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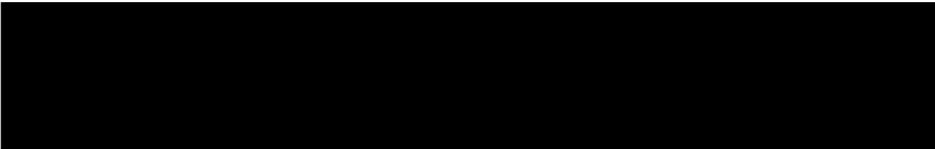
FILE: WAC 06 163 50719 Office: CALIFORNIA SERVICE CENTER Date: **SEP 13 2007**

IN RE: Petitioner:
Beneficiary:



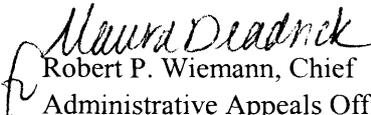
PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

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, California Service Center. On appeal, the Administrative Appeals Office (AAO) remanded the petition for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

The petitioner is a mixed martial arts academy. The beneficiary is an athlete and instructor of several forms of martial arts, including Brazilian Jiu Jitsu (hereinafter "BJJ").¹ The petitioner seeks nonimmigrant classification of the beneficiary, as an alien with extraordinary ability in the arts or 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 part-time basis as a BJJ instructor and coach for a period of three years at a weekly wage of \$350.

The director initially denied the petition and the petitioner, through counsel, appealed. On appeal, the AAO remanded the petition because the director applied the incorrect regulatory criteria for aliens with extraordinary achievement in the motion picture or television industry. Upon remand, the director issued a Request for Evidence (RFE) and a Notice of Intent to Deny (NOID) the petition, to which counsel timely responded. On May 8, 2007, the director denied the petition and certified her decision to the AAO for review. The director notified the petitioner that it could submit a brief to the AAO within 30 days of service of the adverse decision. To date, the AAO has received nothing further from counsel or the petitioner.

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 definitions:

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts. Aliens engaged in the field of arts include not only the principal creators and performers but other essential persons such as, but not limited to, directors, set designers, lighting designers, sound designers, choreographers, choreologists, conductors, orchestrators, coaches, arrangers, musical supervisors, costume designers, makeup artists, flight masters, stage technicians, and animal trainers.

* * *

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition

¹ Evidence submitted by the petitioner variously refers to BJJ as "Brazilian Jiu Jitsu," "Brazilian Jiu-Jitsu," "Brazilian JiuJitsu" and "Ju-Jitsu."

substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

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.

Whether the Regulatory Standards for Artists or Athletes Apply to the Beneficiary

On Part 3 of the Form I-129 Supplement for O and P Classifications, the petitioner indicated that it sought classification of the beneficiary as an alien of extraordinary ability in the arts. In his April 25, 2006 letter, counsel states that the beneficiary “is an elite coach/instructor in the art and sport of Brazilian Jiu Jitsu (“BJJ”).” Counsel further notes, “Due to the highly technical nature of the sport/art, Brazilian Jiu Jitsu teachers/coaches learn and develop their skills through competition. In part, it is the art of competition (and preparing for the same) that they teach.” Counsel provided no further explanation of why BJJ should be treated as an art rather than a sport for purposes of this petition in his initial submission.

On May 9, 2006, the director issued a RFE for documentation that the beneficiary met the regulatory requirements for aliens of extraordinary ability in athletics. In response, counsel again insisted that the petitioner sought classification of the beneficiary as an alien with extraordinary ability in the arts because the beneficiary “is an instructor/coach and is not an athlete in the traditional sense. And, the definition of ‘arts’ includes coaches, not athletes (8 C.F.R. § 214.2(o)(3)(ii)).” Counsel’s reliance on this regulatory provision is misguided. The regulation does state that “coaches” under this provision are “aliens engaged in the field of arts.” 8 C.F.R. § 214.2(o)(3)(ii). The mere inclusion of the word “coaches” in the definition of “arts” at 8 C.F.R. § 214.2(o)(3)(ii), however, does not mean that all coaches in other fields, including athletic coaches, may be classified as aliens with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Act.

Counsel also indicates that the primary reason for requesting classification of the beneficiary as an artist and not an athlete is because “[t]he evidentiary threshold for an ‘athlete’ is different than that of a ‘coach.’” Athletes must demonstrate that they are one of the small percentage who have risen to the very top of their profession; whereas artists must only show that they have achieved “distinction.” 8 C.F.R. § 214.2(o)(3)(ii).

In his appeal of the director’s initial decision, counsel again insisted that the petitioner sought classification of the beneficiary as an alien with extraordinary ability in the arts, not athletics, but offered no further explanation of why the coaching of BJJ should be considered an art and not an athletic field.

On its initial appellate decision, the AAO determined that the regulatory criteria for artists were inapplicable to the beneficiary and remanded the petition for adjudication under the criteria for athletes. Upon remand, the director issued a second RFE (January 29, 2007) of the beneficiary’s eligibility under

the evidentiary criteria for athletes at 8 C.F.R. § 214.2(o)(3)(iii) and clearly notified counsel that the petition would be adjudicated under those criteria, not the evidentiary criteria for artists at 8 C.F.R. § 214.2(o)(3)(iv). In his March 1, 2007 response to the second RFE, counsel reiterated his opinion that the beneficiary should be classified as an artist, but claimed in the alternative, that the beneficiary was also eligible for nonimmigrant classification as an alien of extraordinary ability in athletics.

We concur with the director's determination that the petitioner submitted no evidence that the beneficiary's past achievements and proposed work for the petitioner would be in the practice of BJJ as an art form. Moreover, despite his repeated assertions that BJJ is a "sport/art," counsel has submitted no evidence that BJJ is considered an art in the beneficiary's field. For example, counsel submitted no articles from martial arts or artistic publications or testimony from martial arts experts or other authorities in the arts that discuss the artistic aspects of BJJ or document BJJ performances in artistic events or productions, rather than athletic competitions. To the contrary, the evidence refers to BJJ as a martial art and discusses or cites BJJ competitions, physical techniques and technical certifications. Regardless, even if we were to consider martial arts as an "art," the petitioner has not demonstrated that the beneficiary possesses extraordinary ability in the arts and that he seeks to enter the United States to continue work in the arts.

Evaluation under the Evidentiary Criteria for Aliens with Extraordinary Ability in Athletics

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;
 - (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 states, on his resume, that he has won numerous BJJ championships and other martial arts competitions. Although the petitioner seeks to employ the beneficiary as a BJJ instructor and coach, we will consider the evidence of his 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 as an athlete.

In his March 1, 2007 RFE response, counsel claims that the beneficiary "has won the highest award that anyone can win in Brazilian Jiu Jitsu[,] . . . [t]he World Championships of Brazilian JiuJitsu ('Mundials')." Counsel cites "Exhibit B-C" of his original submission and "Exhibit 1" of the RFE response as evidence of the beneficiary's award. However, none of these exhibits contain primary evidence of the beneficiary's purported award. Exhibits B and C of the original submission consist of the following documents:

- (1) Copy of unidentified, composite photographs of martial arts competitors with the [REDACTED] name and logo;
- (2) The beneficiary's resume in which he lists under his "Titles," "2005 – Rio de Janeiro – Brazil – Mundial Master;"
- (3) Copy of an advertisement for a martial arts event to be held on April 26, 1997 at the "Campineiro Regatas Club";
- (4) Certification of the beneficiary's participation in the Second Kung Fu Wushu and Kuoshu championship held on May 29, 1994 in Rio de Janeiro;
- (5) Certification of the beneficiary's participation in the First Sao Paulo State Championship of Kuoshu, dated April 17, 1993;
- (6) Copy of a photograph in the first fortnight of June 1997 edition of *Jornal Impacto de Campinas*, which shows the beneficiary standing with three other individuals and the caption of which identifies the beneficiary as "instructor Chinese boxing;"
- (7) Copy of an article entitled "Regatas Club is the Stage for Vale Tudo (Free Style)" printed in the April 22, 1997 edition of *Correio Popular*, which identifies the petitioner as the co-organizer of a martial arts competition and a copy of the beneficiary's corresponding "Staff" identification card for the Vale Tudo competition;
- (8) April 24, 2006 letter of [REDACTED], in which he states that the beneficiary won the "2005 World Champion (Mundials, Master Division);"

Exhibit 1 of the RFE response contains copies of the documents numbered 1, 3, 4, 5 and 7 above. Accordingly, none of the exhibits cited by counsel contain documentation of the beneficiary's actual receipt of an award at the 2005 BJJ World Championship. The only other relevant evidence in the record is the April 21, 2006 letter of [REDACTED] Founder of the United States Martial Arts Association (USMA). [REDACTED] states that the beneficiary has won "one World Championship Gold Medal," but [REDACTED] does not identify the exact name or date of the beneficiary's purported award.

In addition, as discussed by the director, when contacted by a Citizenship and Immigration Services (CIS) officer [REDACTED] referred the officer to [REDACTED] Director of Operations for USMA, for verification of the documentation consulted when writing his letter. [REDACTED] told the CIS officer that "There are no documents in the file concerning [the beneficiary's] martial arts abilities, or ranking. The only documents in [his] file [are] an attorney's note requesting an endorsement letter from [REDACTED], and a bounced check from the attorney to [REDACTED] for \$385.00." In an April 1, 2007 letter, [REDACTED] states that at the time he spoke to the CIS officer, he did not have the complete file, the bulk of which remained with [REDACTED] and he mistakenly gave some information from another individual's file. [REDACTED] states that, as of the date of his letter, the beneficiary's file "is very incomplete and contains only his USMA Life Membership application and the advisory letter from [REDACTED]. No other documents are contained in the file that is in my custody." The CIS officer spoke to [REDACTED] and [REDACTED] on the same day. [REDACTED]'s referral to [REDACTED] indicates that he was unable to verify what, if any, documentation was consulted when he wrote his letter endorsing the beneficiary. [REDACTED]'s statements further indicate that USMA possesses only a "very incomplete" file on the beneficiary which does not

document his purported martial arts achievements, including the alleged 2005 BJJ World Championship title.

In addition, we take administrative notice of the fact that the results of the 2005 BJJ World Championship, as posted by the International Brazilian Jiu-Jitsu Federation (IBJJF), do not list the petitioner as having won in any category.² 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).

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

In his March 1, 2007 response to the second RFE, counsel claims the beneficiary meets this criterion through his nomination for the USMA Hall of Fame by ██████████ and his receipt of 18 other, national and international awards between 1992 and 2004. The record fails to sufficiently document these purported achievements.

Counsel submitted a printout from the USMA website which states, "Each year the United States Martial Arts Hall of Fame brings together some of the world's greatest Masters, Grandmasters and Practitioners to celebrate and acknowledge their hard work and dedication to the arts." In his letter, ██████████ states that he "personally nominated [the beneficiary] for induction into our 2006 USMA International Hall of Fame as International Grandmaster of the Year for Brazilian JiuJitsu." As previously discussed, ██████████ inability to verify the documentation of the beneficiary's credentials he consulted and the USMA's lack of any documentation of the beneficiary's achievements in his USMA file greatly detract from the credibility and probative value of Mr. Porter's letter. Moreover, nomination for an award is not equivalent to actual receipt of the award. The record contains no evidence that the beneficiary had been inducted into the USMA International Hall of Fame at the time this petition was filed.

As evidence of the beneficiary's receipt of 18 other, national and international awards, counsel cites the beneficiary's resume. While the beneficiary's resume includes these awards in his list of "Titles," simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In his April 24, 2006 letter, ██████████, Founder and President of the Confederation of Brazilian Jiu Jitsu (CBJJ) and the IBJJF, also lists these awards as part of the beneficiary's accomplishments. However, the record contains no primary evidence of the beneficiary's receipt of these, or any other awards in his field.

Counsel also cites the beneficiary's purported selection, in 1998 and 1999, for the "Gracie Barra World Championship Competition Team," achievements that are also listed on the beneficiary's resume but are not documented in the record. Counsel submits no evidence that the beneficiary's selection for

² Results posted at <http://www.ibjjf.org/worlds.htm> (accessed on June 14, 2007).

these teams was the result of winning national or international competitions or is otherwise recognized as a national or international prize or award in the beneficiary's field.

The record is also devoid of any evidence that the beneficiary has instructed or coached any BJJ athletes who have won nationally or internationally recognized prizes or awards for excellence in their field. Accordingly, the beneficiary does not meet 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 the beneficiary meets this criterion through his certification as a black belt and an instructor by the CBJJ and the IBJJF. The record does not support his claims for two reasons. First, the record documents the beneficiary's black belt certification by the CBJJ, but the petitioner submitted no evidence of the beneficiary's black belt certification by the IBJJF. Second, the record contains no evidence that black belt certification by either association constitutes membership in the organization. For example, the petitioner submitted no evidence of the membership criteria for either CBJJ or IBJJF. Although [REDACTED] explains that the beneficiary is one of the most experienced BJJ instructors certified by the CBJJ, [REDACTED] does not indicate that certification as an instructor constitutes membership in CBJJ. Accordingly, the beneficiary does not meet 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.

Counsel claims the beneficiary meets this criterion through articles published in *Jornal Impacto de Campinas* and *Correio Popular*. As previously noted, the submitted copy of an excerpt from the first fortnight of June 1997 edition of *Jornal Impacto de Campinas* consists of two pictures with captions, one of which shows the beneficiary standing with three other individuals and identifies the beneficiary as "instructor Chinese boxing." The record contains no further explanation of the significance of this excerpt. The article published in the April 22, 1997 edition of *Correio Popular* discusses a martial arts competition to be held the following week and mentions the beneficiary as the co-organizer of the event. The article does not further discuss the beneficiary. These two brief references to the beneficiary do not discuss his work or achievements in any detail. In addition, both documents were published nine years before this petition was filed and consequently do not demonstrate sustained national acclaim. The record is also devoid of any evidence that *Jornal Impacto de Campinas* and *Correio Popular* are nationally circulated newspapers in Brazil or other forms of major media.

The petitioner also submitted copies of two documents printed in Korean that contain photographs of the beneficiary. However, these documents 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.

The record contains no other published material about the beneficiary or any athletes that he has instructed or coached. Consequently, the beneficiary does not meet this criterion.

(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.

As noted by the director, the petitioner submitted several pictures of the beneficiary apparently acting as a referee in martial arts events, but the petitioner provided no evidence identifying the events and documenting the beneficiary's role. Accordingly, the beneficiary does not meet this criterion.

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

Counsel claims that the beneficiary meets this criterion through his service as Director of the Asian and Pacific Rim Development Program for IBJJF. ██████████ confirms that the beneficiary is employed by IBJJF in this capacity and states, "[h]is efforts on behalf of the International Federation have resulted in the establishment of ██████████ Academies throughout Asia and have culminated in the first ever Asian JiuJitsu Open Competition set to occur in Tokyo, Japan on October 26 and 27, 2006." Mr. ██████████ letter is not accompanied by any IBJJF documentation recognizing the beneficiary's role for the Federation or any evidence of the 2006 Asian JiuJitsu Open Competition, which acknowledges the beneficiary's contributions to that event.

Apart from ██████████'s attestation, the record contains little evidence of the beneficiary's employment. The petitioner submitted copies of undated and unidentified photographs of the beneficiary at what appear to be martial arts events in Korea and two copies of photographs of the beneficiary standing in front of signs that state, ██████████. As discussed above under the third criterion, the petitioner also submitted two documents that appear to be newspaper articles printed in Korean that contain pictures of the beneficiary. Because the documents were not submitted with the requisite, certified English translations, we cannot consider whether they support the petitioner's claim. *See* 8 C.F.R. § 103.2(b)(3).

While we do not question the reputation of IBJJF, the record does not sufficiently document the beneficiary's employment by IBJJF and the critical or essential nature of that employment to the organization. Accordingly, the beneficiary does not meet 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 evidence does not establish 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.

Comparable Evidence

The regulation prescribes that comparable evidence will only be considered when the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv)(A) or (B) “do not readily apply to the beneficiary’s occupation.” 8 C.F.R. § 214.2(o)(3)(iv)(C). Counsel claims the criteria at § 214.2(o)(3)(iv)(A) or (B) do not readily apply to the beneficiary’s occupation because martial arts instruction and coaching do “not fit squarely within” those criteria. Counsel does not specify which documents in particular were submitted as comparable evidence of the beneficiary’s eligibility. Regardless of this ambiguity, counsel’s reliance on the comparable evidence provision of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C)³ is misguided. The evidentiary criteria for an O-1 alien of extraordinary ability in the arts do not readily apply to the beneficiary’s occupation because the beneficiary’s field is predominately athletic, not artistic. Despite counsel’s assertion that BJJ is an “art/sport” and that the beneficiary is an artist, the record fails to support his assertions and the evidence indicates that the beneficiary’s field is primarily athletic. Accordingly, assessment of the record under the comparable evidence provision of 8 C.F.R. § 214.2(o)(3)(iv)(C) is unnecessary given counsel’s failure to specify what documentation was submitted as comparable evidence and the inapplicability of this comparable evidence provision to the beneficiary’s field.

Evaluation under the Evidentiary Criteria for Aliens with Extraordinary Ability in the Arts

Given counsel’s persistent claim that the beneficiary is an alien with extraordinary ability in the arts, we address the beneficiary’s eligibility under the evidentiary criteria applicable to aliens with extraordinary ability in the arts.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv), states:

Evidentiary criteria for an O-1 alien of extraordinary ability in the arts. To qualify as an alien of extraordinary ability in the field of arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

- (A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or
- (B) At least three of the following forms of documentation:

³ Counsel erroneously cites the comparable evidence provision as “8 C.F.R. § 214.2(o)(3)(C)” on page five of his April 25, 2006 letter.

(1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements;
or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or

(C) If the criteria in paragraph (o)(3)(iv) 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.

Nomination for, or receipt of, significant national or international awards or prizes in the particular field.

Counsel claims the beneficiary meets this criterion through his purported receipt of a gold medal at the 2005 BJJ World Championship. As previously discussed, the record contains no primary evidence of the beneficiary's receipt of any award or prize at these championships and the results of the 2005 championship do not identify the beneficiary as the winner in any category of the competitions. Most importantly, the record contains no evidence that the BJJ World Championship is an artistic event, rather than an athletic competition.

While counsel also claims that the beneficiary has won numerous other international and national awards, the record contains no primary evidence of the beneficiary's receipt of any of the awards listed on his resume or in the letters of [REDACTED] and [REDACTED]. The petitioner also submitted no evidence that the purported awards were granted by artistic entities based on the beneficiary's artistic, rather than athletic, achievements.

While [REDACTED] states that he nominated the beneficiary for induction into the 2006 USMA International Hall of Fame as International Grandmaster of the Year for BJJ, he explains that his nomination was based on the beneficiary's "extraordinary ability in Martial Arts (Brazilian Jiu Jitsu) teaching ability and competitive excellence" and his "World Championship Gold Medal and a host of regional and state championships." [REDACTED] does not mention the beneficiary's practice of BJJ as an art form. Moreover, as previously discussed, the credibility and probative value of [REDACTED]'s letter has been greatly compromised by the CIS officer's communication with [REDACTED] and [REDACTED] on February 6, 2007 and Mr. Schucker's April 1, 2007 letter.

The record is devoid of any primary evidence of the beneficiary's nomination for or receipt of any national or international awards or prizes in his field. The record also contains no documentation that the beneficiary has been nominated for, or has received, significant national or international prizes in the arts for his demonstration, performance, direction, instruction, coaching, or design of BJJ in artistic productions or events. Accordingly, the beneficiary does not meet the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A) and we will evaluate his eligibility under the relevant criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). Counsel does not claim that the beneficiary meets any criteria not discussed below.

(1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.

Counsel claims the beneficiary meets this criterion because he will be the lead instructor and coach for the petitioning school's BJJ program. The record does not support counsel's claims for four reasons. First and foremost, the record is devoid of any critical reviews, advertisements, publicity releases, publications, contracts or endorsements regarding the beneficiary's proposed employment for the petitioning school or his past work. Second, the summary of the terms of the oral employment agreement between the beneficiary and the petitioning school, as stated in counsel's April 25, 2006 letter, lists the beneficiary's duties as:

- Institute and develop a JiuJitsu and submission grappling team;
- Travel both domestically and internationally to competitions and serve as coach to individual team members during competition;
- Serve as coach to professional and amateur mixed-martial arts fighters with an ultimate goal of forming a competition team to be included in the International Fight League (IFL);
- Provide overall coaching and instruction in standing and ground techniques including chokes, arm-locks, arm-bars, straight and rolling foot-locks, heel hooks and knee-bars;

- Provide instruction to state and federal law enforcement and members of the military in non-weapon hand-to-hand combat.

None of these duties mention the artistic aspects of BJJ and the summarized employment agreement indicates that all of the beneficiary's responsibilities would be focused on the athletic and competitive aspects of BJJ.

Third, the record is devoid of any independent evidence that the petitioning school has a distinguished reputation. In his April 25, 2006 letter counsel states that the petitioning school "is known as one of the premier submission academies in the State of Illinois," but counsel provides no evidence to support his assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, counsel's statement indicates that the reputation of the petitioning school does not extend beyond the state of Illinois. Hence, the beneficiary's proposed employment does not reflect national or international acclaim.

Fourth, counsel does not articulate how the beneficiary has, in the past, performed services as a lead or starring participant in productions or events which have a distinguished reputation. Counsel claims that the beneficiary has "coached at some of the leading Universities and Academies in the world," but the record does not support that claim. Specifically, counsel states that the beneficiary was the head BJJ instructor at Kyongpook University in South Korea in 2005. As evidence of this employment, counsel cites "Exhibit D" of his original submission. However, Exhibit D consists only of unidentified and undated copies of photographs of the beneficiary at martial arts events that appear to have taken place in Korea and two copied photographs of the beneficiary standing in front of signs with the [REDACTED] a logo and the word "Korea." The record contains no critical reviews, advertisements, publicity releases, publications, contracts or endorsements evidencing the beneficiary's alleged services for Kyongpook University. As previously noted, the record contains two copies of what appear to be newspaper articles printed in Korean that contain photographs of the beneficiary, but because the documents were submitted without the requisite, certified translations, we cannot consider whether they support the petitioner's claim. *See* 8 C.F.R. § 103.2(b)(3). In addition, the record contains no evidence that the martial arts program at Kyongpook University, in so much as it may be considered an "event" under this criterion, has a distinguished reputation. In his April 25, 2006 letter, counsel claims that the university "is regarded as one of the finest Universities [sic] in Korea," but counsel submits no evidence to support his assertion. Again, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Counsel further asserts that the beneficiary has taught martial arts at various institutions and programs from 1992 to 2004. As evidence of some of the beneficiary's past engagements, counsel cites Exhibits E, F, H and I of his original submission. However, these exhibits consist of three certificates of the beneficiary's participation as a student in various martial arts courses, a letter inviting the beneficiary to participate in three training sessions of the Great Britain Sport Ju-Jitsu Squad, a letter verifying the

beneficiary's employment as "Chinese Bos and vale-Tudo Head Instructor at Superfight Academy in 1997," a copy of an undated advertisement for the Gracie Barra United Kingdom Academy listing the beneficiary as chief instructor and copies of certificates of the beneficiary's participation in "Wateraerobics workshop" and "Personal Fitness Trainer" courses at the "21st ENAF – World of Physical Activity." These documents show that the beneficiary was an instructor for the Superfight Academy and the Gracie Barra United Kingdom Academy, but the record is devoid of any evidence of the distinguished reputation of either of these academies. Moreover, the beneficiary's past work for the academies, nine and six years before this petition was filed does not demonstrate sustained national or international acclaim.

Finally, the record contains no evidence that any of the beneficiary's proposed or past employment as a martial arts instructor or coach was for artistic productions or events and primarily involved the artistic, as opposed to the athletic, aspects of BJJ or other martial arts. Accordingly, the beneficiary does not meet this criterion.

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications.

Although counsel does not explicitly claim that the beneficiary meets this criterion, we discuss the relevant evidence in the record. As previously noted, the record contains copies of two excerpts from Brazilian newspapers that mention the beneficiary. The articles do not discuss the beneficiary's work in any depth and the record contains no evidence that the newspapers are nationally circulated in Brazil or are otherwise recognized as major newspapers in that country. In addition, both documents were published nine years before this petition was filed and consequently do not reflect sustained national acclaim. Finally, the articles also do not identify the beneficiary as an artist or an instructor or coach primarily concerned with the artistic aspects of BJJ.

Again, the record also contains two copies of what appear to be newspaper articles printed in Korean that contain photographs of the beneficiary, but because the documents were submitted without the requisite, certified translations, we cannot consider whether they support the petitioner's claim. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the beneficiary does not meet this criterion.

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.

Although he does not explicitly claim that the beneficiary meets this criterion, counsel indicates on page 12 of his April 25, 2006 letter that the beneficiary performs a critical role for the IBJJF as the Director of the Federation's Asian and Pacific Rim Development Program.

In his support letter, N [REDACTED] verifies the beneficiary's employment and summarizes his duties as:

1. Direct, plan, and implements policies and objectives of the International Federation in accordance with the Federation's charter;
2. Directs and oversee [sic] Asian Development plan of the organization and its procedures;
3. Analyze operations to evaluate performance of Gracie Barra instructors and students throughout the Asian sub-continent [sic];
4. Confer with board members, organization officials, and staff members to establish policies and formulate plans;
5. Assign or delegate responsibilities to subordinates instructors [sic] and Federation Staff including coordination of information technology as it relates to monitoring the activities of academies in Asia;
6. Directs in-service training of staff and oversee [sic] coordination of seminars throughout the Asian sub-continent [sic] including provision of subordinate instructors.

██████████ further states that the beneficiary's work has "resulted in the establishment of C██████████ Academies throughout Asia and ha[s] culminated in the first ever Asian JiuJitsu Open Competition set to occur in Tokyo, Japan on October 26 and 27, 2006." However, ██████████ does not indicate that any significant portion of the beneficiary's role is concerned with BJJ as an art, as opposed to a sport. Apart from N██████████'s letter, the record is devoid of any articles in newspapers, trade journals, other publications or additional testimonials regarding the beneficiary's role with the IBJJF. As noted numerous times, the two copies of what appear to be newspaper articles in Korean were submitted without the requisite, certified translations and consequently cannot be considered. *See* 8 C.F.R. § 103.2(b)(3).

While we do not question the reputation of IBJJF, ██████████ letter alone does not establish that the beneficiary performs a critical role for the Federation as an artist, as opposed to an athlete or athletic instructor, coach or director. The record also does not indicate that the IBJJF is an artistic organization. As discussed under the first criterion, the record also fails to show that the beneficiary's proposed employment for the petitioning school would be primarily concerned with the artistic aspects of BJJ. The record is also devoid of any evidence that the petitioning school is an artistic establishment with a distinguished reputation. Accordingly, the beneficiary does not meet this criterion.

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.

Counsel does not claim that the beneficiary meets this criterion, but we nonetheless address relevant evidence in the record. The petitioner submitted support letters from ██████████ of the USMA and Mr. ██████████ of CBJJ and IBJJF. As previously discussed, the credibility and probative value of ██████████ letter have been greatly compromised. ██████████ recognizes the beneficiary as one of the most experienced of the few black belt instructors that have been certified as instructors by the CBJJ. As discussed in the preceding section, ██████████ also praises the beneficiary's work as Director of the Asian and Pacific Rim Development Program of IBJJF and he affirms a list of the beneficiary's awards,

titles, commendations and teaching experience. However, Mr. Gracie does not mention a single achievement of the beneficiary that is related to the artistic aspects of BJJ. Instead, Mr. Gracie discusses the beneficiary's achievements as a BJJ competitor, instructor and martial arts program director.

Accordingly, the petitioner has not established that the beneficiary meets any of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv).

The petitioner has also failed to establish that the beneficiary seeks to enter the United States to continue work in the area of extraordinary ability in the arts. On Part 5 of the Form I-129 Supplement O/P, the petitioner describes the beneficiary's duties as follows:

[The beneficiary] will teach/coach and provide complete instruction in the art and sport of BJJ. He will institute and develop a JiuJitsu competition team for which he will serve as the head coach. As the teacher/coach of GMAP's BJJ program he will provide instruction in standing and ground techniques including chokes, arm-locks/arm-bars, straight and rolling knee bars and straight and rolling foot, ankle and heel locks. Travel with the team is contemplated. Additionally, he will teach BJJ instruction to local federal and state law enforcement and members of the military.

The petitioner's proposed duties as stated in the summary of the oral employment agreement between the beneficiary and the petitioning school are quoted above under the first criterion and will not be repeated here. Despite counsel's and the petitioner's appellation of BJJ as an "art and sport," none of the beneficiary's duties as listed on the Form I-129 Supplement and the summary of the oral employment agreement indicate a focus on the artistic aspects of BJJ. Rather, the beneficiary's duties involve the teaching and coaching of individual BJJ competitors and the instruction of BJJ physical techniques such as "arm-locks/arm-bars." The evidence shows that the beneficiary would instruct and coach adults and children, law enforcement officers and members of the military. The record contains no evidence that the beneficiary would instruct or coach actors, dancers or other performing artists. The record also contains no evidence that the petitioning school is an artistic establishment or offers instruction focused on the artistic aspects of martial arts. Accordingly, in so much as counsel claims the beneficiary is an alien of extraordinary ability in the arts, the record does not establish that the beneficiary seeks to continue work in that area of extraordinary ability, as required by section 101(a)(15)(O)(i) of the Act.

Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(O)(i) of the Act as an alien with extraordinary ability in the arts.

Requisite Advisory Opinion and Consultation

All petitions for nonimmigrant classification of aliens with extraordinary ability under section 101(a)(15)(O)(i) of the Act must be accompanied by a "written advisory opinion from the appropriate

consulting entity or entities.” 8 C.F.R. § 214.2(o)(2)(ii)(D). The regulation at 8 C.F.R. § 214.2(o)(5)(i)(A) further prescribes:

Consultation with an appropriate U.S. peer group (which could include a person or person 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 letter from [REDACTED] of the USMA as the requisite consultation. In the NOID, the director informed the petitioner that [REDACTED] letter would not be considered an appropriate consultation because of the inability of [REDACTED] and [REDACTED] to verify what documentation of the beneficiary’s achievements were consulted in writing [REDACTED]’s letter and because [REDACTED]’s statements regarding the beneficiary’s achievements were unsubstantiated by independent, corroborative evidence in the record.

In his April 11, 2007 response, counsel insists that “USMA was provided with clear, convincing and unequivocal evidence that [the beneficiary] had previously won the gold medal at the World Championships of Brazilian JiuJitsu” and the beneficiary’s other achievements as a BJJ practitioner, coach and his work for IBJJ. Yet counsel fails to address the lack of any primary evidence of the beneficiary’s purported gold medal at the 2005 BJJ World Championship and the fact that the results of that championship do not list the beneficiary as having won any medal, title or award. Rather than provide documentation of the beneficiary’s purported gold medal and other alleged awards, counsel simply includes a list of the beneficiary’s alleged honors in his April 11, 2007 letter that repeats the purported titles won by the beneficiary as stated in his resume. Again, the record is devoid of any primary evidence that the beneficiary won any award at the 2005 BJJ World Championship or at any other national or international BJJ or other martial arts competition.

Counsel further asserts that the regulations do not require that the advisory opinion be substantiated by independent, corroborative evidence. However, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. If the record contains no corroborative evidence of the alien’s achievements as cited in the advisory opinion, the credibility of that opinion is necessarily compromised. While [REDACTED]’s letter satisfies the consultation requirement, the credibility of his letter has been greatly compromised for the reasons previously discussed.

In his April 11, 2007 letter, counsel also claims, in the alternative, that if [REDACTED]’s letter is not accepted as the requisite consultation, then the letter of [REDACTED] of CBJJ and IBJJF should be accepted instead. We have considered and discussed [REDACTED]’s letter in our evaluation of the petition. Although [REDACTED]’s letter need not serve as the requisite consultation, we note that his letter could not suffice as the requisite advisory opinion because [REDACTED] and the organizations he represents are located in Brazil, not the United States, as required by the regulation at 8 C.F.R. § 214.2(o)(5)(i)(A).

The petitioner has not established that the beneficiary is an alien with extraordinary ability in athletics who is one of the small percentage who have arisen to the very top of his field. The petitioner has also failed to demonstrate that the beneficiary is an alien with extraordinary ability in the arts who has achieved distinction and seeks to continue work in his purported area of extraordinary ability. The beneficiary is consequently ineligible for nonimmigrant classification under section 101(a)(15)(O)(i) of the Act and the petition must be denied. The May 8, 2007 decision of the director will be affirmed.

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 not met that burden.

ORDER: The May 8, 2007 decision of the director is affirmed. The petition is denied.