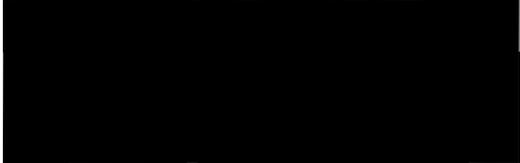




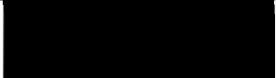
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FILE:



Office: VERMONT SERVICE CENTER

Date: **MAR 01 2006**

EAC 04 091 50359

IN RE:

Petitioner:



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:



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 (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 as a Wushu martial artist. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. On appeal, counsel submits a brief and additional evidence that do not overcome the deficiencies of the petition. Consequently, the appeal will be dismissed for the reasons discussed below.

Section 203(b) of the Act states, in pertinent part:

(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 into the United States will substantially benefit prospectively the United States.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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).

We address the evidence submitted and counsel's contentions in the following discussion of the regulatory criteria relevant to the petitioner's case. Counsel does not claim that the petitioner meets any criteria not discussed below.

(i) 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 evidence that she received numerous awards at national and international competitions including six first place awards at the 2003 International Wushu-Kungfu Festival and Championships in Virginia; three first-place, one second-place and one third-place awards at the 2002 National Martial Arts Championship in China; three first-place, one second-place and one third-place awards at the 2002 Sang Li Cup National Martial Arts Women's Championship in China; a first-place award at the Martial Arts Final Competition in the Ninth Annual National Games in China in 2001; and one first-place award, one second-place award and one third-place award at the Fifth World Chinwoo Wushu and Cultural Carnival held in 1998 in Malaysia. The director did not fully address the evidence of the petitioner's awards, which we find sufficient to establish her eligibility under this criterion.

(ii) 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.

Prior counsel claimed the petitioner met this criterion as a former member of the Tianjin Martial Arts Team, which prior counsel claimed was an association that requires outstanding achievements of its members. However, the eligibility and selection criteria of the Tianjin Martial Arts Team are not documented in the record. In addition, [REDACTED] President of the U.S.A. Wushu Kungfu Federation (USAWKF), explains in his letter submitted with the petition that the Tianjin team "represents the highest level of athletes in the sport of Wushu in a city of approximately 10 million people." Hence, the petitioner's team membership is indicative of her renown in the Tianjin metropolitan region, but the record does not establish that membership in the Tianjin Martial Arts Team demonstrates national acclaim in China.

On appeal, present counsel claims the petitioner satisfies this criterion through her membership in the USAWKF. The submitted documents show that the petitioner joined the USAWKF on January 12, 2004. However, the record contains no documentation of the USAWKF membership eligibility criteria or other evidence that outstanding achievements are prerequisite to USAWKF membership. Accordingly, the petitioner does not meet this criterion.

(iii) Published material 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 did not initially claim eligibility under this criterion. On appeal, counsel claims the petitioner meets this criterion through materials concerning the China's Kungfu Champions 1996 U.S. Tour. On appeal, counsel submits copies of posters, a brochure and an advertisement for this tour, which contain photographs of the petitioner. These documents do not satisfy this criterion because they are promotional materials, not independent media coverage of the petitioner's work that reflects national or international acclaim.

On appeal, counsel also submits copies of articles from the *Tianjin Daily News*, *Dallas Chinese News*, *Xing Zhou Daily* and *Kung Fu* magazine. The article from the [REDACTED] is undated and entitled, "Four Wushu Athletes from Our City Will Visit the United States of America." The article briefly states, "The female athlete, [the petitioner] will perform San-Jie Staff and other wushu," but does not further discuss the petitioner's work in any depth. The record also contains no evidence that the *Tianjin Daily News* is a nationally circulated newspaper in China, publication in which could reflect national acclaim. Similarly, the article from the October 11, 1996 edition of *Dallas Chinese News* does not discuss the petitioner in its text and contains three

photographs that allegedly include the petitioner, but do not identify the petitioner by name. The petitioner submitted no evidence that *Dallas Chinese News* is a nationally circulated newspaper or other form of major media in the United States, rather than a regional publication serving one linguistic minority population. The article from the June 6, 1998 edition of the *Xing Zhou Daily* is entitled “Wushu is Now Ready to be Included into the Olympic Games” and discusses the Fifth World Chinwoo Wushu and Cultural Carnival in Malaysia. The article does not mention the petitioner in its text, but features a photograph of the petitioner with a caption that reads, “[The petitioner] from Tianjing [sic] City, China is top in the field of Nan Quan (Boxing).” The record contains no evidence that the *Xing Zhou Daily* is a nationally or internationally circulated newspaper or is otherwise considered a form of major media.

The submitted excerpt from the February/March 1997 edition of *Kung Fu* magazine includes photographs of the petitioner and the following brief description: “[The petitioner], from Tianjin, specializes in Nanquan, ground forms, three-sectional staff, and two-man set. In the 1990-93 Tianjin Championships, she took second place in forms and long staff.” The record indicates that *Kung Fu* is a nationally and internationally circulated martial arts magazine published in the United States. However, the single brief mention of the petitioner in one edition of this magazine published seven years before her petition was filed does not demonstrate sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

(iv) 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 did not initially claim eligibility under this criterion. On appeal, counsel claims the petitioner meets this criterion through her service as a judge at two international Wushu Kungfu competitions in the United States in 2004. We cannot consider the evidence submitted on appeal regarding the petitioner’s work as a judge because it arose after the petition was filed. The 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* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Accordingly, the petitioner does not meet this criterion.

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

The petitioner did not initially claim eligibility under this criterion. On appeal, counsel claims the petitioner meets this criterion because she has won many events at international martial arts competitions, has received contracts to teach and perform, has been invited to judge international competitions, has been mentioned in published articles, and was a member of the Tianjin Martial Arts Team. We have addressed the petitioner’s awards, service as a judge, the published articles that mention the petitioner, and the petitioner’s membership in the Tianjin Martial Arts Team in our foregoing discussions of the first, second, third, and fourth criteria, where we concluded that the evidence submitted did not reflect the requisite sustained national or international acclaim.

On appeal, counsel submits evidence that the petitioner performed at the Tenth Annual Chinese New Year Banquet of the Maryland-China Business Council, Incorporated on February 16, 2005 and at another Chinese New Year banquet in Maryland on February 20, 2005. The petitioner initially submitted an employment agreement between herself and [REDACTED] in Baltimore, Maryland dated December 31, 2003. On appeal, the petitioner submits a second employment agreement between herself and [REDACTED]

dated October 15, 2004. The December 31, 2003 agreement states that the petitioner will be paid \$30,000 per year, but the petitioner did not submit copies of her paychecks, tax forms or other primary evidence of her income prior to the filing of this petition. We cannot consider the second employment agreement and the evidence of the petitioner's subsequent income submitted on appeal because this evidence arose after the petition was filed. The petitioner must establish eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. Even if all of the evidence regarding the petitioner's employment by [REDACTED] Fu, Inc. arose before the petition was filed, the record does not indicate that the petitioner's teaching is consistent with national acclaim in the United States, as opposed to a regional reputation in Baltimore, Maryland.

On appeal, counsel also cites the recommendation letters submitted below and a new letter submitted on appeal as evidence of the petitioner's eligibility under this criterion. Recommendation letters provide relevant information about an alien's experience and accomplishments, but they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his or her field beyond the limited number of individuals with whom he or she has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

[REDACTED] President of the USAWKF, states that he met the petitioner in 1996 when the USAWKF organized the China's Kungfu Champions U.S. Tour. He explains that the petitioner was one of 12 performers selected by the Chinese Wushu Association to participate on the tour. Mr. [REDACTED] mentions some of the petitioner's national awards in China and states:

With China dominating every World Wushu Championships [sic] organized by IWUF [International Wushu Federation], the skill and ability of a National Champion in China are generally considered to represent the highest level in their respective area of expertise internationally. [The petitioner] has remarkably demonstrated such talent and abilities.

While he affirms the petitioner's high skill and ability, Mr. [REDACTED] does not identify any original athletic contributions of major significance that the petitioner has made to her field.

[REDACTED] President of the U.S.A. National Tai Chi Chuan Federation, states that she met the petitioner and watched her perform at the 2003 International Wushu-Kungfu Festival and Championships in Virginia. Ms. [REDACTED] states, "[The petitioner] is a successful wushu competitor and performer in China. . . . Having seen hundreds of wushu athletes in past years, I can say with confidence that [the petitioner] is a wonderful exemplar [sic] of the skill and professionalism of the Chinese wushu tradition." Yet Ms. [REDACTED] does not discuss any original athletic contributions of major significance that the petitioner has made to her field.

[REDACTED], President of the O-Mei Kungfu Wushu Center and Vice President of the USAWKF, states that he has known the petitioner since the China's Kungfu Champions 1996 U.S. Tour. Ms. [REDACTED] discusses some of the petitioner's awards and performances and states that she is an athlete with extraordinary ability. He does not, however, identify any specific achievements of the petitioner that have made original contributions of major significance to her sport. Similarly, [REDACTED], Chief Instructor at the Jing Ying Institute in [REDACTED]

and [REDACTED] President of the United States of America National Traditional Wushu Federation

(USANTWF), both note the petitioner's superior ability and skill as demonstrated in some of her performances in the United States, but neither Mr. [REDACTED] nor Mr. [REDACTED] note any specific, original achievements of the petitioner that have made major contributions to her field.

On appeal, the petitioner submits a letter from [REDACTED] former editor of *Kungfu* magazine. Ms. [REDACTED] states that she visited the petitioner at her home and training center in China and that in Ms. [REDACTED]'s estimation, the petitioner is "most likely the [sic] one of the top masters of the art of wushu in the world." Ms. [REDACTED] states that the petitioner was published in *Kungfu* many times, but the record only documents the single article from the February/March 1997 edition of *Kung Fu* magazine that was discussed above under the third criterion. While Ms. [REDACTED] highly praises the petitioner's abilities, she does not identify any specific, original contributions of the petitioner that have had a major impact in her field.

Some of the letters note that the petitioner received the Jian Jiang of Sport Certificate in China and attained the Fifth Wushu Dan. The record contains copies of the petitioner's Jian Jiang of Sport Certificate issued by the Chinese National Sport Ministry on March 13, 2000 and the petitioner's undated Wushu Dan Certificate for the Fifth Dan issued by the Chinese Wushu Association. On appeal, counsel claims that the Jian Jiang of Sport is the "highest athlete award recognized by the Chinese Government today." However, the record contains no documentation to corroborate this statement. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Concerning the petitioner's Fifth Wushu Dan, counsel states on appeal, "considering that the 9th Dan is the highest which usually is awarded to only a few senior wushu masters aged over 65, 5th Dan is probably the highest possible rank awarded to an athlete at [the petitioner's] age." Again, the record contains no evidence to support counsel's statements and the unsupported assertions of counsel do not constitute evidence. *Id.*

The record indicates that the petitioner has won numerous awards at various national and international wushu competitions in China and other countries and that the authors of the recommendation letters highly esteem the petitioner's athletic abilities. The evidence submitted does not, however, establish that the petitioner has made original athletic contributions of major significance to her field in a manner consistent with sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

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

This criterion generally applies to the visual arts. Because the record indicates that wushu is considered an art as well as a sport, we will address counsel's claim that the petitioner meets this criterion. Counsel claims the petitioner satisfies this criterion through her performances on the China's Kungfu Champions 1996 U.S. Tour and as a member of the Chinese Wushu Troupe sent by the Chinese Government to perform in Paris in April 2001. As discussed above under the third criterion, the petitioner's photograph was included in promotional materials for the 1996 Tour, she was briefly mentioned or pictured in three published articles about the tour, and several of the recommendation letters discuss her performances on the tour. Yet even if the record demonstrated that participation in the 1996 Tour was indicative of national or international acclaim, the petitioner's performances on this tour took place eight years before her petition was filed and do not establish the requisite sustained acclaim. The petitioner's participation in the Chinese Wushu Troupe's visit to France is not sufficiently documented in the record. The petitioner submitted only illegible photocopies of two photographs which allegedly picture the Chinese Wushu Troupe during their visit to Paris in April 2001. The record is also

devoid of any evidence regarding the details and significance of the Troupe's alleged performances in Paris. Accordingly, the petitioner does not meet this criterion.

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

The petitioner did not initially claim eligibility under this criterion. On appeal, counsel claims that the petitioner currently commands a significantly high salary for her services and cites the petitioner's employment at [REDACTED] in Baltimore, Maryland. As explained above under the fifth criterion, we cannot consider the evidence of the petitioner's employment and income at [REDACTED] submitted on appeal because the documents arose after the petition was filed. The petitioner must establish eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. Moreover, the petitioner submitted no evidence of her income prior to the filing of this petition or documentation that her promised salary of \$30,000 in the December 31, 2003 employment letter was significantly higher than the salaries of other martial arts teachers in the United States, or comparable to such teachers at the top of their field. Accordingly, the petitioner does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the petitioner has won several awards at national and international martial arts competitions in China and other countries. The record does not establish, however, that the petitioner had achieved sustained national or international acclaim as an athlete placing her at the very top of her field at the time of filing. She is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and her 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.