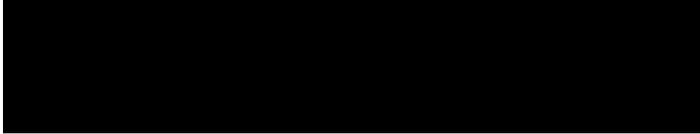


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass., 3/F
Washington, D.C. 20536



File: WAC 01 285 51047 Office: California Service Center

Date: MAY - 6 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
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 on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petition qualifies for classification as an alien of exceptional ability, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer.

(i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute the petitioner's claim that he qualifies as an alien of exceptional ability. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible,

although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the 'prospective national benefit' [required of aliens seeking to qualify as 'exceptional.']. The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at note 6.

Along with documentation demonstrating his exceptional ability as a Taekwondo competitor, the petitioner submitted a letter from Dr. [REDACTED] President of the World Taekwondo Federation. He states:

It is my pleasure to write on behalf of [the petitioner] who retired from international competition in 1997 as the top middleweight fighter in the history of international Taekwondo competition. From 1979 to 1986, [the petitioner] took first place in this Federation's World Games a total of nine times in such sites as Germany, Japan, Russia, Vietnam, Italy, and the United States. As a nine-time world champion, [the petitioner] has established a record that many believe will never be broken.

[The petitioner] holds a 6th Degree black belt in our sport and has participated as a competitor, instructor, and referee at the highest level of international competition for the past 20 years. He is now dedicating himself to the development and promotion of the sport

of Taekwondo throughout the world. As a member of different planning and steering committees of our Federation, he has earned numerous citations for outstanding contributions to the work of the Federation.

[The petitioner] is the best possible emissary of our sport as it rapidly spreads in popularity and skill level of participants around the world. It is my firm belief that [the petitioner] will contribute to the social and health education and development of people around him wherever he may go.

Dr. [REDACTED] letter provides few details regarding the specific nature of the petitioner's activities since retiring from international competition in 1997. We note that the last time the petitioner won an international championship was in 1986. The petitioner, age thirty-seven at the time of filing, no longer competes in Taekwondo at the national or international level. Therefore, it is not immediately apparent how the petitioner would prospectively benefit the national interest of the United States. A letter from Deulim Korean Bible Gospel Church in Korea states that the petitioner "participated as a Taekwondo instructor in a summer camp for youth" from 1986 to 1998, but it has not been shown that he has a successful history of coaching athletes who compete regularly at the national level.

In order to establish eligibility for a national interest waiver, the petitioner must demonstrate the ability to influence the U.S. sport of Taekwondo at the national level. *Matter of New York State Dept. of Transportation* indicates that while education and pro bono legal services are in the national interest, the impact of an individual teacher or lawyer would be so attenuated at the national level as to be negligible. *Id.* at 217, note 3. We find such reasoning applicable to a Taekwondo instructor as well. As the petitioner has not shown that he is coming to the U.S. to coach athletes who compete regularly at the national level, we find that his impact would generally be limited to the local students who receive his martial arts instruction.

The director requested further evidence that the petitioner had met the guidelines published in *Matter of New York State Department of Transportation*. In response, the petitioner submitted two additional witness letters and a brochure from the World Taekwondo Federation.

[REDACTED] Secretary General, World Taekwondo Federation, states:

I serve as the current Secretary General of The World Taekwondo Federation. This organization was established in 1967 and currently has 141 national federation members around the world. We established the competition guidelines and resolve disputes for national championships in each member country as well as for regional competitions (Pan American, Asian, GAISF, All-African, and others). We are recognized by the International Olympic Committee as the governing body in the sport of Taekwondo.

I know of [the petitioner] by his reputation, although I do not know him personally. [The petitioner] is widely regarded among the members of the international Taekwondo community as the greatest middle weight fighter in history. There is no doubt that he would have been a gold medal winner had Taekwondo been an official Olympic event in his time

([The petitioner] retired from international competition in 1996, and Taekwondo became an official Olympic even in 2000). He is now regarded as one of the top coaches in our sport and continues to be a driving force in the development and promotion of Taekwondo around the world.

██████████ asserts that the petitioner is “regarded as one of the top coaches in [the] sport,” but he provides no specific information regarding the petitioner’s past coaching accomplishments. The record contains no documentary evidence showing that the petitioner has a successful history of coaching athletes who compete regularly at the national level. For example, the petitioner has not submitted evidence showing that the athletes he has coached have won national Taekwondo competitions.

██████████ President of the United States Korea Tae Kwon Do Association located in Arcadia, California, states:

The United States Korea Tae Kwon Do Association was established in 1985 as a member organization of the World Tae Kwon Do Federation. We conduct clinics and competitions throughout the United States to promote the sport of Tae Kwon Do and with the goal of raising the level of ability of competitions. Every member of the current men’s and women’s national team has participated in our competitions through the years.

[The petitioner] has been a top champion in international competition and has turned to coaching since his retirement from international competition in 1996. We are very pleased and excited to hear that [the petitioner] plans to move to the United States and join our organization. His participation in the activities of our association will greatly enhance the caliber of our national team members and move the sport of Tae Kwon Do forward in the United States.

██████████ letter states that the petitioner “will greatly enhance” the caliber of national team members, but he offers no information regarding the petitioner’s past coaching accomplishments at the national level. Statements pertaining to the expectation of future results rather than a past record of demonstrable achievement fail to demonstrate eligibility for a national interest waiver. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Bureau held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The petitioner’s response also included a statement from counsel citing an AAO decision approving a national interest waiver petition for a sculling coach. In addressing the third factor set forth in *Matter of New York State Dept. of Transportation*, counsel stated:

[T]he case of the sculling coach is instructive. There the AAO concluded that the coach met the “significantly greater degree” requirement as he had documented by the consensus of credible experts in the field that he was not merely more qualified than the majority of U.S. sculling coaches, but that he was the most qualified sculling coach in the country.

In this case, the record is full of consensus opinions of top officials of the international governing body of the sport, the top official of the United States Taekwondo Association, that [the petitioner] may be the most qualified coach in the world.

Counsel's attempt to apply findings from a previous AAO decision to the current case is flawed. In this matter, the petitioner's three witnesses devote their attention to his competitive achievements in the early 1980's rather than any of his coaching achievements. Therefore, counsel's assertion that top officials in the sport regard the petitioner as being "the most qualified coach in the world" misstates the evidence. None of these officials have provided any information regarding teams that the petitioner has successfully coached or awards won by his athletes at the national or international level. In fact, the letter from Dr. [REDACTED] President of the World Taekwondo Federation, did not even mention the petitioner's coaching endeavors. While a Taekwondo coach and competitor certainly share a knowledge of Taekwondo, the two jobs involve very different sets of basic skills. Thus, there exists a clear distinction between competitive athletics and coaching. In this case, the petitioner may have enjoyed a high level of competitive success in the early 1980's, but success as an athlete does not necessarily establish success as a coach.

Counsel mistakenly refers to [REDACTED] President of the United States Korea Tae Kwon Do Association, as "the top official of the United States Taekwondo Association." We note here that the United States Taekwondo Union, located in Colorado Springs, Colorado, is a member organization of the U.S. Olympic Committee and is the official national governing body for the sport of Taekwondo in the United States (as recognized by the World Taekwondo Federation). The record contains no letter of support from the United States Taekwondo Union. [REDACTED] may indeed preside over the United States Korea Tae Kwon Do Association in California, but it has not been shown that he presides over the officially sanctioned national governing body for the sport of Taekwondo in the U.S.

We find no evidence to support counsel's claim that the petitioner's coaching accomplishments demonstrate his ability to serve the national interest to a substantially greater degree than others in his sport. Contrary to counsel's assertion, there is little similarity between the AAO decision approving a national interest waiver petition for the sculling coach and the petitioner's case. Regardless, the approval in question does not represent a published precedent and therefore is not binding on the Bureau in other proceedings.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director indicated that the record contained no substantive evidence establishing the specific nature of the petitioner's proposed employment and how his individual work would serve the national interest.

On appeal, counsel states that the evidence establishes that the petitioner has met the three requirements set forth in *Matter of New York State Department of Transportation*. We concur with counsel that the petitioner works in an area of intrinsic merit.

In addressing the national scope of the petitioner's work, counsel states:

The petitioner will join an association dedicated to raising the level of ability of top competitors throughout our nation. It does this through conducting clinics and competitions throughout the United States. Every team member of the men's and women's national teams has participated in their clinics.

The record, however, contains no documentary evidence establishing the scope or the reputation of the United States Korea Tae Kwon Do Association of Arcadia, California. For example, it has not been shown whether the organization directly trains U.S. national team members or whether it simply provides youth clinics or hosts competitions in which national team members might have participated. We acknowledge that the United States Korea Tae Kwon Do Association may host local or regional competitions, but documentary evidence demonstrating its national activities has not been provided. In order to establish that his work will be national in scope, the petitioner must show that his employment with the United States Korea Tae Kwon Do Association in California will involve directly coaching U.S. athletes at the national level. The national benefit associated with coaching national champions carries far greater weight in this matter than would coaching a group of youths at a local recreation organization, privately owned business, church, or summer camp. The vague statements of [REDACTED] unsupported by documentary evidence and somewhat contradicted by the existence of the United States Taekwondo Union, the sport's official national governing body (as recognized by the United States Olympic Committee and the World Taekwondo Federation), fail to establish that the proposed benefit of the petitioner's coaching would be national in scope.

Counsel argues that the petitioner, a nine time Taekwondo world champion, would serve the national interest to a substantially greater degree than others in his sport. The petitioner, however, seeks employment not as a competitor but as a coach. Therefore, the petitioner must demonstrate significant coaching achievements that distinguish him from other capable Taekwondo instructors. In this case, the petitioner has failed to provide such evidence. Also lacking is definitive evidence showing how the petitioner will translate his past athletic achievements into future benefit to the United States. Impressive as the petitioner's past achievements are, the fact that he is an ex-champion does not automatically mean he will serve the national interest to a greater degree than others who would have the same minimum qualifications required of a coach.

In sum, we find that the record lacks documentation establishing the petitioner's prior coaching accomplishments and specific information regarding the nature of his future activities (including the level at which he will function as a coach).

At issue is whether this petitioner's contributions are of such unusual significance that he merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. Without evidence establishing that the petitioner has been responsible for significant achievements as a Taekwondo coach at the national level, we must find that his assertion of prospective national benefit is speculative at best.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on the national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.