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

File: EAC 99 252 52887 Office: Vermont Service Center Date: 14 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 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 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 he has sustained national or international acclaim at the very top level.

The petitioner states on his Form I-140 petition that he seeks classification as an alien with extraordinary ability as a "martial arts trainer/coach." The record, however, indicates that the petitioner has continued to compete in his own right and therefore we will also consider evidence pertaining to the petitioner's own

competitive career (which, in fact, forms the bulk of the record). 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. At no point does the petitioner specify which of the criteria he claims to have met, but the evidence of record appears to be intended to satisfy 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's former instructor and coach, [REDACTED] states that the Romanian Taekwondo Union named the petitioner the Male Athlete of the Year for 1997. Witnesses state that the petitioner is a "four time Romanian National Taekwondo Champion," but the petitioner has not submitted documentation to confirm or clarify these assertions. Witness letters referring to the petitioner as a champion do not represent documentation of the petitioner's receipt of prizes.

The petitioner has submitted a number of foreign-language certificates. Without translations, we cannot discern their content or significance. 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).

The petitioner submits photographs which, he claims, show him receiving a gold medal at the 1998 International Cup of the Americas, but again there is no direct, first-hand documentation of the kind that would presumably be readily available.

A copy of an identification badge in the record shows that the petitioner competed in the 1999 Taekwondo U.S. Open Championship but there is no indication that he won any prizes at that event.

A newspaper article in the record indicates that the petitioner won the 1997 Korean Ambassador Cup for Most Competitive Athlete. He also won in his age and weight class, as did a number of his students (ages 12 and up) in their respective age and weight classes. The record does not establish the overall national or international significance of this title.

*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.*

A national-level athletic team is not an association, but given that selection for such a team derives from national-level competition judged at the highest levels, membership in such a team could be considered comparable evidence under 8 C.F.R. 204.5(h)(4) and therefore we find that the petitioner satisfies this criterion through comparable evidence.

*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.*

The petitioner submits a copy of an article from Gazeta Sporturilor which lists the names of the winners of the 1997 Korean Ambassador Cup, including the petitioner in the senior male under-70 kg category. The petitioner also won the cup for "the most competitive fighter." The petitioner states that, in this same competition, "most of the gold medals had been taken by my students." An article from another Romanian publication, Transylvania Sport, profiles several athletes, including the petitioner, who were then preparing to compete in the U.S. Open.

In response to a request for further evidence, the petitioner has submitted a third article which reports the petitioner's selection as the head coach of the Romanian National Team. The date of the article is August 12, 2000, nearly a year after the petition's August 22, 1999 filing date, and thus it cannot establish eligibility as of that filing date. Also, the clipping in the record does not identify the source publication.

We cannot determine from the available evidence that any of the above publications represent major national media as opposed to minor or local publications. It is clear from the restrictive wording of the regulation that a petitioner does not automatically satisfy this criterion by showing that his name has appeared in print.

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

Some witnesses indicate that the petitioner has served as the head coach of the Romanian National Team. The closest thing to documentation of such an appointment, however, is a newspaper

article dated August 2000, a year after the petition's August 1999 filing date. There is no direct evidence from the Romanian National Team or other direct authority to attest that the petitioner was a head coach before he filed the petition.

Beyond the above criteria, the petitioner has submitted several witness letters, such as the examples discussed here. A letter from [REDACTED] of Elite Tae Kwon Do Center appears to be incomplete. The portion regarding the petitioner reads:

I had the privilege of meeting [the petitioner] at an elite camp for Taekwondo. he has been an outstanding athlete and coach for Romania. He has represented Romania in several international National Team as a coach and an athlete.

The tops of the letters on the last line of the text are cut off, and fragments of letters are visible underneath the word "international," consistent with altering of the original letter (either by folding or cutting), or else with error in computer-scanning of the letter. Because the letter in the record is only a photocopy, we cannot determine exactly what happened to the letter or what the missing portion states, but it is obvious that part of the letter is missing from the copy in the record. Other letters show similar anomalies, such as the omission of the tops or bottoms of a given line of text.

A letter from [REDACTED] vice president of the U.S. Taekwondo Union also shows signs of the same kind of alteration (either deliberate or accidental); part of the top of one line of text is missing. [REDACTED] indicates that the petitioner has "wonderful skills" as well as "commitment, dedication, and desire for excellence," but he does not make any reference to the petitioner's activity or ability as a trainer or coach, much less indicate that the petitioner has ever enjoyed national or international acclaim as a top trainer or coach. He states only that the petitioner has "been training at my school" and has a "desire for excellence." Several documents in the record pertain to [REDACTED] but not to the petitioner. These documents have no weight because the petitioner does not derive acclaim simply through his association with [REDACTED]

Various witnesses, including top coaches and champion athletes, assert that the petitioner has competed in recent national and international tournaments, although they do not indicate that he won those competitions. These witnesses initially offer no comment on the petitioner's coaching skills, and indeed some do not even mention that the petitioner is a coach or trainer. Several of them do, however, assert that the petitioner is a champion athlete in his own right. In later submissions, apparently in response to the director's request for evidence regarding the petitioner's acclaim

as a coach, some witnesses state that the petitioner is among his country's best coaches.

The director informed the petitioner that the documentation submitted with the petition was not sufficient to establish the beneficiary as an alien of extraordinary ability. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, and specified that the Service has defined "extraordinary ability" as "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." The director specifically requested further evidence to show that the petitioner has won national or international acclaim as a coach and trainer. Above, we have addressed some of the evidence submitted in response to this request.

The petitioner has submitted another letter from Y.H. Park, who states that he is "interested to have [the petitioner] as a technical skill trainer and YH Park Head Coach . . . because I truly believe that he is the best suitable for this position." As with his previous letter, [REDACTED] makes no representation that the petitioner is a nationally or internationally acclaimed figure in his sport.

[REDACTED] in his second letter on the petitioner's behalf, states that the petitioner "became the new Romanian National Team Head Coach," who "successfully trained and led to gold medals many of the future Romanian and international champions." [REDACTED] asserts that the petitioner "is at the top of his field . . . as an athlete, and even more as a world class coach."

[REDACTED] president of the Romanian Taekwondo Clubs Union and secretary of the Romanian Taekwondo Federation, states that the petitioner has trained "most of the Romanian team members," including two of [REDACTED] students who "became Romanian National Team members." [REDACTED] asserts that the petitioner has been recognized "as the best athlete and coach in Romania," and repeats the assertion that the petitioner is the head coach for the Romanian National Team.

[REDACTED] director of Twisting Tree Martial Arts Academy, states that the petitioner trained [REDACTED] two sons, [REDACTED] (1999 world forms champion) and [REDACTED] (1999 diamond national champion). The record does not indicate when in 1999 the students won these titles, although the petitioner's failure to mention these titles in the initial filing does not suggest that they held the titles at the time of filing.

The director denied the petition, stating that the record does not contain "evidence . . . demonstrating a major significance which

places the beneficiary at a higher level of skill than other Trainer/Coaches."

On appeal, counsel states that a brief is forthcoming within 30 days. To date, nearly a year after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands.

Counsel argues that the petitioner has submitted letters "from our own United States Olympic Committee, Olympians and those of 'world class' established status," who attested to the petitioner's extraordinary ability. Many of these witnesses have, indeed, claimed achievements which would place them very high in the athletic hierarchy of the petitioner's sport. The petitioner, however, has not submitted the "extensive documentation" required by the statute to demonstrate that he himself ranks at a comparable level. The petitioner has made a number of claims which would appear to be readily verifiable through first-hand documentary evidence. Letters from witnesses selected by the petitioner cannot carry the same weight as primary documentation in establishing the kinds of claims made by the petitioner.

The documents submitted with the appeal consist of copies of previously submitted documents, untranslated certificates, new evidence pertaining to developments that took place after the petition's filing date, and English-language certificates acknowledging the petitioner's "participation" or "contributions" in various athletic events. This new evidence demonstrates that the petitioner has remained active in the sport but it does not show that the petitioner has sustained a reputation as a top figure in taekwondo in the United States. Given the claims made on the petitioner's behalf, the petitioner would appear to have a much stronger claim of national acclaim in Romania than in the United States, but as we have noted the petitioner has submitted little usable primary documentation with regard to his reputation in Romania. If the petitioner seeks to establish that he won a significant national title, he must submit more than a vaguely-worded letter (sometimes not even specifying the year the petitioner is said to have won the title) and copied photographs of himself standing in front of what appear to be nearly empty bleachers during a medal ceremony.

The deficiencies in the petitioner's evidence, as described above, appear to be the greatest impediment to the approval of this petition. With regard to the petitioner's accomplishments (both in Romania and in the U.S.) since August 1999, we are aware of those achievements, but they cannot retroactively establish that the petitioner was eligible for the visa classification as of August 1999. See Matter of Katiqbak, 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 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 persuasively establish that the petitioner has distinguished himself as an athlete, trainer or coach 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. Letters in the record indicate that top officials hold the petitioner in high regard, but these letters cannot fulfill many of the evidentiary criteria which, by regulation, the petitioner must fulfill to qualify for this highly restrictive visa classification. The evidence indicates that the petitioner has been a successful athlete and coach, but it is not sufficient to support the claim 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 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.