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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

*ADMINISTRATIVE APPEALS OFFICE*
*425 Eye Street, N.W.*
*BCIS, AAO, 20 Mass, 3/F*
*Washington, DC 20536*

[redacted]

File: [redacted] Office: Vermont Service Center Date: MAY 16 2003

IN RE: Petitioner:
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:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office 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 acknowledged that the petitioner had "world class achievements as an athlete" but determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as a coach of extraordinary ability.

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

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 Bureau 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 seeks to classify the petitioner as an alien with extraordinary ability as a gymnastics 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, international recognized award). While counsel asserts that the petitioner's Olympic Gold Medal meets this criterion, that award was the result of the petitioner's achievements as an athlete twelve years prior to the filing date of the petition. The medal is not evidence of the petitioner's sustained acclaim as a gymnastics coach. For the reasons discussed below, the petitioner must demonstrate sustained acclaim as a coach. 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.

8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." The petitioner, however, intends to work as a coach in the United States. While a gymnast and a gymnastics coach certainly share knowledge of volleyball, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching 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.[1] In light of the above, we concur with the director that the petitioner's achievements as an athlete are insufficient to establish her extraordinary ability as a coach. We reject counsel's arguments to the contrary. We acknowledge that the petitioner submitted evidence of eight years of high-level coaching in Belarus and the United States. The director's only discussion of this evidence is as follows: "While there are several letters of recommendation as a coach, there is no independent evidence to show that the [petitioner] is of E-11 caliber as a coach." On appeal, counsel argues that the director's rejection of the petitioner's recommendation letters "ignores the number of experts, the experts' credentials, and that the facts they present are corroborated." 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. Moreover, as will be discussed in more detail below, the witness' assertions are not "corroborated."

The petitioner submits documentation that she claims meets the following criteria.

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[1] Recently, this office has recognized that there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, this office has used a balancing test 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. In the instant case, however, the petitioner retired from competing in 1991, ten years before filing the petition. Thus, the petitioner has had ample opportunity to establish herself as a coach and must meet the eligibility requirements solely on her accomplishments as a coach.

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

As stated above, the petitioner won an Olympic team gold medal at the 1988 Olympics. Among the other significant prizes and awards, the petitioner placed third in the all-around at the 1988 European Cup. In 1989, the petitioner was a member of the first place team and placed second in the all-around at the World Gymnastics Championships in Stuttgart, Germany. The same year, she also placed second in the all-around at the Chunichi Cup. In 1990, she placed third in the all-around at the DTB Cup. These awards all result from the petitioner's accomplishments as an athlete and cannot be considered evidence of her national or international acclaim as a coach for the reasons discussed above.

On appeal, counsel asserts that the petitioner's students both in Belarus and the United States have won lesser nationally or internationally recognized prizes or awards. We will accept evidence of awards received by a coach's students as comparable evidence under 8 C.F.R. § 304.5(h)(4). In order to meet this criterion through such evidence, however, the petitioner must not only demonstrate that her students won such awards, but that they won these awards while under her tutelage.

In response to the director's request for additional documentation, the petitioner submitted letters attesting to her coaching in Belarus. [redacted] a medalist at the 1989 Olympics who also competed in the 1996 Olympics, asserts that while training for the 1996 Olympics the petitioner, a "trainer" for the team, "assisted me in my balance beam exercises." In addition, the petitioner submitted a letter from [redacted] the Technical Director of the Olympic Gymnastics team of Belarus from 1993 to 1997. Ms [redacted] asserts that the petitioner worked for her as a coach during that time, "rendering direct help and participation in preparation of such gymnasts as [redacted] and [redacted] and [redacted] Ms. [redacted] writes:

> [The petitioner] was the assistant coach at [the] National Training Center in Belarus from 1993-1997. She helped me become the Silver medalist at the European Cup [in] 1995 and Bronze medalist in the European Championships [in] 1996.

In a joint letter, [redacted] and [redacted] credit their success "to having been trained" by the petitioner. [redacted] won a bronze at the DTB Cup in 1993, a gold at the 1993 Belorussian National Championships, a bronze at the Cottbus Cup in 1994, a bronze at a U.S./Belorussian/Chinese competition in 1995, and two medals at the Gymnix Invitational in 1995. [redacted] won a bronze at the Trophee Massilia in 1993, a bronze at the U.S./Belorussian/Chinese competition in 1995, and a gold at the Gymnix Invitational in 1995.

The petitioner submitted the accomplishments of [redacted] including a bronze at the world cup in 1998. The Internet information, however, identifies her coach as [redacted] Moreover, the petitioner was no longer coaching in Belarus in 1998.

The above attestations, however, have reduced evidentiary value in light of evidence submitted initially. Specifically, the petitioner submitted her official Work-Record Card reflecting that the petitioner was employed as a coach masseuse at the Gymnastics Sports School of Olympic Reserve for Children and

Youth from March 1, 1993 until September 10, 1993, at which time she became a coach-choreographer at the same school. She left that position on November 21, 1994. No additional employment appears on the Work-Record Card until June 12, 1997, at which time she returned to the school as a teaching coach. She returned to the position of coach-choreographer on September 4, 1997 and left on August 20, 1998. Thus, this official record reflects no employment from November 21, 1994 to June 12, 1997. Thus, contrary to counsel's assertion, the independent evidence in the record not only fails to corroborate the witness letters on this issue, it contradicts them.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record does contain an article in *International Gymnast* from 2002 that discusses the petitioner's employment difficulties resulting from the arrest of her then husband. This article, written well after the petitioner's employment gap, does not explain the discrepancy between the petitioner's official work document and the letters attesting to her coaching Olympic athletes.

Moreover, the record contains no evidence from the Belarus Olympic association explaining how many coaches train the national gymnastic Olympic team or the significance of a "trainer" or "assistant coach." We note supplementary information at 56 Fed. Reg. 60899 (November 29, 1991), which states:

> The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

If playing in the major leagues is not inherently demonstrative of extraordinary ability, then arguably simply coaching at the national level, especially as an assistant coach, likewise falls short.

Initially, [redacted] the International Relations Coordinator for the United States Gymnastics Federation (USGF), asserted that the most notable gymnasts coached by the petitioner in the United States were [redacted] and [redacted] While Ms. [redacted] identified the programs in which these gymnasts participated, she did not specify any nationally or internationally recognized awards.

In response to the director's request for additional documentation [redacted] a correspondent for *International Gymnast*, asserted that Ms [redacted] placed third at the Junior Friendship Classic, an international competition. This competition, however, took place two months after the petition was filed. Thus, the director did not err by failing to consider this evidence.

*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.*

The petitioner was a member of the Soviet Olympic team in 1988. Such membership can serve as comparable evidence to meet this criterion as an athlete.

Regarding the petitioner's memberships as a coach, Ms. asserts that the petitioner is a professional member of USA Gymnastics and has safety certification. In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. The overall prestige of a given association cannot satisfy the criterion, because the key issue is membership requirements rather than the association's overall reputation. The record does not reflect that USA Gymnastics requires outstanding achievements for its members in the manner of highly exclusive associations.

*Published materials 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 petitioner submitted numerous articles, many of which appear in major media, regarding her career as an athlete. The only recent article about the petitioner submitted initially is a one-paragraph note that appears in the October 2000 issue of *International Gymnast*. While the note states that the petitioner is coaching, it is entitled "Still the Same," and is a nostalgic follow-up (i.e. "where are they now?") to the petitioner's athletic career. The brief note does not mention any coaching accomplishments.

In response to the director's request for additional documentation, the petitioner submitted an article by that appeared in the *International Gymnast*. The article is an extensive article about her life, including her career as a coach. The article, however, was published in April 2002, three months after the petition was filed.

*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.*

Initially, counsel asserted that the petitioner "qualified as a Judge, National Category, Women's Gymnastics, Belarus in the period 1993-98." The petitioner failed to submit any evidence of this assertion prior to appeal. On appeal, the petitioner submits a letter from Senior Secretary of the Belarus Gymnastics Association. Mr lists nine Belarus Championships and Belarus Cup competitions between 1993 and 1997 that the petitioner judged. Thus, the petitioner has now 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.*

Counsel asserts that the petitioner played a leading or critical role for Belarus National Women's Gymnastics Team and Southern Tier Gymnastics Academy. As stated above, the record reflects that the petitioner was an assistant coach for the Belarus National Women's Gymnastics Team. We cannot conclude that an assistant coach plays a leading or critical role for the team she coaches.

Ms. [redacted] asserts that Southern Tier is one of only two elite training facilities in New York State. [redacted] President of Southern Tier, asserts that the petitioner works as a coach for this facility, which has an enrollment of over 400 students. Mr [redacted] does not indicate the number of coaches employed by Southern Tier. In response to the director's request for additional documentation, the petitioner submitted team results for the 2002 I Love NY Cup. Southern Tier placed first in levels six, seven, eight and ten-elite. The record does not establish that Southern Tier has a distinguished reputation nationally. For example, there is no evidence that it attracts students from outside New York. Moreover, the record does not reflect that the petitioner is a head coach for this club. On appeal, Barbara Tiess, head coach and co-owner of Exper-Tiess Gymnastics in New York, writes:

> In the USA there are approximately 60 coaches who have achieved T.O.P. status in the nation. There are approximately 45 coaches who have achieved athletes on the national elite level, and at the highest level of elite gymnastics, the senior international division there are only 12 coaches who have attained that level. In a very short period of time [the petitioner] has qualified athletes into all of these divisions and has quickly established herself as one of the highest level elite coaches in the USA.

The record contains Internet materials from National Elite Gymnastics' website regarding the 11 competency levels in the USA Gymnastics Women's program. The record does not establish, however, that any of the petitioner's students compete at the Senior International Elite level. Nicole Ford competed as a senior at the 2001 USA Gymnastics Championships in August 2000. The materials do not indicates that this was at the Senior International level. The Roster of Athletes includes 29 athletes from at least 21 gymnastics clubs. Thus, it appears that more than 12 coaches were represented. While the accomplishments of the petitioner's students are notable, they cannot establish that she plays a leading and critical role for a gymnastics club with a distinguished reputation nationally.

We note that the petitioner included a recommendation letter from [redacted] He is the head coach and co-owner of World Olympic Gymnastics Academy (WOGA). The Roster of Athletes for the August 2000 USA Gymnastics Championships reflects that five of them trained at WOGA, whereas only one trained at Southern Tier. In his 2002 letter, M [redacted] claims to currently train seven international elite gymnasts including national champions and silver and bronze medalists. He served on the International Elite Committee for USA Gymnastics and was awarded the International Coach of the Year by the U.S. Elite Coaches Association. These accomplishments suggest that the top of the petitioner's field is higher than the level she has obtained.

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.

Review of the record, however, does not establish that the petitioner has distinguished herself as a gymnastics coach 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 indicates that the petitioner shows talent as a gymnastics coach, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) 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.

**ORDER:** The appeal is dismissed.