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U.S. Department of Justice
Immigration and Naturalization Service

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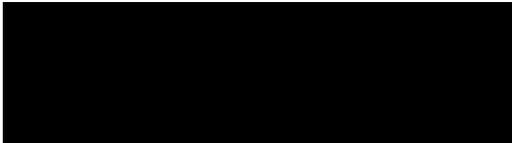


File: EAC-00-007-53335 Office: Vermont Service Center Date: 12 FEB 2002

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:



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

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). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an athlete. 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, she 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 submits evidence of the following awards:

1. Gold medals in [REDACTED] respectively, at the International [REDACTED] Championship in Baltimore, August 8, 1999;
2. First place in [REDACTED] and [REDACTED] Pittsburgh Chinese Martial Arts Championships, June 1999;
3. Gold medal in [REDACTED] silver medals in [REDACTED] in the 1999 International Chinese Martial Arts Championship in St. Petersburg, Florida;
4. Second place in [REDACTED] in the 1998 National Wushu Audition Competition held in [REDACTED] China.
5. First place in Taiji Chuan in the 1997 National Wushu Tournament held in [REDACTED]
6. First place in female [REDACTED] Chuan in the 1996 National Wushu Tournament held in [REDACTED] China;
7. First place in [REDACTED] the 1991 Wudang Marital Arts Festival held in [REDACTED] China;
8. First place in Sword in the 1990 National Wushu Tournament held in [REDACTED]
9. First place in Sword in the 1998 National Wushu Invitation Competition held in [REDACTED] China;
10. First place in [REDACTED] at the [REDACTED] of the Second National Worker's Sports Meet held in [REDACTED] 1985; and
11. Awards at other teen-age level provincial competitions.

Counsel asserted in his initial brief:

The National Wushu Competition of China is the biggest biennial Wushu competition in the world and has different competing zones when the whole event is under way. It attracts thousands of practitioners all over the world. In China alone, about 100,000 people participate in the event. Preliminaries are held in each province to select the qualified for the national competition. One has to be the best among his or her peers to win a medal in one session.

The petitioner failed to submit any official documentation to support this claim. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, none of the competitions in which the petitioner won medals are the "National Wushu Competition of China."

The director concluded that the record did not reflect that the petitioner had won awards other than in "minor tournaments." On appeal, the petitioner submits no new documentation about

the significance of the competitions in China. It remains, the record does not reflect how many martial artists competed in these competitions or how the organizers selected the competitors. Moreover, the record contains no evidence that these competitions received major media attention in China.

The U.S. competitions were sponsored by the USA [redacted] Federation, the exclusive U.S. representative to the International [redacted] which is provisionally recognized by the International Olympic Committee. On appeal, [redacted] president of USA [redacted] asserts on appeal that the International [redacted] an annual event that "attracts approximately 600 - 800 athletes from 13 - 22 countries and is the largest event of its kind in [redacted]. He further asserts that the petitioner participated in the "advanced division [redacted] Secretary-general of USA [redacted] asserts that the festival was "a very top competition in both USA and Pan American."

The assertions regarding the prestige of this competition is not supported by independent evidence. The record reveals that the festival is held in a college gymnasium and the photographs do not reflect that the event was well attended. The record contains no evidence of press coverage in major U.S. media. The record also contains no evidence regarding the number of competitors in the petitioner's category or information regarding how the USA [redacted] Federation selected the competitors. The petitioner is in the United States on a student visa. While the record contains no evidence that she has maintained her status by attending school,¹ it is not clear whether she is competing in student competitions. The brochure for the 2000 festival lists several [redacted] who gave presentations or seminars. The record does not reflect how the petitioner compares with these Masters and whether she competes against them or others at that level for her medals. If the most experienced Masters do not compete for the medals which the petitioner has won, then they cannot demonstrate that she is one of the very few at the top of her field.

After the petitioner filed the petition, she won three trophies at the U.S. Capitol Classics. These trophies cannot be considered evidence of the petitioner's eligibility at the time of filing.

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.

The petitioner is a member of the [redacted] and the [redacted]. The [redacted], by definition, a provincial society and membership in that society is not evidence of national acclaim. Counsel defines the [redacted] as the "top of the ivory tower of the hierarchy of Chinese martial arts." Once again, counsel does not support this assertion with independent evidence. The record does not include the by-laws of the society or other official documentation reflecting the membership requirements of the society.

¹ If the petitioner entered the United States on a student visa with no intention of studying at the institution listed on her Form I-20, this raises serious issues regarding her credibility.

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 response to the director's request for additional documentation, the petitioner submitted articles about the trophies she won at the U.S. Capital Classics in Washington, D.C. published in Chinese-American publications. First, these articles were published after the petitioner filed the petition, and, thus, cannot demonstrate the petitioner's eligibility at the time of filing. Second, as implied by the director, small newspapers aimed at a specific cultural community within the United States cannot be considered major media.

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 the petitioner has coached for over ten years and that she has served as a judge at Wushu competitions. Judging the work of one's students is inherent in the job of coaching. It is not clear that the petitioner was hired as a coach in 1989 based on her national acclaim as an athlete since at that time she had only won local youth division prizes. The record contains a document certifying the petitioner as a National-level Judge in Wushu issued by the Sports Committee of China. The record does not establish, however, that the petitioner ever served as a judge for a national-level competition. The record also fails to include information regarding the criteria for certification as a National-level Judge.

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

The petitioner submitted several reference letters which praise her abilities as an athlete and coach. None of these references, however, provide any specific examples of how the petitioner contributed to the field of martial arts. As discussed below, the petitioner has authored six published articles about Wushu. There is no evidence in the record, however, which indicates whether these articles have influenced other experts in the field.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner has authored six published articles on Wushu in several magazines, including four in [REDACTED]. Although the record does not include translations, some of the articles include diagrams and they appear to be technical articles about performing Wushu. Counsel asserts that [REDACTED] is the "highest authority in discussing and communicating Chinese martial arts." While two of the petitioner's references also assert that this publication and another one in which the petitioner's articles appear are prestigious, the record contains no evidence of the circulation of these publications.

It is not inherent in the field of athletics to publish articles. Thus, the fact that the petitioner authored published articles about her sport is notable. The evidence submitted in support of each criteria, however, must be evaluated as to whether it demonstrates national or international acclaim. As stated above, the record contains no independent evidence of the prestige of the magazines which published the petitioner's articles. In addition, the record contains no evidence that the petitioner's articles were influential or garnered her national acclaim. Even if we were to consider that the petitioner meets this criterion, it is only one criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

[REDACTED] appointed the petitioner as its Secretary-general in May 1997. The record contains no evidence regarding the petitioner's duties for this organization or the organization's reputation.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a Wushu practitioner to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a Wushu practitioner, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. 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 appeal will be dismissed.

ORDER: The appeal is dismissed.