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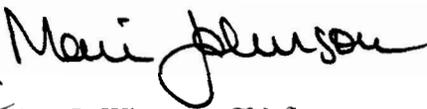
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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, 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.

On appeal, counsel argues that the petitioner “has met four of the ten categories under 8 C.F.R. § 204.5(h)(3).”

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 he has sustained national or international acclaim at the very top level.

This petition, filed on September 19, 2005, seeks to classify the petitioner as alien with extraordinary ability as a martial arts master. At the time of filing, the petitioner was working as an instructor at the U.S.A. O-Mei Kung Fu Academy, Inc. in San Leandro, California. A May 19, 2006 letter submitted from the academy states: “[The petitioner’s] job duties include teaching all levels of our martial arts classes, coaching various

competitions and event teams, representing our school at various performances and other martial arts events and activities.”<sup>1</sup>

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 a September 6, 2005 letter accompanying the petition, counsel argues that the petitioner’s first place in a spear event at the 5<sup>th</sup> Asian Wushu Championships in 2000 “qualifies as a major, international recognized award in the area of martial arts.”

Given Congress’ intent to restrict this category to “that small percentage of individuals who have risen to the very top of their field of endeavor,” the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards.

WL 200418 at \*6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal.<sup>2</sup> 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). Significantly, 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 \$1 million cash prizes. While an internationally recognized award could conceivably 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 petitioner submitted an April 28, 2006 letter from Department, China National Wushu Administrative Center, stating:

[The petitioner] has won the Champion in Spear at the 5<sup>th</sup> Asian Wushu Championships and is a top martial arts master in China.

The Asian Wushu Championships was organized by the Wushu Federation of Asia, the member of the International Wushu Federation (IWUF). The IWUF is an international non-governmental organization [that] administers martial arts at the world level. The Asian Championships is one of the most important and largest martial arts events in the world. Because Asian countries generally have

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<sup>1</sup> The record reflects that the petitioner has competed as recently as 2005 in the 13<sup>th</sup> Annual University of California at Berkeley Martial Arts Tournament. An article in the August 2005 issue of describes this tournament as “the largest and longest-running Chinese martial arts event in that longstanding bastion of Chinese martial arts, the San Francisco Bay Area.”

<sup>2</sup> While Taekwondo and Judo are martial arts events that are part of the Olympic program, Wushu is not one of the official Olympic sports. See [http://www.olympic.org/uk/sports/index\\_uk.asp](http://www.olympic.org/uk/sports/index_uk.asp), accessed on October 16, 2007.

the higher levels of martial arts than other countries, this event is considered by many as the highest level of martial arts competition in the world.

The preceding letter does not include an address, telephone number, or any other contact information for the China National Wushu Administrative Center. Further, while this letter may reflect the opinions of its author, it is not sufficient to demonstrate that the petitioner's first place in a spear event at the 5<sup>th</sup> Asian Wushu Championships is a major internationally recognized award in the martial arts. 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 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.*

The petitioner also submitted a November 5, 2000 article in the *People's Daily*, a leading Chinese newspaper, indicating that Chinese athletes won 16 gold medals at the 5<sup>th</sup> Asian Wushu Championships. The record, however, contains no evidence that a first place gold medal at this competition is a major internationally recognized award in the martial arts, such as evidence that the awardees received international media attention in the general or martial arts sports media of multiple countries worldwide. Further, the Asian Wushu Championships is a regional international martial arts competition rather than a global competition such as the Olympics or the World Wushu Championships. Clearly an award with a geographically restricted pool of competitors cannot serve as a major international prize on the level of an Olympic medal or a comparable major internationally recognized award in the martial arts. As the plain language of the regulation at 8 C.F.R. § 204.5(h)(3) qualifies the phrase "internationally recognized award" with the limitation "major," we cannot conclude that the petitioner's involvement in a competition limited to only Asian nations satisfies the regulation. While we accept that receipt of a gold medal at the 5<sup>th</sup> Asian Wushu Championships is evidence of lesser international recognition in the martial arts, the petitioner's evidence fails to demonstrate that receipt of a gold medal at this competition is evidence of "major, international" recognition as required by the regulation.

Barring the alien's receipt of a major internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) 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 evidence of his receipt of awards at the 5<sup>th</sup> Asian Wushu Championships (2000) and the 9<sup>th</sup> National Games of the People's Republic of China (2001). The record also includes adequate

information to demonstrate the significance of these awards. As such, we find that the petitioner 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 his "membership certificate" (May 8, 1999) and [REDACTED] from the [REDACTED] the record, however, includes no evidence (such as membership bylaws or official admission requirements) showing that the [REDACTED] requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's or an allied field. While the petitioner has "passed the [REDACTED] and achieved a sixth level Dan, there is no evidence that the Chinese Wushu Association requires a sixth level Dan to become a member.<sup>3</sup> Further, there is no evidence identifying the specific requirements that must be satisfied to achieve this ranking.

The petitioner also submitted a "training certificate" (January 22, 2003) bearing the seal of the Chinese Wushu Association and stating that he "finished the National Wushu Forms Training P[rogra]m for Coaches." Completion of a training program is not tantamount to membership in an association in the field requiring outstanding achievement. Further, there is no evidence demonstrating that receipt of this training certificate required "outstanding achievements" in martial arts coaching rather than simply completion of an educational program that developed its participants' coaching skills.

The petitioner also submitted a certificate from the China National Sports Administration [REDACTED] stating: "This is to certify that [the petitioner] has been awarded the title of Martial Arts Elite." This title awarded to the petitioner, however, is far more relevant to the "lesser nationally or internationally recognized prizes or awards" criterion at 8 C.F.R. § 204.5(h)(3)(i), a criterion that we find the petitioner has already met. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and membership in associations in the field, CIS clearly does not view the two 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.

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

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

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<sup>3</sup> There is no evidence that first, second, third, fourth, and fifth level Dans are excluded from membership in the Chinese Wushu Association.

earn acclaim at the national level from a local publication or from a publication not published in a country's predominant language. 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>4</sup>

The petitioner submitted articles from Chinese language publications such as *People's Daily*, *Martial Arts and Beauty*,<sup>5</sup> *World Journal*, *Sichuan Sports*, and *Chengdu Sports*, but these articles were unaccompanied by a full English language translation. Pursuant to the regulation at 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 summary translations submitted by the petitioner do not meet the requirements of the regulation. Without full English language translations, it cannot be determined whether the petitioner was the primary subject of the material and whether the discussion of him was consistent with sustained national or international acclaim at the very top of his field. While we accept that *People's Daily* qualifies as a form of major media, there is no evidence (such as circulation statistics) showing that the remaining publications identified above qualify as "professional or major trade publications or other major media."

The petitioner submitted articles from *Kung Fu Tai Chi* and *Inside Kung-Fu*, but these magazine articles were primarily about the 13<sup>th</sup> Annual University of California at Berkeley Martial Arts Tournament (2005) rather than the petitioner.<sup>6</sup> Further, there is no evidence showing that these publications qualify as professional or major trade publications or other major media.

The petitioner also submitted evidence that his photograph appeared in two promotional advertisements for "Splendid China," an Orlando, Florida "theme park." Promotional material, which is not the result of independent journalistic reportage, cannot serve to meet this criterion. This material does satisfy the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) and is simply not indicative of national or international acclaim.

In response to the director's request for evidence, the petitioner submitted an article from the March/April 2006 issue of *Kung Fu Tai Chi* entitled "[REDACTED] The Lost Legacy of the Big Blade Troop." Photographs of the petitioner appear throughout the article as he demonstrates various swordsmanship techniques, but the article is not about the petitioner. The petitioner also submitted a captioned photograph of himself demonstrating martial arts moves that appeared in the Metro section of the *Oakland Tribune* on

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<sup>4</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>5</sup> In the initial submission, the name of this publication was translated to English as *Martial Arts and Beauty* and its date of publication was identified as August 1998. In response to the director's request for evidence, the petitioner resubmits the same material identifying the publication as "*The Vigor & Beauty Monthly* (July 1997, No. 87, Pages 30-31)." The discrepancies in these conflicting translations submitted by the petitioner underline the necessity of compliance with the regulation at 8 C.F.R. § 103.2(b)(3).

<sup>6</sup> The magazine articles, which focus on the tournament, briefly mention the petitioner only once as an event winner.

February 8, 2006 and a group photograph in which he appeared in the March 25, 2006 issues of *World Journal* and [REDACTED] but these photographs do not satisfy the plain language of this regulatory criterion. Nor is there evidence that the preceding publications qualify as professional or major trade publications or other major media. Nevertheless, the preceding materials were published subsequent to the petitioner's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Commr. 1971). Accordingly, the AAO will not consider this evidence in this proceeding.

In light of the above, 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 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 or regional competition for recreational youth participants.

The petitioner submitted a certificate dated August 5, 2005 and a letter dated August 16, 2005 issued by the Northern California Chinese Athletic Association stating that he served as a “General Judge” at the 2005 Chinese Athletic Tournament Wushu competition. The letter states: “Chinese Athletic Tournament held by Northern California Chinese Athletic Association has been successfully ended by 08/14/05. We are so glade [sic] to have invited [the petitioner] as the General Judge for this Wu Shu competition. We do appreciate [the petitioner's] help.”

The petitioner also submitted an August 20, 2005 certificate signed by [REDACTED] International Martial Arts Tournament 2005 Committee Chair, stating: “International Martial Arts Tournament 2005 [the petitioner] TOURNAMENT GENERAL CHIEF JUDGE.”

Regarding the petitioner's involvement with the Chinese Athletic Tournament Wushu competition held by Northern California Chinese Athletic Association in August 2005 and the International Martial Arts Tournament 2005, the record includes no evidence showing the names of the individuals judged by the petitioner, their level of martial arts expertise, the specific competitive categories he judged, and the significance of these tournaments. For example, it is not clear as to whether the participants judged by the petitioner competed at the youth, junior, intermediate, amateur, professional, or other some other level. 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 his or an allied field that is consistent with sustained national or international acclaim, we cannot conclude that he meets this criterion.

The petitioner also submitted an August 9, 2005 letter from promoters of the West America Tournament for martial arts held in Oakland, California inviting him to serve as a General Judge at the tournament from September 23<sup>rd</sup> – 24<sup>th</sup>, 2005. In response to the director’s request for evidence, the petitioner submitted evidence of his participation as a judge at the 14<sup>th</sup> Annual University of California at Berkeley Martial Arts Tournament in April 2006 and the Tiger Claw Elite Championship Qualifier in May 2006. The petitioner’s response also included evidence indicating that he was to participate in the International Martial Arts Tournament at the San Jose Civic Auditorium in June 2006. All of these tournaments occurred subsequent to the petition’s filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. Individuals seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *Id.* Accordingly, the AAO will not consider the petitioner’s activities at these tournaments in this proceeding.

The petitioner’s response to the director’s request for evidence also included a credential from the China National Sports Administration issued on April 16, 1996 stating that he “has been certified as the First Degree Judge in Chinese Martial Arts.” The plain language of the regulatory criterion, however, requires “[e]vidence of the alien’s participation as a judge of the work of others.” While the petitioner possesses this certification, the record includes no evidence of his actual participation as a judge at martial arts events of the China National Sports Administration.

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

In this case, we concur with the director’s determination that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Beyond the regulatory criteria, the petitioner submitted several letters of support from experts in his field discussing his awards, activities, and expertise as a martial arts coach. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. As discussed previously, CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 791, 795. 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. 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 achievements and recognition one would expect of a martial arts master who has sustained national or international acclaim.

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the 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.