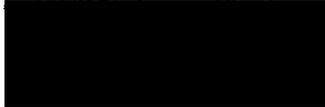




B2

U.S. Department of Justice  
Immigration and Naturalization Service

identifying data deleted  
prevent clearly unwarranted  
invasion of personal  
privacy"/



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

File: EAC 01 226 61279 Office: Vermont Service Center

Date: 11 SEP 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, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

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 and education. The director determined the petitioner had not established that he qualifies 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).

This petition, filed on May 9, 2001, seeks to classify the petitioner as a master of Chinese martial arts. In support of the initial petition, the petitioner has submitted evidence, which counsel claims, satisfies five of the lesser regulatory criteria under 8 C.F.R. 204.5(h)(3). The petitioner's evidence includes, but is not limited to, the following: membership in the Chinese Wushu Association, published materials about the petitioner, evidence verifying his work as a judge at martial arts competitions, evidence of the petitioner's authorship of articles and pamphlets, and a letter describing the petitioner's background.

On January 15, 2002, the director issued a decision denying the petition. The director's decision, in addressing the evidence provided by the petitioner, merely stated:

You have not submitted sufficient documentation to show that you are one of the top martial artists/teachers in the world. There are no letters from major figures and associations in the martial arts field, which attest that you are one of the top martial artists in the world. There is only one letter from the Xiamen University where you went to school. There are no major competition awards in your petition. You appear to have been a part of the Barcelona Olympics, but not as an athlete. All the books you submitted, except one, are written in Chinese and cannot be understood.

The director's discussion contains flawed observations that are unsupported by statute, regulation or case law. The director's first two statements above suggest that the petitioner must establish that he is "one of the top martial artists/teachers in the world." These observations are contrary to the statute, which allows for evidence of sustained "national or international acclaim." The statute permits the petitioner to make a showing of national acclaim in China, for example. Therefore, the director's use of the phrase "in the world" has imposed an excessive standard by requiring evidence only indicative of international acclaim.

On appeal, counsel argues that the director's third statement incorrectly demotes the petitioner from "university department chairman to student." The record contains a letter from [REDACTED] Professor of Xiamen University in China. According to the letter, the petitioner "is the director of the [REDACTED]." The letter also states: "Since [the petitioner's] graduation from the [REDACTED] in 1976, [the petitioner] has been engaged in physical education..." The statements contained in [REDACTED] letter support counsel's conclusion that the director incorrectly described the evidence.

In regards to the director's fifth statement, the evidence shows only that the petitioner served as an editor of a book analyzing the Barcelona Olympics. The director's statement that the petitioner appears "to have been a part of the Barcelona Olympics" seems to suggest that the petitioner was present at the event in some non-competitive capacity (such as a judge or coach). If this were true, the evidence provided should not be immediately disregarded simply because the petitioner was not a competing athlete. Evidence of Olympic participation as a coach or judge must be addressed under the relevant criteria at 8 C.F.R. 204.5(h)(3). However, it should be reiterated that the record contains no evidence showing that the petitioner had any connection to the Barcelona Olympics beyond his participation as an editor of a book analyzing the event.

We concur with the director's assertion regarding the absence of national or international martial arts awards.

The director's decision also notes that published materials provided by the petitioner were not properly translated. We disagree with the director's implication that all of the published material authored by the petitioner should be completely translated. Simply translating the cover and introductory pages of the petitioner's works would suffice for purposes of

practicality in this proceeding. However, in reviewing the evidence pertaining to “published material about the alien,” we find that complete translations are absolutely necessary. This will be further discussed below. By regulation, 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).

Counsel asserts that the director erred by failing to issue a request for evidence in accordance with 8 C.F.R. 103.2(b)(8). Counsel describes his repeated attempts by telephone (prior to the issuance of the denial) to notify the Service Center that the petitioner had never received a request for evidence. The record does contain a request for evidence notice dated October 15, 2001, but it does not bear the address of counsel or the petitioner. Furthermore, the director’s decision does not mention the issuance of a request for evidence. Therefore, the record contains no convincing documentation proving that such a request was actually sent to counsel or the petitioner.

In this case, the petitioner claims eligibility under five of the lesser criteria set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). While not all of the petitioner’s evidence carries the weight imputed to it by counsel, the director’s decision has failed to specify clearly the strengths and weaknesses of the evidence with regards to the evidentiary criteria. The resulting decision does not present the petitioner with an opportunity to mount a meaningful rebuttal on appeal. Because of the flaws in the director’s decision, we conclude that the best course of action is to remand this matter for further action in order for the petitioner to address the following deficiencies pertaining to the regulatory criteria:

*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 submits evidence of membership in the Chinese Wushu Association. However, the record contains no evidence listing the association’s specific membership requirements. Therefore, it has not been shown that membership in this association requires outstanding achievements in the martial arts, as judged by national or international martial arts experts.

*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 several articles alleged to feature the petitioner, which were accompanied by unattested summary translations. The incomplete, unattested translations are not in compliance with the Service regulation at 8 C.F.R. 103.2(b)(3) and cannot suffice to satisfy this criterion. Without complete translations, it cannot be determined if the petitioner is the main subject of the articles, or that he was featured because of his achievements as an

extraordinary martial artist. We further note that the petitioner has omitted evidence regarding the extent of the circulation of the publications that feature him, a key factor in determining whether they qualify as major media. Finally, the petitioner's appearance in the voluminous *Contemporary Dictionary of Chinese Teachers of Physical Education* and *Who's Who* publications (on pages 61, 165 and 422) does not convincingly elevate the petitioner's accomplishments above the hundreds of other martial artists/teachers featured in those same 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.*

The evidence submitted appears to minimally satisfy this criterion.

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

The petitioner submits evidence of his authorship of various articles, a book, and two instructional pamphlets. The plain wording of the regulation requires authorship of scholarly articles "in professional or major trade publications or other major media." The petitioner has not submitted sufficient documentation establishing the significance of the publications presenting his work or the extent of their circulation. Thus, it has not been shown that the publications featuring the petitioner's work qualify as "major media."

The petitioner served as an editor of two textbooks and a magazine. The plain wording of the regulation requires the "authorship of scholarly articles" and, therefore, serving as an editor cannot meet this criterion.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

Counsel cites the letter from [REDACTED] Professor of Xiamen University in China and International Gymnastic Judge, as evidence under this criterion. The letter simply mentions four organizations in which the petitioner participates. No information has been provided detailing the petitioner's specific roles within the organizations or demonstrating that the organizations have a distinguished reputation. It must be emphasized that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The petitioner cannot demonstrate eligibility under this criterion simply by submitting a letter that offers one sentence confirming his involvement.

The opinion of a single witness, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. The notice of the denial, while containing several flawed observations, does mention the absence of letters from experts in the “martial arts field.” We concur with this observation and note that Lixian Chen, the petitioner’s sole witness, has not been shown to possess expertise in the field of martial arts.

While the evidence submitted by the petitioner is weak and does not appear to satisfy at least three of the regulatory criteria, the director’s decision was flawed in that it raised issues of questionable relevance, failed to consider all of the evidence submitted, and did not offer a meaningful discussion of petitioner’s deficiencies as they relate to the pertinent regulatory criteria. Accordingly, this matter will be remanded for the purpose of a new decision. The director shall inform the petitioner of the above deficiencies and afford the petitioner twelve weeks in which to respond. Upon review of the evidence provided in response to the director’s request, the director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. If the director again denies the petition, the decision shall set forth the specific grounds upon which the denial is based, and such grounds must be couched in the pertinent statute and regulations in order to afford the petitioner an opportunity for a meaningful rebuttal. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

**ORDER:** The director’s decision is withdrawn. The petition is remanded for further action in accordance with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review.