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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

PUBLIC COPY



File: EAC 01 258 55413 Office: Vermont Service Center Date:

18 DEC 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:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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
for Robert P. Wiemann, Director
Administrative Appeals Office

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

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 determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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). It should be reiterated, however, that the petitioner must show that he has earned sustained national or international acclaim at the very top level.

This petition, filed on August 20, 2001, seeks to classify the petitioner as an alien with extraordinary ability as an instructor/coach of Brazilian Jiu-Jitsu.¹

On appeal, counsel states: "The media in the United States has acknowledged [the petitioner] as an extraordinary athlete and coach in the sport of Jiu-Jitsu martial arts." The record, however, does not

¹ According to information submitted by the petitioner [REDACTED] [REDACTED] is a martial art indigenous to Brazil. It was founded and developed in the early 1900's by [REDACTED] and his brothers. [REDACTED] favors bringing an opponent to the ground and then relying on grappling techniques to subdue the opponent using holds, armlocks, chokes, leglocks and strikes.

support this conclusion. This decision will consider whether the petitioner has established national or international acclaim as a martial arts competitor. We will also examine whether the petitioner has earned national or international acclaim through his efforts as an instructor/coach.

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 that, 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.

The petitioner submitted the following evidence:

1. Certificate from the Brazilian Jiu-Jitsu Federation stating that the petitioner "won third place in the category of 'Middle-Weight Blue Belt Master' in the 1999 Brazilian Jiu-Jitsu Championship"
2. Certificate from the Brazilian Jiu-Jitsu Federation stating that the petitioner "won third place in the category of 'Middle-Weight Blue Belt Master' in the Second International Brazilian Jiu-Jitsu Masters Championship 2000"
3. Certificate from the International Brazilian Jiu-Jitsu Federation stating that the petitioner was the champion in the category of "Purple Belt Master Heavyweight" in the 2002 Jiu-Jitsu Pan-American Championship
4. Competition results posted on an internet website (www.nagafighter.com) showing that the petitioner was one of fourteen first place winners at the "Battle of the Beach 2" tournament held in Wildwood, New Jersey (2001)

All three of the above certificates were pre-printed "form" documents with the petitioner's name and other data handwritten into blank spaces. The record does not indicate exactly how many individuals received these awards, but the existence of pre-printed "form" documents suggests multiple winners. More importantly, the petitioner has provided little evidence showing that these awards enjoy significant recognition beyond the organization that presented them. The petitioner did submit newspaper articles about his victories appearing in the *Brazilian Press*.² While these articles may show that the petitioner's awards have gained some attention from certain non-English speaking residents of New Jersey, the articles do not rise to a level of national recognition. We note here that an alien cannot earn national acclaim from a local publication or from a publication in a language that most of the population cannot comprehend. The petitioner's articles will be further addressed under a separate criterion.

² Counsel states that this newspaper is "written in Portuguese, English and Spanish" and is "located in the State of New Jersey." We note, however, that none of the articles featuring the petitioner were written in English.

The petitioner's victory at the "Battle of the Beach 2" tournament held in Wildwood, New Jersey appears to reflect local, rather than national, recognition. The petitioner has provided no evidence to demonstrate that this martial arts competition featured top martial arts competitors or garnered national sports media coverage.

The petitioner's Jiu-Jitsu awards are not the only awards to be considered in determining his eligibility under the classification sought. Nationally or internationally recognized prizes or awards won by teams or individuals coached by the petitioner can be considered as comparable evidence for this criterion under 8 C.F.R. 204.5(h)(4). The petitioner, however, provides no such evidence.

On appeal, the petitioner submitted the third award listed above. This award from 2002 came into existence subsequent to the petition's filing. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that aliens seeking employment based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership in an organization that evaluates membership applications at the local chapter level does not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association cannot satisfy the criterion, because the key issue is membership requirements rather than the association's overall reputation.

The petitioner submits two identification cards from the Brazilian Jiu-Jitsu Federation showing the petitioner's "blue" belt status in 1999 and "purple" belt status in 2001. The record also contains a document from the Brazilian Jiu-Jitsu Tatame School in New Jersey indicating the progression of Jiu-Jitsu belts. Under the heading of "Belt Graduation," the document states: "Belts: White, yellow, orange, green, blue, purple, brown, and black. The red belt is given only to masters of Jiu-Jitsu." This information demonstrates that beyond the petitioner's purple belt status, there exists three higher skill levels of brown, black, and red. Therefore, it could easily be argued that the petitioner's "purple" belt status does not reflect achievement at the highest level of Brazilian Jiu-Jitsu or the martial arts. The petitioner has not shown that his "purple" belt status requires outstanding achievement in the martial arts, as judged by experts at the national or international level.

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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. An alien cannot earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality, but also qualify as major media because of significant national distribution, unlike small local community papers.

The petitioner submitted articles appearing in the *Brazilian Press*, a Portuguese and Spanish language newspaper published in New Jersey. The petitioner has offered no evidence to demonstrate that this publication qualifies as major media. The extent of the *Brazilian Press's* distribution appears limited to certain non-English speaking residents of New Jersey.

On appeal, the petitioner provides additional articles featured in the *Brazilian Press* that had been published in 2002. These local articles were all published subsequent to the filing of the petition. See Matter of Katigbak, supra.

The petitioner has not demonstrated that he has captured sustained attention from major national media such as magazines like *Sports Illustrated*. The petitioner's limited submission of articles all featured in the same local publication is hardly indicative of sustained national or international acclaim.

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.

In order to satisfy this criterion, the competition or contest must be on a national or international level. For example, judging a national competition carries greater weight than judging a citywide competition. On appeal, the petitioner submits a letter from the President of Grapplers Company, Inc. of Wayne, New Jersey, requesting that the petitioner serve as a panel judge for a sparring competition on November 17, 2001 at the City College of New York. This evidence came into existence subsequent to the filing of the petition. See Matter of Katigbak, supra. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date. Furthermore, the petitioner provides no evidence that this was a national, rather than a local, competition. In sum, we find no documentary evidence confirming that the petitioner has ever participated as a judge at national or international level martial arts competitions.

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

On appeal, counsel argues that the petitioner satisfies this criterion based on a letter from the Brazilian Jiu-Jitsu Tatame School in Newark, New Jersey dated December 28, 2001. The letter states that the petitioner served as a guest speaker at their school on October 12th and 13th, 2001. See Matter of Katigbak, supra. Speaking to a group of students at a local martial arts school within the same state where the petitioner resides is hardly indicative of national acclaim. The

wording of this criterion strongly suggests that it is intended for visual artists, such as sculptors and painters, rather than for martial arts instructors/coaches. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

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. The petitioner has failed to demonstrate receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

A review of the record does not establish that the petitioner has distinguished himself in the martial arts 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established the petitioner's 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.