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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: WAC-99-124-52125 Office: California 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)

IN BEHALF OF PETITIONER: [redacted]

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

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

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. An appeal was dismissed by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner on motion to reopen. The motion will be dismissed.

The petitioner is a gymnastics facility. The beneficiary is a gymnast competing in the field of aerobic gymnastics/sport aerobics. 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, in order to employ her in the United States as a gymnastics coach for a period of three years.

The appeal was dismissed on the grounds that the record did not demonstrate that the proffered position, coaching at a gymnastics facility, is related to a specific athletic event or events as required at 8 C.F.R. 214.2(o)(1)(i) and that it does not constitute continuing in the work of athletic performance at the extraordinary level as required by the statute.

On motion, the petitioner argues, in part, that the Service, "proposed the novel idea that extraordinary ability in athletics is not a prerequisite to being able to coach in that athletic field."

After a review of the record, it must be concluded that the petitioner has failed to show that the argument satisfies the requirements of a motion to reopen or a motion to reconsider. The petitioner's statement on motion mischaracterizes the decision. The center director did not find that the beneficiary lacked extraordinary ability in athletics and the appeal was not dismissed on the grounds that athletic ability was not required in athletic coaching. The decision was based on the regulatory standards for O-1 classification that require admission to be related to a specific athletic event(s) and the plain language of the statue which requires that the alien must seek to enter the United States to continue work in the area of extraordinary ability. The petitioner failed to establish that a long-term coaching position at its gymnastics facility was either related to a specific athletic event or constituted continuing work in the area of extraordinary ability.

According to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. In order to prevail on a motion to reopen, the petitioner must establish that the new facts and/or evidence presented were unavailable at the time the prior decision was issued. Id.

According to 8 C.F.R. 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any

pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. In order to prevail on a motion for reconsideration, a petitioner must establish that the prior decision rests on an incorrect application of law, so that the decision "was incorrect based on the evidence of record at the time of the initial decision." Id. According to 8 C.F.R. 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

The petitioner has not established that the prior decision rests on an incorrect application of law or Service policy. Therefore, its action does not meet the requirements of a motion and it must be dismissed.

As noted in the appellate decision, the denial of the petition is without prejudice to the filing of a new petition under alternate provisions of the Act.

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 motion is dismissed.