

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



B2  
JUN 28 2007

FILE: WAC 05 233 52392 Office: CALIFORNIA SERVICE CENTER Date:

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:  
[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 Director, California Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

According to the petition as initially filed, the petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

On appeal, counsel asserted that the decision is general and does not address the specific evidence in this matter. Counsel further asserted that the director failed to consider the petitioner’s achievements in separate occupations. Counsel indicated that he would submit a brief and/or additional materials to this office within 30 days. Counsel dated that appeal July 13, 2006. As of June 7, 2007, this office had received nothing further. Thus, on that date, this office contacted counsel by facsimile, advising that we had received no additional materials, inquiring as to whether anything had been submitted and requesting a copy of any additional materials submitted. The facsimile requested a response within five business days. As of this date, approximately two weeks later, this office has received no response. Thus, the appeal will be adjudicated based on counsel’s initial statements and the evidence of record.

Contrary to counsel’s assertion on appeal, the director addressed several specific pieces of evidence and discussed the petitioner’s field and specific accomplishments on more than one occasion. Thus, while some of the language, such as the statement about attendance at conferences, does not appear to relate to the petitioner, the decision is not limited to boilerplate language unrelated to the facts in this matter. For the reasons discussed below, we uphold the director’s ultimate finding of ineligibility. We note that the petitioner must demonstrate his individual acclaim, we will not presume such acclaim by association.

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.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. See 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). 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 sustained national or international acclaim at the very top level.

According to Part 6 of the petition, the petitioner seeks classification as an alien with extraordinary ability as an "actor/director." The nontechnical description of the job is to act and direct martial arts films/television shows and pursue a musical career in the United States. The petitioner submitted a "Co-Production Agreement Contract" between the petitioner for Pearl Start Pictures and the Los Angeles Acting Academy for the production of "The Life of the Notorious Thief," to be filmed from December 2005 through December 2006.

The director issued a request for additional evidence, noting that most of the petitioner's awards were in an unrelated field, Tae Kwon Do. In response, counsel asserted that the petitioner was seeking classification as an alien of extraordinary ability "in the field of athletics," asserting that the petitioner has demonstrated his ability "in the field of Tae Kwon Do." On page five, counsel asserted that while the petitioner's awards were received more than 20 years before the petition was filed, "it is important to note that [the petitioner] is applying as a Tae Kwon Do instructor and demonstrator." Counsel continues, asserting that the petitioner's services as a Tae Kwon Do instructor are being sought by USA Tae Kwon Do and Choi's Korea-America Tae Kwon Do Academy.

In the final decision, the director expressed confusion as to what type of employment the petitioner intended to pursue in the United States. On appeal, counsel asserts that the director ignored evidence of acclaim as an actor, Tae Kwon Do athlete and singer.

A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm. 1998). At the time of filing, the petitioner sought eligibility as an alien of extraordinary ability in the arts. It was in this field that he was most recently working and was intending to work. While the petitioner clearly uses his martial arts abilities in his film work, he is primarily now an actor; his abilities in the martial arts, while important, do not necessarily translate

to acclaim as an actor. We will not consider a new claim that the petitioner is actually an alien of extraordinary ability in athletics, a field in which the petitioner had not competed for many years.

Even if we were to consider counsel's new assertion that the petitioner will work as a martial arts instructor, the petitioner's past achievements as an *athlete* are not evidence of his extraordinary ability as an *instructor*. Counsel has relied on a non-precedent decision by this office for the proposition that achievements as an athlete can be considered for aliens who seek to coach or work as instructors. While a martial arts competitor and an instructor 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, Lee's extraordinary 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. While we will, on a case-by-case basis, sometimes consider the *recent* athletic achievements of an instructor that is instructing at the national level, the petitioner in this matter stopped competing 20 years before filing the petition. Thus, the petitioner would need to demonstrate that his achievements *as an instructor* serve to meet the regulatory criteria discussed below.

In light of the above, we will adjudicate the appeal on the basis of the petitioner's accomplishments in the arts. 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, he claims, meets the following criteria.<sup>1</sup>

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

On his resume, the petitioner lists a 1998 Rookie Actor award and a 1992 Award for People's Choice at the Great Performance Award event sponsored by the Korea Broadcasting System. The record does not contain either award. Rather, in response to the director's request for additional evidence, the petitioner submitted a letter from the Korea Movie People Association asserting that the petitioner won the Daejong Award and New Actor Award in 1998. Also, the petitioner initially submitted a November 5,

---

<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

2004 letter for distinguished service issued by the Director of the Pusan International Film Festival “for his great service and dedication to the Pusan Film Festival and its committee.”

We concur with the director that the record contains no evidence regarding the significance of these awards. The certificate from the Pusan Film Festival appears to be a certificate of appreciation rather than an award for excellence in the field of acting. The petitioner submits no new evidence regarding the significance of these awards on appeal. As discussed above, the petitioner’s martial arts awards are more than 20 years old and are not awards for excellence in the petitioner’s field, acting. Thus, the petitioner has not established that he 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.*

The record contains no evidence of memberships in *artistic* associations, the field in which classification was initially sought. Moreover, counsel relies on the petitioner’s positions with martial arts associations rather than his membership in those associations as evidence to meet this criterion. Such evidence, were it related to the petitioner’s field of acting and directing, would be better considered under the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

In light of the above, the petitioner has not established that he 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.*

The director asserted that the “published articles submitted in relation to the field in general [do] not directly mention the self-petitioner or his work as extraordinary ability with sustained acclaim.” More analysis is required. The petitioner submitted articles that are primarily about him. The petitioner, however, did not submit evidence of the circulation of the publications that carried these articles. Without this evidence, we cannot determine whether those publications constitute major media. Consequently, the petitioner has not established that he 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.*

The record contains no specific evidence that the petitioner has judged the work of other actors or directors. Counsel noted that the petitioner was appointed as a technical Tae Kwon Do instructor. The evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim. It is inherent to the occupation of instructor to evaluate one’s students. Thus, even if we were to consider the petitioner’s past success in Tae Kwon Do, the mere fact that he worked as an instructor is insufficient to meet this criterion.

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

The petitioner submitted several vague letters of recommendation from members of the motion picture industry. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. While the petitioner has had a long career in television and movies, the record lacks evidence as to how he has changed or impacted the industry.

Counsel has asserted that the petitioner's roles in movies and television have contributed to the growth of Tae Kwon Do nationally in Korea and internationally. 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). The record contains no statistics demonstrating an increase in Tae Kwon Do participation correlating with the petitioner's movies and television appearances. The petitioner has also failed to demonstrate that his films are unique within the martial arts film genre such that we could attribute any increase in martial arts participation to him rather than the popularity of the genre in general.

In light of the above, the petitioner has not established that he meets this criterion.

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

The petitioner has appeared in movies and on television. It is inherent to the occupation of performing artist, however, to perform. We find that this criterion relates to the visual arts. The petitioner has not established that his movies or television shows constitute the type of exclusive showcase of his art that would be required to meet this criterion.

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

As stated above, the petitioner submitted evidence of his positions with various Tae Kwon Do entities. These positions, however, were not with entities in the petitioner's current field.

Counsel asserted that the petitioner has starred in 15 motion pictures and seven television shows. The petitioner submitted his self-serving resume, Internet materials from the International Movie Database confirming his role acting in 12 movies, several movie posters (without translation) that appear to feature the petitioner prominently and a letter from the President of Korea Broadcasting confirming the petitioner's performances in seven programs but failing to specify his role in these shows. Most notably, the petitioner recently starred in the movie "Clementine" featuring an appearance by Steven Seagal (eight minutes according to an Internet review). While counsel implied that the petitioner also directed this movie, the newspaper articles indicate that someone else directed the movie although the petitioner did serve as producer.

The record lacks evidence that any of the petitioner's movies or television shows have enjoyed a distinguished reputation. We will not presume the distinguished reputation of a movie simply because it features an eight-minute appearance from an internationally known personality. Thus, the petitioner has not established that he meets this criterion.

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

It is alleged that the petitioner would earn \$60,000 for the movie "Black Roster" and that Jackie Chan only earned \$30,000 for his first Hollywood movie. The petitioner has not submitted the contract confirming this remuneration or evidence that this wage compares with the remuneration of those at the top of the field. Thus, the petitioner has not established that he 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.*

While "Clementine" received favorable reviews, the petitioner did not submit the required evidence for this criterion, box office receipts for the movie or evidence of the video/DVD sales. The petitioner also failed to submit evidence of the sales of his compact discs which he recorded as a singer. Thus, the petitioner has not established that he meets this criterion.

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 himself as an actor/director 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 indicates that the petitioner shows talent as an actor and Tae Kwon Do athlete but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.

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.