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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAY 29 2009

SRC 06 277 52235

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[redacted]

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner, a martial arts school, seeks to classify 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 the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel argues that the beneficiary meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry 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 his or 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 the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on September 25, 2006, seeks to classify the beneficiary as an alien with extraordinary ability as a "Taekwondo Master Instructor and Trainer." Regarding his plans for employment in the United States, the beneficiary states: "I intend to stay in the United States and work as a Tae Kwon Do Instructor at Pan American Tae Kwon Do Association, Inc." In response to the director's request for evidence, the petitioner submitted a November 7, 2006 letter from [redacted] President, Pan American Tae Kwon Do Association, stating:

> [The beneficiary] has been working at the Chung's Tae Kwon Do Academy since June 2004 as a Tae Kwon Do Master Instructor and as an instructor in Haedong Kumdo Korean sword training with dedication, integrity, leadership and great talent to become and outstanding teacher.
>
> I am grateful to have [the beneficiary] teaching in my academy and am sure [the beneficiary] will always bring the best out of him to benefit the students and the parents.

Aside from his activities as a taekwondo instructor and coach, the record includes evidence showing that the beneficiary competed successfully in taekwondo tournaments from the mid-1980s to 1994. However, according to the November 7, 2006 letter from the petitioner, the beneficiary's personal statement, and Part 6 of the Form I-140 petition, "Basic information about the proposed employment," the beneficiary is seeking work in the United States as a taekwondo instructor rather than as a competitive athlete. Subsequent to 1994, there is no evidence indicating that the beneficiary, age 32 at the time of filing, has remained active as a taekwondo competitor at the national or international level. The statute and regulations require the beneficiary's national or international acclaim to be *sustained* and that he seeks to continue work in his area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a taekwondo competitor and an instructor certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and taekwondo instruction are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> 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 coach.

Id. at 918. The court noted a consistent history in this area. In the present matter, there is no evidence showing that the beneficiary has sustained national or international acclaim through achievements as a taekwondo competitor subsequent to 1994 or that he intends to compete here in the United States. Further, the evidence is clear that the beneficiary intends to work as a taekwondo instructor. While the beneficiary's athletic accomplishments as a taekwondo competitor are not completely irrelevant and will be given some consideration, ultimately he must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through his achievements as a taekwondo instructor and coach.

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 such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish the beneficiary's 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 beneficiary 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). The petitioner has submitted evidence pertaining to the following criteria.[1]

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

The petitioner initially submitted Certificates of Merit won by the beneficiary at various taekwondo championships from 1986 thorough 1994. Several of these award certificates were from local elementary, middle, and high school taekwondo tournaments. Local awards from student competitions are not tantamount to nationally or internationally recognized prizes or awards for excellence in the field. With regard to awards won by the beneficiary in junior or student level competition, we cannot conclude that such awards indicate that he "is one of that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.[2] Likewise, it does not follow that an athlete who has had success in junior or student level competition should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

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[1] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

[2] While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

> [T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

The petitioner's initial submission included Certificates of Merit presented to the beneficiary for winning the third rank in the lightweight class at the "3rd Nationwide Taekwondo Meet for Winning the Championship Flag of Ministry of National Defense" (1994), being a semifinal winner in the welterweight class at the "2nd Nationwide Taekwondo Meet for Winning the Championship Flag of Ministry of National Defense" (1993), and winning first place in the lightweight class at the "1993 Nationwide Taekwondo Event Championships" of the Korea Taekwondo Association. Although the record contains a certified translation, it is unclear which of these certificates, if any, to which the translation certification pertains. The submission of a single translation certification that does not identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3), which requires that any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that 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.

On appeal, the petitioner submits a June 21, 2007 "Certificate of Taekwondo Experience" issued by the President of the Korea Taekwondo Association affirming that the beneficiary won "1st place of light category in National New Face Championships 1993," "2nd place of welter category in 2nd Defense Minister's Cup National TKD Championships" (1993), and "3rd place of light category in 3rd Defense Minister's Cup National TKD Championships" (1994). The petitioner also submits a June 25, 2007 "Verification of Taekwondo Achievements" issued by the President of the Korea Taekwondo Association stating that the beneficiary was a "Medal winner" at the "1993 Taekwondo Hanmadang" Championships in the "Foot break" category." The petitioner's appellate submission includes information from the World Taekwondo Federation's internet site discussing the 2005 World Taekwondo Hanmadang competition, but there is no information about the 1993 Hanmadang Championships or the significance of the beneficiary's medal in the "Foot break" category.

The record does not include supporting evidence demonstrating the significance and magnitude of the preceding competitive events won by the beneficiary. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the beneficiary's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no evidence showing that beneficiary's awards commanded a significant level of recognition beyond the tournaments where they were presented. Nevertheless, there is no evidence indicating that the beneficiary has received awards in taekwondo competition subsequent to 1994 or that he intends to continue competing in the United States. As discussed, the statute and regulations require the beneficiary's national or international acclaim to be *sustained* and that he seeks to continue work in his area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While the beneficiary's awards as a competitive athlete are not completely irrelevant and will be given some consideration, ultimately he must satisfy the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) through his achievements as an instructor or a coach. As such, the beneficiary's awards and competitive results demonstrating his past record of success as a taekwondo competitor from the mid-1980s to the mid-1990s cannot serve to meet this regulatory criterion.

Aside from the beneficiary's awards in tournament competition, the petitioner submitted the following:

1. Dan Certificate issued by the President of the Kukkiwon on April 5, 2004 stating that the beneficiary attained 6th Dan "at a test conducted in accordance with the rules and regulation of the Kukkiwon for promotion test;"
2. Dan Certificate issued by the President of the Kukkiwon on December 7, 1997 stating that the beneficiary attained 5th Dan "at a test conducted in accordance with the rules and regulations of the Kukkiwon for promotion test;"
3. Certificate issued by the President of the Korea World Taekwondo Association on December 27, 2006 stating that the beneficiary attained 6th Dan "at the test conducted in accordance with the rules and regulation of this association for a promotion test;"
4. Certificate of Merit issued by the President of the World Taekwondo Federation and the President of Kyung Moon College stating that the beneficiary received a "Diploma for his/her superior performance in Taekwondo Competition by Kyung Moon College for the Millennium World University Taekwondo Open Tournament" (1999);
5. Certificate of Appreciation issued to the beneficiary by the President of the World Taekwondo Federation for his "dedicated service and contribution to the development of Taekwondo" (2001);
6. Letter of Commendation issued by the President of the Kukkiwon on December 22, 2001 stating that the beneficiary was awarded a "Diploma for his/her unlimited efforts of self-sacrifice to bring about the development and popularization of Taekwondo, as a result of a great contribution to the promotion of Taekwondo culture;"
7. Certificate of Appreciation issued by the Florida Sports Foundation to the beneficiary in recognition of his "valuable contribution and support of Florida's 2006 Sunshine State Games;"
8. Certificate of Appreciation issued by U.S. Tae Kwon Do College recognizing the beneficiary's involvement in "a special sparring seminar" on November 20, 2006;
9. Certification issued by the President of the Korea University Taekwondo Federation reflecting that the beneficiary was recognized as "Best Coach/Manager" at the 28th National Collegiate Taekwondo Championship (2001);
10. Certification issued by the Dean of Kook Jae College reflecting that the beneficiary was recognized as "MVP – 1, Best Coach/Manager" at the 99 Millennium World Taekwondo University Festival; and
11. Certification issued by the Dean of Taekwondo at Chunnam Techno College reflecting that the beneficiary was recognized as "Best Coach/Manager" at the 2nd and 3rd Woo Am Cup International Taekwondo Championships in 1999 and 2000.

With regard to items 1, 2, and 3, the plain language of this regulatory criterion requires the beneficiary's receipt of "nationally or internationally recognized prizes or awards for excellence in the field." The preceding certificates reflect that the beneficiary earned a promotion in rank based on his successful completion of a taekwondo skills test. Such promotions are inherent to the martial arts and they represent standardized progression to the next skill level. Further, there is no evidence

showing that the ceremonies in which the beneficiary received his certificates commanded national or international recognition. Accordingly, the petitioner has not established that the beneficiary's successful mastery of required skills and attainment of higher Dan rankings constitutes his receipt of nationally or internationally recognized prizes or awards. Further, we note that item 3 was issued subsequent to the petition's filing date. A petitioner, however, must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider the December 27, 2006 Dan certificate in this proceeding.

In regard to item 4, there is no evidence showing that this certificate is a nationally or internationally recognized prize or award, rather than simply an acknowledgment of the beneficiary's participation. Further, the certificate does not specify the capacity or the event category in which the beneficiary competed, coached, refereed, performed a skills demonstration, or provided some other type of service at the tournament.

Regarding items 5 through 11, the petitioner has not established that these honors had a significant level of recognition beyond the presenting organizations. For instance, the certificates from the Florida Sports Foundation and the certifications from the colleges reflect regional or institutional recognition rather than national or international recognition. There is no supporting evidence demonstrating that items 5 through 11 are tantamount to nationally or internationally recognized prizes or awards for excellence in the beneficiary's field. Further, with regard to item 8, this certificate was issued subsequent to the petition's filing date. A petitioner, however, must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this certificate in this proceeding.

Nationally or internationally recognized prizes or awards won by taekwondo competitors coached primarily by the beneficiary can also be considered for this criterion. In that regard, the petitioner submitted a copy of the beneficiary's 2003 coaching credential from the 2003 U.S. Junior Olympic Taekwondo Championships. The petitioner also submitted a certificate and competitive results reflecting that the beneficiary's student [redacted], won a bronze medal in the "Green belt Age 10-11 division" at the 2003 U.S. Junior Olympic Taekwondo Championships. According to the results submitted by the petitioner, the skill level of the green belt rank is superseded by the higher belt ranks of blue, red, and black. Regarding awards won in "Junior," age-group, or lower belt level competitions, we do not find that successfully coaching their recipients demonstrates that the beneficiary "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).

On appeal, the petitioner submits an August 8, 2000 article in the "Neighbors" section of the *Daytona Beach News-Journal* discussing a visit by the beneficiary and four other black belts to the International Taekwondo Academy in Ormond Beach. The article states that the black belts, under the direction of Grand Master [redacted] of Korea, came to the Ormond Beach school "to help local students prepare for the 20th U.S. Junior Olympic Championships in San Antonio, Texas" in July 2000. The article lists the school's youth medal winners, but there is no evidence showing that the beneficiary, a foreign exchange visitor at that time, was their primary coach. In fact, the article

states that [redacted] ran the Ormond Beach school. The petitioner also submits an article in the July 2007 issue of the *Weston Post* stating that Peter Doscher, a 9th grader, and [redacted] a 7th grader, won gold medals at the Florida's 2007 Sunshine State Games. The article further states that [redacted] and [redacted] "train at Chung's Tae Kwon Do Academy . . . under the instruction of [redacted] and [the beneficiary]." Aside from reflecting regional recognition at the youth level rather than a national or international recognition at very the top level of the sport, the preceding gold medals were won by the beneficiary's students subsequent to the petition's filing date. A petitioner, however, must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider their gold medals in this proceeding.

In this case, there is no evidence showing that top athletes (such as senior national black belt competitors) coached primarily by the beneficiary have won nationally or internationally recognized prizes or awards. Accordingly, the petitioner has not established that the beneficiary meets this criterion.

> *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, 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.

As discussed, the petitioner submitted Dan Certificates issued by the President of the Kukkiwon stating that the beneficiary attained 5th Dan on December 7, 1997 and 6th Dan on April 5, 2004. In response to the director's request for evidence, the petitioner submitted a certificate issued by the President of the Korea World Taekwondo Association on December 27, 2006 stating that the beneficiary attained 6th Dan. This latter Dan certificate was issued subsequent to the petition's filing date. A petitioner, however, must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the December 27, 2006 Dan certificate in this proceeding. The petitioner also submitted "International Taekwondo Association Time in Rank Requirements" reflecting the time periods for advancement from one rank to the next. We cannot conclude that meeting the minimum time requirements for earning the next Dan level ranking and passing a forms and theory test constitute outstanding achievements. The petitioner's response also included the beneficiary's "Certificate of Association Membership" for the Korea World Taekwondo Association (April 25, 2005), a "Certificate of Appointment" from the Korea World Taekwondo Association (April 25, 2005) reflecting that the beneficiary was appointed a "Master" "in accordance with article 20 of the

rules of association," and an "International Martial Arts Instructor Certificate" issued to the beneficiary by the Korea World Taekwondo Association (November 27, 2005) based on his "successful completion of the teakwondo [sic] instructor test in full accordance with the rules and regulations." The record, however, does not include evidence of the actual requirements specified in "article 20 of the rules of the association" or the association's "rules and regulations." While the beneficiary has met the time and skill requirements necessary to attain his 6th Dan ranking and to be appointed as a master and an international instructor, there is no evidence demonstrating that the Korea World Taekwondo Association and the Kukkiwon require such qualifications for admission to membership.[3] The record does not include evidence (such as membership bylaws or official admission requirements) showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the martial arts. Accordingly, the petitioner has not established that the beneficiary meets this criterion.

> *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 beneficiary 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 or regional 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.[4]

The petitioner submitted articles from several Korean language publications, but only a single article in *Gwangnam Ilbo* (October 23, 1998) was primarily about the beneficiary. The plain language of this regulatory criterion requires that the published material be "about the alien." With regard to the article in *Gwangnam Ilbo*, there is no evidence (such as circulation statistics) showing that this publication qualifies as a professional or major trade publication or some other form of major media. The petitioner also submitted online competitive results which merely list the beneficiary's name and a column authored by the beneficiary in *Tae Kwon Do Times*, but none of this material meets the plain language of this regulatory criterion.

In response to the director's request for evidence, the petitioner submitted two articles in the *Korean-American Journal* and the *Korean Weekly Journal* dated November 8, 2006, but the accompanying English language translations were incomplete and were not certified by the translator as required by the

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[3] For example, there is no evidence showing that lower belt rankings, non-instructors, or lesser Dan levels are excluded from their membership bodies.

[4] 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.

regulation at 8 C.F.R. § 103.2(b)(3). Nevertheless, these articles were published subsequent to the petition's filing date. A petitioner, however, must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider these articles in this proceeding. Even if we were to consider the articles, their author was not identified as required by the plain language of this regulatory criterion. Further, there is no evidence showing that the preceding publications qualify as professional or major trade publications or some other form of major media.

The petitioner's response to the director's request for evidence included program material from Chung's Tae Kwon Do Academy such as its "Annual Exhibition and Festival" program for 2005, "2006 Black Belt Testing & Masters Exhibition" program, 2006 Report, and 2007 Year Planning Program, but there is no evidence showing that this internal material was published in professional or major trade publications or some other form of major media, or that it meets the other requirements of this regulatory criterion.

As discussed, the petitioner's appellate submission included an August 8, 2000 article in the *Daytona Beach News-Journal* discussing a visit by the beneficiary and four other black belts to the International Taekwondo Academy in Ormond Beach. The article, entitled "Tae kwon do students win Junior Olympics medals" only mentions the beneficiary's name in passing. The petitioner also submits an article in the July 2007 issue of the *Weston Post* entitled "Weston athletes Bring Home the Gold," but again the article only briefly mentions the beneficiary. The petitioner's appellate submission also includes captioned photographs of the beneficiary in the "Snapshots" section of the May 2, 2008 issue of *Weston Gazette* and the "South Florida" section of the March 7, 2008 issue of *Sea Latino*. Neither of these photographs was accompanied by an article about the beneficiary. Further, the preceding material was published subsequent to the petition's filing date. A petitioner, however, must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the 2007 and 2008 material in the *Weston Post*, the *Weston Gazette*, and *Sea Latino* in this proceeding. Further, there is no evidence showing that the preceding publications (including the *Daytona Beach News-Journal*) qualify as professional or major trade publications or some other form of major media.

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

> *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 beneficiary'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).

The petitioner initially submitted a qualification certificate issued by the President of the Korea Taekwondo Association (March 19, 1999) stating that the beneficiary "passed the 3rd Grade Referee Qualification Test," but the English language translation accompanying the certificate was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). In response to the director's request for evidence, the petitioner submitted a November 6, 2006 letter from the Chairman, International Referee Committee, World Taekwondo Federation, stating that the beneficiary "has a Third Grade Referee Qualification." On appeal, the petitioner submits a "Certification of 3rd Degree Tae kwon Do Referee" reflecting the beneficiary's competency to officiate at the national level.

The plain language of this regulatory criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others." While the preceding documentation reflects that the beneficiary is qualified to serve as a referee, there is no evidence showing that he has actually participated as a judge at officially sanctioned competitions at the national or international level. There is no evidence identifying the names of the competitions refereed by the beneficiary and the dates when they were held. Nor has the petitioner submitted evidence showing the specific competitive categories judged by the beneficiary, the names of the participating athletes, and their level of expertise. Without evidence establishing that the beneficiary has actually participated as a judge and that his activities involved judging top athletes at the national or international level or are otherwise consistent with this highly restrictive classification, we cannot conclude that he meets this criterion.

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

We acknowledge the petitioner's submission of several reference letters from taekwondo organizations, coworkers, parents, and students praising the beneficiary's qualifications, experience, and talent as an instructor. Talent and activity in one's field, however, are not necessarily indicative of original athletic contributions of major significance. The record lacks evidence showing that the beneficiary has made original contributions that have significantly influenced or impacted his field.

With regard to the beneficiary's athletic and coaching achievements, the reference letters do not specify exactly what his original contributions in taekwondo have been, nor is there an explanation indicating how any such contributions were of major significance to his field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the beneficiary has helped his students with their skills and training, there is nothing in the reference letters to suggest that he has developed original training techniques, as opposed to methodologies passed down from his own tutelage in the martial arts. Further, even if the techniques taught by the beneficiary were found to be original, there is nothing to demonstrate that these techniques have had major significance in the sport of taekwondo. For example, there is no evidence showing that the beneficiary's training techniques have been widely

adopted throughout his sport or have significantly influenced others in his field nationally or internationally.

In this case, the reference letters submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinion 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 of support from the beneficiary's personal contacts 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. Thus, the content of the writers' statements and how they became aware of the beneficiary's reputation are important considerations. 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 that one would expect of a martial arts athlete or a taekwondo instructor who has sustained national or international acclaim. Without extensive documentation showing that the beneficiary's work has been unusually influential, highly acclaimed throughout his sport, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

The petitioner submitted title pages for the beneficiary's bachelor's degree thesis entitled "A Study on the Power for Scoring Points of Double Kicking Technique in Taekwondo Competition" and his graduation thesis entitled "A Study on the Research Survey of the Current Situation and the Reality of Taekwondo in the United States Focused on Florida." The petitioner also submitted a column authored by the beneficiary in *Tae Kwon Do Times*, but there is no evidence showing that his column constitutes a scholarly article in the field. Further, the English language translations accompanying the preceding articles were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Finally, there is no evidence showing the beneficiary's articles were published in professional or major trade publications or some other form of major media.

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

> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

The petitioner submitted Chung's Tae Kwon Do Academy's "Annual Exhibition and Festival" program for 2005 showing the beneficiary posing with a sword. The petitioner also submitted two articles from April 2003 in the *Korean News* and the *Korean-American Journal* mentioning a taekwondo demonstration given by the beneficiary at the O'Connell Center Gymnasium at the University of Florida. The English language translations accompanying these articles were incomplete and were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3).

Nevertheless, the plain language of this regulatory criterion indicates that it applies to the visual arts (such as sculpting and painting) rather than to sports such as taekwondo. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner has not established that the beneficiary's taekwondo demonstrations compare to the exclusive showcases of an artist's work that are contemplated by this regulation for visual artists.

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

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

At issue for this criterion are the position the beneficiary was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

On appeal, the petitioner submits a June 27, 2007 letter from [redacted] Chung's Tae Kwon Do Academy, stating that the beneficiary is a vital part of his business and praising the beneficiary's talents and abilities. The record does not include evidence showing that Chung's Tae Kwon Do Academy has a distinguished reputation. Further, the petitioner has not established that the beneficiary's role for the business was leading or critical. For example, there is no evidence demonstrating how the beneficiary's role differentiated him from the other master instructors employed by the academy, let alone [redacted], the business owner. The documentation submitted by the petitioner does not establish that the beneficiary was responsible for the academy's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. Accordingly, the petitioner has not established that the beneficiary meets this criterion.

In this case, the petitioner has failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the beneficiary as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

While USCIS has approved at least two O-1 nonimmigrant visa petitions filed on behalf of the beneficiary, these prior approvals do not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also, Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL

1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the beneficiary's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Review of the record does not establish that the beneficiary has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.