

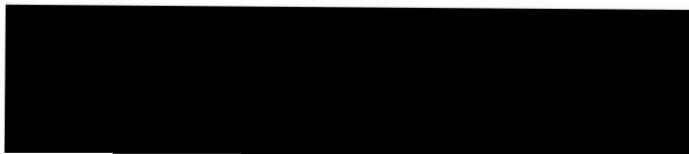
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: SRC 06 095 50306 Office: TEXAS SERVICE CENTER Date: JAN 24 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a corporation that does business as the [REDACTED]. The beneficiary is a synchronized swimming instructor and coach. The petitioner seeks nonimmigrant 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 her in the United States as a synchronized swimming coach and judge for [REDACTED] for a period of three years at an hourly wage of eight dollars.

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 the small percentage who have risen to the very top of her field of endeavor.

On appeal, counsel submits a brief and additional evidence.

Section 101(a)(15)(O)(i) of the Act provides nonimmigrant 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. Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i).

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:

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.

Major, internationally recognized award.

The beneficiary in this case is a native and citizen of Colombia who claims to have won team competitions as synchronized swimmer in the past. Given the nexus between competing and coaching, 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, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. In this case, however, the record does not establish the beneficiary's alleged achievements as an athlete.

Counsel claims that the beneficiary represented Colombia in team synchronized swimming events from 1974 to 1984 and won two team silver medals at the South American Games in Buenos Aires, Argentina and the Central American Games in Medellin, Colombia. The petitioner submitted a certification from the National Swimming Federation of Colombia dated May 25, 2005, which states that the beneficiary “represented and participated in several departmental and national events, and she represented Colombia in international synchronized swimming championships.” The certification does not identify any individual competitions in which the beneficiary participated or won medals and is insufficient to support counsel’s claim. The petitioner submitted no other evidence of the beneficiary’s alleged athletic achievements and counsel states that the beneficiary does not have proof because the events occurred many years ago.

Even if the petitioner had submitted primary evidence of the beneficiary’s alleged silver medals, the record does not establish that silver medals from the South American Games or the Central American Games are major, internationally recognized awards. The record also does not indicate that the beneficiary has instructed, trained or coached any synchronized swimmers who have won major, internationally recognized awards. The evidence indicates that the beneficiary’s most successful trainee is [REDACTED] (the beneficiary’s niece), who placed 25th in the 1997 Junior World Championships and placed second in the 1997 *Journees d’Automne*. The record is devoid of any evidence that either of these achievements are major, internationally recognized awards. Accordingly, the beneficiary does not meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(A) and we will evaluate her eligibility under the relevant criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Counsel does not claim that the beneficiary meets any criteria not discussed below.

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

As discussed above, the record does not sufficiently document the beneficiary’s alleged receipt of two team silver medals for synchronized swimming at international competitions in Central and South America. In addition, counsel claims that the beneficiary received the silver medals sometime between 1974 and 1984, which was 22 and 12 years before this petition was filed. Hence, even if the beneficiary’s alleged awards were documented, they would not demonstrate the requisite sustained national or international acclaim.

The record also does not show that the beneficiary has instructed, trained or coached any synchronized swimmers who have won nationally or internationally recognized prizes or awards. The record shows that the beneficiary trained [REDACTED], who placed second at the 1997 *Journees d’Automne*, but the petitioner submitted no evidence that this competition is nationally or internationally recognized. Moreover, Ms. [REDACTED] received her award in December 1997, nearly a decade before this petition was filed. Consequently, the award, even if nationally or internationally recognized, does not demonstrate the sustained national or international acclaim of the beneficiary. Accordingly, the beneficiary does not meet this criterion.

(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.

Counsel claims the beneficiary meets this criterion through her membership in *Federation Internationale de Natation* (FINA) and Synchro Swimming USA. The record does not support this claim. The record shows that the beneficiary has been a FINA Category G synchronized swimming judge since 1999. A letter dated May 9, 2006 from FINA Executive Director, Cornel Marculescu and a May 5, 2006 letter from [REDACTED] Executive Director of [REDACTED], explain that FINA is the world governing body for all aquatic disciplines with national members from 192 countries. FINA has three levels of judging certification. The first and lowest level is "G" for General List. Individuals in the G category may judge the Junior World Championships, the World Cup and continental championships such as the Pan American Games. To become a Category G judge, an individual must have judged at a minimum of two international competitions. The second, or middle level is "B." Individuals in the B category may judge at all international events except for the World Championships and the Olympic Games. The third and highest level of FINA certification is "A," which qualifies an individual to judge all competitions including the World Championships and the Olympic Games.

On appeal, the petitioner submits a letter dated July 17, 2006 from [REDACTED] Honorary Secretary of the Technical Synchronized Swimming Committee. Ms. [REDACTED] explains that in order to remain on the list of FINA judges, individuals must attend international competitions and clinics and demonstrate "quality judging." Ms. [REDACTED] notes that the beneficiary's "activities ha[ve] increased significantly and she can come up for consideration to move to elite judge status in September." We cannot consider the beneficiary's eligibility for future elite judge status. A visa petition may not be approved based on speculation of future eligibility or after the beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The record shows that the beneficiary holds the lowest level of judge certification in FINA, which requires only that the individual has judged at least two international competitions. The record does not indicate that judging two international synchronized swimming competitions is an outstanding achievement in the beneficiary's field.

The petitioner submitted a print out of an electronic message confirming her "Technical" membership in [REDACTED] since January 6, 2006, exactly one month before this petition was filed. In her letter, Ms. [REDACTED] states that the beneficiary's presence in the United States "is a significant asset to U.S. Synchronized Swimming," but Ms. [REDACTED] indicates that the beneficiary has not yet been certified as a judge by the U.S. organization. **The record** is also devoid of any evidence that Technical membership in U.S. Synchro Swimming requires outstanding achievements. Accordingly, the beneficiary does not meet this criterion.

(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.

The petitioner submitted copies of two articles from French publications, which purportedly discuss the beneficiary's trainee, [REDACTED]. The articles are accompanied by partial, handwritten English translations. Any document containing a foreign language that is submitted to Citizenship and Immigration Services (CIS) must be accompanied by a full English 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. 8 C.F.R. § 103.2(b)(3). Because the petitioner failed to submit certified translations of the articles, we cannot determine whether the evidence supports the petitioner's claim. *Id.* Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The record contains no other published material about the beneficiary or any athletes that she has instructed, trained or coached. Consequently, the beneficiary does not meet this criterion.

(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.

The record shows that the beneficiary judged numerous national and international synchronized swimming championships in France at the junior and senior levels between 1999 and 2005. The director did fully assess the relevant evidence of the beneficiary's judging, which meets this criterion.

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.

The petitioner submitted a copy of a training manual created by the beneficiary to fulfill a requirement for her French degree in sports education. The manual is printed in French and was not accompanied by a certified English translation, as required by the regulation at 8 C.F.R. § 103.2(b)(3). Because the petitioner failed to submit a certified translation of the document, we cannot determine whether the evidence supports the petitioner's claim. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The record is also devoid of any evidence that the beneficiary's manual has been recognized in her field as an original contribution of major significance. The petitioner submitted no other evidence of original contributions of major significance that the beneficiary has made to her field. Consequently, the beneficiary does not meet this criterion.

The record does not establish that the beneficiary has extraordinary ability in athletics, which has been demonstrated by sustained national or international acclaim, and that the beneficiary's achievements have been recognized in her field through extensive documentation, as required by section 101(a)(15)(O) of the Act. The petitioner submitted no evidence that the beneficiary or any athlete that she has instructed, trained or coached has received a major, internationally recognized award and the documentation submitted does not meet at least three of the eight evidentiary criteria specified in the

regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act and the petition must be denied.

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.

ORDER: The appeal is dismissed.