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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 26 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The petition 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, education and business.[1] 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.

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 has 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 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.

This petition, filed on February 28, 2003, seeks to classify the petitioner as an alien with extraordinary ability as an Aikido Master. 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

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[1] In her letter accompanying the petition, counsel stated that the petitioner is seeking visa preference classification as an alien of extraordinary ability in the arts. In her response to the director's request for evidence (RFE) dated April 21, 2003, counsel claims the petitioner is an alien of extraordinary ability in the arts, education and athletics. On appeal, counsel claims the petitioner is an alien of extraordinary ability in business, education and athletics.

three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

On his Form I-140, Immigrant Petition for Alien Worker, the petitioner indicated that he intended to "[expand] ongoing efforts of traditional Yoshinkan Aikido [instruction] at private seminars and at public colleges." The petitioner submits no evidence that meets the requirements of the regulation at 8 C.F.R. § 204.5(h)(5), which provides:

> Neither an offer for employment in the United States nor a labor certification is required for this classification; however, 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 work in the United States.

Counsel asserts in her letter accompanying the petition that the petitioner "developed" the International Yoshinkan Aikido Federation (IYAF) centers in Huntington Beach and Long Beach, California, and hopes to open more farther south. Thus it appears that the petitioner is seeking visa classification preference in the fields of athletics, education and business. To be eligible for visa preference classification, the petitioner must establish that he has sustained national or international acclaim in athletics, education or business.

In his decision, the director stated, "Even if the petitioner fulfills three of the criteria, it does not necessarily mean that he or she has achieved sustained national or international acclaim and recognition and therefore, mandate a finding of eligibility." This is an erroneous statement. Clearly, if the petitioner satisfies three of the regulatory criteria, he will qualify for the visa classification. However, the petitioner must do more than submit evidence addressing at least three of the criteria. The evidence in support of each criterion must qualitatively satisfy the criterion through extensive documentation indicating national or international acclaim.

Through counsel, the petitioner has submitted evidence that, he claims, meets the following criteria. We note that the translations submitted by the petitioner do not comply with the provisions of 8 C.F.R. § 103.2(b)(3), which requires that documents submitted in a foreign language "shall be accompanied by a full English translation which 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." The translations provided with documents submitted with the petition and in response to the RFE contain some variations in the translations, and none are accompanied by a certification from the translator. Such evidence is insufficient proof under the regulation.

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

The petitioner claims to meet this criterion based on his appointment as "IYAF's Senior Foreign Instructor." A certificate dated December 14, 1985 certifying that the petitioner "has been appointed to represent Yoshinkan Aikido in Europe" is apparently intended to provide evidence of this appointment. However, as

noted above, the translations accompanying this certificate do not comply with the regulatory requirements; further there is nothing in the translations that establishes this appointment as a nationally or internationally recognized award for excellence.

Counsel argues that the petitioner is only one of three "non-Japanese individuals ever awarded a 'live-in Student 5th' degree black belt ranking for outstanding practice in Aikido, in addition to many lesser awards." The petitioner submits a copy of what is described by one of the two translations accompanying it as a "diploma," certifying that he has met all requirements for the Uchideshi 5th Dan in Aikido. Another certificate indicates that the petitioner has satisfied all of the requirements of the "selective UCHIDESHI live-student program – a Japanese traditional special apprenticeship reserved to elite students." Other certificates reflect the petitioner's advancement from first-degree dan to fourth degree. None of the translations provided with the documents comply with the regulation and, as noted previously, substantive variations appear between the translations provided with the petition and those provided with the RFE. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Nothing in the translations or in the letters submitted in support of the petition identifies the petitioner's achievements as nationally or internationally recognized awards for excellence. As noted by the director, the petitioner's receipt of the Uchideshi certificates may evidence that he enjoyed training privileges not available to most, but that alone does not establish that he meets the requirements of this criterion.

Counsel asserts that there are no awards that fit within this criterion for excellence in instruction, and we note that the petitioner also provides no evidence that he meets this criterion as an alien of extraordinary ability in business.

The petitioner has not established that he meets this criterion.

> *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.*

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. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

Counsel asserts that the petitioner meets this criterion based on his participation in the design and implementation of the IYAF. On appeal, counsel argues that the director's determination that the petitioner did not meet this criterion is based on a fundamental lack of understanding of Yoshinkan Aikido and "comparable evidence" in the nature of expert opinions should be considered. The evidence is unambiguous that the IYAF is an organization of schools that teach Yoshinkan Aikido. There is no need for expert opinion

to clarify this issue. The petitioner is not a school, and provides no evidence that he is an individual who belongs to an organization comprised of schools. Further, the evidence does not establish that membership in the federation is based on outstanding achievement by its member schools. The petitioner's contribution to the design and implementation of the IYAF is considered under a separate criterion. The evidence does not establish that the petitioner meets this criterion.

> *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 order to meet this criterion, published materials must be primarily about the petitioner and 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. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

As evidence that he meets this criterion, the petitioner submits letters from the editors of the *Black Belt* magazine and the *Aiki Journal*. Although both of the editors indicate that the petitioner's story is "remarkable and unique in the world of traditional Japanese aikido," neither indicates that the petitioner has been the subject of an article in their magazines, and the petitioner presents no such evidence.

The petitioner submits a page from *The Encyclopedia of Aikido* labeled P-R, with the petitioner's name listed among several others. His photograph is accompanied by a six line professional biography. A listing in a professional directory is not published material about the petitioner as required by this criterion. The petitioner and his work are not spotlighted and do not receive more attention than any of the other individuals listed in the directory.

The record includes a copy of a document entitled "A Celebration Yukio Utada Sensei's 25th Anniversary of Teaching Yoshinkan Aikido in the USA." The petitioner is listed as a guest instructor. An article in the June 1993 edition of *Aikido Yoshinkan International* contains an article reporting that the petitioner and another "sensei" had left Japan. The record does not establish the *Aikido Yoshinkan International* as a magazine or other print media. A document that the petitioner identifies as a page from the June 1984 edition of *Inside Karate* contains three pictures with the petitioner identified in a caption to one of the photographs as one of the martial artists "who have made the journey to 'Mecca.'" The accompanying article does not mention the petitioner. None of these publications contain written material about the petitioner within the meaning of this criterion. The evidence also does not establish that any of these publications constitute major trade or professional media, or other major media.

The petitioner submits an article entitled "Aikido Yoshinkan" and an accompanying translation that indicates it is from the *Journal of Brasil*. The translation does not comply with the regulation in that it does not identify the translator or contain a certification as to the accuracy of the translation. Further, although the translation indicates the petitioner was mentioned in the article, the translation reveals the article to be about Aikido Yoshinkan and an event held in Canada.

The record contains an excerpt from the book *Angry White Pyjamas*, in which the author journals his training with the Tokyo Riot Police. The excerpt submitted shows the petitioner mentioned on two pages in a book of more than 300 pages. This book is not about the petitioner and does not meet the requirements of this criterion.

The petitioner submits a page from several websites offering videos for sale in which the petitioner is featured. A couple of websites and a flyer announce the petitioner's participation at the 2002 and 2003 Aiki Expos. These documents are not publications about the petitioner and his work.

A 2000 edition of *Aikido Today Magazine* includes an interview with the petitioner; however, the petitioner submits no evidence to establish this publication as a major trade or professional medium. The petitioner submits a letter from Paul Higgins who describes himself as a "fixture in sports broadcasting on the national and international level since 1896." Mr. Higgins states that he produces and hosts several sports shows and on one of them, "Coach's Corner Live," he "highlighted" the petitioner and the martial art of Aikido. Mr. Higgins does not state when this interview took place. He also does not indicate that the show is seen on a national level. Mr. Higgins states the show can be seen on "Cox Communications Channel 3," implying that this is a local broadcast only.

The petitioner submits several documents in support of this criterion that do not mention him. For example, a 1999 article from the *Aikido Journal* is an interview with Kyoichi Inoue, an instructor in Yoshinkan Aikido. The article does not mention the petitioner. A book *Total Aikido* also appears to contain no evidence relative to this criterion.

The evidence of record does not establish that the petitioner meets this criterion.

> *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.*

The petitioner claims to meet this criterion based on his position as "Chief Foreign Instructor" and as technical director of the British Aikido Federation and the Yoshinkan Aikido Centers. The record reflects that the petitioner was an instructor in Yoshinkan Aikido, specifically instructing the Tokyo Riot Police. As noted by the director, part of the job responsibilities for an instructor is to evaluate and judge the work of students. Despite the fact that this distinction "baffles" counsel, the criteria are designed to assist the petitioner in documenting sustained acclaim. Simply doing one's job, without more, is not necessarily indicative of national or international acclaim.

The petitioner also submits a letter from Robert Twigger, a writer who states he is regarded as "one of the world's leading writers on aikido." Mr. Twigger states that the petitioner has been a "top judge at many Aikido events all over North America and indeed, the world." No other evidence regarding the petitioner's participation as a judge in Aikido events was submitted. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Counsel argues that Mr. Twigger's statement constitutes "comparable evidence" of this criterion as permitted by the regulation.

The regulation at 8 C.F.R. § 204.5(h)(4) states: "*If the above standards do not readily apply to the beneficiary's occupation*, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." [emphasis added]. The regulation makes clear that this provision applies only if the beneficiary's *occupation* cannot be evaluated under the ten enumerated criteria. Counsel does not suggest that this criterion does not apply to the beneficiary's occupation. She seems to suggest that CIS should accept lesser proof than would ordinarily be required to establish eligibility under the criterion. As the regulation does not require specific forms of evidence, counsel's assertion that this criterion can be established by "comparable evidence" involves an inaccurate reading of the regulation.

The petitioner has not established that he meets this criterion.

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

As evidence of this criterion, the petitioner relies upon his translation into English of the Japanese autobiography of the founder of Aikido Yoshinkan in Japan. The record reflects that the petitioner was one of the co-translators of the book *Aikido Shugyo*. The translation is described as a "watershed event for aikido enthusiasts" and is praised for giving its readers the feeling of being personally involved with the book's original author. On appeal, counsel argues that the petitioner's translation was an "original scholarly work" as there is nothing simple in translating Japanese to English. Nonetheless, regardless of the complexity of the translation, the petitioner has not shown that he made an original contribution to Aikido Yoshinkan through his translation of the book.

The evidence indicates that the petitioner contributed to the establishment of the IYAF. The IYAF is described as "crucial to the spreading and development of Yoshinkan Aikido." According to the evidence presented, the IYAF was established by Gozo Shioda, the founder of Yoshinkan Aikido, as a means to prevent "stagnation" in the development of this martial art form in individual countries. Although counsel asserts that the petitioner "designed" the IYAF, the record does not support this. Many of the authors of the letters of support refer to the petitioner as a "key" individual in the organization's development, one of its founders, or the "driving force" behind the IYAF's development. Ricardo Marranita, an instructor of Yoshinkan Aikido in Portugal, while stating that the petitioner was "instrumental and crucial in the development" of the IYAF, also states that "[o]nly the best and most trusted people were given this privilege." The copy of the web page from sdikeikan.com provided by the petitioner credits the development of the IYAF to Gozo Shioda, with the assistance of the petitioner and others. The evidence indicates that while the petitioner was not the creator or innovator of the organization, he may have played a major role in making the organization a going concern. No evidence, however, details his specific contributions to the establishment of the organization, or that he meets the requirements of this criterion.

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

The petitioner claims to meet this criterion based on his translation of the autobiography of Gozo Shioda, the founder of Yoshinkan Aikido in Japan. There is no evidence that the petitioner did more than translate the

book *Aikido Shugyo* from Japanese to English. This does not constitute authorship of a scholarly article in satisfaction of this criterion.

The petitioner also claims to meet this criterion based on his authorship of a book that has yet to be published. As the book has not been published, it cannot be used to satisfy the requirements of this criterion. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Counsel also claims the petitioner meets this criterion based on his videos demonstrating various Aikido techniques. No evidence indicates that these videos involve any form of written communication or that the petitioner created specific techniques involved in the video. The evidence does not establish that the petitioner meets this criterion.

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

Counsel asserts that the petitioner "regularly" performs at public exhibitions throughout the world. On appeal, counsel argues that by failing to determine that these performances satisfy the requirements of this criterion, the director failed to consider "comparable evidence."

The criteria enumerated in the regulations are designed to assist petitioners in establishing sustained national or international acclaim for a wide variety of occupations. Not every criterion will be applicable to every field of endeavor. The wording of this criterion strongly suggests it is for visual artists such as sculptors and painters. While the petitioner may demonstrate his martial arts techniques at public gatherings, no evidence establishes that these "exhibitions" are exhibitions in which the petitioner displays his original artistic works. As stated above, the "comparable evidence" language of the regulation does not apply to the evaluation of proof offered for an individual criterion.

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

To establish that he meets this criterion, the petitioner must show that he performed a leading or critical role for an organization or establishment, and that the organization or establishment has a distinguished reputation.

The petitioner claims to satisfy this criterion based on his role in establishing the IYAF. The evidence reflects that the petitioner is considered to have been one of the key architects in the development of the IYAF. As noted previously, however, no evidence details the specific contributions by the petitioner in the development of the organization. The evidence presented indicates he was one of the people who assisted the Japanese founder of this particular form of martial arts in developing the federation, and that his multilingual skills were valuable. However, the evidence establishes nothing further than that.

The evidence also reflects that the petitioner was one of the instructors who, under the auspices of the Yoshinkan Aikido World Headquarters (Yoshinkan Institute), instructed Aikido to the Tokyo Riot Police. No evidence establishes that his particular role in the teaching of the police was of a leading or critical nature to either the Yoshinkan Aikido World Headquarters or to the Tokyo police.

The record reflects that the petitioner served as technical director to the British Yoshinkan Aikido Federation for approximately two years. The evidence establishes that the petitioner's role was to assist in establishing the British federation, and therefore he played a leading role in that organization. No evidence establishes that the British Yoshinkan Aikido Federation has a distinguished reputation. The petitioner presents no evidence regarding this organization or its standing or reputation in the martial arts world of Yoshinkan Aikido.

The evidence does not establish that the petitioner meets this criterion.

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

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

In her response to the RFE, counsel stated that in support of these two criteria, the petitioner submits letters requesting him to "instruct, teach or demonstrate his Aikido abilities." The letters indicate that offers for the petitioner's services ranged from $400 per three-hour training session to $2,000 per clinic. The petitioner submitted no evidence of the compensation received by others in his profession, and no evidence that the value of his services is significantly high relative to others in the field.

Despite counsel's assertions, the last criterion is applicable to those in the performing arts, and would not be applicable to the petitioner's field of endeavor. None of the letters submitted by the petitioner provide evidence that satisfies these criteria.

Other comparable evidence.

As previously discussed, the regulation at 8 C.F.R. § 204.5(h)(4) provides for consideration of other "comparable evidence" if the enumerated criteria do not readily apply to the beneficiary's occupation. The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation. However, we will briefly address other evidence submitted by the petitioner under this provision.

The petitioner submits numerous letters in support of his visa classification preference petition. Information contained in these letters providing evidence in support of the ten enumerated criteria has been discussed under the appropriate criterion.

The authors all praise the petitioner as one of the few non-Japanese students who served as a live-in student of the founder of Yoshinkan Aikido in Japan. While this may be a significant achievement, this does not compare the petitioner's achievements to those who are of Japanese ancestry who perform well in the field, and does not evidence that he is among the very few at the top of his profession.

The authors also attest to the petitioner's skills as a martial artist and his value to Yoshinkan Aikido. Nonetheless, while not without weight, the opinions of experts in the field cannot form the cornerstone of a successful claim. The opinions must be supported by objective, verifiable evidence of for example, awards for excellence in the field or corroborating a contribution of major significance to the 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 and is one of the small percentage who has risen to the very top of her field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as an athlete, instructor and businessman 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 indicates that the petitioner is a talented and skilled martial artist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.