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U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC 01 059 53588

Office: California Service Center

Date: JUL 22 2002

IN RE: Petitioner:
Beneficiary:



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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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

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(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 the beneficiary has sustained national or international acclaim at the very top level.

The petitioner is a martial arts instruction center that seeks to employ the beneficiary as a Kendo instructor. 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). Counsel states that the beneficiary's certification as a 7th Dan Kendo Master satisfies this criterion:

[The beneficiary] is a professional, world class Kendo Martial Arts expert, with an international reputation for excellence in his field. He was a member of the Korea Kendo Association which is affiliated with the International Kendo Federation, holding the 7th Dan Certificate. Worldwide, only 236 people have ever reached this degree of skill, making him one of the only representatives to have achieved this level of skill presently in the United States.

In support of the above assertions, counsel cites a letter from [REDACTED] president of the [REDACTED] [REDACTED] does not corroborate counsel's assertion that "[w]orldwide, only 236 people have ever reached" 7th Dan. Instead, [REDACTED] states that there are 236 individuals "in Korea as of Dec. 31, 1999" who have achieved 7th Dan or higher.

The petitioner has not established that the 7th Dan is the highest attainable level in Kundo, or that to attain 7th Dan ranking is comparable to a major international prize such as a Nobel Prize or an Olympic Medal. For that matter, the petitioner has not established that a Dan ranking of any level is a "prize" rather than the predictable outcome of a given level of training or experience.

Barring the alien's receipt of a major one-time 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. Counsel contends that the petitioner has submitted evidence 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 beneficiary has won seven Athletic Excellence Awards, having placed second or third in seven National Kendo Championship Tournaments between 1981 and 1998. These awards appear to satisfy this criterion.

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.

Counsel asserts that the beneficiary's 7th [REDACTED] status in the Korean Kendo Association satisfies this criterion. The petitioner bears the burden of establishing that membership in the Korean [REDACTED] is contingent on outstanding achievement as judged by national or international experts. Counsel cites "[p]romotional material . . . evidencing that membership in a [REDACTED] s a Dan is offered only to world class [REDACTED] practitioners." This material discusses the origin of Kendo, the equipment used, and the types of training activities. We can find nothing, however, in these materials that discuss membership in a [REDACTED] nor do we find the word "Dan" anywhere therein.

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 copies of four articles, and one videotape. The videotape in question is an instructional video, containing demonstrations of various Kendo moves. The envelope containing the unmarked tape is labeled "demo tape." Counsel states that the tape "aired in the US" but does not specify where or when. The titles, credits, captions and narration are all in the Korean language, making it unlikely that a major U.S. network showed the tape. The production quality of the tape is more typical of a local video production company than a national network or major production company. The record contains no evidence that the "demo tape" has ever been broadcast anywhere.

Counsel describes the other submissions as a "Japanese article," a "Japanese newspaper article[s]" and a "Japanese magazine article [from] the Kendo-Ninon monthly." The "Japanese Article" is from the [REDACTED] apparently a souvenir created in honor of a Korean high school Kendo team's visit to a Japanese high school. There is no evidence that this "commemorative magazine" was ever formally published or made available to anyone outside of the two high schools.

The two Japanese newspapers are not identified, despite the regulatory requirement that the petitioner provide the title of the material. Both of the articles describe high school visits, and the beneficiary is not the main subject of, or prominently featured in, either article. The articles appear to be local in nature, rather than representing major media that would spread the beneficiary's reputation nationally.

Regarding the [REDACTED] article, the petitioner submits a four-sentence translation that does not mention the beneficiary at all, and a captioned photograph identifying the beneficiary as the captain of the visiting Korean high school team. All of these articles were about the high school visit. There is no evidence that the beneficiary has attracted any media attention on his own merits, in Korea, Japan, or elsewhere, and the attention attracted by the visiting high school team does not appear to have centered around the identity or reputation of its captain.

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

Counsel states that the beneficiary meets this criterion because he "has made many contributions to the field of martial arts. He has been the president of the [REDACTED] has participated in dozens of Kendo World Championships, and continues his Kendo career with involvement as 7th Dan Instructor of Kendo with [the petitioner]." The record contains documentation from the [REDACTED] but none of this documentation indicates that the beneficiary has ever been president of that association. While winning a prize in a championship can qualify as an award, the very act of competing in such a competition does not

qualify as a major contribution. To state that the beneficiary's present employment with the petitioner also constitutes a contribution of major significance, the petitioner must provide persuasive evidence that the beneficiary has, in that capacity, had a national or international impact on his sport, beyond participating in routine training duties expected of every martial arts trainer.

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

Counsel, under this criterion, mentions that the beneficiary "is a member of the Korea Kendo Association. He is a 7th Dan instructor of Kendo. Membership as a Dan in any [REDACTED] is a great achievement." We have already discussed the 7th Dan rank. The burden is on the petitioner to show that every Dan-level member the Korea Kendo Association plays a leading or critical role for the association.

The record shows that the beneficiary has coached high school and middle school teams, but there is no indication that these particular teams have earned distinguished reputations.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. The director specified several deficiencies in the initial evidence. In response, counsel states:

There are 7 Dan-levels, the promotion of which is based on fighting skills and results of actual Kendo battle among peers. The 8th & 9th Dan levels are honorary, based upon one's age and exemplary achievement in the field of Kendo life. 8th dan requires one to be at age of 48 or older and has to have been a 7th Dan holder for at least 10 years. One has to be at least 65 years to be certified as a 9th dan. Thus 7th dan is the highest level of the Kendo one can achieve based on his skill, technique, and fighting spirit. Only 237 players are at 7th Dan or higher among the whole Kendo population.

Counsel neither cites nor provides any corroboration for the assertion that the 7th Dan is the highest skill-based level. The record has already refuted counsel's earlier assertion that there are only 236 7th Dan players "worldwide," that figure having been shown to apply to Korea alone. The record also lacks documentation showing that promotion from one Dan level to the next can reasonably be called a prize or award.

Counsel asserts that the beneficiary's ranking as a 7th [REDACTED] constitutes membership in an exclusive association. To support this claim, the petitioner submits a letter from [REDACTED] president of the [REDACTED] consistently refers to the martial art as "Kumdo" rather than "Kendo," evidently owing to linguistic differences between the Korean and Japanese languages. [REDACTED] states:

The Korea Kumdo Association confers a Kumdo-kup or a Kumdo grade (Dan) on any eligible person. There are nine kups in Kumdo, which are from the ninth kup

to the first kup. The Kumdo-kups are the basic courses. But it takes more than one year to learn and pass these basic courses. Only after passing all kups step by step, people can apply to test for the first grade (Dan). There are also nine Dans in Kumdo, which are from the first Dan to the ninth Dan. The person who is at least 13 years old can apply to test for the first Dan. . . . Korea Kumdo Association confers any eligible person other titles, which are yeonsa, Kyosa, and Bumsa. These are very honorable titles in the Kumdo World. . . .

[T]here is only one opportunity to apply [for] the examination for the fifth Dan and over in a year. . . .

These examinations are strict and difficult.

The person who has been in the first Dan in Kumdo for at least one year can apply for the second Dan examination in Kumdo.

The person who has been [in] the second Dan in Kumdo for at least two years can apply for the third Dan examination in Kumdo. . . .

The person who has been in the sixth Dan in Kumdo for at least six years can apply for the seventh Dan examination in Kumdo.

The person who has been in the seventh Dan in Kumdo for at least ten years and is at least 48 years old . . . can apply for the eighth Dan examination in Kumdo.

The person who has been in the eighth Dan in Kumdo for at least ten years and is at least 65 years old . . . can apply for the ninth Dan examination in Kumdo.

Also, the person who has been in the fifth Dan in Kumdo for at least three years can apply for the Yeonsa title examination in Kumdo.

The person who has been in the sixth Dan in Kumdo and has the Yeonsa title for at least four years can apply for the Kyosa title examination in Kumdo.

The person who has been in the seventh Dan and over in Kumdo and has the Kyosa title for at least four years can apply for the Pumsa title examination in Kumdo.

Not all of the applicants pass the examinations. Most of them fail the examination for several times before they pass the examination at every Dan.

Especially, passing the examination for seventh [Dan] is very difficult for the applicant, because the examiners, who are in the eighth Dan in Kumdo and are strictly selected for the examination, strictly test the applicant for the seventh Dan of Kumdo.

Therefore, [the beneficiary], who is the seventh Dan holder and has the Kyosa title in Kumdo, is recognized nationally and internationally in the Kumdo World.

The beneficiary was 35 when he attained the rank of 7th Dan in 1990. As of this writing, the beneficiary is 47 years old, not yet eligible to apply for the 8th Dan examination. The record does

not reveal when he earned the Kyosa title. Having been in the 7th Dan for a decade as of the time he filed the petition, he would seem to be eligible to apply for the higher Pumsa title. Furthermore, 7th Dan holders with the Pumsa title would seem to rank higher than 7th Dan holders with the Kyosa title.

While there are certain experience requirements for promotion to 7th Dan, the record does not show that meeting these requirements amount to outstanding achievements. Rather, they appear to amount to meeting a pre-set level of skill and ability.

With respect to [REDACTED] assertion that the beneficiary "is recognized nationally and internationally in the Kumdo World," the Service's criteria for determining national or international acclaim may not match [REDACTED] own. The statute calls for "extensive documentation," and the attestation of one top official cannot supersede that requirement. The evidence, as a whole, does not consistently place the beneficiary at the top of his field.

Counsel's assertion that "[o]nly those who record outstanding achievements are admitted to KKA," the Korea Kumdo Association, appears to be refuted by [REDACTED] assertion that "[t]he Korea Kumdo Association has about 500,000 members." This number amounts to more than one percent of the entire population of South Korea, without regard to the percentage of South Koreans actually practice Kendo/Kumdo.

[REDACTED] asserts that the beneficiary has held various leadership positions in Kendo:

[The beneficiary] has been a member of the referee of Kumdo since 1994. . . .

[The beneficiary] has been a leading person who promotes the spread of Kumdo. . . . He was a board member of the Public Relation from 1989 to 1992 (4 years) and for the Executive Duty from 1993 to 1997 (4 years) in the Junior & Senior High School Kumdo Federation in Korea. Especially, he was an Executive Director of the [REDACTED] Standing Team from 1992-1996 (5 years). For those periods, he had visited Japan for 5 times to have games with the Japan High School Kendo Standing Team. . . .

[The beneficiary] has been a good Kumdo player, a high skilled referee and an excellent Kumdo leader. His achievements are distinct among the other Kumdo members in Korea.

The beneficiary's leadership positions appear to be largely restricted to high school and middle school students, rather than members of higher Dan levels. Age and experience requirements would place high school students in the lowest three Dan levels; mathematically, one cannot attempt to qualify for 4th Dan until the age of 19 at the earliest.

Counsel asserts that the beneficiary's work as a referee satisfies a previously unclaimed criterion:

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 cites [REDACTED] letter, above, and states:

One must pass the Exam for Judge and be in 7th Dan to take the Exam. Only a master who has an insight into one's Kendo Level and judges in an impartial conscientious manner is to be awarded Judgeship. The beneficiary passed the exam and has been sitting on the panel of Referee Committee of Kendo since 1994. He served as a Judge in local, national level games, and most importantly, for selecting team members representing Korea for international events.

Insight and impartiality are not indicative of sustained national or international acclaim. Furthermore, if every competition has a referee, it is not clear that serving in that capacity shows the referee to be at the top of the field.

In describing the process by which Kendo players are promoted from one Dan to the next, [REDACTED] has stated that the examiners "are strictly selected for the examination." Service as an examiner in this way, particularly at the highest Dan levels, would appear to be more akin to the work of a judge than would the more routine duties of a referee. It also appears that it is more difficult to become an examiner than a referee, and therefore the examiners are fewer in number than the referees, although the record contains no exact figures in this regard. Certainly the examiners appear to judge the performance of individual Kendoists rather than simply officiating at competitions to ensure adherence to rules.

Counsel concludes his response to the director's notice with a claim pertaining to another heretofore unclaimed criterion:

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

Counsel states that "[a] super master of Kendo or in any other Martial ARTS should not be compared to a super star on an NBA basket ball team or Major League Baseball team with respect to his remuneration." We grant this observation, but nevertheless the petitioner cannot meet this criterion unless the evidence shows that the beneficiary is among the highest-paid figures in the field of Kendo. It is entirely appropriate to compare the beneficiary's earnings to those of others working in the same martial art. The petitioner submits payroll documents, showing that the beneficiary and two other coaches (all employed by the [REDACTED]) earned equal salaries in January 1998. This evidence, in isolation, shows only that the beneficiary has received payment for his work. The only comparative figures provided are equal to the beneficiary's remuneration. Other payroll-related documents are in Korean, with no translation offered.

The director denied the petition, discussing the petitioner's evidence in detail. For example, the director acknowledged the beneficiary's second- and third-place rankings, but found that the beneficiary had not actually won any national competitions. The director noted that, "although reaching the 7th Dan is an impressive achievement, the progression of Dan goes up to the 9th." The director did find that the beneficiary's work as a referee qualifies as judging the work of others.

On appeal, counsel asserts "there are only 237 7th Dan masters now," but offers no source for this claim. As noted above, counsel's earlier figure of 236 applies only to Kendo players in Korea. Korea is not the sole country where Kendo is practiced, nor did Kendo originate there.

Counsel states that the 7th Dan is effectively the top of the field, because "the 8th Dan & 9th Dan are awarded based upon one's age and exemplary achievement in the field of Kendo life, not on actual fighting contests and ability." While the 8th and 9th Dan have minimum age requirements, the same can be said of every other Dan level because there is a minimum age of 13 for the 1st Dan, and then minimum time periods which must elapse between promotions to the next Dan level. Using these figures, no Kendo player can qualify for 7th Dan before the age of 34, thus disqualifying athletes in their late teens and early twenties who are arguably at the peak of their stamina and athletic prowess. Furthermore, counsel's contention that eligibility for the 8th and 9th Dan is "based upon . . . exemplary achievement" supports the director's assertion that members at those levels are closer to the top of the field.

We agree with counsel's assertion that placing second or third in a significant national competition can qualify as a lesser prize or award, and that the director erred in finding otherwise. Just as an Olympic bronze medal would be impossible to ignore, so the beneficiary's high placement (for which he received awards) is a factor in his favor here.

Counsel states "[t]he Director erred in arguing that KKA does not require outstanding achievements of its members," but offers no corroborating evidence to support this contention. The KKA's own president stated that the organization is half a million members strong, and it is far from clear that the organization could have grown to such a substantial size if it accepts only the elite as members. Counsel's assertion that the 7th Dan amounts, in effect, to another organization within the KKA is not persuasive. It is simply a relatively high level of membership. It is true that few who begin Kendo training reach the 7th Dan, just as few who attend primary school ultimately earn Ph.D. degrees (which, like high Dan levels, require prolonged, dedicated study and evaluation by experts). In neither case, however, is it evident that the very act of attaining such a level conveys national or international acclaim.

Regarding the published materials in the record, the director had found these publications to be local in nature. Counsel, on appeal, does not directly contest this finding, but instead claims that the content of the articles, "namely the introduction of the Korean Kendo team and master in a Japanese publication . . . is not a usual scene and must be given serious weight." Counsel does not explain how brief mentions of the beneficiary in local publications can contribute to national acclaim outside of the limited circulation areas of the publications. Such acclaim could be manifest from systematic local coverage throughout the nation, but such is not the case here.

Counsel asserts that the director should have given greater weight to the beneficiary's leadership roles and salary, but, as we have noted, the beneficiary's leadership role appears to have been limited to coaching very young students, and the petitioner has submitted nothing to show that the beneficiary has ever been among the highest-paid figures in his field.

We disagree with the director's finding that the beneficiary's work as a referee qualifies as judging the work of others, in the face of evidence that a more rarefied level of judging exists. Even if this were not the case, however, the petitioner would have satisfied only two criteria (judging and awards).

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 beneficiary has distinguished himself as a Kendo master 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 beneficiary'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.