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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

[REDACTED]

File: WAC 02 232 52887

Office: California Service Center

Date: OCT 23 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:

[REDACTED]

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 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, and is now before the Administrative Appeals Office (AAO) 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 as a Muay Thai sports instructor and promoter. The director denied the petition after determining that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel for the petitioner requests oral argument. Oral argument, however, is limited to cases where cause is shown. It must be shown that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, counsel has not offered sufficient justification as to why the issues to be presented on appeal cannot be addressed in writing; counsel simply expresses a desire to argue the case in person. Consequently, the request for oral argument is denied.

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

It is necessary in this case to address the difference between the petitioner's acclaim as a competitor in Muay Thai, and the position listed on the Form I-140 for which the petitioner seeks classification, an instructor and promoter. The statutory language at section 203(b)(1)(A)(ii) requires the petitioner to be "seeking to enter the United States to continue to work in the area of extraordinary ability." Therefore, even if we determined that the petitioner qualifies as an alien of extraordinary ability as a Muay Thai competitor, because he seeks classification as an instructor and promoter of Muay Thai, he cannot be considered to be continuing in his area of extraordinary ability.

While a Muay Thai competitor and a Muay Thai instructor certainly both share knowledge of the sport, the two rely on very different sets of basic skills. 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, this office has recognized that there exists a nexus between competing and coaching or instructing in a given sport. To assume that every extraordinary athlete's area of expertise includes instruction or 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 established a successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not.

Although no new evidence is submitted on appeal, counsel argues that the evidence already contained in the record meets the following evidentiary criteria:

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

On appeal, counsel argues that the district director "overlook[ed] important evidence of [the petitioner's] championship achievements in his home country." As evidence of such achievements counsel notes passages in witness letters where the witnesses refer to the petitioner as a "former Thai champion" and "Northeast Thailand champion." We do not find that the district director's decision was erroneous, as mere references to the petitioner's champion status in witness letters do not satisfy the requirement that the petitioner provide extensive documentation of the prizes

won. These letters certainly do not establish that the petitioner was a recipient of an award that is nationally or internationally recognized. Further, the petitioner has not shown that he has won any awards based on his competitive wrestling from the late 1970s to the filing date of the petition. We note that it is only concurrent with this appeal that counsel has ever asserted that the petitioner even meets this criterion.¹

Moreover, as the references to the petitioner's awards were based on the petitioner's ability as an active competitor in Muay Thai, even if we determined that such awards enable the petitioner to qualify as an alien of extraordinary ability as a Muay Thai competitor, they do not establish that the petitioner has sustained national or international acclaim as a coach or promoter. Although it is not clear that significant awards exist for Muay Thai instructors, 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).

While those people that the petitioner has instructed speak highly of the petitioner, such references carry no evidentiary weight without documentation that the athletes the petitioner has instructed have actually been involved at a national or international level of competition. [REDACTED] the 1993 California Kickboxing Champion, while attesting to the high caliber of instruction received by the petitioner, does not attribute his success as a kickboxing champion to instruction by the petitioner. As indicated in [REDACTED] the petitioner did not meet Mr. [REDACTED] 1994, a year after he was named California Kickboxing Champion. Another witness, [REDACTED] the 1985, 1986, and 1987 kickboxing champion of the World Kickboxing Association, does not claim to have met the petitioner until 1997, nearly ten years after Mr. [REDACTED] was champion. In this case, there is no evidence that the petitioner has instructed or trained any person who has gone on to receive national or international acclaim.

The petitioner submits other witness letters that provide opinions that the petitioner "is among the top three percent of martial arts instructors in the field," "his instruction is of champion caliber," and "his is one of the top few percent of Muay Thai instructors and promoters in the world today." Once again, however, these attestations are not supported by documentary evidence. We cannot ignore the absence of national or international awards won by teams or individuals that the petitioner has personally instructed.

The lack of documentary evidence related to awards won by the petitioner raises questions as to the petitioner's sustained acclaim individually as wrestler, as well as his acclaim, sustained or otherwise, as a wrestling coach. Finally, none of the evidence submitted for this criterion has any relevance to the petitioner's position as a promoter.

¹ Counsel's initial brief, submitted on July 11, 2002, asserts that the petitioner "produces six different forms of evidence," related to the relevant CIS regulations. Not one of the petitioner's six forms of evidence relates to prizes or awards.

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.

Generally, 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 the 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. The petitioner submits many photographs of the petitioner that have appeared in magazines. However, we do not consider photographs to be articles or material "about" the petitioner. The petitioner also submits several articles which, although about the sport of Muay Thai, reference the petitioner's name. We also do not consider these articles to be "about" the petitioner as the focus of the articles are on the sport, not the petitioner. We further note that many other names are referenced in these articles, not just the petitioner's name.

The petitioner has submitted articles that reference the training camps held by the United World Muay Thai Association (UWMTA), the association started by the petitioner. Again, however, we do not consider these articles to be about the petitioner as a sports instructor or promoter, but rather about the camp and its participants and instructors. While these articles do mention the petitioner's name as the President of the UWMTA, they are not written about his skills and accomplishments as an active competitor, an instructor, or a promoter, and include references to many people including camp instructors and camp attendees.

On appeal, counsel argues that the director's decision "minimizes the collective significance of the published material" about the petitioner. Counsel refers to letters from two publishing executives of martial arts magazines that indicate of the approximately 750 issues of martial arts periodicals published over the last forty years, approximately 30 have been devoted to Muay Thai. Further, of those 30 issues devoted to Muay Thai, the petitioner has appeared in twenty of the issues. However, as discussed above, the fact that the petitioner's name appears in an article or that the petitioner is in a photograph showing a particular move, does not demonstrate that the petitioner has had material published "about" him. This deficiency cannot be overcome, as counsel suggests, by mere quantity, as the intent of this criterion is based not upon the amount of times the petitioner's name or likeness appears in print, but upon a showing that the material actually discusses the petitioner and his work.

Counsel also argues that the articles on the camps and competitions, of which the petitioner and the UWMTA are the principal authorities, are evidence of the petitioner's "preeminence in the sport" and were erroneously discounted by the director. We must note however, that for this particular criterion we do not look for whether the petitioner is "preeminent" in his sport; instead, the criterion evaluates whether the petitioner has documented that he has had material published about him. As stated above, the fact that the petitioner is mentioned as the "creator" of the UWMTA and Muay Thai camps in the U.S. does not mean that the petitioner is the feature of the

article.

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 specialization for which classification is sought

Counsel for the petitioner states that the petitioner meets this criterion based on the fact that the petitioner judges the progress and performance of his students and instructors. On appeal, counsel further argues that the director's decision viewed only the fact that the petitioner judged the work and progress of students and trainees and failed to acknowledge the fact that the petitioner instructs "champion fighters" and "martial arts instructors." Counsel states:

[The petitioner] does not train children at a neighborhood recreation center. He consults and travels around the country to train martial arts professionals in authentic Muay Thai practice... [The petitioner] is regarded by American martial arts champions in various fields as the expert whose guidance is [sic] sought in the martial art of Muay Thai.

The record also includes letters from witnesses who praise the work of the petitioner as an instructor.

The petitioner's work as an instructor does not encompass the duties envisioned by this criterion of one participating as a judge of the work of others in the field. In occupations where a person is a coach, instructor, teacher, or professor, simply performing one's job related to evaluating a student's work is inherent in the job. The use of the word "participation" implies that there is some type of match or competition involved which requires a judge or judges to determine the outcome. In the case of a teacher or instructor, there is no match or competition, only the determination as to whether the student has progressed in ability. The duty of a judge, as envisioned by this criterion, is to evaluate the skills of one competitor versus the skills of the other competitors. As such, we do not find that the petitioner's work as an instructor, even as instructor of "champion fighters," meets the requirements of this criterion that the petitioner demonstrate participation as a judge. None of the evidence contained in the record demonstrates that the petitioner's duties have gone beyond that of an instructor to actual participation as a judge of any Muay Thai competitions or bouts.

Moreover, evidence contained in the record indicates there are opportunities for judges of Muay Thai competitions. In the witness letter submitted from Paulo Tocha, Mr. Tocha states that he was awarded the "U.S. Judge and Referee of the Year Siam Award." As the opportunity to judge Muay Thai competitions or matches is clearly available, we find it questionable that the petitioner can only point to his role as an instructor to fulfill this criteria.

Counsel also points to instructional video tapes created by the petitioner as evidence of the petitioner's "importance as a standard of proper training and technique." However, to view such videotapes, where the petitioner is not even present to assess the performance of the person following the video, as evidence that the petitioner has participated as a judge of the work of others, is far too attenuated.

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

Counsel asserts that the petitioner has made both athletic and business related contributions to his field. As evidence of the petitioner's original athletic contributions, counsel refers to the petitioner's production of original seminars, training camps, and exclusive competitions. However, while we do not dispute that such events have taken place, the petitioner has failed to show how these events have been contributions of major significance to the field.

Counsel also states that the petitioner was a "champion Muay Thai athlete...[who brought] authentic Thai technique and context to the American exposition of Muay Thai." Counsel, however, makes such assertions without any documentary evidence to corroborate his assertions. 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). For instance, the petitioner has failed to show how his instruction or technique compares to that of the many other Muay Thai instructors, such that the petitioner's instruction can be considered either an original contribution or of major significance. As stated by the district director in his decision, "[t]here is nothing in the evidence to suggest that the petitioner invented any new techniques, methods or moves or made any significant changes to the way the sport is perceived or practiced."

We note that none of the articles provided by the petitioner, which we look to as more independent opinions than the witness letters, mention the petitioner as being the "father" of Muay Thai in the U.S., as asserted by counsel. In fact, an article in the magazine *Inside Kung-Fu* submitted by the petitioner states:

[A]lthough many U.S. servicemen and some tourists had viewed Muay Thai while in Thailand, Muay Thai did not come to the attention of American martial artists until the late 1970s and early 1980s...Dan Inosanto, the leader of the kali/JKD family and protégé of the late Bruce Lee, incorporated Muay Thai techniques into the JKD boxing curriculum in 1974."

Therefore, counsel's assertion that the petitioner is the father of Muay Thai in the United States in not only unsubstantiated by documentary evidence, it is contradicted by other evidence in the record.

On appeal, counsel asserts that the petitioner invented a new sport in that he "re-invented the Thai martial art of Muay Thai for the United States market based on the legal norms which apply to martial arts competitions." However, the fact that the petitioner established the UWMTA, the sanctioning authority for training and competition, does not demonstrate that the petitioner has made an original contribution of major significance.²

² Evidence in the form of an article submitted by the petitioner and referenced as exhibit 83 notes that the "most radical changes in [Muay Thai] occurred in the 1930s. It was then that the sport was codified and today's rules and regulations were introduced. Rope bindings of the arms and hands were replaced by boxing gloves, a change that can be attributed to the growing success of Thai boxers in international boxing. The introduction of weight classes was also inspired by international boxing. These and other innovations- such as the organization of fights into rounds -substantially altered the fighting techniques employed by fighters."

As evidence of the petitioner's business related contributions, counsel asserts that the petitioner has hosted thirteen commercially successful seminars and camps and that the petitioner's company, Vut Promotions, "has staged over 20 competitions with thousands of spectators since January of 1999." Counsel also asserts that the petitioner's seminars and camps are "popular with students around the world and show the business acumen of the champion fighter." Counsel's assertions that the seminars and camps offered by the petitioner were "popular" do not establish how these events were an original contribution of major significance to the petitioner's field. While counsel does point to the remuneration received as evidence of the popularity of such events, we do not find that remuneration is relevant for this criterion. It is, instead, considered under a separate criterion to be discussed below.

Therefore, while we do acknowledge that the petitioner is helping to introduce the sport of Muay Thai to the American public, we do not find that his contribution as an individual instructor, promoter, or competitor has been shown to be original or significant to the field of Muay Thai. Further, while the petitioner may have successfully held camps or promoted competitions, such events remain localized. The fact that the petitioner's contributions have not radiated beyond Los Angeles, Nevada, or Fort Lauderdale lessens any argument that the petitioner's contributions have had wide reaching effects such that they can be considered significant.

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

The wording of this criterion, with the inclusion of the word "artistic," indicates that the criterion is intended for visual artists, such as sculptors and painters, rather than for athletic performance or instruction. Therefore, counsel's assertions, including those made on appeal, that the seminars and camps provided by the petitioner are an "important showcase for his authentic skills and inspired instruction" are not persuasive. We do not find that the petitioner's instruction and presentation of Muay Thai techniques is considered a display at an artistic exhibition or showcase.

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

The petitioner presents evidence of his role in the UWMTA and Vut Promotions, the petitioner's promotion company. Counsel asserts that the UWMTA, founded by the petitioner in 1993, is "the aegis for all of [the petitioner's] competitive and promotional efforts" and "is recognized by organizations and individuals around the U.S. and the world." Counsel does not, however, cite any documentary evidence to establish the distinguished reputation of either the UWMTA or Vut Promotions.

In his decision, the director did not dispute the leading role played by the petitioner in either the UWMTA or Vut Promotions. As the founder and President of the respective organizations, it is clear that the petitioner plays a critical role. Instead, the focus of the director's decision for this criterion was based upon the fact that the petitioner had failed to establish the distinguished reputations of the organizations. The director indicated that while many witnesses, some of whom were also members of the UWMTA, "alluded" to its distinguished reputation, there was no

documentary evidence to substantiate these claims.

On appeal, counsel argues that the director “overlooked the role of the UWMTA in providing licensing officials in California and Nevada with the standards of competition and officiating that enable [the petitioner] to promote competitions in those two states.” We do not find that counsel’s argument overcomes the finding of the director. The fact that the UWMTA provides licensing officials with standards does not establish that either the UWMTA or Vut Promotions have a distinguished reputation.

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

As evidence of the petitioner’s high salary the petitioner submits letters from witnesses attesting to the average salary earned by martial arts instructors. The petitioner also submits copies of his 2000 and 2001 tax returns showing an income of \$105,000 and \$115,000 respectively. The petitioner also submits the U.S. Department of Labor’s Occupational Outlook Handbook for 2002-2003. Counsel argues that “the median annual earnings of athletes was \$32,700; umpires, coaches and related workers earned a median of \$18,500. The record contains no evidence establishing the salary for promoters. In his decision, the director noted that the petitioner had failed to take into account the part of the income derived from means other than instruction, such as promotions.

On appeal, counsel continues to argue that the petitioner’s annual salary “grossly exceeds” the wage surveys from the Occupational Outlook Handbook for athletes, coaches, and related workers. As the petitioner does not seek classification as an athlete or coach, we can only assume that an “instructor” fits in this list as a “related worker.” We do not, however, find that the petitioner’s work as a promoter can be considered in the category of “related worker.” As the petitioner is both an instructor and a promoter, we agree with the director that there is no evidence to demonstrate what portion of the petitioner’s annual income comes from his occupation as an instructor versus that of a promoter. As such, we are unable to determine whether, for the two occupations combined, the petitioner has actually commanded a high salary or significantly high remuneration for his services.

On appeal, counsel for the petitioner also argues:

The decision [of the district director] is myopic and does not address the broad success of [the petitioner]. Rather than consider the evidence as a whole, the decision looks at each piece, and without any easy reference to compare to, erroneously diminishes its importance.

We are not persuaded by counsel’s argument. The regulation clearly breaks down the evidence that must be submitted in order to establish a claim that a petitioner meets the definition of extraordinary ability. For counsel to argue that the district director was in error for judging evidence in accordance with each separate criterion, rather than as a whole, is simply without merit.

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. The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in his field. The classification is not meant to be easy to obtain and is for individuals at the rarefied heights of their respective fields. An alien can be successful, but still not have obtained sustained national or international acclaim and be considered at the top of the field.

As in this case, an alien who is not at the top of his or her field will be unable to submit adequate evidence to establish such acclaim. The petitioner has not presented any evidence that establishes he has obtained or sustained national or international acclaim as [REDACTED] competitor. The petitioner does not appear to have been an active competitor in the sport since the late 1980s. Further, the record contains no evidence that the petitioner has sustained national or international acclaim as [REDACTED] instructor or promoter.

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.