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

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 27 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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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

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted, the decision of the AAO will be withdrawn, and the petition will be denied.

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.

The petitioner filed an appeal dated June 9, 2003, asserting that a brief would be submitted within 30 days. On December 3, 2003, the AAO summarily dismissed the petitioner's appeal. On motion, counsel submits an appellate brief dated July 8, 2003. Thus, we will reopen the matter and adjudicate the appeal on its merits.

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 Citizenship and Immigration Services (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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a martial artist. 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). Counsel continues to argue that the petitioner's evaluation as a 7th level Dan black belt fulfills this requirement. Specifically, counsel states:

> There are 2,760,732 people obtaining a Dan (black belt) in the world. There are only 1,694 who have achieved the level of 7th Dan and only 105 in the United States. This clearly raises

> the beneficiar[y] to the category of extraordinary in his abilities and achievements in the field of Martial Arts. He has respectively earned that which a mere 0.00061% of Black belts achieve.

The record does not support these numbers. For example, the Internet materials submitted reflect that the World Tae Kwon Do Headquarters has certified 2,990,804 Dan-level black belts in Korea alone. Moreover, it is clear from the petitioner's certificates that the World Tae Kwon Do Headquarters is not the only entity certifying black belts. Moreover, the record does not contain a certificate from this entity certifying the petitioner as a 7th level Dan master. Rather, the entity certified the petitioner as a 6th level Dan master one month prior to the date of filing, although the certificate was only submitted in response to the director's request for additional documentation.

The record does contain evidence that the Korea Hap Kido Association certified the petitioner as a 7th level Dan master and an uncertified translation[1] of a letter from the association asserting that 7th level Dan masters are .04 percent of the five million practitioners of Hap Kido Worldwide. We do not find that comparing the petitioner with every individual worldwide who practices Hap Kido regardless of age or professional status is useful. For example, every major league player in professional sports is in the top one percent if compared with every non-professional and child athlete who plays the sport worldwide. Yet, 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."

Similarly, we find that a blanket rule for all 7th level Dan masters would not serve Congressional intent. The small number of 7th level Dan masters is a necessary, but not sufficient, factor to establish eligibility. Just because there are very few 7th level Dan masters does not demonstrate or imply that everyone who holds that rank enjoys national or international acclaim.

The record reflects that there are nine, rather than seven, Dan levels. The petitioner's documentation shows that Dan levels have a minimum age requirement. Given the experience requirements for the various Dan levels, no one under the age of 34 can qualify to test for the 7th Dan. If level of rank, and scarcity of individuals holding that rank, are indications of extraordinary ability as counsel implies, then the 8th and 9th Dan grand masters outrank the beneficiary and they, not the beneficiary, are at the top of the field. As it stands, progression to higher Dan rankings is contingent on skill and experience, not on acclaim or success in athletic competition. Dan rankings provide, at best, an incomplete picture of a martial artist's standing in his field.

While the director did not specifically address whether the petitioner's Dan level constitutes a major international recognized award, the director did conclude that the petitioner had failed to establish that Dan levels are lesser nationally or internationally recognized prizes or awards. We concur that an evaluation of skill level is not a prize

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[1] While the initial submission included a blanket certification of all translations submitted at that time, the subsequent submission did not include such a certification. 8 C.F.R. § 103.2(b)(3) requires that an applicant or petitioner submit full certified translations of any document containing a foreign language.

or award. 8 C.F.R. § 204.5(h)(4) only permits comparable evidence for the 10 alternative criteria discussed below. Thus, we find the petitioner has not demonstrated a major, international recognized award, such as an Olympic medal.

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 has submitted evidence that, he 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.

For the reasons discussed above, we do not find that the petitioner's certification as a 7th level Dan master in Hap Kido and lesser certification in other martial arts is a lesser nationally or internationally recognized prize or award. 8 C.F.R. § 204.5(h) only permits comparable evidence to meet a criterion where that criterion does not apply to the alien's field. Given the other evidence of record, it is clear that lesser nationally or internationally recognized awards are issued in the alien's field. Thus, this criterion is applicable to the petitioner's field and we need not consider comparable evidence.

While counsel initially asserted that certificates of appreciation were evidence to meet this criterion, counsel no longer advanced that claim in response to the director's request for additional documentation. The director did not consider these certificates in his final decision and counsel raises no objection to that omission on appeal. We concur that certificates of appreciation are not evidence relating to this criterion.

The petitioner submitted certificates verifying prizes and awards for a "remarkable record" at a Tae Kwon Do competition at Yonsei University in 1985, the national classified game in 1985, the preliminary contest for the Seoul area in 1985, the 20th President Pennant sponsored by the Korean Tae Kwon Do Association, the Seoul Mayor's Pennant contest for preliminary middle school, high school and college in 1986 (first ranked), 1987 (second ranked) and 1988 (third ranked), the 11th Taekeukkwan Martial Arts Championship Series in 1991 (first rank), and a "trophy" competition sponsored by the Seongdonggoo Taekwondo Association in 2001. The petitioner also submitted other certificates verifying participation in other competitions.

In response to the director's request for additional documentation, the petitioner submitted an uncertified translation indicating that in 1985 he won third place at the "National Assort Athletic," the President's Cup, and National College and first place at Yonsai University. With the exception of the National College competition, where the petitioner competed as a member of the SungKyun University team, the petitioner competed as a member of the SungDong High School team. The petitioner also attached information asserting that the competitions were continuously held.

The director concluded that the petitioner had not submitted evidence regarding "the origination, purpose, significance and scope of each award." On appeal, counsel cites *Buletini v. INS*, 860 F. Supp. 1222 (D.D. Mich. 1994), for the proposition that the plain language of the awards themselves is sufficient to establish their significance. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. Regardless, a reading of the entire discussion of the

award, both on page 1225 and on pages 1230-1231 reveals that the award in that case was issued by Albania's highest legislative body and signed by the President of the Republic of Albania. The court, while noting that the language of the award was related to the petitioner's field, was most concerned that the Service Center had questioned whether the award had any significance outside Albania.

In the instant case, the director did not question whether the awards had any significance outside of Korea. Moreover, the plain language of the competitions and evidence provided reveals that the petitioner only competed against other high school and college students through 1988. We cannot conclude that competitions restricted to students, excluding the most experienced members of the field, demonstrate the petitioner's position as one of the very few at the top of the field.

The 2001 award, based on the plain language of the award, appears limited to competitors in the Seongdonggoo District. A district award limited to competitors in the district is not evidence of national acclaim. The record contains little evidence regarding the 1991 award. Regardless, the petitioner received this award 11 years prior to filing the petition. Thus, even if the petitioner had established that the 1991 award is nationally recognized, he would need to demonstrate other evidence proximate to the date of filing in order to establish sustained acclaim as of that date.

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 response to the director's request for additional documentation, counsel asserted that the petitioner's Dan level certifications could serve to meet this criterion. The director concluded that the record lacked evidence that the organizations certifying the petitioner were exclusive organizations that require outstanding achievements of their members. On appeal, counsel notes that the petitioner submitted information on Dan certification by the World Tae Kwon Do Federation and Korea Hap Kido Association.

We cannot conclude that certification at any Dan level is an outstanding achievement. Thus, the "membership" in these certifying entities cannot serve to meet this criterion. We find that the promotion of skill levels through the acquisition of experience and skill is not akin to the type of membership in exclusive associations contemplated by the regulations.

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 response to the director's request for additional documentation, the petitioner submitted a manual for Hwa-rang Youth Training featuring a picture of the petitioner. The director concluded that this manual cannot be considered published material "about" the petitioner. Counsel does not challenge this determination on appeal and we concur with the director for the reasons stated in his decision.

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 response to the director's request for additional documentation, counsel references the following appointments as evidence to meet this criterion: Chairman of the Technical Committee of the International Hanmoodo Association in 1995, an umpire by the Committee of the National Alumni All Round Martial Arts Championship in 2002, a member of the umpire committee during the 20th National Hap Ki Do Martial Arts exhibition game and championship series in 1992, and a third junior grader umpire by the Korea Hwa Rang Youth Foster Association in 1994. The petitioner also submitted a list of nine national and one international Hap Ki Do competitions he judged between 1992 and 2000 and three youth Hwa-Rang competitions he judged in 1995, 1996 and 2000. The list, which is partially in English and partially in Korean, is not on letterhead and does not bear a seal or signature. The full English translation is not certified.

The director concluded that the record lacked corroborating evidence of the petitioner's claims to have judged competitions, suggesting that evaluation sheets should have been submitted. On appeal, counsel argues that the director's conclusion went beyond the regulations and constituted an abuse of discretion. Counsel notes that the court in *Buletini v. INS, supra*, found that the regulations do not require a showing that participation as a judge required extraordinary ability.

While we question the director's suggestion that the petitioner should have submitted evaluation sheets, we do not find that requiring evidence to support one's claims is augmenting the regulations. 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). As stated above, the record contains no evidence that the list of competitions judged comes from an official source. The certificates of appointment are ambiguous. While they suggest that the petitioner received a license to referee, they do not establish that he actually served as a judge. It remains, the record contains no programs for competitions identifying the petitioner as a judge or certification from an official source confirming the competitions at which he judged.

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

In response to the director's request for additional documentation, the petitioner submitted evidence of his membership in the 1991 Blue Dragon Demo Team. The materials submitted reflect that the team was created to focus on teamwork and developing Tae Kwon Do. The director concluded that this criterion was applicable only to performing artists. On appeal, counsel asserts that the director's conclusion augments the regulations.

The regulation requires display at *artistic* exhibitions and showcases. Thus, it is not augmenting the regulations to restrict this criterion to artists, although we find that the regulation is more relevant to visual artists than performing artists. The question is whether the petitioner's 1991 membership on a demonstration team is comparable evidence to meet this criterion, which is clearly inapplicable to his field. This office consistently holds that evidence submitted to meet a criterion must be evaluated as to whether it is indicative of or at least consistent with national or international acclaim. Thus, a visual artist, who must display his work to some degree in order to make a living in his field, must demonstrate that his work appeared in exclusive exhibitions. Without further evidence regarding the Blue Dragon Demo Team, including its reputation, membership criteria and the venues where it performed, we cannot conclude that membership on this team is comparable to the exclusive artistic exhibitions and showcases required under this criterion. Finally, we note that the petitioner's membership on this team occurred 11 years prior to the date of filing and is not evidence of sustained acclaim.

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

The director concluded that the petitioner's commendations and letters of appointment could not serve to meet this criterion. Counsel does not challenge this conclusion on appeal other than to assert that the petitioner's appointments to "positions of prestige in national martial arts organizations" is "documentation of a general nature that establishes the petitioner is an alien of extraordinary ability."

In addition to the appointment letters discussed above, including the one appointing the petitioner as the Chairman of the Technical Committee of the International Hanmoodo Association, the record includes a 1991 appointment as Deputy Director of the protocol section for the First Contest for the Minister of Sports and Youth, a 1997 appointment as general director for the Korea True Swordsmanship Association, a 1999 confirmation of the petitioner's position as a Deputy Chairman of the awarding subcommittee of the Korea (Hap) Ki Do Association, and a 2000 appointment as a guidance director for the Hwa-Rang Youth Martial Arts and Swordsmanship Federation. The record does not contain an organizational chart for these entities, job descriptions or other evidence of how these positions constitute leading or critical roles for the organizations as a whole. Moreover, the record lacks evidence that these organizations enjoy a distinguished reputation nationally. We note that we do not "augment" the regulations by requiring evidence to establish every element of a regulatory criterion.

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, however, does not establish that the petitioner has distinguished him as a martial artist 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 shows talent as a 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 AAO's decision of December 3, 2003 is withdrawn. The petition is denied.