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U.S. Citizenship and Immigration Services

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[redacted]

MAR 26 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 petitioner is an acrobatics/gymnastics coach at Charter Oaks Gliders. 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.

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 pertinent regulations 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 he has sustained national or international acclaim at the very top level.

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). The petitioner states that he "satisfies the requirement for one-time achievement TWICE" (emphasis in original) because one of his pupils, Antoniana Stoyanova (the record offers variant spellings of her surname), placed second in some events, and third overall, at the European Acrobatics Championships, as well as third overall in the World Championships.

We interpret the "one-time achievement" clause to be exercised very restrictively, because its broad application would contravene the plainly-worded statutory demand for "extensive documentation" of sustained acclaim. Third place in competitions with a lower overall profile than the Olympic Games cannot meet this standard. More importantly, the petitioner did not receive any awards in these competitions. While 8 C.F.R. § 204.5(h)(4) allows for the submission of comparable evidence under some circumstances, we do not construe the "comparable evidence" clause to apply to the "one-time achievement" clause. If the petitioner himself has not won a major international award, he does not satisfy the "one-time achievement" clause. We will consider Ms.

Stoyanova's prizes, in their proper context, further below. We note that, according to all the available evidence, the petitioner stopped coaching Ms. Stoyanova in 1996, before either of the above competitions.

Barring the alien's receipt of a major, internationally recognized 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. The petitioner's initial submission contained no explanation as to which of the ten criteria the petitioner claims to have satisfied. Subsequently, in response to a request for additional evidence, the petitioner has claimed that he satisfies the following criteria:

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

We acknowledge that coaches rarely receive prizes in their own right, but deserve considerable credit for helping their pupils to earn national or international prizes. Thus, first-hand documentation of prizes earned by gymnasts who were the petitioner's pupils at the time they won the prizes can constitute comparable evidence as allowed by 8 C.F.R. § 204.5(h)(4).

Antonia Stoyanova credits the petitioner's coaching with her success:

> [U]nder [the petitioner] as a coach, [my partner and I] participated in International events in Poland and USA. I was awarded two gold medals.
>
> In 1991 I switched to women['s] pair class (still under the coaching of [the petitioner]). . . . For three consecutive years we were National Champions.
>
> In 1996 . . . [the petitioner] was forced to leave us due to financial hardship. . . .
>
> [W]ithout the coaching of [the petitioner] my results diminished.

The petitioner submits copies of certificates and rankings, establishing that Ms. Stoyanova is a highly successful gymnast. Some of the certificates are undated. The remaining materials are dated between 1997 and 1999, after the petitioner had ceased to be Ms. Stoyanova's coach.

The regulatory language requires "documentation" of prizes and awards, rather than testimonial claims regarding unspecified prizes and awards. The regulation at 8 C.F.R. § 103.2(b)(2)(i) states:

> The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document . . . does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence . . . pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

Given the above evidentiary standards, witness letters referring to vaguely-described awards cannot suffice to meet the petitioner's burden of proof.

Dr. Y. Demianenko, chair of the Sports Acrobatics Technical Committee of the South African Gymnastics Federation (SAGF), states that several gymnasts who trained at Benoni Acro & Tumbling Club won medals while the petitioner "assisted with coaching" at that facility. Dr. Demianenko does not state that the petitioner coached these athletes, only that the petitioner worked where they trained. Dr. Demianenko adds that the petitioner "started his own club. . . . The gymnasts from his club took part in various tumbling competitions where they were successful." To say that unnamed athletes "were successful" in unidentified competitions is not evidence of prizes or awards.

Olympic gold medallist Lilia Podkopaeva does not indicate that the petitioner has coached champion gymnasts. Rather, she states that the petitioner is "capable of building world class gymnasts if he's given the right opportunities." Ms. Podkopaeva refers to the petitioner not as a top coach, but "one of the world's most potential young coaches."

The petitioner has also listed, under this criterion, several items which are not, or have not been shown to be, prizes or awards. For instance, a certificate from the Bulgarian Union for Physical Education and Sports Central Council indicates that the beneficiary holds the rank "Master of Sports Acrobatics." The certificate is dated December 1987, when the petitioner was 17 years old. The petitioner's coaching career began several years later, in 1994, and therefore this rank does not reflect the petitioner's coaching ability. Ron Gallmore, senior director of the men's program at USA Gymnastics, states that the master of sports acrobatics certificate is "equivalent to a Bachelor's Degree in physical education." A bachelor's degree, or its equivalent, is not an award, let alone a nationally or internationally recognized one. Similarly, job titles are not prizes or awards, and coaching an athlete who participates in, but does not win, a competition is neither a prize nor an award.

Mr. Gallmore states:

> [The petitioner] is very well known as a former sport acrobatics athlete, as well as an elite level coach from Bulgaria, formerly of the USSR.[1] [The petitioner] was a member of Bulgaria's national team; however, his greatest achievements came from coaching Bulgaria's national team members. Many of Bulgaria's elite athletes coached by [the petitioner went on to medal in their National Championships, the European and World Championships.

Mr. Gallmore provides no specific, verifiable information (such as dates or the athletes' identities), and he fails to specify whether the petitioner was still coaching these athletes at the time they won their national or international medals.

> *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.*

Evgeny Kolev, secretary general of the Bulgarian Federation of Sports Acrobatics, states that the petitioner "has been recognized and honored as [an] honorary member" of that federation. Mr. Kolev does not explain or document the requirements that one must meet to qualify as an honorary member.

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[1] Although it was formerly a member of the communist bloc, Bulgaria was never a constituent republic of the Union of Soviet Socialist Republics.

It is important to note that the petitioner left Bulgaria in 1996, six years before the petition's filing date. Evidence regarding the petitioner's coaching work in Bulgaria, therefore, cannot suffice to show *sustained* acclaim as a gymnastics coach, although such evidence can clearly constitute part of a larger pattern of acclaim if the petitioner is able to demonstrate acclaim subsequent to 1996.

The petitioner claims to have been a member of the Eastern Gauteng Sports Acrobatics Committee in South Africa. His only evidence of this is a letter from a witness who does not claim any affiliation with that committee. The record does not show that the above committee requires outstanding achievements of its members as judged by national or international experts. The name of the committee suggests a local rather than national orientation. Thus, the petitioner's claim regarding this membership is deficient in several respects.

The petitioner documents that he is a "professional member" of USA Gymnastics. The record is silent as to that organization's membership requirements.

> *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.*

A letter from the SAGF Tumbling Technical Committee indicates that the petitioner "qualified as a Novice Judge for the discipline of Tumbling in 1997," but does not indicate any events at which the petitioner actually served as a judge. The director, in denying the petition, indicated that this was the only document to mention the petitioner's work as a judge. The director failed, however, to note the letter from Dr. Y. Demianenko, identified above, who states that the petitioner "judged at the Sport Acrobatics National Championships." On balance, this statement from an SAGF official appears to be adequate to establish the petitioner's work as a judge at a national level.

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

The petitioner states that his skills as a gymnast were "displayed" in a 1989 exchange visit to California by the Bulgarian National Team, of which he was then a member. The petitioner, however, has retired from competition and does not seek to enter the United States as a gymnast. He seeks entry as a coach of female gymnastics. It is not readily apparent that the occupation of coaching is amenable to fulfilling this regulatory criterion.

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

The record indicates that the petitioner has coached teams in Bulgaria, South Africa and the United States that have competed in significant international competitions. This work appears sufficient to satisfy this criterion.

The director denied the petition, discussing the evidence in the context of the criteria at 8 C.F.R. § 204.5(h)(3). The director found the petitioner's evidence deficient, except regarding a leading or critical role for distinguished organizations. As noted above, we find that the petitioner satisfies a second criterion through working as a judge for the SAGF.

There is no evidence that counsel participated in the preparation or filing of the appeal. On appeal, the petitioner requests oral argument. Such requests will be granted only for good cause. The petitioner's assertion that his spoken English is superior to his written English does not constitute good cause for oral argument. The denial rests on a deficiency of evidence, rather than the petitioner's failure to clearly explain that evidence in writing.

Therefore, the petitioner has not shown that the outcome of the appeal would be different with an oral presentation than it would be without one.

The petitioner argues on appeal that he has "the highest possible education, diploma and degree in coaching acrobatics." We do not dispute his credentials as a coach, but academic degrees do not confer national or international acclaim.

The petitioner repeats his claim that Antonia Stoyanova's third-place finish at international competitions should qualify under the "one-time achievement" clause. Having already addressed this claim above, we need not repeat those arguments. We will, however, note the petitioner's new argument to the effect that the specific forms of gymnastics he coaches are not Olympic events, or at least were not at the time Ms. Stoyanova competed. It does not follow that Ms. Stoyanova's non-Olympic events have equal significance to the Olympic Games. Not every field of endeavor will have an international award so universally recognized as to fulfill the "one-time achievement" clause. The Olympic Games are well-known even to non-athletes and those with little interest in sports in general. The petitioner has not shown that the same can be said of the non-Olympic gymnastics events at which his former pupils have competed.

The petitioner offers general arguments regarding the reputation of Bulgaria's gymnastics community. The central issue revolves around the petitioner's own recognition; association with the Bulgarian team is not sufficient to reflect individual acclaim onto the petitioner.

The petitioner states "I have the highest award for coaching in Bulgaria: Honorary coach and an Honorary member of Bulgarian Acrobatics federation. The criteria for awarding such honors are achievements at World and European championships as a coach." The petitioner offers no support for these claims regarding the significance of these honors. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner asks for careful consideration of previously-submitted letters from officials of United States gymnastics organizations. These letters attest to the petitioner's expertise and his "character and integrity," and mention a shortage of qualified coaches, but these letters do not demonstrate sustained acclaim in the sport. Other immigrant classifications exist to accommodate United States employers seeking to employ alien workers in hard-to-fill positions.

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 himself as a gymnastics coach to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that \the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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.