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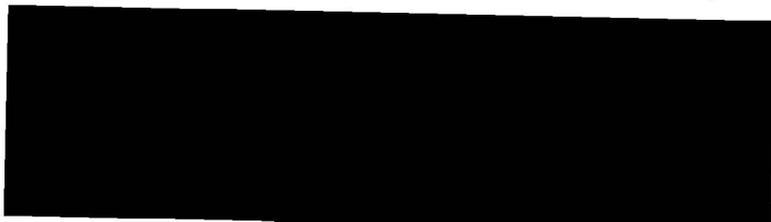
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: NOV 13 2007
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IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

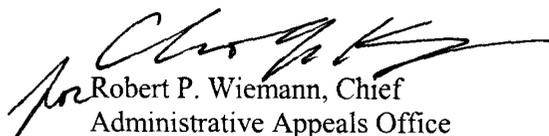
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition and affirmed that decision on motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in athletics, 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. In a second decision, the director advised that all of the evidence of record had been considered in the initial decision.

On appeal, counsel asserts that the initial denial does not reflect consideration of the petitioner’s response to the director’s notice of intent to deny. While the director purported to quote language from counsel’s response that does not, in fact, appear in that response, the director does appear to have considered the additional evidence submitted. For example, while the director concluded in the notice of intent to deny that the petitioner had not submitted sufficient evidence to meet the criterion set forth in the regulation at 8 C.F.R. § 204.5(h)(3)(i), the director finds that this criterion *is* met in the final decision. It is counsel’s position that more discussion of the remaining evidence is warranted. As counsel is asserting that the director failed to sufficiently consider the evidence on two occasions, the most efficient and responsive action for us is to consider all of the evidence of record on appeal, which we will do below. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

For the reasons discussed below, the petitioner has not established eligibility under the regulatory criteria. As will be detailed below, the evidence of record contradicts counsel’s assertions regarding the petitioner’s roles for the U.S. military and law enforcement, seriously reducing counsel’s credibility.

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 into 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 Employment-Based Immigrants*, 56 Fed. Reg. 60897, 60898-99 (Nov. 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a martial arts instructor and competitor in [REDACTED]. Counsel has asserted that this office has recognized a "nexus" between competing and coaching such that any recognition as an athlete implies ability as a coach. Counsel has oversimplified the issue. While a competitor and an instructor certainly share knowledge of Jiu Jitsu, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are *not* the same area of expertise. As the court explained in *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002):

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, [REDACTED] 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. Nevertheless, counsel is correct that this office has recognized that there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, where an alien has clearly achieved national or international acclaim *as an athlete* and has sustained that acclaim in the field of coaching *at a national or international level*, the AAO may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that it can be concluded that coaching is within the petitioner's area of expertise. This issue does not arise in this matter, however, as the petitioner continues to compete.

The petitioner is trained in the martial art of Jiu Jitsu. 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, internationally recognized award). In response to the director's notice of intent to deny, the petitioner submitted evidence that he finished first in the Black Belt Adult

Super Super Heavy class at the “American National 2005.” Counsel asserts that the competition is organized by Brazilian Jiu Jitsu and that top athletes from around the world come to Southern California to compete. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, as counsel mischaracterized the petitioner’s role with the U.S. military as discussed below, counsel’s credibility is diminished.

The Regulations and Rules of Brazilian Jiu Jitsu, submitted as exhibit one, make no mention of the American National event and the results submitted as exhibit two do not reference Brazilian Jiu Jitsu. We note that the mere fact that competitors may derive from more than one country is insufficient. The award must be a *major* internationally recognized award. We note that the regulation at 8 C.F.R. § 204.5(h)(3)(i) provides that *lesser* internationally recognized awards are one of ten alternate criteria, of which an alien must meet at least three. Thus, it is clear that the regulations do not suggest that every award with an international pool of competitors qualifies as a one-time achievement.

Congress’s example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). As noted above, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). Nobel Laureates, the example provided by Congress, are selected from a global pool of nominees, are reported in the top media internationally regardless of nationality and are awarded a substantial cash prizes. While an internationally recognized award could constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien’s field as one of the top awards in that field.

The record contains no evidence of the American National 2005 competition’s international recognition, such as evidence that it is covered by the national general or sports media. Thus, the petitioner has not established that an award from the American National 2005 is a major, internationally recognized award.

Finally, the petitioner did not include any evidence of this award when he initially filed the petition on October 13, 2005. The materials submitted in response to the director’s notice of intent to deny do not indicate when in 2005 the American National 2005 took place. The petitioner must establish his eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). The petitioner has not established that he won an award at the American National 2005 as of the date of filing.

Barring the alien’s receipt of a major internationally recognized 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.¹

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

Consistent with the evidence of the petitioner's award history, including his second place heavy weight finish in the Pan American Games, the director found that the petitioner meets this criterion.

While the petitioner meets this criterion as an athlete, it bears mention that counsel implies that the petitioner also meets this criterion as an instructor. Specifically, in the December 2005 response to the director's notice of intent to deny, counsel asserted that the petitioner personally instructs members of the U.S. military, that he will continue to do so and that one of his students "recently" won a gold medal in the Welterweight Division of the All American Jiu Jitsu Tournament. The petitioner submitted unofficial results reflecting that [REDACTED] from Fort Riley, Kansas, won the Welterweight competition but no evidence that he was ever the petitioner's student. While the petitioner did provide private instruction for a Kansas City police sergeant who asserts that he gained "insights" he can pass on to other officers, the record lacks evidence that the petitioner ever served as an official instructor for U.S. military or police officer training programs. Thus, the petitioner has not established that any of his students won a lesser nationally or internationally recognized prize or award while under his tutelage.

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 response to the director's notice of intent to deny, counsel asserted that the petitioner is a black belt member of the International Brazilian Jiu Jitsu Federation. Counsel further asserts that the petitioner is also a black belt member of the *Confederacao Brasileira de Jiu Jitsu*, which appears to simply be the Portuguese name for the same entity. The record does reflect that the petitioner received his black belt certification from the *Confederacao Brasileira de Jiu Jitsu* in 2002. Significantly, however, the petitioner is one of approximately 40 non-degree black belts trained by [REDACTED] while [REDACTED] has also trained second through eighth degree black belts, five or less in each degree, revealing that there are eight levels above that attained by the petitioner.

A belt level is not an association that admits members. Moreover, the record lacks evidence that a specific belt level is based on outstanding achievements rather than passing a competitive test of skill. Without additional information, belt level achievements appear more comparable to certification from a competitive institution than a membership in an association that requires outstanding achievements of its members.

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

Counsel further asserted that the petitioner is an original member of the Association of Schools and Academies. Counsel references an invitation to attend a conference in 2005 as evidence of this "membership." Training at a prestigious club is no more persuasive than attending a competitive institution. Instructing is the petitioner's job. A job offer with a competitive employer cannot serve to meet this criterion. Should that position be documented as leading or critical for the employer as a whole, that fact would be considered pursuant to 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.

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

In response to the director's notice of intent to deny, counsel asserted that the petitioner serves in a critical and essential capacity for the U.S. military, law enforcement and the International Brazilian Jiu Jitsu Federation.

Counsel asserts that one of the petitioner's former students is the instructor of Modern Army Combatives at Fort Riley, Kansas. only documented training was at the Gracie Barra Academy in Brazil in 2003 (according to brief Internet biography), which was after the petitioner had moved to the United States and (according to certificates in the record) at Fort Benning, Georgia under the supervision of and himself does not claim to have been trained by the petitioner in his own letter in support of the petition. The Internet materials in the record regarding the United States Combative Arts Association indicate that the U.S. Army Rangers "sent several men to train at the Gracie Jiu-Jitsu Academy in Torrance California." (Emphasis added.) The record contains no evidence of any affiliation between the petitioner and the California affiliate. Thus, the record remains absent any evidence that the petitioner has officially assisted the U.S. military with combat training.

Initially, the petitioner submitted a letter from President of the International Brazilian Jiu Jitsu Federation. We acknowledge prestige in the field. however, asserts only that he has "personally observed [the petitioner's] teaching skills." The Internet materials provided from the federation's website lists the petitioner as student but not as an instructor. who identifies himself as the Vice President of the International Brazilian Jiu Jitsu Federation, asserts that the petitioner was formerly an instructor at the Gracie Barra Academy in Rio de Janeiro under supervision. is listed as an instructor on page on the International Brazilian Jiu Jitsu Federation's website. The academy address, however, is listed as California. The letter from not on the same letterhead as the earlier letter from. Specifically, the letterhead of letter provides no address or phone number for the federation.

asserts that the petitioner was "responsible for teaching members of law enforcement" and that this responsibility led to his appointment as Director of Local and International Law Enforcement

Outreach and Training for the International Brazilian Jiu Jitsu Federation. Given the questionable claims regarding the petitioner's involvement in training U.S. military personnel, the claim regarding law enforcement requires some corroboration.

The only law enforcement officer who claims to have received any training from the petitioner is [REDACTED] Supervisor of Firearms and Defensive Tactics for the Kansas City, Missouri Police. Sergeant Conroy however indicates that the petitioner provided private training in Kansas City, not Rio De Janeiro. [REDACTED] indicates that he passed on what he learned from the petitioner to his trainers. This letter is not indicative of a formal law enforcement training scheme as implied by counsel and [REDACTED]. The record lacks contracts or other objective evidence that the petitioner has liaised with U.S. law enforcement as an official of the International Brazilian Jiu Jitsu Federation as claimed by [REDACTED].

In light of the above, the record lacks evidence that the petitioner has performed a leading or critical role for Gracie Barra, U.S. law enforcement or the U.S. military.

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

Counsel relies on the letter from [REDACTED] to meet this criterion. [REDACTED] asserts that as Director of Local and International Law Enforcement Outreach and Training for the International Brazilian Jiu Jitsu Federation, the petitioner's responsibilities included:

1. Identifying the specific needs of law enforcement personnel and arrang[ing] Jiu Jitsu training regimens particular to those needs; and
2. Correspond[ing] with State and local law enforcement agencies to arrange instructional programs.

As stated above, the record contains no letters from law enforcement agencies affirming this type of significant role in establishing training regimens for law enforcement officers. Moreover, the petitioner has not established that training law enforcement officers is unique among Jiu Jitsu trainers. Without such evidence, the petitioner has not demonstrated that his participation in such training sets him apart from others in the field. 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.

While neither the petitioner nor counsel asserts that the petitioner meets this criterion, we note the submission of the petitioner's 2004 Internal Revenue Service (IRS) Form 1040 U.S. Individual Tax Return. The only income on the return is \$20,600 as business income for work as a personal trainer.

The petitioner has not demonstrated that this remuneration is significantly high for personal trainer services consistent with national or international acclaim as one of the few at the top of the field.

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. Section 203(b)(1)(A)(i) of the Act, 8 U.S.C. §1153(b)(1)(A)(i); 8 C.F.R. § 204.5(h)(2).

Review of the record, however, does not establish that the petitioner has distinguished himself as a Jiu Jitsu athlete or trainer 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 a Jiu Jitsu 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.