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U.S. Citizenship  
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: NOV 23 2007  
SRC 06 181 53340

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.

A handwritten signature in cursive script, appearing to read "Mai Johnson".

2 Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas 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 the arts. The director determined the petitioner had not established that she qualifies for classification as an alien of extraordinary ability.

On appeal, counsel argues that the petitioner has risen to the very top of her field of endeavor.

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

This petition, filed on May 22, 2006, seeks to classify the petitioner as an alien with extraordinary ability in the martial 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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by

submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). 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 photocopies of the following:

1. Certificate of Appreciation from Asian Spectrum, Inc. acknowledging the petitioner's martial arts performance for a television show on June 7, 2005
2. Award Certificate for first place in Women's Nanquan at the National Wushu Competition tournament in September 1999
3. A March 13, 2002 certificate stating that the petitioner placed first in the Nanquan competition at the National Wushu Match and was awarded “the title of Wushu master star athlete”
4. Certificate from the “Zhujian Film Manufactur[ing] Company” stating that the petitioner took part in a battery advertisement on September 8, 2000 which “acquired the Golden Prize of Advertisement” in Guangdong Province
5. Achievement Certificate stating that the petitioner won first place in Women's Nanquan at the Wushu Match of the Sixth University Students' Sport Meet in September 2000
6. Award Certificate stating that the petitioner placed first in Women's Nanquan at the National Adult Wushu Tournament in December 1999
7. Certificate issued by the Guangdong Wushu Association on August 18, 1999 stating that the petitioner was awarded first place at the “Wushu Match of Guangdong”
8. First place diploma for Women's Nanquan at the 1998 “Macau Asia Junior Wushu Invitation Tournament”
9. First Place diploma for Women's [REDACTED] at the 1998 “[REDACTED] Junior Wushu Invitation Tournament”
10. A December 17, 1998 certificate issued by the Guangdong Physical Athletic Committee stating that the petitioner placed first in the Women's [REDACTED] at the Wushu Match of Guangdong Province and was awarded the title of “first class athlete”

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to 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 translations accompanying the petitioner's award certificates were not certified as required by the regulation. Further, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. In this case, the petitioner has not submitted evidence showing that her awards had a significant level of recognition beyond the presenting organizations.

In regard to item 1, there is no evidence that this certificate is a nationally or internationally recognized award for excellence in the petitioner's field, rather than simply an acknowledgment of her participation in the show. Nor is there evidence showing that items 2, 3, 5, 6, 8, and 9 commanded national or international recognition consistent with sustained national or international acclaim. The record contains no evidence establishing the significance and magnitude of these Wushu competitions. National competitions typically issue event programs listing the order of events and the names of the participating contestants. At a competition's conclusion, results are usually provided indicating how each participant performed in relation to the other competitors in his or her events. The petitioner, however, has provided no evidence of the official comprehensive results for the competitions in which she received awards. Nor is there evidence showing that the recipients of these award certificates were announced in major media or in some other manner consistent with national or international acclaim. Regarding items 4, 7, and 10, there is no supporting evidence showing that these awards reflect national or international recognition rather than provincial recognition. Further, the awards numbered 2 through 10 were received more than four years before this petition was filed and therefore they are not an indication that the petitioner's national or international acclaim in the martial arts has been *sustained*.

In light of the above, 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.*

The petitioner submitted a photocopy of her "Work Certificate" issued by the Guangdong Physical Athletic Committee on December 29, 2004 and a March 10, 2004 "Letter of Appointment" from the Guangdong Wushu Association. The petitioner also submitted a photocopy of her "Wushu Dan Certificate" from the Chinese Wushu Association reflecting a sixth level [REDACTED]. The English language translations accompanying these documents were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, while the petitioner has "passed the Wushu [REDACTED] and achieved a sixth level [REDACTED] there is no evidence that the Chinese Wushu Association requires a sixth level [REDACTED] to become a member.<sup>1</sup> Nor is there evidence identifying the specific requirements that must be satisfied to achieve this ranking. The record includes no evidence (such as membership bylaws or official admission requirements) showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's or an allied field.

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

*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.*

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<sup>1</sup> There is no evidence that first, second, third, fourth, and fifth level Dans are excluded from membership in the Chinese Wushu Association.

In general, 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 level from a local publication. 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.<sup>2</sup>

The petitioner submitted an article from *Chinese Overseas News* entitled “[redacted] National Representative [the petitioner] Found [redacted] is Favored by Americans.” The date and author of this material were not identified as required by this regulatory criterion. Further, the English language translation accompanying this article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Nor is there evidence (such as circulation statistics) showing that *Chinese Overseas News* qualifies as a professional or major trade publication or other form of major media. Finally, the plain language of this regulatory criterion requires published material about the petitioner in more than one publication. A single article about the petitioner does not meet this requirement and is not indicative of sustained national or international acclaim.

In light of the above, 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.*

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends 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). For example, judging a national competition for top athletes is of far greater probative value than judging a local competition for novices.

The petitioner submitted a “Certificate of Referee” issued by the Guangdong Province Athletic Bureau on March 5, 2003 stating that she was named “First class referee of PRC [People’s Republic of China] in Wushu program” and a January 18, 2004 “Letter of Appointment” stating that she was “appointed to be a General Referee in Wushu Team of Guangdong Wushu Association.” The petitioner also submitted a document entitled “Competition Supervision Committee” identifying the petitioner as a “Chief Referee.”<sup>3</sup> The source of the latter document has not been identified. The record also lacks official competition rules or other evidence showing that serving as a referee is tantamount to participation as a judge. The petitioner also submitted a July 2004 “Letter of

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<sup>2</sup> 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, for instance, cannot serve to spread an individual’s reputation outside of that county.

<sup>3</sup> This document identifies the petitioner as a “referee” and other individuals as “judges.”

Invitation” requesting the petitioner’s services at the “national youth team wushu tournament” in Indonesia in 2004 and a September 2003 letter from the Organizing Committee of the Hong Kong International Wushu Festival requesting the petitioner’s services at the festival in February 2004. An invitation to judge is not evidence of “participation” as a judge. For example, there is no evidence of the petitioner’s actual participation (such as judging slips, a judge’s identification badge, or an event program identifying her as a judge) at the Hong Kong International Wushu Festival or any other competition. Further, the English language translations accompanying the preceding documents were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3).

On appeal, the petitioner submits a November 10, 2006 letter from [REDACTED] of [REDACTED] Association in Orlando, Florida, stating that the petitioner “was . . . invited to judge the martial arts competition at [REDACTED] Arnold Fitness Expo 2005 in Ohio,” but there is no evidence of the petitioner’s actual participation.

In this case, there is no evidence of the petitioner’s *participation*, either individually or on a panel, as a judge of the work of others. The record lacks evidence showing the names of the individuals evaluated by the petitioner, their level of expertise, the specific competitive categories she judged, or any other documentation of her assessments. The benefit sought in the present matter is not the type for which documentation is typically unavailable and the statute specifically requires “extensive documentation” to establish eligibility. *See* section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). Further, the commentary for the proposed regulations implementing this statute provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Without substantive evidence of the petitioner’s actual participation as a judge of the work of others in her or an allied field that is consistent with sustained national or international acclaim, we cannot conclude that she meets this criterion.

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

In an April 25, 2006 letter accompanying the petition, counsel argues that the article in *Chinese Overseas News* meets this criterion. As discussed previously, the English language translation accompanying this article was not certified as required by the regulation 8 C.F.R. § 103.2(b)(3). Nevertheless, nothing in this article indicates that the petitioner has made original artistic or athletic-related contributions of major significance. Further, this “published material” has already been addressed under the criterion at 8 C.F.R. § 204.5(h)(3)(iii). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for published material and original contributions of major significance, CIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

The petitioner submitted letters of support discussing her [REDACTED] ranking, employment, training, and awards, but these letters fail to specify her original contributions of major significance in the martial arts. The record does not indicate the extent of the petitioner’s influence on others in her field nationally or internationally, nor

does it show that the field has somehow changed as a result of her work. In general, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. For example, vague statements attesting to an alien's standing and skill are less persuasive than specific examples of achievements. Similarly, experts who were previously aware of the alien's accomplishments through her reputation are more persuasive than experts who were previously unaware of the alien and are providing an opinion based on a review of the alien's resume as provided by the alien. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a martial arts practitioner who has sustained national or international acclaim. In this case, the petitioner has not established that she has made original contributions of major significance to her field in a manner consistent with sustained national or international acclaim.

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

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

The petitioner submitted what is alleged to be an article she authored in *Chinese Acrobatics and Martial Arts* entitled "Function of Sound and Exhalation of Southern Boxing: A Coach's Experience." The English language translation accompanying this article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence (such as circulation statistics) showing that the preceding publication qualifies as a professional or major trade publication or other form of major media. Finally, the plain language of this regulatory criterion requires "authorship of scholarly articles." A single article authored by the petitioner does not meet this requirement and is not indicative of sustained national or international acclaim.

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

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). Further, there is no evidence of achievements or recognition (during the years immediately preceding the filing of the petition) showing that the petitioner has sustained national or international acclaim in the martial arts in recent years.

In the April 25, 2006 letter accompanying the petition, counsel states that the petitioner "is currently working in the United States in O-1 status as an entertainer." Documentation in the record indicates that the alien was the beneficiary of an approved O-1 nonimmigrant visa petition filed in her behalf in 2005. Although the words "extraordinary ability" are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states, "The term 'extraordinary ability' means,

for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.” The O-1 regulation reiterates that “[e]xtraordinary ability in the field of arts means distinction.” 8 C.F.R. § 214.2(3)(ii). “Distinction” is a lower standard than that required for the immigrant classification, which defines 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). The evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the petitioner’s prior receipt of O-1 nonimmigrant classification is not evidence of her eligibility for immigrant classification as an alien with extraordinary ability.

While Citizenship and Immigration Services (CIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the beneficiary, that prior approval does not preclude CIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. In publishing the proposed rule, legacy INS specifically distinguished the O-1 nonimmigrant category from the high standard set for the immigrant visa extraordinary ability category. See 56 Fed. Reg. 30703, 30704 (July 5, 1991). 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 a beneficiary’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.



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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.