to come to the United States as a gymnastics coach." Finally, the initial petition included a letter from Dr. [REDACTED] Director/Owner of [REDACTED] which states that they are "in need of a professional gymnastics coach" and "would like...to offer [the petitioner] a position...upon achieving her immigration status." Thus, the record reflects that the petitioner is seeking classification as an alien of extraordinary ability as a coach rather than as a competitor.

The statute and regulations require the petitioner's national or international acclaim to be *sustained* and that the petitioner seeks to continue work in her area of expertise in the United States. See

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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 coach and a gymnast share knowledge of the sport, the two rely on very different sets of basic skills. Thus, coaching gymnasts and competing as a gymnast 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.

Based on the petitioner's answers to the questions on Form I-140 and the submitted documentation, the record reflects that the petitioner intends to work as a gymnastics coach. Ultimately, as stated by the director in his decision, the petitioner must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through her achievements as a gymnastics coach. As such, the evidence submitted by the petitioner regarding her achievements as a competitor is not demonstrative of her extraordinary ability as a coach. In the present matter, the record does not contain evidence which establishes that the petitioner has sustained national or international acclaim through her achievements as a gymnastics coach.

The petitioner also "note[s]" on Form I-290B that the director issued his decision without requesting any additional evidence.

While the petitioner is correct, the director's decision cited the regulation at 8 C.F.R. § 103.2(b)(8)(ii) which states:

*Initial evidence.* If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

While the director's decision acknowledged the submission of a job offer letter for the position of gymnastic coach, the decision further stated that, "none of the [submitted] evidence relates to the [petitioner]'s career as a coach in the field of endeavor of gymnastics." As the petitioner did not submit initial evidence to demonstrate that she is a gymnastics coach of extraordinary ability, the director was not obligated to issue a request for evidence.

On appeal, the petitioner does not offer any arguments identifying any error of law or fact in the director's analysis. See *Desravines v. United States Attorney Gen.*, No. 08-14861, 343 F. App'x 433,

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435 (11th Cir. 2009) (finding that issues not briefed on appeal are deemed abandoned). The petitioner does not specifically challenge any of the director's findings or point to specific errors in the director's analyses of the documentary evidence submitted for the categories of evidence at 8 C.F.R. § 204.5(h)(3). Although the petitioner states on appeal that she is "submitting additional evidence addressing the concerns raised in the denial letter," the petitioner does not indicate which of the regulatory criteria, if any, the evidence satisfies. Further, a letter confirming one year of employment in 1989 as a coach and a letter confirming her employment at [REDACTED] from 2005 until 2008 do not establish that the petitioner has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of coaching in gymnastics.

Moreover, the regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." In this matter, the petitioner has not identified an erroneous conclusion of law or a statement of fact in the director's decision as a proper basis for the appeal. The petitioner's appellate submission offers only a general statement asserting that the petitioner qualifies as an alien of extraordinary ability. The petitioner offers no argument that demonstrates error on the part of the director based upon the record that was before him and the additional evidence is of no evidentiary value.

As the petitioner did not contest any of the specific findings of the director and offers no substantive basis for the filing of the appeal, the regulations mandate the summary dismissal of the appeal

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.