



U.S. Citizenship
and Immigration
Services

AS

[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: OCT 08 2004

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:

SELF REPRESENTED

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

CC: [REDACTED]

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prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner¹ seeks classification 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.

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.

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 CIS regulation at 8 C.F.R. § 204.5(h)(3).

This petition seeks to classify the beneficiary as an alien with extraordinary ability in karate. 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. Specifically, the regulation at 8 C.F.R. § 204.5(h)(3) provides the following criteria:

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

¹ 8 C.F.R. § 103.2(a)(3) specifies that a petitioner may be represented "by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." In this case, the person listed on the G-28 is not an authorized representative.

- (ii) 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;
- (iii) 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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

Initially, the petitioner submitted what appear to be award certificates and Judo certificates in a foreign language with no accompanying translations. The petitioner also submitted four award diplomas in various categories all issued at the 1998 First International European Karate and Kobudo Open Cup Competitions. In addition, the petitioner submitted two certificates in a foreign language issued at the 2000 "Hungarian [REDACTED]" and a packet of papers with the title "Activities of [REDACTED]". The papers are almost entirely in a foreign language except a certificate from the Japan Karatedo [REDACTED] certifying that [REDACTED] represents the [REDACTED] Federation and is approved as the sole organization for an overseas headquarters in Hungary.

Finally, the petitioner submitted a packet including photographs of himself at competitions and news articles with the petitioner's name highlighted. The petitioner did not submit translations of the news articles.

On November 3, 2003, the director advised the petitioner of the ten criteria and requested evidence that the beneficiary meets at least three of those criteria. The director specifically requested information about the karate

competitions won and noted that all foreign language documents must be accompanied by English language translations.

In response, counsel asserts that the petitioner's three national championship awards and one international championship award was sufficient to establish eligibility. Counsel further asserts that the petitioner is submitting published articles in major trade publications, proof of memberships and recommendation letters.

The petitioner also submitted a job offer from Eagle Boxing and Kickboxing; two recommendation letters from [REDACTED] President of the [REDACTED] Do Federation; translations for the previously submitted award certificates; membership documents and diplomas; and news articles with translations.

The translations reflect that the petitioner placed third or above at the following competitions: The Budapest Patriots Sport Organization Organized Event in 1989, an event organized by Budapest Spartacus in 1989, the JKF Cup in 1995, the Elizabeth Cup in 1996, the 9th European [REDACTED] Championship in Germany in 1999, the Goju-Ryu National Championship in 2000, and the Georgia Karate League Tournament in November 2003 (after the date of filing).

The petitioner also submitted evidence that he passed the third level belt test in 1988, was admitted to first level Dan in 1999,² and was designated a "Shodan" by the American Bushido Karate Association in 2004 (after the date of filing). In addition, the petitioner submitted evidence of his membership in the Hungarian Karate-Do Federation, formerly the [REDACTED], the European Koju-Ryu Karate-Do Federation and the American Bushido Karate Association. The petitioner also submitted a foreign language document purporting to be a referee certificate. The record does not include a certified translation of this document. Finally, the petitioner submitted news articles regarding [REDACTED] and his founding of JKF [REDACTED] and reporting the results of competitions where the petitioner competed.

The director concluded that the petitioner had failed to submit evidence of the beneficiary's sustained national or international acclaim. Specifically, the director concluded that the petitioner had not established that his awards were nationally or internationally recognized, that the organizations of which he is a member require outstanding achievements of their members, or that the articles appeared in professional or major trade publications.

On appeal, the petitioner submits three identical affidavits from U.S. citizens born in Hungary affirming that the petitioner's awards are well known in Europe. The petitioner also submits a certification from the Vice Mayor of Pesterzsebet, Hungary, affirming that the petitioner competed in Germany in 1999 and in Hungary in 1998. Counsel asserts, without support, that the news articles previously submitted appeared in *Nemzeti Sports*, major media.

We concur with the director's conclusion and analysis. In response to the director's request for additional documentation, counsel implies that the petitioner's awards alone are sufficient. We find no evidence that the international competitions attended by the petitioner compare to major international recognized awards that constitute a one-time achievement, such as Olympic medals. Thus, we concur with the director that the petitioner must establish that he meets at least three of the ten criteria quoted above.

² The record contains a certificate of excellence issued to the petitioner that is signed by third, seventh, and eighth Dan level masters.

A competition that includes competitors from more than one country and, thus, calls itself "international" is not necessarily internationally recognized. Similarly a competition that hosts competitors from different parts of a nation is not necessarily nationally recognized. The petitioner must provide evidence of the national or international attention these competitions receive. The record, including the evidence submitted on appeal, is insufficient. The attestations of individuals, especially the identically worded affidavits submitted on appeal from individuals with no official role in the field, are insufficient. The record contains no evidence regarding the number of competitors or evidence of the circulation for the newspapers that published the results of the competitions where the petitioner competed. Even if we did consider the petitioner's awards sufficient to meet 8 C.F.R. § 204.5(h)(3)(i), the record falls far short of establishing that the petitioner meets any other criterion.

That the petitioner belongs to associations with a national reputation is not determinative. What is relevant to meet 8 C.F.R. § 204.5(h)(3)(ii) is the membership requirements for those associations. The record contains no official documentation, such as the bylaws, of the associations in which the petitioner is a member. Thus, the petitioner has not established what the membership criteria are for these associations. As such, the petitioner has not established that they require outstanding achievements of their members.

Regardless of whether the news articles in the record appeared in major trade publications, they are not primarily about the petitioner. Rather, they report the results of competitions where the petitioner competed, and his results are included in the complete results. Thus, the articles cannot serve to meet the plain language of 8 C.F.R. § 204.5(h)(3)(iii).

Finally, while [REDACTED] asserts that Japanese grandmasters have emphasized the petitioner's talent in their international seminars and training camps, the petitioner has submitted no evidence, such as letters from these grandmasters or their training materials mentioning the petitioner, to support this assertion.

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 in karate 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 in the field of karate,³ 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.

³ The petitioner submitted evidence that he seeks to work as a karate instructor. The evidence all relates to the petitioner's abilities as a karate competitor. While a karate competitor and instructor certainly share knowledge of karate, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in federal court. *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002). As the petitioner has not established national acclaim as an athlete, however, we need not address this issue further.