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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC 02 112 52207 Office: CALIFORNIA SERVICE CENTER Date: 16 DEC 2002
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a corporation that was incorporated for the purpose of creating a Shaolin martial arts school. The beneficiary is a Shaolin monk, a professional martial arts performer and coach. The petitioner seeks O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act) as an alien with extraordinary ability in athletics, in order to temporarily employ him in the United States as a martial arts coach for a period of three years at a salary of \$28,000 per year, plus room, board and transportation.

The director denied the petition finding that the petitioner failed to establish that the beneficiary would be performing in a particular event.

On appeal, counsel for the petitioner submits two briefs and additional documentation.

The record of proceeding includes an I-129 petition with supporting documentation, the petitioner's response to the director's request for additional documentation, the director's decision, an appeal, a brief and a supplemental brief.

Section 101(a)(15)(O)(i) of the Act, provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

8 C.F.R. 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

8 C.F.R. 214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized

award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

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

(2) 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;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding

the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The petitioner submitted the following documentation with the Form I-129 petition: a six-page letter from the president of the petitioning corporation; four peer letters; copies of nine awards; pictures of the beneficiary performing with the Shaolin Temple Monks in international performance tours; and evidence that the beneficiary is featured in a PBS produced documentary film titled *Shaolin: Wheel of Life*. The petitioner also included a summary of the terms of the three-year contract between the petitioner and the beneficiary in satisfaction of 8 CFR 214.2(o)(2)(ii)(B).

Counsel for the petitioner indicated that he could not provide a consultation from a national office of a labor union, but he did provide the Service with four letters from peer groups including the American Black Belt Academy, the Karazenpo Go Shinjutsu Black Belt Society, the International Seidokan Motobu-Ryu Rengokai, and the area director for Bally Total Fitness.

The director denied the petition on the sole basis that the petitioner failed to establish that the beneficiary would be coming to the United States to perform at an event. The director noted that the petitioner had not yet established the school where it intended to employ the beneficiary.

On appeal, counsel explained that the petitioner had postponed opening his school until he was assured that the beneficiary and two others would receive visas and authorization to work for the petitioner school. Counsel provided documentation showing that the petitioner had signed a letter of intent to lease space for the school. Counsel also included documentation that the petitioner has 190 prospective students.

There is no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 C.F.R. 214.2(o)(3)(iii)(A). However, the petitioner has established that the beneficiary satisfied three of the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B).

For criterion number one, the petitioner provided the Service with documentation of the beneficiary's receipt of nine nationally or internationally recognized prizes or awards for excellence in the field of endeavor. He was the recipient of the first place certificate in the following competitions: the 1991 and 1996 International Shaolin Wushu Festivals; the 1996 Quan Guo Junior Wushu Festival; the 1999 Quan Guo Wu Shu Guan Mo Jau Liou Committee Festival; the 1987 and 1999 Young Shaolin Wushu Festivals. He was awarded a certificate of excellence for his participation in the Quan Guo Wu Shu Martial Arts Championship, the International Cup Open Martial Arts Championship and the 1995 International Traditional Wushu and Unique Feats Tournament.

No evidence was submitted in relation to criterion number two.

The petitioner provided the Service with published material¹ about an upcoming PBS documentary about the Shaolin monks. The beneficiary is featured in the documentary. The petitioner established that the beneficiary made appearances on television shows such as the Jay Leno Show, the David Letterman Show and Good Morning America while on tour in the United States in 1998.

The petitioner submitted evidence that the beneficiary has participated as a judge of the work of others in his field, by serving as a judge at the 2001 Second International Eagle Cup Kung Fu Tournament and Master's Demonstration.

No evidence was submitted in relation to criteria numbers five, six and seven.

For criterion number eight, there is no evidence of the beneficiary's salary history. In the absence of relevant salary data, the petitioner failed to establish that the current offer of \$28,000 per year is high in the beneficiary's field.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary would be coming to the United States to perform an event.

When a petition is filed for an alien of extraordinary ability, the petitioner must show that the beneficiary is coming to the United States to perform services relating to an event or events for an employer. 8 C.F.R. 214.2(o)(1)(i).

On appeal, the petitioner informed the Service of where his school would be located and when the school would be opened. The petitioner provided the Service with a letter of intent to lease that is contingent upon the approval of this visa petition. The petitioner has located the physical premises for the school and has received 190 registration applications from prospective students. The petitioner has established that, as of the date of filing, the beneficiary was coming to the United States for an engagement of three years duration to perform in an event as defined at 8 CFR 214.2(o)(3)(ii). The petitioner has overcome the director's objection. The three year period begins with the approval of the visa petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained.

¹ *Kungfu Qigong*, January/February 2002 (Fremont CA: Pacific Rim Publishing).