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**U.S. Department of Homeland Security
Citizenship and Immigration Services**

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



File: WAC 02 065 54520 Office: CALIFORNIA SERVICE CENTER Date: **NOV 06 2003**

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)

ON BEHALF OF PETITIONER:

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 Citizenship and Immigration Services (CIS) 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. The director had denied the petition for abandonment, but reopened the proceeding after the petitioner demonstrated that this denial was in error. The director subsequently denied the petition on its merits. The matter is now before the Administrative Appeals Office on appeal. 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.

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

The petitioner is an instructor and competitor in the martial art of taekwondo, and founder of a martial arts school in Sacramento, 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). Barring the alien's receipt of such an 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 did not initially clarify which of the criteria she claims to have satisfied.

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

The record establishes that the petitioner has placed highly at several national competitions in her own right, as well as instructing students with similar accomplishments. The awards are from various martial arts organizations. The record shows that the petitioner's taekwondo school is a member of the United States Taekwondo Union (USTU), "the national governing body for Taekwondo in the United States of America." The certificate from the USTU also refers to "the World Taekwondo Federation" (WTF). None of the prizes or awards documented in the record show any affiliation with, or recognition by, the USTU or the WTF.

Beyond competition-based prizes, Rebecca Polstra, treasurer and secretary of the petitioner's school, states that "our center and [the petitioner] individually have received numerous awards. Some of these include proclamations from the former Governor. Awards from the city, a runner up award for National Make a Difference Day, and an award from Project Action a national charity that has never before . . . been given to a woman." These awards, recognizing the petitioner's charitable activities, are mostly from local or state entities and thus are not national or international prizes or awards. Some are not "awards" at all, but merely letters or certificates acknowledging the petitioner's and/or her school's participation in charity events.

The only documentation from Project Action is a "Certificate of Appreciation," with no indication that the certificate is considered a national or international prize or award. The petitioner claims to have won Project Action's Lillian V. Ryan Award, but the record contains no corroborating documentation to establish the petitioner's receipt of the award, or its significance.

The petitioner has subsequently submitted further documentation about some of the competitions in which she has participated. Some of these competitions have been under the aegis of the United States International Taekwon-Do Federation, identified as "an official governing body for the International Taekwon-Do Federation." It is not clear what relation, if any, the ITF has to the USTU or the WTF, which are described as the official governing bodies of taekwondo and which are affiliated with the International Olympic Committee.

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 is a member of various "trade associations" in the field, but the petitioner has not shown that any of these organizations require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In response to a request for further evidence, counsel has stated "Membership in associations. Awards, certificates and letters confirming the petitioner's recognition as a Level 4 Black Belt and outstanding instructor and judge have already been submitted." Counsel fails to explain how this evidence pertains to membership in associations. Awards and work as a judge fall under other criteria.

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 only published material in the record is an article from the June 1997 issue of *Martial Arts Professional*, described in its masthead as "The Trade Journal For The Martial Arts Industry." The article, "The \$10K Marathon, Martial Arts-Style," describes how the petitioner's martial arts school raised \$10,000 for Project Action. The article does not mention the petitioner's own record as an athlete, nor does it evaluate the petitioner's school. Instead, the article is "a step-by-step description of how [the petitioner] was able to garner tremendous civic and corporate support for her cause," as an instructional guide for other schools contemplating similar fund-raising activities. Thus, the only documented media attention that the petitioner has earned pertains to fund-raising work rather than her skills as an athlete or instructor, and even then her fund-raising work appears to have been used mainly as an illustrative example.

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.

Senior master Jack Corrie, vice president and director of testing at the International Taekwondo Council (ITC), states that the petitioner "is one of our most qualified judges. She sits on most black belt testing panels and is often asked to judge at tournaments all day." The nature of the ITC is not clear from the record. A printout from ITC's web site, submitted with the petition, refers to "ITC Events 2001" but refers only to events in northern California, Nevada, and Oregon, which suggests that the ITC's activities are predominantly limited to the northwestern United States. A list of "ITC School Locations" identifies four schools in Argentina, one in Canada, three in Nevada, one in New Jersey, one in Oregon, and two in Pennsylvania. The list also shows 19 schools in California, concentrated in the northern part of the state. Thus, the ITC has more schools in northern California than in the rest of the world. The petitioner's judging work on behalf of ITC appears to be, for all practical purposes, local in nature. It is not clear how many black belt testing panels the ITC organizes, given the claim that the petitioner sits on "most" of them.

A list of 75 "GSKA Black Belt Judges" includes the petitioner's name. The record does not indicate what the initials "GSKA" stand for. The evidence of record shows that the petitioner has acted as a judge in some capacity, but it does not demonstrate that this judging work was in a national or international, rather than local, context.

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

While the petitioner and various witnesses offer general praise for the petitioner's skill as a 4th degree black belt, the record does not establish that the petitioner is responsible for any specific original contributions of major significance. Success in one's field is not inherently an original contribution.

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

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

The above two criteria do not appear to apply to the martial arts.

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

Rebecca Polstra states that the petitioner "has drawn national attention to our Center itself," but the record does not contain sufficient evidence to establish that the petitioner's center has a distinguished reputation at a national or international level.¹

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

The record is silent as to the petitioner's remuneration.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

This criterion does not apply to aliens outside of the performing arts.

Beyond the above criteria, counsel notes that the petitioner "will soon attain the 5th Black Belt level, which carries the designation of the title 'master,' and will likely represent one of the few female holders of this title worldwide." The petitioner did not hold a 5th degree black belt, or the accompanying title of "master," at the time the petition was filed. Aliens seeking

¹ A Google search (<http://www.google.com>) for several versions of the name of the petitioner's school shows little mention of the petitioner on the Internet apart from local directories of martial arts schools in the Sacramento area.

employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971).

According to Jack Corrie of the International Taekwondo Council, the petitioner “will be eligible to test for her fifth degree in 2 years.” The petitioner has not established that she is guaranteed to attain a 5th degree black belt, as implied by counsel’s use of the verb “will.” The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director denied the petition, finding that the documentary evidence of record fails to support the petitioner’s key claims. The director also found, among other things, that the USITF has not been shown to be an acknowledged governing body for the sport. On appeal, counsel states that the director’s finding “was in contradiction to the evidence presented, which included letters from high ranking athletic association officials which stated that [the petitioner] would soon be among the dozen premier athletic performers in her field.” Counsel does not explain how these letters contradict, or even relate to, the director’s finding regarding the USITF. From the documents in the record, there appear to be several rival “governing bodies” for the sport of taekwondo, with little or no regulation of such descriptive terms as “international,” “governing body,” “world championship” and so on.² The United States entity with the strongest claim to true “governing body” status would appear to be the USTU, with its connection to the International Olympic Committee. The petitioner has not shown that she or any of her students have won prizes in USTU-sanctioned competitions.

Counsel’s claim that the petitioner will “soon be among the dozen premier athletic performers in her field” is not persuasive. Whether two years after the petition’s filing date qualifies as “soon” is debatable, and in any event no one disputes that the petitioner did not yet hold the 5th degree black belt at the time of filing. The expectation that the petitioner will one day qualify for that level is not evidence of eligibility. Assertions regarding the future number of 5th degree black belts rely on the unproven and conjectural assumption that, of all the world’s female 4th degree black belts, only the petitioner will advance to the 5th degree black belt.

The record, as a whole, shows that the petitioner has been successful as a competitor and as an instructor, but it also indicates that the reputations of the petitioner and of her school are primarily local in nature. The petitioner has not shown that she has earned sustained acclaim throughout the United States or internationally.

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,

² According to <http://www.itf-information.com>, “[t]here are now three groups claiming the title of International Taekwon-Do Federation so we are no longer able to list an official constitution.” The documented fact that there is more than one International Taekwon-Do Federation underscores the director’s finding regarding the apparent lack of any universally recognized governing body among the many organizations under which the petitioner has competed.

however, does not establish that the petitioner has distinguished herself as an athlete or instructor to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.