D8

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

[redacted]

File: WAC-99-232-50093 Office: California Service Center Date: MAR 7 2001

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER: Self-represented

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

Robert P. Wiemann, Acting Director
Administrative Appeals Unit

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a synchronized swimming club. The beneficiary is a professional synchronized swimmer and coach. The petitioner seeks extension of the beneficiary's classification under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), as an alien with extraordinary ability in athletics, in order to continue her employment as head coach/consultant in the United States for a period of one year.

The director denied the petition finding that the petitioner failed to establish that the beneficiary qualifies for classification as an alien with extraordinary ability in athletics within the meaning of the regulatory provisions.

On appeal, the president of the petitioning organization stated that the beneficiary has been granted O-1 classification twice in the past, although they omitted proof of this fact with the petition. The respondent stated that this is the second request for a one-year extension and submitted additional documentation.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), provides 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.

The issue raised by the director in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien of extraordinary ability in athletics.

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.

8 C.F.R. 214.2(o)(3)(iii) states, in pertinent part, that:

> *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.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

> Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The beneficiary is a native and citizen of Canada currently residing in the United States in O-1 classification authorized to be employed by the petitioner. The petitioner seeks extension of that employment authorization.

On appeal, the petitioner submitted, in part, a consultation from United States Synchronized Swimming ("USSS"), the U.S. national governing body of the sport. The USSS labor consultation letter, supported the beneficiary's continued employment in the United States describing her as a "qualified coach" and noting that such coaches are lacking in the United States. It was further noted in the letter, that one team member coached by the beneficiary reached the finals of the U.S. Open Championships describing this as an "unprecedented" achievement in just three years.

An additional letter was submitted from the United States Synchronized Swimming Southern California Association strongly supporting the beneficiary's continued employment opining that she has delivered "extraordinary levels of accomplishment" in the last four years. It was also stated that the beneficiary is qualified to be a judge in the sport in Canada.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the director's objections. There is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. 214.2(o)(3)(iii)(A). Nor is the record persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B). It must be noted that these provisions are only documentary requirements and merely addressing them does not establish eligibility for the benefit sought.

The record supports a claim that the beneficiary has satisfied two of the regulatory criteria: that is, she is a member of a professional association and is qualified as a judge in the sport. However, the record does not show that the beneficiary has satisfied the remaining criteria. There is no evidence that the beneficiary has won any major awards in the sport, that she was nationally or internationally ranked in the sport as an individual

athlete, that she was recognized or ranked as a coach in the sport, or that she has commanded a high salary in the sport. The petitioner did not submit evidence from a major publication or commentator relating to the sport demonstrating that the beneficiary was recognized as having extraordinary ability in the sport.

While the two consultation letters support the beneficiary's continued employment in the United States, the affiants did not provide information demonstrating that the beneficiary is recognized as being one of the few individuals at the very top of the sport of synchronized swimming.

Pursuant to the regulations, O-1 classification is available to a "small percentage" of athletes who have arisen to the "very top" of the field of endeavor. The petitioner has not established that the beneficiary's abilities have been so recognized. The record does not contain the requisite "extensive documentation" of the beneficiary's "sustained acclaim" required by the statute. Therefore, it must be concluded that the petitioner has not shown that the beneficiary is an athlete of extraordinary ability within the meaning of section 101(a)(15)(O) of the Act.

The petitioner's statement that two previous petitions for O-1 classification were approved is acknowledged. However, that fact does not overcome the grounds for denial of the instant petition. The Service is not bound by past erroneous decisions. The record clearly shows that the beneficiary is a highly respected athlete and coach in the sport. However, the petitioner has not demonstrated that the beneficiary has achieved recognition at the extraordinary level.

The denial of this petition is without prejudice to the beneficiary pursuing any other immigration benefit for which she may be eligible.

The burden of proof in these proceedings rests solely with the petitioner. § 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.