D8

U.S. Department of Justice

Immigration and Naturalization Service

deleted to
unwarranted
invasion of privacy

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

[redacted]

File: LIN-01-076-52945 Office: Nebraska Service Center Date: JUN 18 2002

IN RE: Petitioner: [redacted]
Beneficiary:

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

PUBLIC COPY

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

Mark L. Rosenberg
for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a gymnastics school. The beneficiary is a former gymnast and gymnastics coach. The petitioner seeks classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act"), as an alien with extraordinary ability in athletics. The petitioner seeks to employ the beneficiary temporarily in the United States "teaching gymnastics to children" for an unspecified duration at a salary of $400 per week.

The director denied the petition determining that the petitioner failed to establish that the beneficiary satisfies the regulatory standard for an alien with extraordinary ability in athletics.

On appeal, an official of the petitioner submitted a letter asserting that the beneficiary has clearly established eligibility for O-1 classification and has won national and international tournaments.

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.

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.

At issue in this proceeding is whether the beneficiary qualifies as an alien with extraordinary ability in athletics and whether he seeks to enter the United States to continue work in the area of extraordinary ability.

The petitioner is a non-profit gymnastics school. The beneficiary is a native and citizen of Lithuania who last entered the United States on July 18, 2000, in B-2 classification, authorized to participate in a marathon. The record reflects that the beneficiary has been employed by the petitioner in violation of the terms of his admission as a B-2 visitor.

The petitioner asserted that the beneficiary was a gymnast as a youth and completed a Bachelor of Education degree from the Lithuanian Academy of Physical Education in 2000.

The director denied the petition finding, in part, that the evidence was insufficient to establish that the beneficiary was recognized as having risen to the "very top" of the field of gymnastics as required by 8 C.F.R. 214.2(o)(3)(ii).

The petitioner asserted on appeal that the beneficiary had won national and international competitions and was recognized as a gymnastics coach.

The petitioner's argument is not persuasive. First, the petitioner failed to provide a detailed account of the beneficiary's professional achievements as an athlete or an athletic coach. Simply going on record without supporting documentary evidence, is not sufficient for purposes of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Second, the evidence submitted with the petition was insufficient to establish eligibility. The petitioner submitted evidence including, in pertinent part, a letter of recommendation from the petitioner, a letter from the alien's school in Lithuania, a letter from an private individual, and a certificate of having completed a gymnastics safety course in the United States.

Here, 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) or that he satisfies at least three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B).

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. In order to establish eligibility for extraordinary ability, the statute requires proof of "sustained" national or international acclaim and proof that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized. Merely having competed in, or won, some gymnastics competitions is not a sufficient basis for O-1 classification. A petitioner must demonstrate that the alien is widely recognized as being at the "very top" of the field of endeavor. Accordingly, the petitioner has failed to overcome the director's concerns.

Additional notice must be made that the petitioner failed to specify the duration of the temporary employment and failed to submit a consultation letter from the appropriate athletic organization. For these reasons as well, the petition may not be approved.

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.