U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Citizenship
and Immigration
Services

B2

PUBLIC COPY

[redacted]

FEB 24 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

for Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The director rejected a subsequent appeal as untimely. The matter is now before the Administrative Appeals Office on a motion to reopen. The motion will be granted and the appeal reinstated. 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.

The director denied the petition on June 27, 2003. The petitioner filed a skeletal appeal on July 30, 2003, with the assertion that further materials would follow within 30 days. On August 14, 2003, the director rejected the appeal as untimely, stating that the appeal was not filed within 30 days of "May 27, 2003." On August 29, 2003, the petitioner filed a motion to reopen. Counsel observed that the director denied the petition on June 27, not May 27, and therefore (taking into account three days for mailing) the July 30 appeal was timely. The August 29 motion includes supplemental arguments which, presumably, would have been included in the promised supplement to the appeal had the director not rejected that appeal. The director erred in rejecting the appeal; the rejection was based on confusion as to the decision date. Because the director should never have rejected the appeal, we will consider the appeal to be active, and we will consider the August 29 motion submission to represent the timely supplement to the petitioner's timely appeal.

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 pertinent regulations 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 seeks admission as a taekwondo instructor. He has a job offer from Taekwondo Martial Arts USA of Placentia, California.

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). This clause is extremely restrictive, and applies only to a very limited number of major awards with near-universal recognition, such as the Nobel Prize, Academy Award, and Olympic Medal. Counsel argues that the petitioner meets this requirement because he holds a fifth dan (fifth degree) black belt in the martial arts of taekwondo and taeguemdo. Counsel argues:

> The attainment of a Fifth Dan Black Belt is definite proof that [the petitioner] has risen to the very top of the field of Taekwondo. According to the Kukkiwon internet site, there are only 16,205 out of 5,148,666 worldwide (of which only 2172 are outside of Korea) who hold Fifth Dan Black Belt. That is less than 1% of all those who hold black belts.

The petitioner has not shown that attaining fifth dan black belt constitutes an "award," as opposed to a level in stratified, hierarchical ranking system. The petitioner has also failed to show that all 16,205 fifth dan black belt holders are internationally recognized, which would be axiomatic if attaining the fifth dan black belt was indeed a major, international award on a par with the world's very top international prizes.

The petitioner's documents show that the very top ranking in the sport of Taekwondo is not fifth dan, but rather tenth dan (a title held by only five individuals as of 2001). Thus, to emphasize the petitioner's standing in the hierarchy is to call attention to the higher tiers that he has not yet reached. Indeed, the record contains several general recommendation letters from witnesses who claim seventh or eighth dan black belts. Furthermore, the dan system is largely based on length of experience. The higher dan levels are attainable only for practitioners who are well beyond the usual age of active competitors. Thus, the Olympic athletes and current champions are highly unlikely to be at the highest dan levels, yet there is little doubt that an Olympic medallist who is still competing today is at the top of the sport.

The statutory and regulatory standard is sustained national or international acclaim. The petitioner cannot arbitrarily substitute a different standard, such as hierarchical ranking, without persuasive evidence that this ranking brings with it the sustained acclaim required by law. To establish this sustained national or international acclaim, the regulations at 8 C.F.R. § 204.5(h)(3) outline ten evidentiary criteria, of which a petitioner must satisfy at least three.

Counsel has initially claimed that the petitioner meets three of the ten criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

A certificate in the record indicates that the petitioner won first prize at the KTC International Taekwondo Expo 2001. The record contains no other information about this event or the sponsoring entity (Korea Taekwondo Consulting, Inc.).

A "Winner Certificate" from the 4th World United Martial Arts Championship, 1998, lists the petitioner's "event" as "Demonstration Team." The event took place at "Beverly Hills High School Gym," which the petitioner has not shown is typically a venue for major national or international athletic competitions. Sponsors of the event include local businesses such as Three Star Fish Company. The record does not establish that this was a national or international event. Rather, the name of the competition appears to come from the "World United Martial Arts Organization," an entity whose logo appears on the certificate.

A 2001 certificate indicates that the petitioner, as master of the "Korea National Demo Team," received a Presidential Sports Award from the Presidential Council on Physical Fitness and Sports. There is no evidence that this is a prize or award for excellence in the field. Rather, the certificate indicates that the petitioner "has, through regular participation in sport, made a commitment to the active life."

Other claimed prizes are certificates of appreciation from various entities. As with much of the petitioner's other evidence, the petitioner has not established the significance of these documents. Simply submitting these materials does not create the presumption that they are nationally or internationally recognized prizes or awards for excellence in the field.

One of these certificates bears the heading "SEOUL 1988 / The Korean National Taekwondo Demonstration Team / Presented by the Grandmaster of Taekwondo Demonstration in the Opening Ceremony of the 24th Olympic Games in SEOUL." The petitioner's certificate, however, is dated "Dec. 27, 2001," over 13 years after the 1988 Olympic Games in Seoul. The petitioner did not join the demonstration team until 1996.

The director instructed the petitioner to submit further evidence about these awards, but the petitioner simply submitted copies of previously submitted documents regarding the above awards.

> *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 contends that the petitioner satisfies this criterion "through his membership in elite national martial arts demonstration teams." Regarding this criterion, the petitioner submits no evidence except for several photographs. These materials do not establish that membership in the team requires outstanding achievements as judged by recognized national or international experts.

Following the director's request for additional evidence, counsel did not reiterate the above claim. Instead, counsel has asserted that the petitioner's fifth dan black belt ranking amounts to a qualifying membership. We reject this argument. Promotion from one dan level to the next does not appear to be a competitive endeavor, but rather the expected result of regular examinations.

> *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 what counsel calls "recent articles from several Korean language newspapers (one based in Los Angeles, and others in Seoul) and the Chinese L.A. Daily News describing exhibitions of martial arts by" the petitioner. Local newspapers do not constitute major media, nor do newspapers published in a language spoken by only a small minority of a nation's population. An individual cannot achieve national or international acclaim through media attention of such limited scope. The petitioner submits no materials to establish that the Seoul-based newspapers are major national media in Korea. Furthermore, none of the articles include the translation required by the above regulations.

Nearly all of the initial evidence concerns the petitioner's activities as a competitive athlete rather than as an instructor, which is the occupation the petitioner seeks to pursue in the United States.

Following the director's request for further evidence, counsel claims for the first time that the petitioner has satisfied additional criteria beyond the three claimed initially.

> *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 observes that the petitioner was certified as a third class judge in November 1998, after completing referee training courses. The petitioner submits a photograph of himself acting as a referee at a competition in Cambodia. A referee and a judge are not the same thing (completion of a training course does not bestow acclaim), and because every martial arts competition has a referee, simply acting as a referee is not demonstrative of sustained national or international acclaim. The petitioner has not established that he has acted as a judge at top-level national or international competitions, or under any conditions where selection as a judge requires a degree of recognition rather than completion of a training course.

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

Counsel asserts that the petitioner displayed his work as a member of the Korea National Demonstration Team. This is perhaps the petitioner's strongest claim, involving as it does membership in a national-level team. Even so, the record is uneven with regard to the circumstances under which the petitioner displayed his talents. Performances and demonstrations at small, local events do not rise to the level of national or international acclaim, regardless of the number of nations in which those demonstrations occur

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

Counsel notes the petitioner's previous submission of certificates from various martial arts organizations. These certificates are all vaguely worded, referring very generally to "contributions" made by the petitioner. These documents do not demonstrate that the petitioner has served in a leading or critical role for any of the associations named on the certificates.

The director denied the petition, stating that the petitioner's evidence does not establish sustained national or international acclaim. On appeal, counsel repeats several prior arguments and assertions, such as the discussion of the ratio of fifth dan black belts to all taekwondo black belts.

Counsel states that the director failed to consider evidence regarding the process by which black belts are promoted from one dan level to the next. These materials, while not discussed in depth by the director, do not demonstrate that promotion to the fifth dan represents an achievement of national or international scope, much less the major international award claimed by counsel. The materials from the Kukkiwon web site, http://www.kukkiwon.or.kr/eng/, indicate that promotion tests up to the fifth dan are conducted at the "city or province" level; "the Member National Federation will exclusively manage and perform the tests for higher Dan grades (6th Dan and higher)." The promotional test for fifth dan consists of a mandatory practical test and an optional theoretical test. These same materials indicate that special consideration can be given on merit if a candidate for promotion is a "Winner of Olympic Games," "world level championships sponsored by WTF [World Taekwondo Federation]" or "continental level championships approved by WTF." The record does not indicate that the petitioner has achieved any of these.

Counsel also reiterates the argument that the petitioner is a member of associations requiring outstanding achievements, by virtue of his membership on the Korea National Demonstration Team. Counsel also

contends that the petitioner's fifth dan black belt is comparable to such a membership. As noted above, the materials submitted by the petitioner show that fifth dan black belts can be examined by "city or province" officials, rather than national or international experts. Thus, the petitioner's own evidence places his fifth dan black belt outside of the regulatory criterion. As for the petitioner's national team membership, the record offers little information except to confirm that membership. Counsel's attempts to satisfy numerous criteria through the petitioner's team membership runs counter to the purpose of requiring a broad variety of evidence.

Counsel asserts "[t]here is no requirement that [the petitioner] prove he attained his referee status as a result of having extraordinary ability." Counsel cites a district court case which has no force as precedent in the current proceeding. The regulations indicate that the petitioner must establish "sustained national or international acclaim" by reaching "the small percentage at the very top of the field." Evidence which does not demonstrate acclaim, or place the petitioner at the very top of the field, has little value in terms of demonstrating eligibility for the classification sought. We are not persuaded by counsel's argument that, to qualify as an alien of extraordinary ability, the petitioner should not be required to show evidence of extraordinary ability.

We note that section 203(b)(1)(A)(i) of the Act calls for "extensive documentation" of sustained acclaim. Many of the petitioner's claims are supported only by vague certificates or photographs. The petitioner has not submitted the range of documentation that one would reasonably expect if the petitioner were in fact among the best-known, most acclaimed figures in his field nationally or internationally. The petitioner has established that he has been an active and successful athlete, who has toured many countries, but these accomplishments are not inherently tantamount to sustained acclaim.

We also note that the petitioner seeks entry not as a competitive athlete, but as an instructor. The evidence of record deals almost exclusively with the petitioner's career as a competitor in his own right. The record is devoid of evidence that the petitioner has worked as an instructor at a national or international level. Indeed, the record offers little indication that the petitioner has, thus far, worked as an instructor at all.

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 himself as a taekwondo athlete 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, and the record is all but silent with regard to his record as an instructor. 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 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.