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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

[redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

MAY 23 2003

FILE: LIN 03 066 53525 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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

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 nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a gymnastics academy. The beneficiary is a former gymnastics competitor and a gymnastics coach. The petitioner seeks O-1 classification of the beneficiary, as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i) in order to employ him in the United States as a gymnastics instructor and coach.

The director denied the petition finding that the petitioner failed to establish that the beneficiary qualifies as an alien with extraordinary ability in athletics.

On appeal, counsel for the petitioner states the following as the reason for the appeal:

> The INS' decision was in error, in that it failed to give any weight to expert opinion of USA Gymnastics and other sources that Mr. [redacted] is a coach of extraordinary ability. The INS-NSC applied an incorrect standard that would require extraordinary achievements of Mr. [redacted] students, while ignoring the documented accomplishments he has achieved with establishing new fledging gymnastics programs as evidence of his own extraordinary coaching talents.

Counsel also states that he would send a brief within thirty days of the appeal. More than sixty days have lapsed since the date of the appeal and no brief has been received as of this date. The record, therefore, must be considered complete as presently constituted.

Section 101(a)(15)(O)(i) of 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.

The beneficiary in this matter is a native of the former Soviet Union and citizen of the Ukraine. The record shows that the beneficiary has been a gymnastics competitor and instructor since 1987. He was named "all-around National Champion" in 1993 in the Ukraine, and was a member of Ukraine's 1994 bronze medal World Championship team. The beneficiary was a candidate for participation at the 1996 Olympic games. In 1986 and 1990, the Ukrainian State Sport Committee awarded the beneficiary the title of "International Master of Sport." In 1996, he worked as a gymnastics coach in Bauru, Brazil. In the years 2000-2002, he worked as a gymnastics coach at Dreams Gymnastics in Glenview, Illinois.

The director determined that the evidence was insufficient to demonstrate that the beneficiary is among that small percentage who have risen to the very top of their field. It is noted that the petitioner relied heavily on testimonials to establish the beneficiary's eligibility.

On appeal, counsel asserts that the director applied an incorrect standard in evaluating the beneficiary's eligibility for O-1 classification.

After a careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial of the petition. The record is insufficient to establish that the beneficiary is an alien with extraordinary ability as a gymnastics coach.

First, 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).

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

The director determined that the beneficiary satisfies criterion number one as a competitor in gymnastics, but that the petitioner failed to establish that the beneficiary is recognized as one of that small percentage of coaches who have risen to the very top of the field. Counsel for the petitioner took issue with the director's review of the beneficiary's students' performance. In the instant case, the petitioner failed to provide evidence that the beneficiary has won any nationally or internationally recognized prizes or awards for excellence in the field of gymnastics coaching. As comparable evidence, the Bureau may evaluate a coach's performance vis-à-vis the performance of those under his tutelage.[1] The petitioner submits evidence that the

[1] In *Lee v. INS*, 237 F.Supp.2d 914 (N.D. Ill. 2002) the court upheld an AAO determination that evidence that an alien was an outstanding foreign professional baseball player did not establish that the alien had extraordinary ability as a baseball coach.

beneficiary has been instrumental in the success of certain gymnasts, but the level of their success falls short of national or international recognition. According to the evidence on the record, the beneficiary coached a boys' gymnast team at a gymnastics center in Glenview, Illinois. The petitioner submits a letter from his former employer that states:

> As a result of [the beneficiary's] impressive capabilities, our students flourished from the lowest to the highest-level classes. Under his guidance for example, our Level 5 boys' team achieved a third place in the 2001 Illinois State Meet. Under [the beneficiary's] coaching, one of the boys on the team, Steve Deutch, distinguished himself with first place on vault . . . second places in the parallel bar and horse events; and second place all-around in the 2001 Region 5 Championship.

The petitioner provided the Bureau with a certificate of appreciation given to the beneficiary for his "attention and dedication in the evolution of Olympic gymnastics in Bauru, Brazil." The evidence does not show that the beneficiary is recognized in Brazil for coaching Olympic medal winners.

The evidence is insufficient to establish that the beneficiary satisfies criterion number one.

No evidence was submitted in relation to criterion number two.

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field of which classification is sought, which shall include the title, date, and author of such published material, an any necessary translation.

For criterion number three, the petitioner submits to the Bureau several articles, some of which feature the petitioner and fail to mention the beneficiary. One item is a photograph of the beneficiary training for the Olympics that was published in the *Chattanooga Free Press* on July 8, 1996. Another article is captioned "Bauru has been cheated out of the Olympic Bronze," that is dated December 15, 1996. This article states that the city of Bauru had cut off funding for its gymnastics program, and mentions the beneficiary as one of its trainers. The petitioner failed to include the name of the Brazilian publication. Moreover, the petitioner has not provided any information regarding the circulation or reputation of these publications. These articles were published in 1996. The petitioner has failed to demonstrate that the beneficiary has sustained any acclaim to the present date.

No evidence was provided in relation to criteria numbers four, five, six, seven, and eight.

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.