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U.S. Citizenship and Immigration Services

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identity deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: WAC 99 033 50798 Office: CALIFORNIA SERVICE CENTER Date: JAN 21 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]

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.

Mari Johnson
for 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. 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 pertinent regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The petitioner coaches and competes in the martial art of Wushu. 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 which, 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.*

To show that the petitioner won an international prize as an athlete, the petitioner submits a copy of a certificate that reads, in part:

6th WORLD CUP MENDOZA ARGENTINA
WORLD-CUP CHAMPION

THE TOP HONORABLE CERTIFICATE

> This is to certify that ___[*the petitioner*]___ participated in the 6th World Cup International Martial Arts Championship in October, 1997 and obtained the World Top One Hundred Exceptional Martial Artists Gold Medal Award.

A second certificate is largely identical to the first certificate, except that the main legend reads "This is to certify that ___[*the petitioner*]___ participated the [sic] 6th World Cup in October 1997 and obtained outstanding prize at United State [sic] and Argentina." On both certificates, the petitioner's name is handwritten into an underlined blank space before the word "participated." In a joint letter, the petitioner and Lijuan Zang, vice president of US-Chinese Wushu University, state:

> The World Cup is recognized as the highest level of competition of Wushu in the world. Worldwide top renowned martial arts maters swam [sic] to participate. The 6th World Cup was held by the International Martial Arts/Kung Fu Federation (I.M.A.F.). The honorary chiefs of the federation are [Los Angeles Mayor] Richard Riordan, [California Governor] Pete Wilson, [former President] George Bush and [President] Bill Clinton.[1]

The certificate identifies Richard Riordan as the "Mayor of J. Riordan." A Spanish inscription correctly identifies the city as Los Angeles. The identities of the honorary chiefs is without consequence, because there is no indication that any of these individuals consented to, or were even aware of, their designation as honorary chiefs. A brochure reproduces congratulatory letters from President Clinton and the President of Argentina (whose signature is illegible), but it appears that these letters were provided as a courtesy rather than as an indication that the event had attracted these leaders' special attention.

Promotional materials in the record refer to the above event (which took place October 11 in Los Angeles and October 17-19 in Mendoza, Argentina) as the 6th World Cup Championships and 2nd International Chinese Medicine & Herbs Academic Seminar & Exhibition of New Products. The record contains no independent evidence to substantiate the petitioner's claim that "[t]he World Cup is recognized as the highest level of competition of Wushu in the world." We note that the petitioner has submitted letters from officials of various Wushu organizations in the United States (to be discussed further below); none of these officials makes any mention of the World Cup Championships or IMAF.

The record contains evidence regarding the petitioner's awards as a coach. In 1993, 1994 and 1995, the petitioner received awards as "the Outstanding Coach of Henan Province." This award is provincial rather than national or international. A 1992 certificate also appears to be provincial. The certificate, which recognizes the petitioner's "performance as a chief coach in planning and organizing the world's largest Wushu performance of competition," was issued by the Henan Office of the China National Physical Education and Sports Committee. There is no indication that the petitioner has received any formal recognition in China from national, rather than provincial, authorities. The petitioner calls this 1992 certificate an award, but there is no indication on the certificate itself that it is a prize or award, rather than simply an acknowledgment of the petitioner's participation in organizing the event in question.

Anthony Goh, president of the United States of America Wushu Kungfu Federation (USAWKF), describes that entity as "the official U.S. representative to the . . . International Wushu Federation (IWuF)" and "the governing

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[1] Apart from former President Bush, the named officials held those positions as of 1997, when the competition took place.

body for Wushu-Kungfu in the U.S." Mr. Goh states that the International Wushu-Kungfu Festival "is the official national event held by USAWKF." He makes no direct or indirect mention of any other national Wushu events in the United States, or of any other national or international Wushu organizations. Mr. Goh states that "[t]he IWuF holds its official World Wushu Championships biennially," with the 1997 event taking place in Rome, Italy. He says nothing about the World Cup Championships in Los Angeles and Argentina in 1997. At best, it appears that there are several rival organizations, each claiming governing authority over Wushu/Kung Fu.

Mr. Goh asserts that the petitioner's "two students won seven first place or second place awards" at the 1997 National and International Invitational Tournament in Baltimore, organized by USAWKF. Mr. Goh contends "[t]his event is one of the premier tournaments in the United States and represents the highest level of Wushu competition in this country." These awards appear to represent the strongest evidence the petitioner has submitted with regard to prizes and awards. While the petitioner himself did not receive these awards, as the coach of those who did win them, the petitioner is clearly responsible to some degree for the winners' receipt of the prizes. Therefore, the petitioner weakly satisfies 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 submits a partial translation of one newspaper article. *Xingdao Daily News*, identified as a Chinese-language newspaper published in San Francisco, reported on a 1998 martial arts tournament and exhibition. The headline mentions "presentations [in the] Bay Area," but the partial translation states that the tournament/exhibition "was held . . . in Oregon." The article is not about the petitioner, but rather contains a short mention of him, identifying him as "an international Wushu coach and judge." Three sentences devoted to the petitioner, in a single newspaper article, do not represent published materials about the alien. Furthermore, the petitioner has not shown that this newspaper represents major media. It appears to be a local publication, whose readership is further restricted by its publication in Chinese, a language not read by the majority of San Francisco Bay Area residents. The petitioner has not satisfied 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.*

Certificates in the record show that the petitioner served as a Vice Chief Judge and Vice President at the 1998 International Cup Open Martial Arts Championship Tournament and Masters Exhibition. A brochure reproduced in the record indicates that this two-day event took place at Aragon High School, San Mateo, California. It is not readily clear that significant international athletic competitions take place at public high schools.

Another certificate shows that the petitioner served as a judge at the 6th World Cup in 1997, held by the International Kung-Fu Federation (IKFF). The IKFF seal on the certificate is virtually identical to the IMAF seal on the documentation from the 6th World Cup discussed further above, and the certificates have other similarities as well, such as reproduced signatures of George Bush and other high officials. The IMAF documentations also display the seal of the International Kung-Fu Federation U.S.A., implying some degree of connection between IMAF and IKFF. If the 6th World Cup held by IMAF in 1997 was, in fact, the same competition as the 6th World Cup held by IKFF in 1997, then the petitioner was a judge and a competitor at the same competition.

Earlier certificates indicate that the petitioner judged at the provincial level in Henan Province. One certificate, issued by the China Zhengzhou International Shaolin Wushu Competition in 1991, reports the petitioner's "performance as a Judge in the Annual International Shaolin Wushu Competition." Overall, while some

individual instances of judging are at too low a level to qualify as national or international, the director determined that the petitioner has satisfied this criterion.

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

The petitioner claims that he satisfies this criterion owing to his "scholarly thesis in the field of Wushu." The petitioner's thesis, "Darmo Yi Hsing Jing," received the first place award from the Maiji Mountain Wushu Scholarly Research Seminar Committee in 1993. The record provides no other information about this thesis or its impact on the martial art of Wushu. An award from a seminar committee of undetermined importance cannot suffice to show that the petitioner's thesis represents an athletic contribution of major significance in the field. The record contains no evidence that the thesis was published in a major national or international journal or other publication.

Beyond the above criteria, the petitioner submits several witness letters. For the most part, the witnesses are martial arts instructors who assert that the beneficiary is an accomplished and respected athlete and coach. They identify no specific achievement on the petitioner's part except for the aforementioned medals won by his students.

Over a year after the petition's filing date, the petitioner submitted documentation of subsequent achievements. While these documents show that the petitioner remains active in the field, they concern events that took place after the filing date. Such events cannot retroactively establish that the petitioner was already eligible as of the filing date. A 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. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Also, the new documentation appears to be comparable to the documentation previously submitted, rather than providing compelling new evidence of sustained acclaim.

With regard to this new filing, we note that, generally, a petition must be complete at the time of filing. The director may request additional information, but there is no regulatory provision allowing the petitioner arbitrarily to supplement a previously filed petition.

The director denied the petition, acknowledging that the petitioner had attained some level of recognition, but finding that the petitioner has not established sustained national or international acclaim. On appeal, the petitioner submits copies of previously submitted documents, as well as copies of newer documents, showing more of the petitioner's achievements subsequent to the petition's filing date. As discussed above, the petitioner's activities after the filing date cannot establish eligibility if the petitioner was not already eligible as of the filing date.

Counsel discusses the evidence already submitted but does not overcome the director's findings regarding that evidence. 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).

Counsel asserts that the petitioner "invented 'Darmo Yi Jin Jing' theory and strategies, which combined martial arts gist and theory into modern medicine. His invention has helped to release stressful muscle and cure psycho illness." The claim that the petitioner's aforementioned thesis has significant medical value is wholly unsubstantiated. There is no evidence that the petitioner has become nationally or internationally known for

"Darmo Yi Jin Jing," or that it has been empirically verified to produce the effects claimed. Even if the method has some effect, it would not represent a contribution of major significance unless it could be shown to be substantially more effective than methods already available and in use.

Counsel claims the petitioner has satisfied a previously unclaimed 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.*

Counsel states that appellate Exhibit F documents the petitioner's membership in USAWKF. We note that Exhibit F consists entirely of four photographs, captioned "China International Shaolin Wushu Competition / Group Performance and Competition." The petitioner has submitted letters from USAWKF officials, but even if we inferred the petitioner's membership from these letters, the record is entirely devoid of evidence that USAWKF requires outstanding achievements of its members.

The record, as a whole, indicates that the petitioner is an experienced and accomplished athlete and coach in the martial art of Wushu. It does not, however, contain "extensive documentation" as required by statute to establish sustained national or international acclaim as an alien of extraordinary ability at the very top of the field of endeavor. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.