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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

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

[redacted]

File: EAC 02 042 57685 Office: Vermont Service Center Date: MAR 11 2003

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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

Elizabeth Hayward

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 Administrative Appeals Office 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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. 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 November 13, 2001, seeks to classify the petitioner as an alien of extraordinary ability as a karate instructor. The petitioner has submitted evidence that, he claims, satisfies several 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: a certificate from the Georgian Shotokan Karate-Do Association indicating that the petitioner won first place at the Republic of Georgia's Cup of Erquan (1993), a letter from the Georgian Shotokan Karate-Do Association stating that the petitioner took third place at the World Championships in Turkey as a member of the Georgian team (1992), certificates reflecting awards won by the petitioner's students, proof of the petitioner's membership in the Shotokan Karate International Federation, letters from officials in the Federation, and two job offer letters.

The director's decision, in addressing the evidence initially provided by the petitioner, and in response to a request for further evidence, merely stated:

> While the [petitioner] may be a gifted karate instructor with some local notoriety, the evidence falls short of establishing the [petitioner] to be one of the very top karate instructors in the world today. The record does not establish that the [petitioner] qualifies as an alien of extraordinary ability.

Some of the evidence contained in the record, however, supports the petitioner's contention that his notoriety extends beyond the "local" realm. The director's decision failed to address this evidence and did not offer a meaningful discussion of the petitioner's deficiencies as they relate to the pertinent regulatory criteria.

The director's statement that the petitioner did not establish that he is "one of the very top karate instructors in the world today" is contrary to the statute and regulations, which allow for evidence of sustained national or international acclaim. The statutory and regulatory language provides for the submission of evidence that would demonstrate sustained national acclaim in the Republic of Georgia, for example. Therefore, the director's use of the phrase "in the world" has imposed an excessive standard by requiring evidence indicative of international acclaim.

In this case, the petitioner claims eligibility under six of the ten lesser criteria set forth in the Service regulation at 8 C.F.R. § 204.5(h)(3). While the evidence contained in the record does not appear to warrant approval of the petition, the director's decision has failed to specify clearly the strengths and weaknesses of the petitioner's evidence as it relates to the six regulatory criteria that the petitioner seeks to satisfy. The resulting decision is so vague that it does not present the petitioner with an opportunity to mount a meaningful rebuttal on appeal. Therefore, we conclude that the best course of action is to remand this matter in order for the director to properly address the petitioner's evidence under the pertinent regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3).

Accordingly, this matter will be remanded for the entry of a new written decision. The director's decision shall set forth specific deficiencies in the evidence upon which the denial is based in order to afford the petitioner an opportunity for a meaningful rebuttal.

ORDER: The director's decision is withdrawn. The matter is remanded for further consideration consistent with the above discussion and entry of a new decision that is to be certified to the Administrative Appeals Office for review.