



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



B2

AUG 24 2000

File: WAC 98 159 51834 Office: California Service Center Date:

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly
Terrence M. O'Reilly, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

AUG 2000 - 01011000

DISCUSSION: The employment-based immigrant visa petition was denied by the director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The record lists varying spellings of the petitioner's name. The lack of a standard spelling appears to result from differing transliterations of the petitioner's name from the Cyrillic alphabet of her native Bulgaria. For this decision the Administrative Appeals Office has chosen the spelling which appears on the Form I-140 petition.

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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On the Form I-140 petition, the petitioner had described herself as an "Amateur Athlete & Professional Coach." The director, in denying the petition, stated:

[T]he evidence of record is not sufficient to determine that the petitioner/beneficiary has extraordinary ability in the field of coaching. . . .

The petitioner/beneficiary's duties are as follows: Coach female wrestlers. . . .

Although the petitioner has submitted evidence revealing that the petitioner/beneficiary as the outmost [sic] experience and talent in the field of wrestling, the duties of the said position is TO COACH and the petitioner/beneficiary does not have extraordinary abilities in this field.

On appeal, counsel for the petitioner asserts that the petitioner intends to continue participating as a competitive wrestler, concurrent with her coaching activities.

It appears, from review of the record, that the director has disregarded the petitioner's stated intent to continue wrestling competitively. Furthermore, the petitioner is not merely an athlete who intends to begin coaching upon approval of the petition. The record indicates that the petitioner has already coached successful wrestlers.

The director's decision contains only a cursory conclusion regarding the petitioner's background as an athlete, and no discussion at all of the petitioner's achievements as a coach.

While the evidence of record is ambivalent regarding the petitioner's achievements as a coach and as an athlete, the director made no effort to inform the petitioner of perceived shortcomings in the evidence presented. The director's sole request for evidence consisted of a request for information about the petitioner's intended job duties.

The director's decision, as written, appears to rely on a distorted reading of the record, and has not afforded the petitioner a fair opportunity to mount a meaningful appeal. The director's decision also fails to mention technical shortcomings in much of the petitioner's evidence. For instance, while the petitioner has been the subject of media coverage, the petitioner has not provided proof that the publications involved represent "major media" as required by 8 C.F.R. 204.5(h)(3)(iii).

As another example, 8 C.F.R. 204.5(h)(3)(ii) calls for "[d]ocumentation 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 has documented her membership in the [REDACTED] but she has provided no documentation to establish the association's membership requirements. It cannot suffice to provide subjective assertions by the petitioner, counsel, or third parties to the effect that one must be a good wrestler to become a member; the petitioner should submit official documentation from the association (in the form of bylaws, for example) clearly setting forth the nature of the membership requirements and identifying (at least by class) those who make the decisions on membership applications.

The petitioner has made several claims regarding her achievements both as a wrestler and as a coach which, if confirmed by more solid evidence, may support a finding of eligibility. Of course, the Administrative Appeals Office can take no definitive position at this time regarding the petitioner's eligibility; further evidence may well prove to undermine rather than support the petitioner's claims.

Should the director opt to request further evidence from the petitioner in this matter, the following types of evidence would appear to be of significant value in resolving the director's concerns: (1) evidence that the petitioner has continued to wrestle competitively since her arrival in the United States; (2) evidence that amateur wrestling organizations actively sought the beneficiary's involvement as a wrestler in her own right, between her September 1997 arrival in the U.S. and the May 1998 filing date of the petition; (3) comparative evidence to show that an unusually high proportion of the petitioner's pupils have attained major success in their sport; and finally, (4) with regard to the petitioner's most successful pupils, evidence to show that the petitioner had been the primary coach for those individuals for a

significant period of time prior to those pupils' greatest successes, and that those pupils were measurably and consistently more successful with the petitioner as a coach than they had been with previous coaches.

Evidence of the kind outlined above should present a clearer picture of the petitioner's future plans as a competitor, as well as of the petitioner's existing reputation as a coach. The petitioner should, of course, also ensure that she submits the best available evidence to meet the full wording and intent of at least three of the ten criteria set forth in 8 C.F.R. 204.5(h)(3). Any evidence submitted must show not only that the petitioner is at the top of her field at present, but also that she was at the top of her field in May 1998 when she filed this petition. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

While the Service is flexible as to the types of evidence which are acceptable, verifiable documentation generally carries greater weight than subjective and/or general witness statements. While the petitioner's prior counsel had claimed "[i]n the sports arena, letters of recommendation from coaches and commentators [are] often the best evidence of an athlete's standing in the sport," there is little to support this claim and much to controvert it. For example, in many competitive sports, an official governing organization maintains rankings of the top active competitors. These rankings are objective and universal, and do not rely on the opinions of those close to a given competitor. To establish national or international acclaim, the petitioner cannot simply establish that her employers and colleagues have a high opinion of her; she must show broad recognition throughout the field, which is not dependent on personal acquaintance with her. An athlete or coach known only to her trainers, friends, pupils and employers does not have a national or international reputation.

The director's denial appears to be incomplete and relies on an inaccurate reading of the record. Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for Examinations for review.