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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
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Washington, DC 20536

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: [redacted] Office: California Service Center Date: JAN 02 2004

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)

ON BEHALF OF PETITIONER:

PUBLIC COPY

[redacted]

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.

for Mari Johnson

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 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 --
> >
> > > (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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a Wushu Qigong teacher and performer. 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 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.

The petitioner received the title of First Class Wushu Master of Sichuan Province in 1995. The City of Monterey Park awarded the petitioner for "Best Performance" for his performance at the 2002 Family Fun Moon Festival. In 1995, the Organization Committee of International Traditional Wushu and Unique Feats awarded the petitioner the Extraordinary Outstanding Award at the Wushu Self-Select Item Performance Contest at their tournament in Taizhou, China. At the same tournament, the petitioner won third place at the Wushu Compulsory Item Performance Contest. The petitioner won first place in the 70 kg group of the Western Sichuan Traditional Wushu Challenge Contest in 1986. In the same year, the petitioner won first place in Chinese Boxing at the Second Wenjiang County Public Sports Meet.

In his request for additional documentation, the director concluded that the above awards appeared to be local and requested additional information regarding the significance of the competitions.

In response, the petitioner submitted a letter from Carol Tung, Director of YES Marketing, which sponsored the Family Fun Moon Festival. She asserts that they invite performers from different countries to perform. She further asserts that the award was presented to the petitioner and his partner after YES Marketing determined that the petitioner and his partner stood out from the other performers. The petitioner also submitted a flier for the festival advertising "National level Chinese Unique Fests [sic] Performance."

The petitioner also submitted his identification card as an athlete competing at the International Traditional Wushu and Unique Feats Tournament. A program for the tournament identifies the tournament as "a grand event in the circle of Wushu enthusiasts in the world." The program lists 27 countries that, according to counsel, represent the countries from which the competitors originate. The remaining documents reveal that Wushu athletes from several Chinese provinces participated. The petitioner submitted a translation from a report on the event listing the ranking of six athletes who competed in the brick smashing competition; the petitioner was ranked third. The petitioner also submitted a partial translation of a list of 91 athletes who won Extraordinary Outstanding and Outstanding awards.

The petitioner also submitted a certificate of appreciation from the Tiger Claw Foundation for a performance contribution at their benefit gala. A letter from Gigi Oh, Publisher of *Kung Fu Qigong Magazine*, a division of Tiger Claw Martial Arts Supplies, asserts that 400 athletes performed at the gala and only the top ten, including the petitioner and his partner, were issued Extraordinary Performance Awards. The record does not contain an Extraordinary Performance Award issued by Tiger Claw.

Finally, the petitioner submitted a Best Performance Award for his performance at the 2003 Chinese New Year Lantern Festival and another such award from the Chinatown Business Improvement District for his performance at the 2003 Chinese New Year Festival. An accompanying letter indicates

there were only 15 athletes who participated in the latter event. Regardless, the awards were issued after the date of filing.

Counsel conceded that the remaining awards submitted initially were local or regional awards. The director concluded that the petitioner had not established how many athletes competed in the brick contest at the International Traditional Wushu and Unique Feats Tournament or the significance of the Extraordinary Outstanding Award also issued to the petitioner at that competition. The director further concluded that the petitioner had not demonstrated that the Family Fun Moon Festival is recognized outside of Monterey Park. Finally, the director concluded that the certificate from the Tiger Claw Foundations was a certificate of appreciation, and not a competitive award for excellence.

On appeal, counsel asserts that 150 athletes "participated in the competition" in 1995 and that only three awards were issued: first, second, and third place. Counsel notes that a list of winners was submitted with six names ranked first through sixth. Counsel further asserts that of the 300 competitors at the tournament, only 23 were awarded Extraordinary Outstanding Awards.

Counsel does not contest the director's conclusions regarding the remaining awards and we concur with the director's conclusions and reasoning regarding those awards. Thus, it remains to determine whether the petitioner's 1995 awards are sufficient to meet this criterion.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, counsel's assertions initially and on appeal regarding the number of athletes competing at the International Traditional Wushu and Unique Feats Tournament are insufficient. Nevertheless, the petitioner did submit evidence strongly suggesting that athletes from 27 countries competed at this tournament and that the athletes competing in the brick competition were ranked first through sixth with only one athlete ranked in each place. While the fact that a given competition happens to have competitors from different countries does not necessarily mean that the competition is internationally recognized as significant, the participation of 27 different countries is notable. The petitioner's case would certainly be bolstered, however, by national media coverage of the event. Regardless, even if we were to conclude that this competition was nationally or even internationally recognized, the award was issued in 1995, seven years prior to the date of filing. Thus, the petitioner would need to demonstrate more recent acclaim under one or more of the remaining criteria in addition to meeting a minimum of three criteria.

> *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 January 2000, the China O-Mei Strength Qigong Research Association appointed the petitioner Chief Coach of China O-Mei Strength Qigong for five years. In 2001, the petitioner was selected as an honorary chairman of the Wenjiang County Wushu Association. In 1999, the petitioner was appointed as a member of the China Unique Wushu Feats Research Association.

The director requested the minimum requirements for membership in the above associations. In response, the petitioner submitted a letter from Jian Wang, President of the O-Mei Kungfu Research Association. This appears to be another translation of the O-Mei Strength Qigong Research Association. Mr. Wang asserts that to become Coach General of the institute, one must be nationally influential, be one of the top Unique Hard Qigong Feat performers, have years of coaching experience with a great number of students, and be experienced in Hard Qigong performances.

In addition, the petitioner submitted a letter from the China Unique Wushu Feats Research Association asserting that they have 981 members and 29 counsel members, including the petitioner. The association asserts that counsel members must have mastered at least one feat at the international level, have initiated or developed that feat, be able to exert comparatively significant social influence, and have achieved outstanding results in two fields including academic education, Wushu level, social status, organizing ability, and judging ability.

The director concluded that neither letter submitted in response to the request for additional documentation adequately established the requirements for membership. On appeal, counsel argues that the letters did address the membership requirements and the petitioner, through counsel, resubmits the two letters discussed above.

The petitioner's position as head coach for the O-Mei Kungfu Research Association appears to be an employment position and not a membership. Thus, it is better considered under the leading or critical role criterion discussed below. The letter from the China Unique Wushu Feats Research Association asserts that it is a national association and lists several criteria for counsel membership. The letter implies that a counsel member must meet all of the criteria for recruitment. At least some of the criteria provided appear to be outstanding achievements. Thus, the petitioner has established that he 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.*

The petitioner submitted three articles about himself and his performance partner, Xueli Fu, in the *Chinese Daily News*, an article about a festival where the petitioner performed, and some advertisements of seminars and festivals where the petitioner was scheduled to appear or perform in the same paper.

The director requested documentation regarding the significance of the above publications, including the circulation of the *Chinese Daily News*. In response, the petitioner submitted information regarding the paper. Specifically, the paper asserts that it is the most influential Chinese newspaper in North America. The information also indicates, however, that there are three separate editions of the paper: the Los Angeles edition, the San Diego and Mid-West States edition, and the Texas edition. The Los Angeles edition is circulated in Los Angeles and Orange County only.

The petitioner also submitted a February 2003 issue of *Kung Fu Qigong* magazine with a photo of the petitioner performing with Grand Master Leung Ting on the front cover. The cover, however, only identifies Grand Master Ting. The petitioner is identified in several photographs inside the magazine. The letter from Ms. Oh identifies the magazine as "the leading English language publication on Chinese martial arts in the United States of America."

In addition, the petitioner submitted an April 2003 letter from Fabio Chang of Sky Link TV advising that they wished to televise the petitioner's performance. The petitioner also submitted a contract dated 2003 between the petitioner and Adelphia East Valley Public Access Cablecast Agreement. Finally, the petitioner submitted articles published in 2003 in the *Sing Tao Daily News*, the *Chinese Press*, the *International Daily News*, and the *Chinese Daily News*. The translator asserts that these are the top four Chinese newspapers circulated in the United States.

The director concluded that foreign-language newspapers that the majority of the population cannot comprehend are not major media. On appeal, counsel reiterates the circulation of the *Chinese Daily News*. Counsel further states that the petitioner is a newcomer to the United States and that he will "gradually" become known and influential.

The petitioner must demonstrate his eligibility as of the date of filing. 8 C.F.R. § 103.2(b)(12). *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Thus, the articles published in 2003 and the potential for the petitioner to become known cannot be considered. Thus, we must determine whether the *Chinese Daily News* constitutes major media. It is the petitioner's burden to demonstrate how a newspaper that is not published in a language that the majority of the population can comprehend constitutes major media. The materials submitted are not persuasive. That the *Chinese Daily News* is distributed in most states is not conclusive. Moreover, as stated above, the Los Angeles edition is not distributed outside Los Angeles and Orange County. The petitioner has not demonstrated that the coverage of his performances was published in an edition that was circulated nationally. We note that the local advertisements on the same pages as the articles are all for California professionals and businesses. One article appears to be taken from the World Journal section of the *China Daily News*. Even assuming this article was nationally circulated, most of the article discusses Master Xueli Fu's ability to have a stack of bricks on his head smashed with a hammer and emerge uninjured and is entitled "Unique Qigong, Unbeatable Iron Head." While the petitioner is named as the individual smashing the bricks, the article is not primarily about him. Thus, the petitioner has not demonstrated that he meets this criterion.

We note that most of the evidence relating to the other criteria purports to establish the petitioner's national acclaim in China. Yet, the petitioner did not submit evidence of any major media coverage in that country.

> *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 submitted letters attesting to his ownership of Wushu schools in China. In response to the director's request for additional documentation, the petitioner submitted photographs of him

leading Tai Ji exercises in a Los Angeles park. The director, based on decisions from this office, concluded that teaching or coaching students cannot serve to meet this criterion because those being taught or coached are at a lower level of professionalism. Counsel does not contest this conclusion and we concur with the director. We note that "judging" the work of one's students is inherent to the position of teacher and coach. We cannot conclude that every teacher and coach has sustained national acclaim.

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

In response to the director's request for additional documentation, counsel asserted that the petitioner has contributed to his field by carrying on and developing China's Tai Ji and Qigong feats for promoting health and appreciation. Specifically, counsel asserted that the petitioner's top level performances by pulling a car with his teeth, pushing a car with a spear at his throat, having a car roll over him, bending a steel bar using his throat, and breaking a pile of four or more bricks with his bare hands "discourages the majority of performers in the world who claim to have similar abilities." Counsel further stated that the Chinese military uses Qigong and that the petitioner could benefit the U.S. military by teaching such techniques. The record does not contain any correspondence from any branch of the U.S. military attesting to their interest in the petitioner. In addition, counsel asserted that the petitioner has developed Tai Ji to the highest level, as evidenced by his 1995 awards at the International Traditional Wushu and Unique Feats Tournament. Finally, counsel referenced the petitioner's awards, memberships, and press coverage. The director did not question the petitioner's strength and mental discipline, but concluded that the petitioner had not established that his feats constituted contributions of major significance in the field of martial arts.

On appeal, counsel asserts that "the petitioner is considered to be the father or founder" of a number of fields of Wushu. Counsel refers to letters from Xinliang Wu and Shutian Wang submitted previously. Mr. Wu, who has known the petitioner since 1980, is a member of the Refereeing Committee of China and has achieved 7th level Dan. The petitioner has achieved 6th level Dan. The highest Dan level is nine, held by only three people according to counsel. Counsel further stated that 60 individuals hold the rank of 8th Dan and that 600 individuals hold the rank of 7th Dan. According to counsel, those at level 7th Dan focus on writing theories on Wushu. Counsel asserted that the 1500 6th Dan level athletes are the best Wushu practitioners. The petitioner did not submit evidence to support those assertions.

Mr. Wu asserts that the petitioner "is recognized as the best person in mastering Fire Dragon Quan, Dunshuang Quan, and Shiping Quan." Mr. Wu continues that the petitioner "created a special training method for the Strength Qigong called Shenshuibaijin. Mr. Wu concludes that this method "enables the trainees to gain the ability in a very short period of time to lock one's throat" so that the trainee can withstand two teams of 10 people each pulling on a rope wrapped around his neck.

Shutian Wang has known the petitioner since 1986 and has been awarded a title identifying him as one of the "100 Chinese Wushu Elites." As quoted by the director, Mr. Wang asserts that the petitioner "is a typical traditional Wushu performer." As noted by counsel, however, Mr. Wang subsequently asserts

that the petitioner "is recognized as the best person in mastering Fire Dragon Quan, Dunzhuang Quan, and Shiping Quan."

The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition. The record contains no evidence that the petitioner's Shenshuibaijin training method has been widely adopted. Neither letter supports counsel's assertion that the petitioner is considered to be the father or founder of "a number of fields." Subjective opinions that the petitioner is recognized as being the best at certain forms of Wushu is not as persuasive as evidence that the petitioner has set officially acknowledged world or national records.

Counsel's request in his second submission that the petitioner's awards, memberships, and media coverage be considered evidence to meet this criterion is not persuasive. These achievements have been considered under the criteria to which they relate. Moreover, the petitioner's media coverage falls far short of being consistent with national acclaim.

In light of the above, the petitioner has not established that he meets this criterion.

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

The petitioner never claimed to meet this criterion. The director concluded that the petitioner's performances at competitions and festivals could not serve to meet this criterion. Counsel does not challenge this conclusion on appeal. We concur as this criterion applies to visual artists.

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

Xinliang Wu, a member of the Referring Committee of the China Wushu Association, asserts that the petitioner is the Principal of the Chengdu Hanbin Wushu School. As stated above, in January 2000, the China O-Mei Strength Qigong Research Association appointed the petitioner Chief Coach for five years and in 2001, the petitioner was selected as an honorary chairman of the Wenjiang County Wushu Association.

The director concluded that the petitioner had not demonstrated the reputations of the Chengdu Hanbin Wushu School or the Wenjiang County Wushu Association. Counsel does not challenge this conclusion on appeal.

Mr. Wu also asserts that the Chengdu Hanbin Wushu School "wins the honor of Model School almost every year from the government." Mr. Wu does not specify whether the government entity giving the award is central or local and the record does not include these awards. The record contains no objective evidence, such as national media coverage, establishing the national reputation of the China

O-Mei Strength Qigong Research Association. The Wenjiang County Wushu Association appears to be local in nature. Thus, we concur with the director.

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

While the petitioner never claimed to meet this criterion, the director noted that the job offer stipulating a salary of $35-$50 per hour was insufficient as no evidence allowing a comparison with other Kung Fu instructors was submitted. Counsel does not challenge this conclusion on appeal. We concur with the director's conclusion and reasoning and further note that the petitioner had not yet received this salary as of the date of filing.

In summary, the most persuasive evidence is the petitioner's 1999 counsel membership in the China Unique Wushu Feats Research Association and his awards at the 1995 International Traditional Wushu and Unique Feats Tournament. These two achievements cannot establish the petitioner's eligibility as they only address two criteria. Nor do they reflect that the petitioner has enjoyed sustained acclaim up until the date of filing.

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 himself as a Wushu performer 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 Wushu performer, 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.