

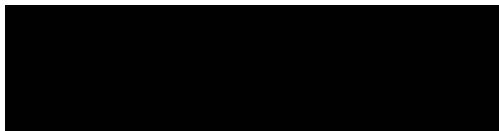
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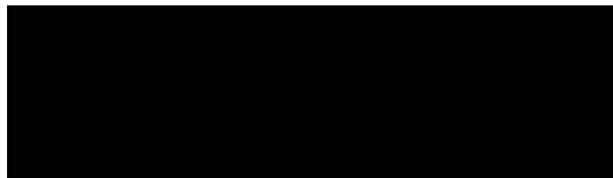


FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: APR 10 2009
LIN 06 212 52745

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in blue ink, appearing to read "John F. Grissom".
John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner seeks classification of the beneficiary as 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 that the record did not establish that the petitioner had achieved the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. The director also found the petitioner had not established that she is one of that small percentage who have risen to the very top of her field of endeavor.

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

(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 into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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 her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition, filed on July 12, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a martial artist. Initially, the petitioner submitted award certificates for contests in 1992-93, a certificate awarding her the title of Grand Master of Tai Chi, news reports, certificates of appreciation for judging martial arts tournaments, certificates of appreciation for participating in various events, background information about Tai Chi, verification of her position with several organizations, and seven letters of recommendation. In response to the April 5, 2007 Request for Evidence ("RFE"), the petitioner submitted awards certificates for contests held in 1985-1989, instructor certifications, additional certificates of appreciation for judging martial arts tournaments,

appointments for positions with organizations, additional news reports, certificates of participation in various events, a letter verifying employment, and seven additional letters of recommendation.

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, internationally recognized award). Barring the alien's receipt of a such an award, the regulation at 8 C.F.R. § 204.5(h)(3) 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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). We address the evidence submitted and counsel's contentions in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not addressed below.

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

The petitioner states in her appellate brief that she retired from competition after 1993 and that she focused on her work as a coach and instructor. Although a nexus exists between playing and coaching a given sport, to assume that every extraordinary athlete's area of expertise includes coaching would be too speculative.¹ To resolve this issue, in a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national or international level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the petitioner's area of expertise. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not.

The petitioner submitted evidence showing that she won the Tai Chi Fist Championship in the 1985 China National Traditional Martial Arts Tournament and the 1989 China National Wu Dang Martial Arts Competition; that she was champion of the Traditional Tai Chi Broadsword at the 1987 Shaanxi Hua Xia International Tai Chi Tournament; champion in the 1992 2nd China International Tai Chi Festival; and champion in the Tai Chi sword division of the 1993 Hua Xia Cup Tai Chi Competition Tournament. The petitioner also submitted certificates of appointment as Tai Chi Envoy for the Northern California Chinese Athletic Federation, as Tai Chi

¹ While not binding precedent, we note that the reasoning contained in *Lee v. I.N.S.*, 237 F.Supp.2d 914, 918 (N.D.Ill. 2002), supports this interpretation:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or instruct.

Ambassador by the Journal of Tai Chi Magazine, and as Invited Researcher in Tai Chi by “The Journal of Wu Dang.” In her response to the RFE, the petitioner stated that she won the Tai Chi fist championship at the 2000 China National Wu Dang Martial Arts Competition, however, no evidence of that award is present in the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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)).

Although documentation of these various awards appears in the record, information about the significance and national or international recognition of the competitions is notably absent. The awards are accompanied by no information about the contests, including how the contests were nationally or internationally recognized in the field of Tai Chi or in the general area of martial arts. The petitioner did not submit evidence such as the number of participants in any event, the standing or recognition of the other participants in the events, or any other indication that winning any of these prizes or awards confers national or international recognition for excellence in Tai Chi or the martial arts.

In the appellate brief, the petitioner states that she should not be penalized for not being able to provide evidence of the competitions that she won in the 1980s and 1990s. However, the petitioner’s inability to provide award certificates for contests occurring from ten to twenty years ago does not change the result of our analysis and instead, highlights the fact that she has failed to sustain her claim as a competitor. Even assuming that the petitioner won the 2000 competition cited in her RFE response, which we do not, she has not presented evidence of sustained claim as that award preceded the filing of this petition by six years. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(2)(A)(i); 8 C.F.R. § 204.5(h)(3).

Therefore, even if the petitioner had provided the requisite evidence to prove that the competitions that she won are nationally or internationally recognized, she did not provide any evidence that she sustained that claim through her work coaching or training, such as through nationally or internationally awards won by her students.

In light of the above, the petitioner has not established that she meets this criterion.

(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.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, proficiency certifications, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

The petitioner claims that she meets this criterion by virtue of her certification as Grand Master in Tai Chi by the China Chang An International Tai Chi Association, her receipt of the 6th level Dan black belt in Tai Chi as recognized by the International Taiji I Quandao Association (“ITIQA”), and her participation in Tai Chi organizations. The petitioner also provided a certificate that she is qualified as an instructor in Taiji Master

as a 7th degree black belt. We acknowledge that the petitioner achieved both the title of Grand Master and the ITIQA black belt certification and was qualified as an instructor, however, the petitioner has not shown that an association of Grand Masters, 6th level Dan black belts, or instructors exists. Even if the petitioner had introduced evidence that such associations exist, she did not provide evidence that the organizations require outstanding achievements of their members as opposed to proficiency in Tai Chi at a particular level.

The petitioner presented evidence that she was named the secretary-general of the ITIQA in 1994, director of Hong Kong China Chan An International Taiji Quan Society for 1998-2000, vice president of the China Chang An International Tai Chi Association in 2000, associate director of Shaanzi Chinese Tai Chi Tui Shou Dao Center in 2000, vice president of the ITIQA in 2001, and vice president of the Wu Dang Zhao Bao Tai Chi Research Institute in 2002. The petitioner presented no evidence that any of these associations have members or that any membership was awarded based on her outstanding achievements by recognized experts in the field. Moreover, claims related to her position within these organizations are more relevant to the criterion at 204.5(h)(viii) and will be further discussed there.

In response to the RFE, the petitioner also provided a “Rewarding Certification” stating that her name would be included in the book “the Name List of Contemporary Chinese Elites in Martial Art Field.” Again, however, again, the petitioner presented no evidence that an association exists in conjunction with this certificate or that the judges of prospective members are recognized experts in the field.

For all of the above reasons, the petitioner has not established that she meets this criterion.

(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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

The petitioner submitted four editions of “The Journal of Tai Chi,” two editions of “The Journal of Wu Dang,” and a March 25, 2006 article from “World Journal.” One of the editions of “The Journal of Tai Chi” is dated 2007, so was published after the petitioner filed the instant petition and cannot be considered. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Comm. 1971). The articles and journals that predate the filing of this petition do not contain the requisite translation as required by 8 C.F.R. § 103.2(b)(3). Instead of including a translation of the material, the petitioner submitted a summary of what was in the publication. For example, the “translation” submitted for volume 4 of the 2006 “The Journal of Wu Dang” states: “[the petitioner] was featured on the front color

² Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

page;” the “translation” submitted of the “World Journal” article states: “The article announces that International Martial Arts Tournament will be held on June 18, 2006 in San Jose, CA. Many top martial arts masters will participate in this event. Here, Tai Chi master [the petitioner] was pictured with other masters and event officials.” A summary of what is presented in the foreign language is not the same as a translation of that item. Without the full translation, we are unable to determine that these materials are relevant to this criterion.

Even if we were to accept the summaries of the material as accurate, which we do not, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be about the alien and be published in a professional or major trade publication or some other form of major media. None of the above listed articles talks about the petitioner; instead, the journals mostly only included a photograph of the petitioner practicing Tai Chi. In her appellate brief, the petitioner contends that “most reports about martial arts masters focus on various pictures, using a wide range of pictures to show the master.” However, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I. & N. Dec. at 165. The page included about volume 3 of the 2006 “The Journal of Tai Chi” states that the petitioner wrote a two page article that appeared in the publication. The information submitted contains no indication that the subject of the article is the petitioner.

Finally, as it relates to the regulatory requirement that the material be published in major media, the only information submitted about these news sources is the statement by the translator that the publications are “prestigious and widely circulated professional journals” and a May 3, 2007 letter from [REDACTED] CEO of Pure Shaolin Kung Fu School, which states that the “*Journal of Tai Chi* . . . is probably the most prestigious journal in the Tai Chi field [and] is read by tens of thousands of martial arts practitioners across the world.” The petitioner provides no information as to how the translator or [REDACTED] is qualified to make such a determination regarding the standing of the publication, and she provides no objective evidence such as circulation statistics or other data to show that the publication is a form of major media.

In her response to the RFE, the petitioner submits a document titled “Translation & Description,” which states that a “special report about the 20th Anniversary of the International Wushu Sanshou Dao Association (IWSD) in 2007” reported about her. This “special report” was issued after the time of filing and thus we are unable to consider it. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I. & N. Dec. at 49. Even if we were to consider it, the “special report” contains only photographs of the petitioner and no information was provided about the publication to conclude that it amounts to major media.

In light of the above, the petitioner has not established that she meets this criterion.

(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 specification for which classification is sought.*

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates,

reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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). For example, judging a national competition or a competition for top athletes is of far greater probative value than judging a regional, youth or amateur competition.

The petitioner submitted evidence that she judged the 1995 Tai Chi Pushing Hands Tournament, the 3rd Wu Dang Fist Competition Conference in 1995, the 5th China International Tai Chi Competition in 1995, the 14th Annual UC Berkeley Chinese Martial Arts Tournament in 2006 and 2007, the 2006 Tiger Claw Elite Championship & Disney's Martial Arts Festival, the 2005 and 2006 International Martial Arts Tournaments, and the 2nd Annual Wulin Cup Martial Arts Championship in 2006. The petitioner submitted no information such as information about individuals who were judged by the petitioner or about how she was selected to be a judge for these competitions. The only information provided about any of the tournaments was about the International Martial Arts Tournament, which indicates that martial artists of varying levels of skill and varying ages competed. A May 18, 2007 letter from [REDACTED] chair of the International Martial Arts Tournament, states that the petitioner was chosen as a judge "based on recommendations from many other martial arts masters." The petitioner submitted no information about the reputation, significance, or magnitude of these tournaments for us to be able to ascertain whether her participation as a judge is indicative of the national or international acclaim at the very top level of the martial arts field that is required for this highly restrictive classification.

In light of the above, the petitioner has failed to establish that she meets this criterion.

(v) *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

The petitioner claims to meet this criterion by virtue of her creation of "a new style of Tai Chi, called Tai Chi Yi, which is a 9-Dan level Tai Chi system." A June 19, 2006 letter from [REDACTED] director and chief coach of Shaolin Kung Fu International, recognizes that the petitioner "is one of the founders of the Tai Chi Yi style martial arts" and states that the "dozens of new movements . . . are becoming more popular over the years." A June 2, 2005 letter from [REDACTED] president of Shou-Yu Liang Wushu Taiji Qigong Institute, also recognized the petitioner's work in helping to create Tai Chi Yi and stated that "This new style of Tai Chi has attracted immediate attention from other Tai Chi masters, and has been recognized as a significant development of the traditional Tai Chi." A June 7, 2006 letter from [REDACTED], president and head coach of Wu Dang Zhao Bao Tai Chi Research Institute, states that the petitioner's help in creating Tai Chi Yi "is considered by many as one of the major achievements in Tai Chi in the last few decades."

Letters of recommendation submitted by the petitioner alone are not sufficient to meet this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I. & N. Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Even when written by independent experts, letters solicited by an alien in support of an immigration

petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a martial arts performer who has sustained national or international acclaim. In this case, although the letters of recommendation state that the petitioner co-founded Tai Chi Yi and that the new form has made a major contribution to the martial arts field, the petitioner presented no further objective evidence to indicate that the petitioner's techniques have been widely adopted throughout the sport or have significantly influenced how Tai Chi is practiced. Without objective evidence such as news articles, flyers of other masters teaching the form, or tournament categories of Tai Chi Yi, for example, we are unable to conclude that Tai Chi Yi is an original form of Tai Chi that demonstrates that the petitioner has made a contribution of major significance to the martial arts field.

In light of the above, the petitioner has not established that she is eligible under this criterion.

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

As noted above in our discussed under criterion iii, the translator indicated that the petitioner wrote a two page article in volume 3 of the 2006 "The Journal of Tai Chi." No full translation was provided, however, as required by 8 C.F.R. § 103.2(b)(3). Without a full translation, we are unable to consider this article. No further evidence relevant to this criterion has been submitted. As such, the petitioner has not demonstrated eligibility under this criterion.

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The petitioner asserts eligibility under this criterion by virtue of the same affiliations as discussed above in criterion ii: i.e., being named the secretary-general of the ITIQA in 1994, director of Hong Kong China Chan An International Taiji Quan Society for 1998-2000, vice president of the China Chang An International Tai Chi Association in 2000, associate director of Shaanxi Chinese Tai Chi Tui Shou Dao Center in 2000, vice president of the ITIQA in 2001, and vice president of the Wu Dang Zhao Bao Tai Chi Research Institute in 2002. The petitioner also submitted evidence that she was named a consultant or instructor for several private martial arts studios. However, the petitioner presented no evidence regarding any of the studios' or organizations' backgrounds, standing in the community or world, or any other aspect of their reputations except for the USA Tai Chi Kung Fu Club. The information submitted concerning the USA Tai Chi Kung Fu Club contains general background information, but includes no information to indicate that it enjoys a distinguished reputation.

In addition, the petitioner failed to introduce evidence that she performed in a leading or critical role for any of these organizations. The petitioner relies upon the job titles as evidence that she performed in a leading or critical role, but submitted no evidence regarding what requirements were imposed by these positions. The petitioner submitted no documentation to establish that she was responsible for any of the organizations' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

Without evidence that she performed a leading or critical role for an organization with a distinguished reputation, the petitioner has failed to show eligibility under this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of her field. The evidence in this case indicates that the petitioner achieved success as a competitor in the late 1980's and early 1990's, however, the record does not establish that the petitioner sustained her past acclaim as a martial arts practitioner in the decade following her last documented award and preceding the filing of this petition. The record also fails to establish that, at the time of filing, the petitioner sustained her former acclaim as a practitioner through her subsequent work as a coach. She is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and her 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. This decision is rendered without prejudice to the filing of a new petition with the requisite supporting documents under section 203(b) of the Act, 8 U.S.C. § 1153(b).

ORDER: The appeal is dismissed.