U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 19 2009

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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).

Perry Rhew
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 (AAO) on appeal. The appeal will be dismissed.

The petitioner 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 December 3, 2007, seeks to classify the beneficiary as an alien with extraordinary ability as a martial arts instructor, coach, and competitor. The petitioner submitted a letter from [redacted] of the Traditional Karate Center in America (TKCA), stating: "At this time we are pursuing an I-140 petition on behalf of [the beneficiary] so that he may utilize his extraordinary and outstanding skills and talents in the martial arts as a permanent, full-time coach and competitive athlete on behalf of TKCA."

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 under 8 C.F.R. § 204.5(h)(3).[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 submitted the beneficiary's "Curriculum vitae" listing his "Awards and accomplishments" as follows:

1992- Dominican Republic National Tournament Taekwon-Do ITF [International Taekwondo Federation],[2] 1st place for lightweight division in fighting (*December*);
1993- Dominican Republic Spanish Tournament-American and ITF, 1st place in form, 1st place for lightweight division in fighting (*August*);
1994- 1st place in breaking[,] 1st place in form in Dominican Republic (*January*);
1995- Award for the Dominican Republic Instructor of the year (*October*);
1996- National Tournament Taekwon-Do Oh Do Kwan Dominican Republic 1st place fighting division (*August*);
1997- North Regional Champion in forms (*September*);
1998- Instructor of the year (*December*);
1999- National Tournament ITF 1st place in forms, Dominican Republic (*December*);
2000- Instructor of the year Dominican Republic (*December*);

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

[2] For clarification, the International Taekwondo Federation is a separate entity from the World Taekwondo Federation, the official governing body for the sport of taekwondo as recognized by the International Olympic Committee. *See* http://www.wtf.org/wtf_eng/site/about_wtf/intro.html, accessed on August 11, 2009, copy incorporated into the record of proceeding.

2001- Haiti Championship 1st place in fighting, 1st place breaking and 1st place team;
2002- Instructor of the year in Dominican Republic;
2002- Guatemala Championship 1st place in lightweight fighting, 1st place in breaking and 1st place in team;
2003- 1st place for lightweight divisions in fighting, 2nd place in my division in breaking. Championship for lightweight division fighting in Cuba;
2004- 1st place in Pan-American in lightweight fighting and 2nd place in breaking in the Pan-American ITF of Argentina;
2005- 4th place in fighting for the World Championship of the ITF in Australia of over 60 countries;

Awarded by the major of the City of Tamboril, Dominican Republic, for *Best Athlete* in 2002, 2003 and 2004; and
Awarded by the International Institute of Taekwon-Do Oh Do Kwan for *Best International Coach* in 2004.

The petitioner's initial submission included letters from the United States of America National Taekwon-Do Federation,[3] Shuko-Kai International, the Southern Pacific Karate Association, and the Seiden-Kai Karate Center stating:

> [The beneficiary] was named Best Athlete in 2002, 2003, and 2004 by the city of Tamboril, Dominican Republic and named the Best International Coach in 2004 by the International Institute of Taekwon-Do Oh Do Kwan. Most recently he placed first in the lightweight fighting division and 2nd in breaking at the Pan American ITF of Argentina 2004 and placed fourth in fighting for the World Championship of the ITF in Australia in 2005 that included participation from over 60 countries.

The beneficiary's awards from the city of Tamboril and the International Institute of Taekwon-Do Oh Do Kwan in the Dominican Republic constitute local or institutional recognition rather than nationally or internationally recognized prizes or awards. With regard to the beneficiary's first place in the lightweight fighting division and 2nd place in breaking at the Pan American ITF competition in Argentina (2004), there is no evidence from the competition's organizers indicating that the beneficiary received nationally or internationally recognized prizes or awards in those categories. Although the record includes a November 2004 Certificate of Participation from the ITF's VII Pan American Games of Taekwon-Do in Mar del Plata, Argentina stating that the beneficiary participated as a competitor, the certificate does not identify him as an award recipient.[4] With regard

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[3] For clarification, the United States of America National Taekwon-Do Federation is a separate entity from USA Taekwondo, the official governing body for the sport of taekwondo in the United States as recognized by the U.S. Olympic Committee. *See* http://usa-taekwondo.us/, accessed on August 11, 2009, copy incorporated into the record of proceeding.

[4] For clarification, the participation certificate submitted by the petitioner indicates that the beneficiary competed in the ITF's VII Pan American Games of Taekwon-Do in November 2004 rather than the multi-sport Pan American Games. The multi-sport Pan American Games are held every four years in the year preceding the Olympics (2003 and 2007 in this decade) and are conducted by the Pan American Sports Organization. *See* http://www.olympics.bm/pasocourses.htm

to the beneficiary's fourth place in fighting at the World Championship of the ITF in Australia in 2005, the plain language of this regulatory criterion requires evidence of the his receipt of "nationally or internationally recognized prizes or awards." In this instance, there is no evidence from the competition's organizers showing that the beneficiary received a prize or an award at this event for placing fourth. Further, the record does not include official results from the ITF World Championship showing where the beneficiary placed.

In response to the director's request for evidence, the petitioner submitted a June 2008 letter from the International Institute of Taekwon-Do Oh Do Kwan, Santiago, Dominican Republic, stating that the beneficiary "has been champion in his division of 54 Kg., more tha[n] 10 times, in the national and international competitions celebrated in the Dominican Republic, in skills and fight." A second June 2008 letter from the International Institute of Taekwon-Do Oh Do Kwan states that the beneficiary "was COACH & COMPETITOR for the winning team of the first place cup on the national championship 1998, in Santiago . . . and due to the great role in skills and fight, the team conquest that first place."

With regard to the coaching and competitive awards claimed in the beneficiary's curriculum vitae and in the letters from the International Institute of Taekwon-Do Oh Do Kwan, United States of America National Taekwon-Do Federation, Shuko-Kai International, the Southern Pacific Karate Association, and the Seiden-Kai Karate Center for which there is no supporting evidence, simply 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). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Without submitting evidence of the actual awards claimed above, the petitioner has not established that the beneficiary received them.

The petitioner also submitted the following:

1. Photocopies of two medals from the 2007 ITF U.S. Junior and Senior World Qualifier, Pleasanton, California;
2. Certificate stating that the beneficiary was awarded 2nd place in Sparring at the 2007 U.S. Junior and Senior World Qualifier in Pleasanton, California;
3. Certificate from the International Institute of Taekwon-Do Oh Do Kwan stating that the beneficiary was granted a fourth degree black belt ranking "in accordance with the rules and regulations of the organization;"
4. Several "Certificate(s) of Participation" for various training seminars and competitions;
5. Photographs of various unspecified medals and trophies;
6. Photographs of the beneficiary receiving or handling awards from the International Institute of Taekwon-Do Oh Do Kwan;

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and http://www.olympics.bm/panamgamesbermuda_teams.htm, accessed on August 11, 2009, copies incorporated into the record of proceeding.

7. "Skills Tournament IITO [International Institute of Taekwon-Do Oh Do Kwan] TKD 99" medal;
8. Santiago's City Council 2002 medal;
9. "Tamboril 2003 IITO 6/8/03" medal;
10. "XXIV Tournament IITO TKD 2003" medal;
11. "1st Martial Arts Tournament of Tamboril 2003" medal;
12. "The Radiologist House 2nd Place Team Fights 1st Caribbean Encounter ITF 2004" medal;
13. "Tae Kwon-Do Tournament San Rafael 2004" medal;
14. "Almonte Fulgons" medal;
15. "XIII Tournament of Tae Kwon-Do, Tae Kwon-Do Eh Institute UTI, Dominican Republic 2005" medal;
16. "Tamboril's Firefighters 2nd Place ITF Tournament Tamboril 2005" medal;
17. Monumental Gym 1st ITF Cup Santiago 2005 Team Fight medal;
18. July 2007 commendation presented to [redacted]" from "Hawks Tae Kwon-Do Academy;"
19. Award from the IITO and the Merger of Tamboril School naming the beneficiary "Professor of the Year" for 1999;
20. December 21, 2002 award from the IITO Tamboril Black Belt Team acknowledging the beneficiary for his hard work in the development of the institution;
21. February 3, 2002 award from the IITO stating: "The merger of the schools Tamboril, Moca and Licey grant this award to [the beneficiary] for his great work in favor of this institution;"
22. Award of Gratitude (2007) presented to the beneficiary by two of his students at IITO-ITF of San Diego;
23. August 15, 2004 award presented to the beneficiary by the 1st Dan Black Belt Team of Tamboril for his "effort and dedication to Taekwon-Do;" and
24. Undated and untitled newspaper article stating that the beneficiary was a member of the Dominican Team which won a silver medal at the "VII Pan-American Tournament of Discipline."

With regard to items 1 through 24, there is no information about the preceding awards from the presenting organizations or supporting evidence demonstrating their national or international significance. 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 had a significant level of recognition beyond the presenting organizations.

Regarding item 3, we note that the beneficiary's promotion in rank from his school, the IITO, was based on his successful completion of a taekwondo skills test. Such belt ranking 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 ceremony in which the beneficiary received his promotion certificate commanded national or international recognition. Accordingly, the petitioner has not established that the beneficiary's successful mastery of required skills and attainment of a

higher belt ranking equates to his receipt of a nationally or internationally recognized prize or award. In regard to items 3, 6 – 11, 13, and 16 – 23, these awards reflect local or institutional recognition rather than nationally or internationally recognized prizes or awards for excellence. With regard to item 4, there is no evidence showing that these certificates are nationally or internationally recognized prizes or awards for excellence, rather than simply an acknowledgment of the beneficiary's participation in various training seminars and competitions. Regarding item 18, the petitioner has not established that the beneficiary was the recipient of this award rather than [redacted] the owner of the [redacted]

In regard to items 1, 2, 5, 9 – 13, 15 – 17, and 24, the record does not include supporting evidence demonstrating the significance and magnitude of the preceding competitive events won by the beneficiary. For instance, there is no evidence of the official results from the preceding competitions indicating the number of entrants in the beneficiary's competitive category or weight division. Moreover, a competition may be open to athletes from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize is "nationally or internationally recognized." The burden is on the petitioner to demonstrate the level of recognition and achievement associated with the beneficiary's awards. With regard to awards won by the beneficiary in sporting events not demonstrated to have a level of stature comparable to those organized by recognized athletic organizations such as USA Taekwondo, the World Taekwondo Federation, or the Pan American Sports Organization, 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.[5] Likewise, it does not follow that an athlete who has had success in obscure competitions or tournament events with a limited pool of entrants 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."

On appeal, counsel refers to the beneficiary's curriculum vitae as evidence that he served "as national trainer for the Northern Region of the Dominican Republic from 1990 to 2005, as head

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[5] 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.

instructor for the Dominican Republic National selection team to represent the Dominican Republic in international competition from 1996 to 2005, and as coach for the Dominican Republic Northern Region female team national and regional competitions from 2000 to 2005." The self-serving claims made in the beneficiary's curriculum vitae do not constitute evidence. Simply 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 158, 165. Nevertheless, the beneficiary's claimed experience as trainer, head instructor, and coach is not tantamount to his receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Nationally or internationally recognized prizes or awards won by taekwondo competitors coached primarily by the beneficiary, however, can be considered for this criterion. As previously discussed, the beneficiary submitted a June 2008 letter from the IITO stating that the beneficiary "was [redacted] for the winning team of the first place cup on the national championship 1998, in Santiago . . . and due to the great role in skills and fight, the team conquest that first place." Rather than submitting primary evidence of the preceding first place award from 1998, the petitioner instead submitted a letter issued a decade later by the beneficiary's taekwondo school attesting to the award's existence. As discussed, simply 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 158, 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. The June 2008 letter is not sufficient to establish that the beneficiary or those under his tutelage received a prize or award at the national championship in 1998 or that their award had significant national recognition. On appeal, counsel states that the June 2008 letter should be considered as "expert testimony." The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony in visa proceedings. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). We find that the claims made in the June 2008 IITO letter are unsupported by the initial evidence that is specifically required by this regulatory criterion, despite the director's request for evidence. 8 C.F.R. § 204.5(h)(3)(i). Where the regulations require specific, objective evidence in support of a petition, the petitioner's burden of proof is not satisfied by submitting unsupported expert testimony. 8 C.F.R. § 103.2(b)(1). Accordingly, the AAO gives the submitted June 2008 letter less weight and finds its claims unpersuasive. *Matter of Caron International*, 19 I&N Dec. at 791.

Counsel further states:

> [The beneficiary] has coached students who have excelled in the sport, such as [redacted], who, along with beneficiary himself, was a member of the Team USA 2007 and won second place at the Jr. and Sr. World Qualifier held in Pleasanton, California, as well as received the

> opportunity to compete in the 2007 World Cup held in England. . . . Moreover, beneficiary coaches his daughter [redacted] recipient of second place in fighting and patterns at the Taekwon-do Team Training in San Francisco, CA, and his son [redacted] who received third place in fighting and patterns at the Taekwon-do Team Training in San Francisco, CA. Both participated in the prestigious 2007 Jr. and Sr. World Qualifier held in Pleasanton, CA (in the San Francisco area).

The petitioner submitted a 62-person roster of Team USA 2007 participants for the ITF's 2007 World Cup held in England as posted on the internet site of "[redacted]" the beneficiary's Certificate of Participation and his certificate for 2nd place in Sparring from the 2007 U.S. Junior and Senior World Qualifier in Pleasonton, a photograph of the beneficiary at the podium, and a photograph of his medal. The beneficiary's 2nd place in Sparring and medals from the 2007 U.S. Junior and Senior World Qualifier have already been addressed. The record does not include evidence showing the awards won by [redacted] or the beneficiary's children. Without documentary evidence to support counsel's claims regarding their awards, 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 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, there is no documentation demonstrating that the beneficiary's students' received awards that were nationally or internationally recognized or information indicating the specific dates of their training under his tutelage. In this case, there is no evidence showing that top athletes coached primarily by the beneficiary have won nationally or internationally recognized prizes or awards in taekwondo or karate competition.

In light of the above, 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.

The petitioner submitted an October 22, 2007 certification from the IITO stating that the beneficiary is a member of the IITO and the ITF. The petitioner also submitted a certificate from the IITO stating that the beneficiary was granted a fourth degree black belt ranking "in accordance with the rules and regulations of the organization." The record, however, does not include evidence of the actual requirements for a fourth degree black belt ranking as specified in "the rules and regulations."

Nevertheless, we cannot conclude that meeting the minimum time requirements for earning the next degree black belt ranking and passing a skills test constitute outstanding achievements.

On appeal, counsel refers to the ITF's "Umpire Rules" as further evidence for this criterion. The petitioner initially submitted letters from the United States of America National Taekwon-Do Federation, Shuko-Kai International, the Southern Pacific Karate Association, and the Seiden-Kai Karate Center stating that the beneficiary has served as a "Class A umpire." The beneficiary's service as a Class A umpire will be further addressed under the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). In response to the director's request for evidence, the petitioner submitted the ITF's "Umpire Rules." Article 17, Umpire Class and Requirements, states:

1. The "Class A" Umpire

   The criteria for the ITF "Class A" International Umpire are:

   a) At least 25 years old,
   b) Possesses a good sense of fairness and conscience,
   c) Holds an ITF 4th degree or over,
   d) Has successfully attended an official ITF International Umpire Course and holds the ITF "Class A" International Umpire certificate,
   e) Has a minimum of three (3) years experience in regular domestic umpiring and has good recommendations from his or her National Association,
   f) Participates regularly in authorized ITF Refreshers Courses for Referee and Jury Members,
   g) Officiates regularly at tournaments within the ITF jurisdiction.

We cannot conclude that meeting the preceding age, skill level, education, and experience requirements equate to outstanding achievements. Further, while the beneficiary has met the requirements necessary to attain his fourth degree black belt ranking and serve as a Class A umpire for the ITF, there is no evidence demonstrating that the IITO and ITF require such qualifications for admission to membership.[6] In fact, "Article 21, Membership" of the ITF Constitution submitted by the petitioner in response to the director's request for evidence states:

> Any natural person or any organization of natural persons that officially practices the Taekwon-Do spirit, techniques, methodology, theory and training ways developed by the first ITF [redacted] the Founder of Taekwon-Do, and accepts the ITF Constitution, By-Laws and Tournament Regulations, can be a member of ITF.

In this case, the documentation submitted by the petitioner does not show that the IITO and the ITF require outstanding achievements of their members, as judged by recognized national or international experts in the martial arts.

[6] For instance, there is no evidence showing that novices, lower belt rankings, or non-umpires are excluded from their membership bodies.

The petitioner submitted a November 1, 2007 letter from the United States of America National Taekwon-Do Federation stating that the beneficiary is a member of the "national USA Taekwon-do team." As discussed previously, the petitioner also submitted a roster of 62 "Team USA 2007" members for the ITF's 2007 World Cup held in England as posted on the internet site of "Jue's Taekwon-Do." We note, however, that the United States of America National Taekwon-Do Federation's national team is not the same team as the USA Taekwondo National Team, which is recognized by the U.S. Olympic Committee and which competes in international events sanctioned by the World Taekwondo Federation, the official governing body for the sport of taekwondo as recognized by the International Olympic Committee. We acknowledge that membership on an Olympic team or a major national team such as a World Cup soccer team may serve to meet this criterion as such teams are limited in the number of members and have a rigorous selection process. We reiterate, however, that it is the petitioner's burden to demonstrate that the beneficiary meets every element of this criterion, including that he is a member of a team that requires outstanding achievements of its members, as judged by recognized national or international experts. We will not presume that every national team, such as the United States of America National Taekwon-Do Federation's national team that was selected to participate in the ITF's 2007 World Cup, is sufficiently exclusive. Without evidence showing, for instance, the selection requirements for the beneficiary's national team, we cannot conclude that he meets the elements of this regulatory criterion.

Counsel further states that the beneficiary has been a member of the USA-National Karate-do Federation since February 2006, but the record does not include his membership credential for this organization. As stated previously, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 533, 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 1, 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503, 506. Nevertheless, there is no evidence showing that the USA-National Karate-do Federation requires outstanding achievements of its members, as judged by recognized national or international martial arts experts.

In light of the above, 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.[7]

The petitioner initially submitted three newspaper articles, but the name of the newspapers and the date of the articles were not identified. Further, the articles were unaccompanied by certified English language translations. Pursuant to 8 C.F.R. § 103.2(b)(3), 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. The petitioner also submitted various articles about Julio Martinez of the TKCA, but none of these articles mention the beneficiary. The plain language of this regulatory criterion requires that the published material be "about the alien."

In response to the director's request for evidence, the petitioner submitted the November 2006 issue of *Taekwondo Times*, but none of the articles in this magazine are about the beneficiary. Further, there is no evidence (such as circulation statistics) showing that *Taekwondo Times* qualifies as a professional or major trade publication or some other form of major media.

The petitioner also submitted a November 9, 2002 article in *La Informacion* entitled "National Taekwondo starts today." The beneficiary, however, is not mentioned in the article. Further, the English language translation accompanying the article was not complete as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The petitioner's response also included a September 29, 2004 article in *La Informacion* entitled "Taekwon-do potential stands out in Santiago." The beneficiary is identified along with several other individuals in one of the two photographs accompanying the article, but the body of the article does not mention him or his achievements. Further, the English language translation accompanying the article was not complete as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The petitioner also submitted an article entitled "Dominican Earns the right to participate in the Tae Kwon Do world championship." The article and an accompanying photograph each contain only one sentence briefly mentioning the beneficiary. Accordingly, we cannot conclude that the material is about the beneficiary. Further, we note that the article and its accompanying English language translation did not include the name of publication or the date of the article as required by the plain language of this regulatory criterion. Further, the English language translation was not complete as required by the regulation at 8 C.F.R. § 103.2(b)(3). On appeal, counsel states that the article was published in *La Informacion*, but the evidence submitted does not support his claim. As stated previously, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 533, 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 1, 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503, 506.

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[7] 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.

The petitioner's response also included an article entitled "Haiti & Dominican interchange Tae Kwon," but the article and its accompanying English language translation did not identify the name of publication or the date of the article. Further, the English language translation was not complete as required by the regulation at 8 C.F.R. § 103.2(b)(3). The article and an accompanying photograph each contain only one sentence mentioning the beneficiary by name.

The petitioner also submitted a December 26, 2003 article in *La Informacion* entitled "Guatemalan Horantes: Conquest International Tae Kwon-Do IITO." The beneficiary, however, is not mentioned in the article. Further, the English language translation accompanying the article was not complete as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The petitioner's response also included an April 27, 2006 article in *La Informacion* entitled "Tae Kwon do seminar ends," but the article only mentions the beneficiary's name in passing. Further, the English language translation accompanying the article was not complete as required by the regulation at 8 C.F.R. § 103.2(b)(3).

On appeal, counsel argues that *La Informacion* qualifies as a form of major media. The petitioner submits a profile of the Dominican Republic obtained from the U.S. Department of State's internet site, but this profile does not contain information about *La Informacion* or the country's major publications. The petitioner also submits information printed from www.pressreference.com stating:

> The newspaper with the largest circulation in the Dominican Republic is the *Listin Diario* with a daily circulation of 166,000, a Saturday edition with a circulation of 180,000, and a Sunday edition with a circulation of 150,000, numbers that nearly double those of any major competitor. . . . Other newspapers, in order of circulation, are the *Hoy* with a daily, Saturday, and Sunday circulation of 82,000; *El Nacional* with a daily, Saturday, and Sunday circulation of 42,000; and the *Ultima Hora* (statistics NA), all of which are published out of the capital of Santo Domingo. Other national papers are *El Caribe*, circulation 40,000 . . . and *El Nuevo Diario*, circulation 20,000. The largest circulation of regional interest is *La Informacion* of Santiago, circulation 22,000, and one English language paper, *The Santo Domingo News.*

The petitioner's appellate submission also includes information printed from www.abyznewslinks.com listing *La Informacion* as one of seven "national" newspapers. The preceding information from www.pressreference.com, however, identifies *La Informacion* as a "regional" publication. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Even if the petitioner were to resolve this inconsistency, the limited regional circulation of *La Informacion* in relation to the more extensive national circulation of *Listin Diario*, *Hoy*, *El Nacional*, and *El Caribe* is not sufficient to demonstrate that *La Informacion* qualifies as a form of major media. Nevertheless, as discussed previously, the petitioner has not established that any of the articles in *La Informacion* are about the beneficiary. Further, the English language translations accompanying the articles in *La Informacion* were not complete as

required by the regulation at 8 C.F.R. § 103.2(b)(3). Accordingly, 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).

As discussed, the petitioner submitted letters from the United States of America National Taekwon-Do Federation, Shuko-Kai International, the Southern Pacific Karate Association, and the Seiden-Kai Karate Center stating that the beneficiary has served as a "Class A umpire." In response to the director's request for evidence, the petitioner submitted a photograph of the beneficiary in uniform standing under a basketball net between two other individuals in their uniforms about to commence sparring. A comment below the photograph states: "Dominican Republic International Tournament of Antillas [the beneficiary] in the center as Judge." The date of the tournament and the skill level of the competitors were not specified. The petitioner also submitted the ITF's "Tournament Rules." Section 1, Article 4: Duties, states:

a) Jury will normally consist of three (3) senior Umpires who will be seated in the place of honor, in front, and will render the final decision in case of a tie or dispute.
b) Referee will be in the square to control the match.
c) Judges for Pattern will be seated in a line facing the Competitors. Judges for Sparring will be seated at the four corners of the square, they will give points in accordance with their judgment.

In the photograph submitted by the petitioner, the beneficiary is shown in the center controlling the sparring match rather than seated as a Judge or Jury member. According to the ITF tournament rules submitted by the petitioner, "Judges for Sparring will be seated" and "will give points in accordance with their judgment." Accordingly, the preceding photograph does not constitute evidence of "[e]vidence of the alien's participation . . . as a judge of the work of others." Moreover, the preceding ITF tournament rules do not establish that refereeing an ITF match is tantamount to judging the work of others. For instance, the ITF tournament rules indicate that referees "control the match" rather than award "points in accordance with their judgment." According to the Competition Rules, referees have control over the match, but do "not award points" to the competitors. It is the judges who evaluate

the competitors, assess points, and ultimately determine the outcome of a match. The responsibility of the referee, on the other hand, is to ensure that rules and procedures are being followed and that the match is safe and fair. A referee whose primary responsibility is to observe a competition and ensure that rules or proper procedures are followed is not judging the work of others in the context of this criterion. While the letters from the United States of America National Taekwon-Do Federation, Shuko-Kai International, the Southern Pacific Karate Association, and the Seiden-Kai Karate Center state that the beneficiary has served as a "Class A umpire," there is no evidence showing that he has actually participated as a "judge" at officially sanctioned competitions at the national or international level. Further, there is no evidence identifying the names of the other competitions in which the beneficiary has served as a judge or the dates when they were held. Finally, the petitioner has not 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 were otherwise consistent with this highly restrictive classification, we cannot conclude that he 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).

The record reflects that USCIS previously approved a P-1 nonimmigrant visa petition filed on behalf of the beneficiary to perform at a specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance. This prior approval does 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.