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Office: TEXAS SERVICE CENTER

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IN RE:

Petitioner:

Beneficiary:

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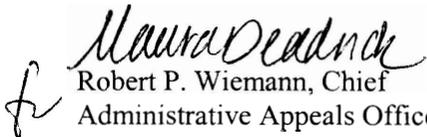
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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 Director, Texas Service Center, denied the employment-based immigrant visa petition, reopened the matter on motion and issued a new denial on the merits. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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). On September 22, 2005, the director denied the petition for failure to respond to a request for additional evidence. The petitioner filed a motion, noting that it had responded. The director reopened the matter and denied the petition on the merits, determining that the petitioner had not established that the beneficiary enjoys the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel relies on non-binding federal district court decisions and non-precedent decisions by this office with questionable relevance to the facts in this matter. Counsel fails to specifically rebut the director’s bases of denial. Significantly, while counsel has repeatedly asserted that the petitioner meets three of the ten regulatory criteria as required, counsel characterizes the criteria differently than can be inferred from a reasonable reading of the plain language of the regulation at 8 C.F.R. § 204.5(h)(3). Thus, for the reasons discussed in detail below, we uphold the director’s decision. Our conclusion, reached by an evaluation of the regulatory criteria individually, is consistent with a review of the evidence in the aggregate.

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

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a Taekwondo instructor. Counsel has repeatedly discussed the substantial benefit the beneficiary will bring to the United States if granted permanent residency. While section 203(b)(1)(A)(iii) requires a showing that the alien will substantially benefit the United States if admitted, the regulations provide no specific evidentiary burden for this requirement. Rather, while it is a statutory requirement that we cannot ignore, in most cases it is presumed that an alien with sustained national or international acclaim who seeks to continue in his field of expertise will provide a substantial benefit. Thus, the statements as to the value of Taekwondo instruction and the necessarily subjective testimonials from the parents of the beneficiary’s students have limited relevance to the ultimate issue of eligibility for the exclusive classification sought, sustained national or international acclaim.

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. While counsel has asserted on more than one occasion that the beneficiary meets three of the regulatory criteria, counsel does not always accurately characterize the plain language of the criteria. Moreover, counsel has consistently focused on the beneficiary’s alleged ranking in the field, which is not a regulatory criterion. Rather, counsel appears to derive this consideration from *Muni v. INS*, 891 F. Supp. 440, (N.D. Ill. 1995).

In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge’s decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Regardless, while the court in *Muni* acknowledges the plaintiff’s argument that other hockey players at the same level had been approved as aliens of extraordinary ability, the court never implied that such a subjective test could take the place of the ten regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3). *Muni*, 891 F. Supp. at 442, 444-445. In fact, the only part of the decision where the court ranks the plaintiff with other players is in regard to his remuneration, which relates to a regulatory criterion that, in this matter, the beneficiary is not alleged to meet. *Id.* at 444-445.

Counsel's assertion that the beneficiary ranks within the top two percent of his field is based on the assertion that there are 300,000 members of the American Taekwondo Association and only 3,000 are certified as instructors like the beneficiary. If true, one percent of members would be certified instructors. however, indicates there are, in fact, 150,000 members, including 3,000 instructors, which is consistent with the two percent figure. We are not persuaded, however, that the beneficiary's participation in the instructor training program, intensive as it may be, makes him one of the very few at the top of his field. In fact, competitive athletics and instructing are not the same area of expertise. *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002). Thus, counsel's ranking of the beneficiary with competitors and instructors rather than with just instructors is not persuasive. More generally, we note that in every sport there are more athletes than coaches; in the performing arts there are more actors and dancers than directors and choreographers. That fact does not lead to the conclusion that every coach, director or choreographer is at the top of his or her field.

Counsel further asserts that the court in *Muni* requires Citizenship and Immigration Services (CIS) to compare the alien with other aliens who have been approved in the same classification rather than evaluating the evidence on a case-by-case basis. Such language does not appear in *Muni*. As stated above, the court in *Muni* acknowledged the plaintiff's argument that other similarly ranked hockey players had received classification as an alien of extraordinary ability but goes on to evaluate the evidence that the plaintiff met at least three criteria. *Id.* Thus, counsel's reliance on non-precedent decisions by this office, for which we do not have the full record of proceedings before us, is not persuasive. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Counsel asserts that "once it is established that the alien's evidence is sufficient to meet three of the criteria listed in 8 CFR 204.5(h)(3), the alien must be deemed to have extraordinary abilities unless the INS sets forth specific and substantiated reasons for its finding that the alien, despite having satisfied the criteria does not meet the extraordinary abilities." Counsel cites *Buletini v. INS*, 860 F. Supp. 1222, 1234 (E.D. Mich. 1994) for this proposition. As stated above, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715. Regardless, neither the director nor this office has found or is finding that the beneficiary meets three criteria. Thus, no additional explanation is necessary beyond our finding that the beneficiary does not meet the criteria as claimed. Significantly, the court in *Muni*, on which counsel relies, recognized that the "satisfaction of the three-category production requirement does not mandate a finding that the petitioner has sustained national or international acclaim and recognition in his field," although the court also found that "it is certainly a start." *Muni*, 891 F.Supp. at 446. *Accord Yasar v. Dep't of Homeland Security*, 2006 Westlaw 778623, (S.D. Tex. March 24, 2006). It remains, the petitioner's submission of evidence relating to the regulatory criteria is insufficient and we will explain in detail below why the evidence is not consistent with or indicative of sustained national or international acclaim.

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

On appeal, counsel asserts that the beneficiary's resume "and other submitted documents" demonstrate his awards at international championships from 1996 through 2001. Primary evidence of awards consists of copies of the awards themselves. Secondary evidence might include competition results published in a newspaper or magazine. The regulation at 8 C.F.R. § 103.2(b)(2) states that the unavailability of primary evidence creates a presumption of ineligibility. Only when the petitioner demonstrates that both primary and secondary evidence are unavailable may the petitioner rely on affidavits. Counsel cites no legal authority that would allow us to consider the beneficiary's own self-serving resume as evidence of his awards and prizes.

In addition to the beneficiary's resume, the petitioner submitted a list of "world level" results for Uruguay competitors. The list does not bear a seal or other evidence that it is an official document. The petitioner did not submit copies of the actual awards. In response to the director's request for additional evidence, the petitioner submitted evidence that in 2005 the beneficiary placed first among 4th and 5th degree black belts in sparring, form and weapons at the North Carolina Songahm Taekwondo State Championship. This is a purely local award.

Even if we accepted that the beneficiary won the claimed international awards, the most recent one was in 2001. The beneficiary has not won a national or international award since that time. Thus, without more recent evidence relating to this criterion or other criteria, the petitioner cannot establish that the beneficiary enjoyed sustained national or international acclaim as of the filing date, May 11, 2005.

Finally, the petitioner seeks to classify the beneficiary as an extraordinary Taekwondo instructor. The petitioner does not submit evidence indicative of national or international acclaim, such as evidence that any of the beneficiary's students have won nationally or internationally recognized awards or prizes while under the beneficiary's 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.

Initially, the petitioner submitted the beneficiary's certification as a fourth degree black belt. Counsel asserted that the beneficiary's "attaining a Black Belt clearly is evidence of outstanding achievement as a member of the traditional Taekwondo Federation." Counsel further asserted that the achievement "was judged by individuals who are recognized as national and international experts in their fields. That is, people who have already attained the status of Black Belt and a Masters Instructors [sic]." Counsel significantly changes the wording and meaning of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). The petitioner must demonstrate that the beneficiary is a member of an association that requires outstanding achievements of all its members, not that the beneficiary has demonstrated outstanding achievements as a member of an association without regard to the membership requirements of that association. The petitioner initially submitted materials from the website taekwondobible.com on the

“Belt System of Taekwondo.” The materials discuss the origin of the belt colors and concludes that the “ranks of belts comes [sic] from the amount of time he has wasted in practicing.”

On appeal, counsel asserts:

In Songahm Taekwondo, the different colored belts reflect a member’s proven level of competence. Each belt achieved is truly an accomplishment worthy of respect. It is also worth noting that achieving a belt isn’t just a matter of “spending enough time” in a previous belt. In order to achieve the next rank, a student must demonstrate their proficiency in their current belt’s techniques, to include Basic Moves, Sparring and Forms. [The beneficiary’s] achievements are the result of objective evaluation of his performance by his peers.

A belt level is not an association that admits members. That said, we acknowledge that the regulation at 8 C.F.R. § 204.5(h)(4) permits the submission of comparable evidence where a criterion is not readily applicable. The record, however, lacks evidence that attaining 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 receiving an academic degree from a highly competitive institution than to a membership in an association that requires outstanding achievements of its members. Moreover, we note that the beneficiary has not attained the highest “Dan” or belt level. Specifically, we note that Master is a 7th Dan Black Belt and Grand Master is a 9th Degree Black Belt.

In light of the above, the petitioner has not demonstrated that the beneficiary 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.

While neither the petitioner nor counsel asserts that the beneficiary meets this criterion, we note that the published materials submitted are in a local Huntersville publication. We cannot conclude that this publication constitutes major media. Thus, the petitioner has not established that the beneficiary 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.

Initially, counsel stated that the petitioner met this criterion. Counsel elaborated as follows: “Part of the on-going process of being a Taekwondo instructor and athlete is service on panels of judging other athletes.” The petitioner did not submit any evidence that the beneficiary was an official judge of Taekwondo competitions or Dan / belt level tests. On appeal, counsel asserts:

[The petitioner] has served on panels judging others – only instructors can sit on such panels. In [a non-precedent decision issued by this office], the Petitioner served as a judge of the work of others as an instructor for the Croatia Judo Federation. [The petitioner] serves as the judge of the work of others as an instructor certified by the American Taekwondo Association and its affiliated organizations.

We do not find it violates the reasoning in *Buletini*, 860 F. Supp. at 1231, to examine the evidence submitted as to whether it is indicative of or inconsistent with national or international acclaim. The court in *Buletini* was concerned that an alien would need to first demonstrate “extraordinary ability” in order to meet this criterion. We are not following this “circular exercise” that troubled the court. Rather, we are looking at the type of review responsibilities inherent to the field and what review responsibilities might be indicative of or at least consistent with sustained national or international acclaim. *Accord Yasar v. Dep’t of Homeland Security*, 2006 Westlaw 778623, *9 (S.D. Tex. March 24, 2006) (citing *Buletini* as an example of sufficient judging responsibilities rather than for the proposition that no evaluation of the judging responsibilities is permissible).

As stated above, the record contains no evidence that the beneficiary has judged Taekwondo competitions or Dan / belt level tests for a national or international authority. Rather, the petitioner and counsel appear to rely solely on the fact that the beneficiary works as a Taekwondo instructor. We concur with the director that judging the work of one’s students is inherent to the position of Taekwondo instructor. Not every instructor enjoys sustained national or international acclaim. As the beneficiary’s review responsibilities as an instructor do not set him apart from others in the same occupation and are not indicative of national or international acclaim, the petitioner has not established that the beneficiary meets this criterion.

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

The petitioner submitted a foreign language letter signed by [REDACTED], former president of the Uruguayan Karate Confederation. The petitioner also submitted two similar uncertified translations of the same or similar letter from [REDACTED]. According to the uncertified translation, the letter asserts that the beneficiary is the president and founder of the Songahm Taekwondo Association in Uruguay. Without a certified translation pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), the letter has no evidentiary value.

The petitioner also submitted a 1998 letter from Grand Master [REDACTED] President and Founder of the Songahm Taekwondo Federation asserting that the beneficiary and two other individuals are the federation’s “representative members in Uruguay” with the authorization to utilize the federation’s materials in relation to martial arts training. A March 15, 1989 “To Whom it May Concern” letter from then-Governor [REDACTED] asserts that the Songahm Taekwondo Federation was established in 1983 and has 600 schools internationally with over 120,000 members. Governor [REDACTED] requests that the reader of the letter “recognize the responsibility and success of the Federation as the official martial arts

organization in South America, as we have in the United States.” It is not clear to whom this letter was directed and whether or not the federation was ultimately recognized in South America. Additional Internet materials from the federation’s website indicate that Grand Master [REDACTED] and Master [REDACTED] founded the federation in Paraguay in 1982 and that it subsequently spread to Brazil, Uruguay, Argentina, Chile, Venezuela and Peru. Finally, the petitioner submitted a “Certificate of Appointment” appointing the beneficiary a “National Representative STF Uruguay” from January 12, 1999 through January 12, 2001.

The sole evidence of the national or international distinguished reputation of the Songahm Taekwondo Federation is a 1989 letter from a state governor and the federation’s own website materials. The only evidence of the beneficiary’s role with the federation is a certificate appointing him as a representative and a letter supported by an uncertified translation. By not submitting certified translations and objective evidence of the federation’s reputation, the petitioner has not complied with the regulatory evidentiary requirements to meet this criterion.

Conclusion

As discussed above, the petitioner has not submitted the required evidence to establish that the beneficiary meets any of the regulatory criteria. Even if we ignored the petitioner’s failure to submit primary evidence of the beneficiary’s alleged nationally or internationally recognized awards and accepted the uncertified translation as evidence that the beneficiary served as founder and president of a prestigious martial arts federation in Uruguay, he would meet only two criteria. An alien must meet at least three to be eligible for the classification sought. The beneficiary falls far short of meeting any other criterion.

The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the beneficiary as one of the small percentage who has risen to the very top of the field of endeavor. The beneficiary, a Taekwondo instructor, relies on his past achievements as a competitor, his fourth degree black belt level, his certification as an instructor, and his alleged past experience founding a Taekwondo federation in Uruguay. While this may distinguish him from other Taekwondo competitors, most of this evidence does not distinguish him from other Taekwondo instructors, who must also be certified to work in the occupation and must have presumed reached a similar black belt level. Moreover, as stated above, two of the beneficiary’s references have a much higher degree black belt than the beneficiary and have “Master” or “Grand Master” honorific titles. The evidence relating to the potentially most significant achievement, founding a Taekwondo federation in Uruguay, does not comply with the regulatory requirements for foreign language evidence set forth in the regulation at 8 C.F.R. § 103.2(b)(3).

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 a Taekwondo instructor 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 Taekwondo instructor, 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.