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[REDACTED]

FILE:

[REDACTED]

WAC 05 009 51055

Office: CALIFORNIA SERVICE CENTER

Date: SEP 22 2006

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.

Robert P. Wiemann

➤ Robert P. Wiemann, Chief
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. The director also found the petitioner had not established that she would continue work in her area of expertise in the United States.

On appeal, counsel argues that the petitioner has achieved “sustained national acclaim as a woman in the Brazilian Taekwondo world.”

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 earned sustained national or international acclaim at the very top level.

This petition, filed on October 7, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a martial artist and Taekwondo instructor.

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 documentation from the World Taekwondo Federation indicating that she is a 6th Dan Black Belt in Taekwondo. Documentation from the Confederation of Brazilian Taekwondo reflects that the petitioner holds 7th Dan status in that country. In an October 4, 2004 letter accompanying the petition counsel argues that the petitioner's Dan status constitutes a nationally or internationally recognized award for excellence. The plain language of this criterion, however, requires nationally or internationally recognized "prizes or awards." We do not find that passing a standardized examination to earn an incremental black belt promotion constitutes a nationally or internationally recognized prize or award. While we acknowledge that only a small percentage of individuals involved in Taekwondo are able to obtain this Black Belt grade, attaining such a status represents a qualification or skill level rather than a qualifying prize or award.

It is not clear that significant awards exist for Taekwondo instructors; however, nationally or internationally recognized prizes or awards won by teams or individuals coached by the petitioner may be considered as comparable evidence for this criterion under 8 C.F.R. § 204.5(h)(4). Here, it is important to evaluate the level at which the petitioner acts as coach. A coach who has established a successful history of coaching top athletes who win titles at the national level or above has a credible claim under this visa classification; a coach of intermediates or novices does not. In this case, there is no evidence showing that athletes directly under the petitioner's tutelage have won prizes or awards at nationally or internationally recognized Taekwondo competitions.

The petitioner has not established that she meets this 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.

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.

In the October 4, 2004 letter accompanying the petition, counsel argues that the petitioner's 6th Dan Black Belt status in the World Taekwondo Federation satisfies this criterion. The petitioner submitted a copy of the

Promotion Test Regulations printed from the internet website of the World Taekwondo Headquarters. According to Article 8 of the Promotion Test Regulations, one has to have been in the field for 30 years, has to have held 5th Dan Black Belt status for the preceding 5 years, and must complete standardized testing requirements in order to attain 6th Dan Black Belt status. We do not find that years of experience or passing a standardized promotion examination are tantamount to outstanding achievement. Further, there is no evidence showing that membership in the World Taekwondo Federation is limited only to those having 6th Dan Black Belt status.¹ The evidence submitted by the petitioner does not establish that admission to membership in the World Taekwondo Federation requires outstanding achievement or that prospective members are evaluated by national or international experts in consideration of their admission to membership. Thus, the petitioner has not established that she 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.

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 a January 6, 1980 article that appeared in *Jornal de Brasilia*. 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 translation accompanying the preceding article was not certified as required by the regulation. Further, the petitioner did not submit any evidence showing that this publication has national circulation, including the section of the paper in which the article was featured. Finally, we cannot ignore that the article in *Jornal de Brasilia* was from 1980. We cannot conclude that a single article from 24 years prior to the filing date of the petition demonstrates sustained national or international acclaim up until the date of filing. In this case, there is no qualifying evidence to demonstrate that the petitioner has earned sustained national or international acclaim in major media. Thus, the petitioner has not established that she meets 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.

¹ For example, there is no evidence showing that lower categories of belt holders are excluded from membership the World Taekwondo Federation.

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.

The petitioner submitted a June 23, 2005 letter from Taekwondo Federation, stating:

Deputy Secretary General, World

[The petitioner] has been an International Referee of the World Taekwondo Federation since 1992. In particular, we commend [the petitioner] for her exemplary performances at the 13th (6th Women's) WTF World Taekwondo Championships in Hong Kong on Nov. 19–23, 1997; as well as at the 1998 Brazil International Taekwondo Championships in Curitiba, Brazil, on April 9–12, 1998.

In addition, [the petitioner] attended the 22nd International Referee Refresher Course, which was held in Miami, Florida, U.S.A. on April 24–26, 1998.

A June 23, 2005 letter from Dr. [REDACTED] President, Pan American Taekwondo Union, states: “[The petitioner] has been requested as an international referee by the Pan American Taekwondo Union on many occasions and specifically did an exceptional job as Referee Director at the Pan American Taekwondo Championship in Lima, Peru in 1998.” Aside from briefly confirming the petitioner’s participation at an event in Lima, Peru, Dr. [REDACTED] does not specifically identify the other “many occasions” mentioned in his letter. We note here that simply being “requested” to participate is not tantamount to actual “participation.” The plain wording of this criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others.”

The petitioner also submitted an internet printout of the “Competition Rules” for the World Taekwondo Federation. Article 20, item 2 of the Competition Rules distinguishes “referees” from “judges” stating:

Duties

1) Referee

- (1) The referee shall have control over the match.
- (2) The referee shall declare [REDACTED] winner and loser, deduction of points, warnings and retiring. All the referees’ declarations shall be made when the results are confirmed.
- (3) The referee shall have the right to make decisions independently in accordance with the prescribed rules.
- (4) The referee shall not award points.
- (5) In case of a tie or scoreless match the decision of superiority shall be made by all refereeing officials after the end of the fourth round.

2) Judges

- (1) The judges shall mark the valid points immediately.
- (2) The judges shall state their opinions forthrightly when requested by the referee.

The preceding letters of support from Dr. [REDACTED] and [REDACTED] indicate that the petitioner participated as a “referee” rather than a “judge” at events in 1997 and 1998. According to the Competition Rules, referees have control over the match, but do “not award points” to the competitors. It is the judges who evaluate the competitors, assess points, and ultimately determine the outcome of a match. The responsibility of the referee, on the other hand, is to ensure that rules and procedures are being followed and that the match is safe and fair. A referee whose primary responsibility is to observe a competition and ensure that

rules or proper procedures are followed is not judging the work of others in the context of this criterion. In this case, there is no evidence showing that during her participation as a referee, the petitioner judged the work of others. Even if it were established that the petitioner served as a judge at the preceding events rather than a referee, there is no evidence of her participation in national or international competitions subsequent to 1998.³ The statute and regulations, however, require the petitioner to demonstrate sustained national or international acclaim. Without evidence showing that the petitioner has judged national or international Taekwondo competitions in recent years, we cannot conclude that she meets this criterion.

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

In order to establish that she performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

On appeal, counsel argues that the letters of support from World Taekwondo Federation, Confederation of Brazilian Taekwondo, Pan American Taekwondo Union, and the Federation of Taekwondo of the State of Sao Paulo satisfy this criterion. While we accept that the World Taekwondo Federation has a distinguished reputation, there is no supporting evidence showing that the remaining organizations mentioned above have earned distinguished reputations.

In addition to briefly discussing the petitioner's activities as a referee for the World Taekwondo Federation during the 1990's, **Manseek Choe's June 23, 2005 letter of support states: "Based on her excellent performances, knowledge and vast experience in the various fields of Taekwondo, as well as her dedication to rigorous training, I assure you that [the petitioner] is a self-motivated instructor of strong will and leadership abilities."**

A June 2, 2003 letter of support from

Secretary General, World Taekwondo Federation,

states:

[The petitioner] is a qualified Taekwondo Instructor, as she successfully completed the Taekwondo Instructor course in 1978. . . . She has actively participated in various WTF events as an International Referee [REDACTED]. She also has served as a member of the Women's Committee of WTF from March 22, 2000 to present to study the requirements concerning the women's Taekwondo competitions.

While the petitioner is a well-qualified instructor and participates in World Taekwondo Federation sponsored events, there is no evidence showing that she performs in a leading or critical role for this organization. For example, there is no evidence showing how the petitioner's role is more important than that of other the instructors and referees active in the World Taekwondo Federation. Regarding the petitioner's involvement with the Women's Committee, there is no evidence demonstrating how the petitioner's role differentiated her

³ The letters from Dr. [REDACTED] and [REDACTED] describe the petitioner's participation in events that occurred more than six years prior to the petition's filing date.

from other members holding similar appointments, let alone more senior officers in the World Taekwondo Federation.

A June 15, 2005 letter of support from [REDACTED] President, Federation of Taekwondo of the State of Sao Paulo, states:

The master [the petitioner] is a very accomplished and notable leader in Tae Kwon Do in . . . Brazil.

* * *

The master [the petitioner] has been practicing Tae Kwon Do for over 25 years and teaching her knowledge and experience of Tae Kwon Do to the athletes of the infantile and juvenile categories and feminine Brazilian selection of the Brazil.

A June 6, 2005 letter of support from [REDACTED], President, Confederation of Brazilian Taekwondo, states that the petitioner was the only woman from South America to be promoted to 7th Dan status and become a Grand Master. [REDACTED] further states: "It's worth to remind that [the petitioner] also made a beautiful and grandiose base work to the athletes of the infantile and juvenile categories and feminine Brazilian selection of Taekwondo in Brazil."

The June 23, 2005 letter from Dr [REDACTED] of the Pan American Taekwondo Union states: "[The petitioner] is a very accomplished leader in Taekwondo in Brazil. She has been a competitor, coach, instructor and is an international referee."

While the petitioner is affiliated with the preceding organizations, she has not submitted evidence showing that her specific duties and responsibilities were leading or critical to these organizations. The letters of support submitted by the petitioner do not adequately explain how she has influenced the preceding organizations or how she was important to their overall success. Nor is there any evidence of the petitioner's election to an executive leadership position in the aforementioned organizations. Finally, there is no evidence showing that athletes or students under petitioner's direct tutelage have competed successfully at the national or international level. In this case, the petitioner has not established that she has performed in a leading or critical role for a distinguished organization, or that her involvement has earned her sustained national or international acclaim.

We concur with the director's finding that the petitioner has failed to demonstrate she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

The director also determined the petitioner had not established that she would continue work in her area of expertise in the United States. 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." We concur with the director's finding that the record includes no such evidence.

While CIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, WAC0321353013, that prior approval does not preclude CIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Review of the record does not establish that the petitioner has distinguished herself 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 is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.