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U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 03 2005

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:

[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

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 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 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 she has sustained national or international acclaim at the very top level.

Part 6 of the petition indicates that it seeks to classify the petitioner as an alien with extraordinary ability as a martial artist. In response to the director's inquiry as to how the petitioner intended to continue in her field, the petitioner stated that she intended to "open an elementary training center in the [sic] New York City." She does not indicate that she intends to support herself as an athlete.

The regulation at 8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." The petitioner, however, intends to work as a coach/trainer in the United States. While a martial arts athlete and a martial arts trainer certainly share knowledge of martial arts, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, xtraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Nevertheless, recently this office has recognized that there exists a nexus between playing and coaching a given sport, although we will not assume that every extraordinary athlete's area of expertise includes coaching. In this matter, however, we need not examine whether the level at which the petitioner has coached indicates that coaching is within her area of expertise, as she has not established sustained national or international acclaim as an athlete.

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, she claims, meets the following criteria.[1]

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

Initially, the petitioner submitted evidence of two first place prizes at the Fifth International Chinese Martial Arts Tournament of Canton in 2001. The categories were Form and The petitioner asserted:

> This award is open to martial artists who has [sic] great talent in the field of martial arts internationally. Candidates are selected strictly by experts in the relevant area, among which only a small percentage win the prize, especially to [sic] the first prize.

The director requested additional evidence regarding the significance of the 2001 awards. In response, the petitioner submitted information about the 2001 awards and awards not previously claimed or documented.

of the for Martial Arts in Ohio, which sponsors the International Chinese Martial Arts Tournament, certifies that the tournament involved 400 competitors "from almost every country" and that only three awards are issued. As the petitioner won two first place awards, we presume that eant that the competition awards three awards in each category.

The petitioner also submitted a certificate for first prize, Female "Group B" in at the Qingdao International Wushu Championship in July 2002 and a certificate for First Place of Female elder group at the Qingdao "Wan Tong Cup" national Tai Chi Fest and Tai Chi Sword competition in November 2000. A certificate affirms that the China Qingdao Fourth International Wushu Championship is sponsored by Qingdao on behalf of China, with 580 competitors from over 50 "countries or districts." According to the certificate, the championship issued three awards in the female group of Tai Chi Sword, with the petitioner winning the first

[1] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

prize. A certificate from the Qingdao Tai Chi Fist Committee affirms that the Qingdao Wantong competition is a national competition held in Qingdao. Three hundred individuals competed, 40 in the most advanced levels, with three levels of awards granted.

The petitioner's response regarding this criterion is the first example of a pattern whereby the petitioner responds to the director's concerns regarding the significance of certain accomplishments by submitting evidence of different accomplishments. Such submissions are not necessarily responsive to the director's concerns.

The director concluded that the petitioner had not established the significance of the above awards. On appeal, the petitioner submitted the brochure for the 2002 China Qingdao Fourth International Wushu Championship and two affidavits from Jin Wang regarding Internet search engine "hits" relating to the Qingdao International Wushu Competition and the International Chinese Martial Arts Tournament of Canton.

The brochure indicates that the various groups in each division are based on age. Group B is "juvinile [sic]: 13-18 (including 18.)" The petitioner is listed in the program as Group F, or "elder: aged 51-60 (including 60)." The petitioner's award certificate, however, indicates that she received first prize in "Group B,"[2] although she was well over 18 in 2002. Similarly, one of the petitioner's references, a national referee, also asserts that the petitioner won in Group B. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states:

> It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

The discrepancy between the program and the award certificate renders the award certificate suspect. The petitioner has not resolved that discrepancy. Similarly, the reference letter, purportedly from a national referee who can be expected to know age group labels, also has reduced evidentiary value.

As stated above, the award certificate for the Qingdao International Wushu Competition is not credible without a documented explanation for listing the wrong age group for the petitioner. We further note that the newspaper articles submitted on appeal, while dated on the final date of competition and the day after competition ended, confirm the petitioner's participation but do not indicate that the petitioner won any awards at this competition. The record contains no explanation for this omission if the petitioner won the awards submitted.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Thus, the discrepancy in group letter and the failure of the newspaper articles to confirm the petitioner's awards forces us to look more carefully at the remaining awards. The petitioner indicates that she entered the United States in December 2002 on a nonimmigrant B-2 visa. According to the copy of her passport submitted with the accompanying Application to Register Permanent Residence or Adjust Status, her passport was issued on June 17, 2002. The record contains no evidence that the petitioner was even in the United States in October

[2] The certificate also includes the Roman letter "B" contained within the Chinese language portion of the certificate. The Chinese portion, however, does not include the Roman letter "F". Thus, the "F" that appears before "Group B" in the English portion appears to refer to "female."

2001, when the International Chinese Martial Arts Tournament of Canton took place in Ohio. While we might not always require such evidence, given the discrepancy discussed above, we are justified in our concern.

asserts that Chinese character Internet searches produced 4,110 entries about the Qingdao International Wushu Competition and 51 entries relating to "Hall of Fame," also known as the International Chinese Martial Arts Tournament of Canton. For the reasons stated above, however, the evidence that the petitioner won awards at those competitions has reduced evidentiary value. The record contains little documentation regarding the significance of the Wan Tong Cup Award in 2000. In light of the above, we concur with the director that the petitioner has not established that she meets this criterion as a martial artist.

Moreover, as stated above, the petitioner intends to work as an instructor. This office generally accepts evidence of nationally or internationally recognized awards or prizes won by students while under the alien's tutelage to constitute comparable evidence to meet this criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). While the petitioner submitted a list of students on appeal, the record contains no evidence that any of these students has won any nationally or internationally recognized awards or prizes while under the petitioner's tutelage. Thus, the petitioner has not established that she meets this criterion as a martial arts instructor.

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.

The petitioner initially asserted that she would provide evidence relating to this criterion at a later date. The director inquired as to the significance of any memberships. In response, the petitioner submitted evidence of her membership in the Qingdao Tai Chi Fist Committee as of 1997 and in the Qingdao Hai Jian Tai Chi Fist Club as of 2001.

The petitioner submitted a "partial English translation" of the club rules for the Qingdao Hai Jian Tai Chi Fist Club. The partial translation reflects that the third chapter relates to membership, but the petitioner did not provide a translation of that chapter. President of the Qingdao Martial Arts Committee, asserts that there are "several Tai Chi committees all over China and among which, Qingdao's committee is one of the best, and almost the most important one." continues that membership on the committee is limited to "those who have received outstanding award and [are] very proficient in this field." A certificate from the Qingdao Tai Chi Fist Committee limits membership to those "who have been granted awards and possess very high talents in this field."

The director concluded that the petitioner had not established the exact criteria for membership. On appeal, the petitioner submits yet another membership. Specifically, the petitioner submits evidence of her membership in the Chinese Tai Chi Chuan Expert Association as of August 2002. According to a certificate from the association, membership is limited to those "who have the Tai Chi Chuan Expert Qualification and have achieved extraordinary achievements in the recent national and international Tai Chi Chuan competitions." The petitioner provides no explanation for not submitting this national membership initially or in response to the director's request for additional evidence in addition to the local memberships submitted prior to appeal. Once again, the petitioner has responded to concern about the significance of an accomplishment by submitting evidence of a different accomplishment.

Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's request for evidence. *Id.* While the petitioner was not specifically requested to submit *all* of her memberships, it is clear from the cases cited above that new materials submitted on appeal are disfavored.

The Qingdao memberships are, by definition, local. The petitioner has not established that they require outstanding achievements as judged by recognized national or international experts in the field. The national membership submitted on appeal, which also appears to relate to her abilities as an instructor, has somewhat reduced evidentiary value given the petitioner's failure to claim this membership previously. Regardless, without the official bylaws of the association that list the specific criteria for membership, as opposed to the general phrase "extraordinary achievements," we cannot determine whether the association truly requires outstanding achievements of all of its members.

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 initially asserted that she would provide evidence relating to this criterion at a later date. The petitioner did not, however, provide such documentation prior to her appeal. On appeal, the petitioner submits two articles primarily about the Qingdao International Wushu Championship in *Da Zhong Daily* and *Qingdao Daily*. Curiously, while the brochure submitted on appeal lists the dates of the competition as July 8 through June 11, 2002, the newspaper articles, dated July 11, 2002 and July 12, 2002, do not indicate that the petitioner won any awards at the competition. Rather, they indicate that she participated. Regardless, the articles are not primarily about the petitioner; they are about the competition itself. Moreover, the petitioner did not provide evidence that either paper has a national circulation. As such, the petitioner has not established that the articles appeared in major media. Finally, the articles are not about the petitioner's abilities as an instructor. In light of the above, we find that these articles cannot serve to meet 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 initially asserted that she would provide evidence relating to this criterion at a later date. In response to the director's request for additional evidence, the petitioner submitted evidence that she was appointed as a "First Grade Instructor of Shandong Province Martial Art School." The certificate allows the petitioner "to teach martial arts Tai Chi Chuan within Shandong Province with this Certificate; also is allowed to participate in grading[,] [t]raining and the related competition and exchange [a]ctivities, etc." The petitioner also submitted a certificate from the Qingdao Martial Arts Committee confirming that the petitioner has served "as the reviewer for the national competition of Tai Chi Fist and Tai Chi Sword since 1999." The director did not directly address this criterion and the petitioner submits no new evidence addressing this criterion on appeal other than her expert membership discussed above. Without evidence that the petitioner has judged competitions outside of Qingdao, we cannot conclude that her judging positions are indicative of or consistent with national acclaim. Thus, we find that the petitioner has not met this criterion.

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

The petitioner initially asserted that she would provide evidence relating to this criterion at a later date. In response to the director's request for additional evidence, the petitioner submitted several reference letters from representatives of the Qingdao Martial Arts Committee and the Qingdao Tai Chi Committee. Vice Chairman of the committee, asserts that he and the petitioner have studied and practiced Tai Chi. Mr. Xin attests to the petitioner's ability, notes that she has authored a book and refereed competitions, but does not identify a specific contribution made to the field of Tai Chi, a martial art concedes originated thousands of years ago.

a national referee, asserts that he has learned from the petitioner and that she comes up with "unique ideas." He continues that he has "taken her advice and applied her opinions to my practice in Chang Quan." does not identify a specific "unique idea" or explain how the petitioner's "unique ideas" have influenced the practice of Tai Chi such that they can be considered original contributions of major significance. Vice President of the Qingdao Tai Chi Committee, asserts that the petitioner has "developed new actions or styles, which enrich the practice of the martial arts." does not explain these actions or styles or provide examples of how they have influenced the practice of Tai Chi.

The director concluded that letters from independent experts who do not know the petitioner personally would have been more persuasive. The petitioner does not submit more independent letters on appeal. We find that the letters fail to identify a specific contribution made by the petitioner that has had a major impact on the practice of Tai Chi either as an athlete or as an instructor.

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

The petitioner initially asserted that she would provide evidence relating to this criterion at a later date. In response to the director's request for additional evidence, the petitioner submitted copies of pages of a textbook authored by the petitioner entitled "One hundred eight Tai-Chi Fuhu Zhang." The director concluded that the petitioner had not established the impact of her book in the field. On appeal, the petitioner submits a second book for which she is a coauthor, "42 Series of Tai Chi Sword and Its Application in Daily Life." Once again, however, the petitioner has responded to the director's concern about the lack of evidence of the *significance* of the petitioner's accomplishment with evidence of a different accomplishment. The petitioner has not demonstrated the significance of either book. Specifically, the record contains no evidence that either book was a bestseller or otherwise influential in the Tai Chi community nationally.

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

The petitioner initially asserted that she would provide evidence relating to this criterion at a later date. The petitioner's response to the director's request for additional evidence and the appeal do not address this criterion. Thus, the petitioner has not submitted any evidence that she meets this criterion.

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

The petitioner initially asserted that she would provide evidence relating to this criterion at a later date. The director inquired as to whether the petitioner met this criterion, specifically, whether the petitioner has "been a paid endorser for the sport itself." In response, the petitioner submitted a certificate from the Arts Committee affirming that it "has hired [the petitioner] as the endorser for this field since 1999." The director concluded that the record lacked evidence that the petitioner was a paid spokesman for an athletic company.

The petitioner does not address this criterion on appeal. A general claim that the petitioner is an "endorser" cannot suffice to meet this criterion, which, according to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x), requires specific sales numbers. Similarly, the record lacks sales data for the petitioner's book. As such, the petitioner has not established that she meets this claim.

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 herself as a martial artist or instructor to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a martial artist, but is not persuasive that the petitioner's achievements set her significantly above almost all other martial art instructors in her 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.

Finally, the director rejected petitioner's statement that she intended to "open an elementary training center in New York City [and] use the book I wrote as instructions." Counsel reiterates this intent on appeal. The regulation at 8 C.F.R. § 204.5(h)(5) provides:

> *No offer of employment required.* 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 her work in the United States.

(Emphasis added.) A general statement of intent without an explanation of how the petitioner will pursue her intent has little evidentiary value. The petitioner did not identify any possible sources of financing for the project. Thus, the petitioner has not demonstrated that she will be able to secure the financing to open a training center in New York City.

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.