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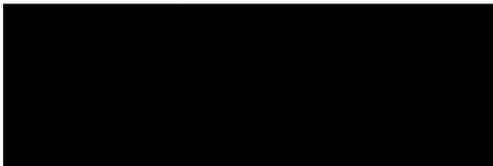


FILE: EAC 05 251 50742 Office: VERMONT SERVICE CENTER Date: **OCT 25 2007**

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

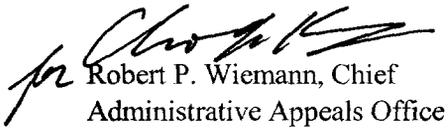
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



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 nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be affirmed and the petition will be denied.

The petitioner is a [REDACTED] (hereinafter "BJJ")¹ athlete. The petitioner seeks nonimmigrant classification of the beneficiary, as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ him in the United States on a full-time basis as a BJJ coach and trainer for a period of three years at yearly salary of \$18,000.

On April 17, 2006, the director denied the petition finding that the petitioner had failed to demonstrate that the beneficiary has sustained national or international acclaim as a coach and trainer and that he is an alien of extraordinary ability in athletics. The petitioner submitted a timely appeal.

Section 101(a)(15)(O)(i) of the Act provides nonimmigrant 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. Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i).

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides the following pertinent definition:

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.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part:

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;

¹ Evidence submitted by the petitioner variously refers to BJJ as [REDACTED]

- (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.

Major, internationally recognized award.

The beneficiary in this case is a native and citizen of Brazil who the petitioner claims has won numerous BJJ championships. Although the petitioner seeks to employ the beneficiary as a BJJ coach and trainer, we will consider the evidence of the beneficiary's purported achievements as an athlete. Given the nexus between competing and coaching, in cases where aliens have clearly achieved national or international acclaim as athletes and have sustained that acclaim in the field of coaching at a national or international level, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. In this case, however, the record does not establish the beneficiary's alleged achievements either as an athlete or as a coach or trainer.

The petitioner claims the beneficiary has won the following championship titles:

- 1st Place BJJ National Champion 1996, 1999, 2000
- 1st Place BJJ National Teams Champion 2000
- 1st Place BJJ Pan American Championships 1996, 2000
- 2nd and 3rd Place BJJ World Championships 1998, 1999
- 1st Place BJJ American Championships 2003
- 1st Place Florida Sunshine State Games Champion (Judo) 1998
- Finalist (4th Place) BJJ World Championships 2001, 2002, 2003
- 1st Place Rio de Janeiro BJJ State Championships 1989, 1991, 1993
- 1st Place Miami Dade, Florida Judo Open

As evidence of the beneficiary's awards, the petitioner submitted photographs of seven medals, a copy of a diploma from the [REDACTED] and a certificate from the International [REDACTED]. The photographs of the medals, however, do not list the beneficiary's name as the recipient of the award and the record contains no other documentary evidence of the petitioner's receipt of the claimed awards. Further, the diploma and certificate were submitted without English translations. Any document containing a foreign language that is submitted to Citizenship and Immigration Services (CIS) must be accompanied by a full English translation, which 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. 8 C.F.R. § 103.2(b)(3). Because the petitioner failed to submit certified translations of the documents, we cannot determine whether the evidence supports the petitioner's claim. *Id.* Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Accordingly, the beneficiary does not meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(A) and we will evaluate his eligibility under the relevant criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The petitioner does not claim that the beneficiary meets any criteria not discussed below.

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

As discussed above, although the petitioner claims that the beneficiary has won more than a dozen national or international championships, the record fails to sufficiently document these purported achievements. The record is not supported by primary evidence of the beneficiary's awards. Rather, the petitioner has submitted copies of awards which do not show the beneficiary's name and uncertified copies of a diploma and a certificate issued to the beneficiary.

The record is also devoid of any evidence that the beneficiary has trained or coached any BJJ athletes who have won nationally or internationally recognized prizes or awards for excellence in their field. Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

(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.

Counsel claims that the beneficiary meets this criterion through his certification as a black belt and an instructor in the International Brazilian Jiu Jitsu Federation (IBJJF). The record does not support counsel's claims for two reasons. First, although the record contains a letter from [REDACTED] President of the IBJJF, which indicates that the beneficiary is certified by the IBJJF as a black belt, the record does not contain primary documentation of this certification or an explanation as to why such primary documentation is not available. Second, and more importantly, the record contains no evidence that black belt certification by the IBJJF constitutes membership in IBJJF. For example, the petitioner submitted no evidence of the membership criteria for the IBJJF.

Counsel further claims that the beneficiary meets this criterion through his membership in the [REDACTED] Team and the BJJ National Team. Again, however, the record is devoid of primary evidence which demonstrates that the beneficiary is a member of either of these teams. We note that although the record contains a printout from an Internet page upon which someone has written "Black Belt team," the printout is in Portuguese and does not contain the requisite translation per 8 C.F.R. § 103.2(b)(3). The record contains no other documentary evidence to support counsel's claims regarding the beneficiary's membership on either of these teams. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, even if the record contained a proper translation and evidence that the beneficiary is a member of these teams, this evidence would not be sufficient to establish that the beneficiary's memberships were based upon his outstanding achievements, as judged by recognized national or international BJJ experts.

Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

(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.

The record contains copies of several photographs of the beneficiary in magazines such as *Submission Fighter* and [REDACTED]. These photographs, however, are not "about" the beneficiary, but rather capture the beneficiary at a particular instance during competition. Although we do acknowledge articles printed in [REDACTED] that appear to be about the beneficiary, the articles are not in English and are not accompanied by a *full and complete* translation of the entire article as required by 8 C.F.R. § 103.2(b)(3). The record also contains a translated article from the *Jornal dos Sports*. However, while the article can be considered "about" the beneficiary, it was written more than 18 years ago when the petitioner was 11 years old. Accordingly, the article carries little probative value in establishing the beneficiary's sustained acclaim. Finally, the petitioner submitted copies of two documents written in Korean that contain photographs of the beneficiary. However, these documents were submitted without

English translations. Because the petitioner failed to submit certified translations of the documents, we cannot determine whether the evidence supports the petitioner's claim. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. *Id.* Most significantly, the petitioner has failed to show that any of the magazines discussed above in which the beneficiary has appeared are considered to be major trade publications or major media.

The record contains no other published material about the beneficiary or any athletes that he has instructed or coached. Consequently, the petitioner has failed to establish that the beneficiary meets this criterion.

The record does not demonstrate that the beneficiary has won a major, internationally recognized award pursuant to the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(A) or that he has satisfied any of the alternative evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). In sum, the petitioner has not established that the beneficiary has achieved sustained national or international acclaim as a BJJ instructor and coach and is one of the small percentage of individuals who have risen to the very top of his field. Accordingly, the beneficiary is not eligible for nonimmigrant classification as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Act and the petition must be denied. The April 17, 2006 decision of the director will be affirmed.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The April 17, 2006 decision of the director is affirmed. The petition is denied.