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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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... clearly unwarranted
... on of personal privacy**

File: WAC 98 011 50971 Office: California Service Center Date: **DEC 09 2002**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

IN 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 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially denied by the Director, California Service Center. The Associate Commissioner for Examinations remanded the matter, instructing the director to issue a new decision to be certified to the Associate Commissioner for review. The director approved the petition and certified the decision as instructed. The decision will be withdrawn and the petition will be denied.

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 director, in denying the petition, cited three factors. The director noted counsel's assertion that the petitioner "has been called upon to train and render services to diverse groups including the Police Department," but the director stated that there was no evidence of the petitioner's work with police groups. The record, in fact, contains several letters from police officials and thus conclusively refutes this ground for denial.

The director also stated that the record "does not include documentation revealing that the petitioner . . . will be under the employ of a company, organization, or a business." This ground of denial cannot stand, because no offer of employment is required for this classification. 8 C.F.R. 204.5(h)(5). In any event, the record shows that there exists some demand for the petitioner's services and therefore the petitioner's continued employment in the field, as required by 8 C.F.R. 204.5(h)(5), is beyond dispute.

In the final substantive paragraph of the denial decision, the director stated "[n]otwithstanding the petitioner['s] . . . extraordinary ability in the field of martial arts, the evidence of record lacks evidence that the petitioner . . . will substantially benefit prospectively the United States." The director's language created the impression that the petitioner has established extraordinary ability, and can demonstrate his eligibility simply by explaining how he intends to benefit the United States.

On appeal, counsel understandably focused on refuting the above findings, demonstrating that the petitioner had indeed established that he works with local police departments and will presumably continue to do so.

Because the above-cited grounds constituted the body of the director's decision, and those grounds are inadequate and somewhat misleading grounds for denial, the Administrative Appeals Office ("AAO") remanded the matter to the director, with the instruction to return any subsequent decision on certification for our review. Subsequently, the director has approved the petition and certified that decision for review as directed.

For reasons to be discussed below, review of the record does not support a finding of eligibility for the highly restrictive visa classification sought. The AAO had advised the director (and the petitioner) in the remand notice that "[t]he record contains deficiencies" and "serious evidentiary shortcomings," and it was for this very reason that the AAO had called for the certification of the director's new decision. The remand order took issue not with the outcome of the decision, but rather the means by which the director arrived at that decision. Now, reviewing the matter on certification pursuant to 8 C.F.R. 103.4(a)(5), we reverse the director's decision and deny the petition based on those deficiencies and shortcomings.

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 Service regulation 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.

In a letter accompanying the initial filing of the petition, counsel has stated that the petitioner "has a long and distinguished career as a martial arts Black Belt in the style of Jiu Jitsu." With regard to counsel's assertion, this office notes that the petitioner was 23 years old when he filed the petition in

October 1997. Counsel claims that the petitioner earned his black belt in 1994, three years before he filed the petition. The earliest documentation of any black belt, however, is a certificate dated September 15, 1996, from the U.S. Federation of Brazilian Jiu-Jitsu. This certificate states that the petitioner "is promoted to the rank of Black Belt," consistent with the finding that the petitioner did not hold that rank prior to September 1996. The record, therefore, does not support counsel's contention that the petitioner has had a "long . . . career as a martial arts Black Belt." While the petitioner apparently began studying jiu jitsu at age seven, he required years of training to earn his black belt, and his childhood martial arts activities did not constitute a "career."

Counsel contends that the petitioner "is a national figure in Brazil. His fame and popularity equals that of 'Magic Johnson' in the United States." Elsewhere, counsel compares the petitioner to legendary athlete Michael Jordan and martial artist Bruce Lee.

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). Barring the alien's receipt of such an 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 has submitted evidence which, counsel claims, meets 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.

On appeal from the director's initial decision, counsel states that the petitioner "won the Brazilian Jiu Jitsu national championship titles five years in a row from 1990 to 1995. . . . He has also been the recipient of the National Brazilian Championship for 1993." These assertions indicate a distinction between "the Brazilian Jiu Jitsu national championship titles" and "the National Brazilian Championship," but the nature of that distinction is not clear.

Counsel also asserts that the petitioner received "the 'Oscar of Jiu-Jitsu,' the highest award in the field of Jiu-Jitsu." The record contains no documentation of a prize by that name. The term is presumably a nickname applied by counsel, but counsel does not clearly specify which particular award is considered "the 'Oscar of Jiu-Jitsu.'"

Counsel states that, between 1989 and 1995, the petitioner has won gold medals or championships in over two dozen competitions, and

"has been the undefeated champion in Jiu Jitsu for 5 years." Counsel does not indicate whether the petitioner has been undefeated in the United States, where the petitioner now resides, or that the petitioner has otherwise sustained in the U.S. the reputation which he claims to have earned in Brazil.

The actual documentation of record pertaining to prizes and awards is described below. Most of the documents are in Portuguese without accompanying certified English translations. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). In this case, the record contains only counsel's brief capsule descriptions of each document. These capsule descriptions will be discussed briefly, but the absence of the required certified translations severely diminishes the evidentiary value of the certificates.

Counsel states that one certificate indicates that the Association of Sports Journalists and Broadcasters elected the petitioner "Athlete of the Year." There is no indication as to whether the Association is local or national in scope. The certificate itself is a "form" document with the petitioner's name and other specific information added with a typewriter, which does not lend support to the assertion that the presentation of the award is an event of major significance.

Counsel describes several of the petitioner's championship certificates as originating from "the Jiu-Jitsu League of Neteroi City," "the State of Minas Gerais" and "the Rio de Janeiro State Tournament." Another certificate refers to "the tournament . . . at Municipal Shopping Center Barra." Local and state competitions do not yield nationally or internationally recognized prizes or awards. These certificates are "form" documents with the petitioner's name handwritten or typed into blank spaces.

According to counsel, one certificate is from "the Brazilian National League of Jiu-Jitsu," indicating that the petitioner won "first place [at] the National Jiu Jitsu Tournament . . . in September 1992." Of the initially submitted certificates, this document is the only one which purportedly describes a national-level prize.

Counsel, in a later statement, asserts that the petitioner "won the Brazilian Jiu Jitsu Championships five years in a row from 1990 to 1995. It is respectfully submitted that this feat alone is enough to qualify for extraordinary ability." The only prizes or awards that can, by themselves, establish extraordinary ability are major international prizes or awards. National prizes do not become

international prizes, regardless of whether an alien has won several of them in succession.

In any event, the record does not offer objective documentation that the petitioner won a series of national championships. While some witnesses refer to the petitioner winning a single national championship, the witnesses disagree as to the year. We note that, if the petitioner had won every championship from 1990 to 1995, he would have won six rather than five championships (1990, 1991, 1992, 1993, 1994, 1995).

Counsel maintains that the petitioner's "championships are nationally and internationally known and recognized. [The petitioner] is by far the Bruce Lee of Brazil and an undefeated champion in Jiu Jitsu martial arts." Even counsel's incomplete translations of the petitioner's certificates indicate that most of the petitioner's prizes are local or regional in nature, and even the petitioner's own instructors have not supported counsel's contention that the petitioner is an internationally famous, undefeated champion. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

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

Counsel submits capsule summaries, which he deems "concise translations," of various Portuguese-language articles published in Brazil. As with the prize certificates, above, the record contains no certified complete translations of the articles. A description of a newspaper article is not a translation of that article.

A note accompanying an article from O Fluminense indicates that the article "points out [the petitioner] as the high light of the grand opening of the new jiu-jitsu school at Santa Martha College." The "article" is in fact a one-paragraph caption to a photograph which depicts the petitioner and another individual.

Another note indicates that an article from Brazil Today "covers the annual Jiu-Jitsu Tournament Brazil-USA realized July 26, 1996. . . . Once again [the petitioner] was the high light of the tournament winning over a very talented U.S. fighter. [The petitioner] was selected as a superfighter having his performance announced as a special event." Brazil Today is a Portuguese-language periodical, published in the United States for the Brazilian immigrant community. This publication cannot be considered "major media" because it is published in the U.S. in a

foreign language which most U.S. readers cannot understand. The article does not establish that the biggest U.S. sports publications or general interest periodicals have taken any notice of the petitioner.

The record contains a completely untranslated article from Jornal dos Sports, a Rio de Janeiro publication. The petitioner's name appears once in an underlined sentence. Other articles appear to derive from purely local publications. The burden is on the petitioner to establish that the articles derive from major national publications. Furthermore, articles about competitions in which the petitioner was one of several competitors are not necessarily about the petitioner. Many local newspapers cover local sporting events, usually naming several of the competitors. Such local articles cannot establish that the petitioner is nationally famous as he claims.

The record contains what appears to be an uncertified translation of a newspaper article, but there is no indication as to which of the articles in the record is translated therein. The translation may accompany a Japanese-language article from an unidentified publication; this article immediately follows the translation in the record.

Other articles originate from the Jornal Gracie which appears to be a newsletter published by a martial arts school. Such newsletters do not constitute major media.

Counsel has listed the publications in which the petitioner's name has appeared, and maintains that "[t]hese publications are national newspapers and magazines in Brazil." Counsel cites no evidentiary support for this claim. Among the publications which counsel claims to be "national newspapers and magazines in Brazil" are Brazil Today, published outside of Brazil, and what counsel identifies as "Japanese Magazine." Even if the record contained any evidence that the publication is in fact called Japanese Magazine, and that it is in fact published in Brazil, a Japanese-language magazine would not represent major media in Brazil because it would be incomprehensible to the Portuguese-speaking majority of Brazil's population.

The petitioner has established some media coverage of his work, but he has not demonstrated that he has been the principal focus of articles in major national publications.

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.

Counsel asserts that "[f]rom 1994 through to 1997, [the petitioner] has participated as a referee in numerous national and international martial arts tournaments." Counsel claims "[i]n order to be a referee in any sport, you must be a famous, world renown figure in the field." Counsel offers no support at all for this claim.¹ Counsel's credibility necessarily suffers as a result of numerous unsubstantiated claims of this kind.

Apart from counsel's unfounded assertions regarding the qualifications to act as a referee, the initial evidentiary submission contains no evidence to establish that the petitioner has acted as a referee at all. A subsequent submission includes a letter from promoter Ken Gabrielson, who states that the petitioner "is a celebrated national hero in Brazil. He is an acclaimed referee in jiu-jitsu having judged demonstrations, exhibitions and showcases all at the highest level of international competitions. He is truly world famous." Mr. Gabrielson indicates that he has selected the petitioner to be the referee at a "historic martial arts event," the Orange County Submission Grand Prix.

The Orange County event did not take place prior to the filing of the petition. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. The petitioner must document his activity as a judge of the work of others as of the October 1997 filing date of the petition. While Mr. Gabrielson asserts that the petitioner has acted at a referee "at the highest level of international competitions," the record contains no supporting documentation from the entities which actually held the unnamed competitions, nor does Mr. Gabrielson establish his own standing to attest to the petitioner's activities in Brazil. Upon consideration, Mr. Gabrielson's vague and unsupported attestations do not carry sufficient weight to establish that the petitioner has judged major competitions.

¹The official web site of the National Association of Sports Officials (www.naso.org) discusses at length the qualifications necessary to be a sports officiator, up to and including the professional level. While the site indicates that while training and experience are important, there is no indication that one must be a famous athlete in order to act as a referee or other officiator. The U.S. Department of Labor, in the Occupational Outlook Quarterly (spring 2001, page 28), states that professional baseball umpires must have "a high school diploma or equivalent, 20/20 vision, and quick reflexes," in addition to five weeks of training. The above official documents contradict counsel's blanket claim that "world renown" is a necessary qualification "[i]n order to be a referee in any sport."

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Counsel contends that the petitioner fulfills this criterion by virtue of having trained law enforcement officers in the martial arts. Counsel states that the petitioner "trains not just the ordinary but rather the police professionals." The record contains statements from officials of various police departments, but the record offers no compelling indication that the petitioner's conducting training sessions for law enforcement officers constitutes an original contribution of major significance in the field. This office does not dispute that the officers benefit from the petitioner's instruction, but the same can be said of every student of every competent martial arts instructor. The petitioner's efforts do not assume national importance because some of his pupils are local law enforcement officers.

The petitioner's instructor, Rodrigo Gracie, states that the petitioner's "unusual skill and knowledge in the Martial Arts has made him an essential part in the field of Jiu-Jitsu. He has taken many championship awards including Brazilian National Championships." Rickson Gracie, 9th degree Black Belt Master and president of the American Jiu-Jitsu Association, states that the petitioner studied at the Gracie Academy from 1981 "until 1994 when he received his black belt." Mr. Gracie does not reconcile this statement with the above-described certificate which indicates that the petitioner was promoted to the rank of black belt in 1996 (the word "promoted" being inappropriate if the petitioner already held that rank). Mr. Gracie indicates that the petitioner has won various local, state and national championship titles and "has distinguished himself among other Jiu-Jitsu stylists as a superior competitor." The petitioner does not indicate that he enjoys acclaim among highly-ranked martial arts experts not affiliated with the Gracie Academy which trained him.

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

Counsel contends that "the national and international tournaments at which [the petitioner] participated and attained the championship titles establish the display of his artistic work." This criterion appears to be intended for museum display of visual art. Every athlete who competes publicly could, by counsel's reasoning, be said to have displayed his or her work, and therefore the fact that audiences have witnessed the petitioner's competitions does not elevate the petitioner above other athletes in his field.

We note that whatever recognition the petitioner may have earned in his native Brazil does not appear to have followed him to the

United States (where the petitioner resided when he filed the petition). Therefore, the issue arises as to whether the petitioner's acclaim, such as it exists, has been sustained.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a martial artist 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 indicates that the petitioner shows talent in jiu jitsu, but is not persuasive that the petitioner's achievements have, and continue to, 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 decision of the director approving the petition will be withdrawn, and the petition will be denied.

ORDER: The petition is denied.