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Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass., 3/F
Washington, D.C. 20536

B2

[REDACTED]

File: [REDACTED] Office: California Service Center

Date:

JUL 18 2003

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:

[REDACTED]

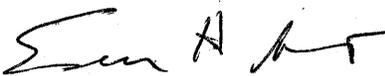
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


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 Administrative Appeals Office on appeal. The appeal will be dismissed.

It is noted that the petitioner was initially represented by attorney [REDACTED] will be referred to herein as the petitioner's former counsel, or previous counsel. References to "counsel" will refer to the petitioner's current attorney of record, who submitted a Form G-28, Notice of Entry of Appearance as Attorney or Representative, on appeal

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.

The regulation at 8 C.F.R. § 204.5(h)(5) states, in pertinent part:

...the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in 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, filed on June 4, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a martial arts competitor, trainer, and coach. 8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." The petitioner, age forty-two at the time of filing, has submitted a "Development Plan" detailing his plans on how he intends to continue his work in the United States. The petitioner states that he seeks "to prepare young American Kung Fu hopefuls for the 2008 Olympics in Beijing." He further states:

Through my association with [REDACTED] I hope to give birth to a tradition of martial arts apprenticeship in the ancient Shaolin tradition. I would like to see a school where young American children begin at a very early age to learn the martial arts...

* * *

I am very interested in setting up a martial arts school in the United States.... As a Chinese martial arts champion, a China first class martial arts coach, and a first grade national martial arts judge, I am confident and able to convey the top qualities of Chinese martial arts to the lovely and enthusiastic American people.... In order to assist them to win the 2008 Olympics gold medals in martial arts events, I will devote my entire energy to reach that goal.

Thus, the petitioner intends to work as a coach/instructor in the United States. While a Kung Fu instructor and competitor certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, playing and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. Ziglar*, 237 F.Supp.2d 914 (N.D.Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's 'area of extraordinary ability' as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Nevertheless, recently this office has recognized that there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is appropriate. In a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. Specifically, in such

a case we will consider the level at which the alien acts as coach. A coach who has an established a successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not. Thus, we will examine whether the petitioner has demonstrated his extraordinary ability as a competitor or as a coach. If the petitioner's evidence demonstrates his extraordinary ability as a martial arts competitor, we will consider the level at which he has successfully coached.

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). In a brief submitted in support of the appeal, counsel states:

[The petitioner] has not only won a major internationally recognized award – the Gold Prize for the Traditional Long Arms Taolu, Yue, but he won a second major award – the Gold Award for the Traditional Long Arms Taolu, Chan. Both of these major accomplishments were at the 8th World Cup Championships...

As evidence of these awards, the petitioner submitted two pre-printed "form" documents with the petitioner's name, type of prize, and competition description handwritten into blank spaces. It has not been shown that these "Certificate[s] of Merit/Golden Prize[s]" were significant beyond the context of the event where they were presented.

The regulation permitting eligibility based on a single award must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. Examples of one-time awards which enjoy truly international recognition include the Nobel Prize, the Academy Award, and (most relevant for athletics) the Olympic Gold Medal. These prizes are "household names," recognized immediately even among the general public as being the highest possible honors in their respective fields. It has not been shown that the pre-printed "Golden Prize" certificates from the 8th World Cup Championships enjoy immediate international recognition on a par with the almost universally-known awards described above. Statements from the petitioner's own "Development Plan" further suggest that the Summer Olympics is the ultimate level of international martial arts competition. The single major award criterion is meant to be even more restrictive than the ten lesser criteria outlined below. The petitioner's "Golden Prize" Certificates of Merit will be addressed below as lesser internationally recognized prizes or awards.

Barring the alien's receipt of a major, internationally recognized 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 that, counsel 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 submitted the following evidence (with accompanying English language translations,

if applicable):

Two "Certificate[s] of Award" from the "Organizing Committee of the International/Traditional Wushu and Unique Feats Tournament" dated May 1999. The left side of both certificates bears Chinese text while the right side is in English and has three blank spaces. The right side of each certificate states: "This is to certify that Mr./Mrs. _____ is granted _____ Award in _____ of Taolu event at International Traditional Wushu & Unique Feats Tournament."¹

The accompanying translation of the Chinese half of the first certificate states: "This is to certify that [the petitioner] is granted the EXTREMELY EXCELLENT AWARD for the program of Traditional Long-arms of Taolu Event..." The accompanying translation of the second certificate states: "This is to certify that [the petitioner] is granted the EXTREMELY EXCELLENT AWARD for the program of Chinese Boxing of Taolu Event..."

Two "Certificate[s] of Honor" issued by the Match Council of the "China National Guo Qiang Cup of BAIQUAN (Chinese Wushu)" dated October 6, 2000. The first states that the petitioner was "awarded the FIRST PRIZE for the match program of Traditional Chinese Long-arms." The second certificate states that he was "awarded the FIRST PRIZE for the match program of Traditional Chinese Boxing."

Two certificates dated November 18, 2000 stating that the petitioner won a "Gold Medal" and "First Prize" of Traditional Arms of Men in the "Adult Class of the Dalian Wushu Match."

A certificate from the International Martial Arts Kung-Fu Federation stating: "World Top Outstanding Performance Golden Award. [The petitioner] has passed the examination administered by the committee of the 8th World Cup Conference and has received the above Golden Award for His/Her Excellence. September 29, 2001, Los Angeles, California."

Two "Certificate[s] of Merit" from the "8th World Cup Championship" (2001) with the petitioner's name, type of prize, and competition description handwritten into blank spaces. These certificates state that the petitioner obtained a "Golden Prize" in "Traditional Long-arms Taolu" in the "Yue" and "Chan" disciplines.

The significance and importance of the above awards are not self-evident. It should be emphasized that the petitioner must submit documentary evidence showing the degree of recognition accorded to the petitioner's individual competitive events. The evidence does not indicate how many other individuals competed against the petitioner for these awards or the criteria used in determining winners. We note here that many of the certificates are pre-printed, form-style documents with the petitioner's name handwritten into blank spaces. The record does not indicate how many other individuals received certificates at these events, but the existence of pre-printed forms suggests multiple winners. Finally, it has not been shown that the petitioner's awards were significant beyond the context of the event where they were presented. We note, for example, the absence from the record of substantial national or

¹ In response to the director's request for evidence, the petitioner re-submitted copies of these same certificates. On the newer, color-copied versions, the petitioner's information has been handwritten into the blank spaces on the English side, whereas the initial submissions had been left blank.

international media coverage about the petitioner's awards or his individual competitive events. Simply receiving an award certificate with the word "national," "international," or "World Cup" in its title would not satisfy this very restrictive criterion.

The petitioner submitted photographs of himself performing martial arts at the "8th World Cup International Martial Arts Championships held in Los Angeles." A large banner in the background states: "American Asian Charitable Foundation Fund Raising Performance – Famous Persons Top Level Demonstration Match." Page 56 of an event program provided by the petitioner states:

Our federation in order to celebrate 20th year anniversary, we will hold all kinds of activities in Los Angeles. It is this federation's "8th World Cup Championship of International Martial Arts Primary" held on September 29th to 30th. At the same time, we will hold "World Top" and "World Night" charitable performance for the purpose of American Asian charitable foundation.

It is not clear whether the petitioner received the "8th World Cup" certificates for providing a martial arts "demonstration" or whether he actually competed against other athletes.

Large-scale athletic competitions typically issue event programs listing the order of events, the name of each specific event, the names of all of the participating athletes, and their competitive ranking. At a competition's conclusion, results are usually provided indicating how each participant performed in relation to the other competitors in his/her individual events. The petitioner, however, has provided no such evidence for any of his competitions.

Section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide sufficient evidence to establish that his awards enjoy significant national or international stature. Simply alleging that an award is nationally or internationally recognized would not satisfy this very restrictive criterion.

It is further noted that all of the awards submitted by the petitioner were based on his ability as a competitor. These awards do not establish that the petitioner has sustained national or international acclaim as a coach/instructor. It is not clear that significant awards exist for martial arts instructors. However, nationally or internationally recognized prizes or awards won by teams or individuals coached by the petitioner may be considered as comparable evidence for this criterion under 8 C.F.R. § 204.5(h)(4). The petitioner's evidence (including his Dalian Wushu Coaching Certificate dated June 8, 1998) indicates that he has been coaching since 1998, but he has not provided any evidence showing a past record of success as a coach at the national or international level. The record contains no evidence of national or international awards won by teams or individuals coached by the petitioner.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to

membership. In addition, it is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted a letter confirming his membership in the Dalian Wushu Association and the Japan-China Wushu Exchange Association. On appeal, counsel argues that the petitioner's "Golden Award" certificate from the International Martial Arts Kung-Fu Federation would also satisfy this criterion. The certificate, dated September 29, 2001, states: "[The petitioner] has passed the examination administered by the committee of the 8th World Cup Conference and has received the above Golden Award for His/Her Excellence." This certificate might show that the petitioner has been honored by the International Martial Arts Kung-Fu Federation for participation in a charity event, but it does not constitute first-hand proof of the petitioner's individual membership status in the Federation. Furthermore, documentary evidence showing that the Federation requires outstanding achievement as a requirement for admission to membership has not been submitted. We note here that the record contains no documentary evidence of any of the above organizations' specific membership requirements. In sum, the evidence presented by the petitioner does not show that his various memberships require outstanding achievement as judged by national or international experts in the martial arts.

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 general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. An alien would not earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.

The petitioner submitted a newspaper article and a captioned photograph from a local Chinese language newspaper, the *China Press*. This article reflects local attention among the Chinese-speaking population of Los Angeles rather than national or international recognition. It is also noted that the article was not accompanied a full English language translation. By regulation, any document containing foreign language submitted to the Bureau shall be accompanied by a full English language translation that 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). Without a complete translation, it cannot be determined that the petitioner is the main subject of the article, or that he was featured because of his extraordinary achievements in the martial arts. The evidence presented fails to demonstrate the petitioner's sustained national or international acclaim as a martial arts competitor or instructor. In this case,

the petitioner has not demonstrated that he has captured sustained attention from major national 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.

In an occupation where “judging” the work of others is an inherent duty of the occupation, such as a coach, instructor, teacher, professor or editor, simply performing one’s job related duties demonstrates competency, and is not evidence of national or international acclaim. Instead, the petitioner must demonstrate that his sustained national or international acclaim resulted in his selection to serve as a judge of the work of others. Similarly, the competition or contest must be on a national or international level.

The petitioner submitted a “License of Umpire of Dalian Sport and Games” dated January 20, 2001. Also submitted was an unsigned letter, written by an unidentified author and bearing the seal of [REDACTED] Association, stating: “Since he is extremely prestigious in the Wushu Field in China, so many Wushu matches appointed [the petitioner] to be the umpire with excellent performances, being granted the national qualification [sic].”

The plain wording of the regulation requires “evidence of the alien’s participation.” The brief, vague information contained in the letter from the [REDACTED] offers no details of the petitioner’s involvement at any specific competition. The petitioner has offered no contemporaneous, first-hand documentary evidence showing that he has umpired any national or international level competitions in China, the United States, or any other country. Nor has the petitioner provided any documentary evidence of national or international publicity surrounding the events in which he allegedly served as an umpire.

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

The petitioner submitted a letter from [REDACTED] in Rancho Cucamonga, California. He states:

I first became acquainted with [the petitioner] in the month of March 2002, when he was introduced to me by John Lueck, an attorney who approached me and asked me to give him an opinion at to the authenticity of his certificates, and the level of his skills.... After spending several hours sparring with him, I was thoroughly convinced that [the petitioner] is indeed a martial arts master, with life-long training similar to my own, yet different in that he has training in many skills largely unknown in this country.

* * *

I immediately arranged for [the petitioner] to put on an exhibition not only for my own students, but also for the owners of a number of martial arts schools as far away as northern California and different areas of southern California. Great interest in the possibility of learning from [the

petitioner] was expressed by all who attended, an audience of about sixty. Other school owners who attended expressed interest in holding similar exhibitions at their schools.

The issue here is not the skill level or expertise of petitioner, but, rather, whether any of his past accomplishments would qualify as a contribution of major significance in his sport. The letter from Bill Lasiter indicates that the petitioner received some limited attention in California, but it does not identify any of his athletic achievements that would constitute a contribution of major significance.

An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting his acclaim. If the petitioner's achievements are not widely praised outside of his direct acquaintances, then it cannot be concluded that he has earned sustained national or international acclaim as one who has reached the very top of the field. In sum, the record does not show that any of the petitioner's coaching or athletic accomplishments are widely recognized as rising to the level of a contribution of major significance in the martial arts.

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

On appeal, counsel argues that the petitioner's participation in various martial arts events would satisfy this criterion. This claim is not persuasive. The wording of this criterion indicates that it is intended for visual artists, such as sculptors and painters, rather than for athletic performance or coaching. Furthermore, given that martial arts competitions and instructional demonstrations are virtually always held before an audience, every capable athlete or coach would display his or her athleticism in this manner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

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 the alien performed in a leading or critical role for an organization or establishment with a distinguished reputation, a petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted four separate single-sentence "Appointment Letters" naming him Director of the Japan-China Wushu Exchange Association (May 18, 2000), Deputy Chairman of the Dalian Wushu Association (March 10, 1998), Coach of the Dalian Huari Wushu Training School (September 18, 1998), and Deputy President of the Dalian Huari Wushu Training School (September 18, 1998). The record, however, contains no documentary evidence to establish the specific nature of the petitioner's duties for these organizations or their distinguished reputations.

On appeal, counsel argues that the petitioner's "participation in a charitable showcase for the American Asian Charitable Foundation" would satisfy this criterion. The petitioner's stage demonstration for a Los Angeles-based charitable foundation reflects his brief involvement in a one-time fund-raising event rather a "leading or critical" role for the Foundation. The record contains no supporting documentation to demonstrate that the petitioner has ever supervised or overseen other

individuals within the Foundation. Further, the record does not indicate that the petitioner has consistently exercised substantial control over important decisions executed on behalf of the Foundation.

We withdraw the director's statement that "[t]he field of martial arts is not an international one." As counsel correctly points out, judo is a martial art and an Olympic sport that is recognized both nationally and internationally. We note, however, that the record contains no evidence from the United States Olympic Committee, its Chinese counterpart, or the International Olympic Committee attesting to the petitioner's national or international acclaim as a competitor or a coach.

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in his field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every coach or athlete who has competed at the national or international level is among the small percentage at the very top of the field. Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard.... A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even compete at the national or international level, without reaching the top of his or her field.

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. The petitioner has failed to demonstrate receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

A review of the record does not establish that the petitioner has distinguished himself as a competitor 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. 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 his 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.