



U.S. Citizenship
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BJ

FILE: [Redacted]
EAC 05 050 52939

Office: VERMONT SERVICE CENTER

Date: **DEC 19 2005**

IN RE: Petitioner: [Redacted]
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:

SELF-REPRESENTED

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.

Maiphuson

§ Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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. 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 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 earned sustained national or international acclaim at the very top level.

This petition, filed on August 31, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a martial arts athlete. The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since August 3, 2001. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than three years), it is reasonable to expect him to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as an athlete in this country.

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 pertaining to 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 submitted the following:

1. "Honor Certificate" naming the petitioner a "National Outstanding Athlete in 1999"
2. Fill-in-the-blank certificate (undated) from the "Chinese Wushu Association" stating that the petitioner "passed the Wushu Dan Examination"
3. Fill-in-the-blank certificate (undated) allegedly issued by the "People's Republic of China Committee of Sports & Athletics" granting the petitioner "the honor of Martial Arts Hero"
4. "Certificate of Honor" from the "Bureau of Art & Literature of Shen Yang City" (September 2000)
5. Fill-in-the-blank "National Athletic Competition Honor Certificate" for achieving "Second prize of male Chopper skills" (1998)
6. Fill-in-the-blank "National Athletic Competition Honor Certificate" for achieving "Sixth Almightyness" (1998)
7. "Honor Certificate" stating that the petitioner won the "Ju Ling Cup Ten best Martial Arts Award" (November 17, 1990)¹
8. "Certificate of Honor" stating that the petitioner "won The Gold Award of Long Sword" at the 1997 "'Super Sai De Cup' . . . International Martial Arts Intercourse Competition"
9. "Certificate of Honor" naming the petitioner a "National Martial Art Outstanding Individual because of his outstanding performance in Martial Art Education in 1995"
10. "Certificate of Honor" from the "People's Government of Liaoning Province" naming the petitioner a "Single sport active individual" (1999)
11. Fill-in-the-blank "Certificate" stating that the petitioner achieved second place of "Middle and Young" in the "'99' China Qingdao International Wushu Championship."

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation that 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 accompanying the petitioner's award certificates were not certified as required by the regulation.

The petitioner also submitted what is alleged to be an article published in *Wu Lin* in 2000 stating that he was "youth group champion" at the "Beijing National San Da Challenge Competition." However, none of the certificates in items 1 through 11 correspond to this sporting event. The petitioner offers no explanation regarding the omission of first-hand evidence of his award from this competition.

¹ We note that the petitioner was born on February 25, 1984. On November 17, 1990, he would have been only six years old.

Interestingly, the petitioner has submitted awards limited to a ten-year period from 1990 to 2000 (or from age six to age sixteen). There is no evidence showing that the petitioner has received a significant award for which he would have faced competition from throughout his field, rather than his approximate age group within that field. A youth award may place the petitioner among the top juveniles in a particular sporting event, but it offers no meaningful comparison between the petitioner and the most experienced and practiced martial arts professionals. In this case, the petitioner's youth awards fail to demonstrate that he "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). Further, there is no evidence showing that the petitioner has won any significant athletic competitions in China or the United States subsequent to 2000. The absence of such awards indicates that the petitioner has not sustained whatever acclaim he may have earned as a youth in China during the 1990's.

In regard to items 5, 6, 7, 8, and 11, we note that large-scale competitions typically issue event programs listing the order of events and the names of the participating athletes. At a competition's conclusion, results are usually provided indicating how each participant performed in relation to the other competitors in his or her events. The petitioner, however, has provided no evidence of the official comprehensive results for the competitions for which he submitted award certificates.

In regard to items 4 and 10, we find that these awards reflect local or provincial recognition rather than national or international recognition.

In regard to items 1 through 11, the petitioner has not submitted evidence showing the degree of recognition accorded to his awards. The evidence submitted by the petitioner does not indicate the total number of certificates distributed, the criteria used in determining recipients, or the level of publicity associated with the award presentations. We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence showing that the certificates presented under this criterion enjoy significant national or international stature. Simply alleging that an award is nationally recognized cannot suffice to satisfy this criterion. In this case, the record includes no supporting documentation from the awarding entities confirming the authenticity of the petitioner's awards.

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 order 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 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. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted what is alleged to be his membership certificate for the Chinese Wushu Association (CWA) indicating "Dan: 7." In response to the director's request for evidence, the petitioner submitted what he alleges is a copy of the "Chinese Wushu Association's grade system." This document includes no address, phone number, or any other information through which this association may be contacted in order to verify the information related to the petitioner or the validity of his individual membership status. According to the grading system document, beyond Dan 7, the petitioner's level, there exist the more advanced levels of 8 and 9. The petitioner does not explain how attaining level 7 demonstrates that he "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). Nevertheless, the information provided in the "grade system" document does not establish that admission to membership in the CWA required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

The petitioner also submitted what is alleged to be his membership certificate for the Shanghai Wushu Association (SWA). We note, however, that this is a local association rather than a national association. Further, the petitioner has not submitted evidence of the membership bylaws or the official admission requirements for this association. There is no evidence demonstrating that admission to membership in the SWA required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

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 for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

The petitioner submitted two articles allegedly published in *Wu Lin* and *Liaoning Daily News* in 2000. The translations accompanying these articles were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the petitioner is not the primary subject of the article in *Liaoning Daily News*. There is no evidence showing that these publications have substantial national readership or that the petitioner has been the subject of published material in the United States or China subsequent to 2000. In this case, we find no evidence to demonstrate that the petitioner has earned sustained acclaim in the national media of China or the United States.

² Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

In this case, the petitioner has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the 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.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "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 her work in the United States." The record contains no such evidence.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.