U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

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DATE: JUL 28 2011 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiaries:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking to classify the beneficiaries as internationally-recognized athletes or members of an internationally-recognized athletic team under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i). The petitioner, a Chinese [redacted], seeks to employ the beneficiaries as "outstanding martial arts athletes" for a period of one year. At the time of filing, the beneficiaries held P-1 status based on an approved petition filed by an unrelated employer.

The director denied the petition based on three independent and alternative grounds, concluding that the petitioner failed to establish: (1) that the beneficiaries are coming to the United States to participate in athletic competitions which have a distinguished reputation and which require participation of an athlete or athletic team that has an international reputation; (2) that the beneficiaries are members of a foreign athletic team that has achieved international recognition in the sport; and (3) that the beneficiaries are internationally-recognized as individual athletes in their sport, pursuant to 8 C.F.R. § 214.2(p)(4)(ii).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, new counsel for the petitioner asserts that "the appeal arises from the erroneous conclusions of law and fact that formed the bases of the Director's denial." Counsel puts forth the following argument in his short brief:

> Wushu Competition could also be [v]iewed as [p]erformances.
>
> The Director rejects the petition's [*sic*] application partially based on his [*sic*] assumption that Wushu competition is an athletic sports [*sic*] rather than a performance. However, such assumption can be wrong.
>
> Wushu is not just a competition. It is also a performance. It is sufficient for the performance to require qualified Kungfu masters. As to the information about the performance, the letters from the organizer should give weight because the organizers for these events are usually not well-funded and may not be able to afford press conference etc.
>
> In addition, the Director rejects evidence from Wikipedia. However, we think that articles from Wikipedia are basically knowledge accepted by the public and used as a reliable source for knowledge. Articles from Wikipedia should not be rejected as unreliable.
>
> Finally, we believe evidence submitted has indicated that the group has achieved an international recognition and reputation.
>
> Together we believe that the evidence submitted by the petitioner is sufficient to show that the beneficiaries are qualified for P1 visa.

Under section 101(a)(15)(P)(i) of the Act, an alien having a foreign residence which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or sponsor. Section 214(c)(4)(A)(i) of the Act, 8 U.S.C. § 1184(c)(4)(A)(i), in relevant part, provides that section 101(a)(15)(P)(i)(a) of the Act applies to an alien who:

(I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance;

(II) is a professional athlete, as defined in section 204(i)(2);

Section 214(c)(4)(A)(ii)(I) of the Act, 8 U.S.C. § 1184(c)(4)(A)(ii)(I) provides that the alien must seek to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

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

> *Internationally recognized* means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country.

The regulation at 8 C.F.R. § 214.2(p)(4)(ii) sets forth the documentary requirements for P-1 athletes as:

(A) *General.* A P-1 athlete must have an internationally recognized reputation as an international athlete or he or she must be a member of a foreign team that is internationally recognized. The athlete or team must be coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete or athletic team that has an international reputation.

(B) Evidentiary requirements for an internationally recognized athlete or athletic team. A petition for an athletic team must be accompanied by evidence that the team as a unit has achieved international recognition in the sport. Each member of the team is accorded P-1 classification based on the international reputation of the team. A petition for an athlete who will compete individually or as a member of a U.S. team must be accompanied by evidence that the athlete has achieved international recognition in the sport based on his or her reputation.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

> An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. The appeal will be summarily dismissed.

On appeal, while counsel generally contends that the director's decision is based on erroneous conclusions of law and fact, counsel's arguments do not directly address the three grounds for denial of the petition or otherwise specifically identify any errors on the part of the director. As such, counsel's arguments are simply insufficient to overcome the well-reasoned conclusions the director reached based on the evidence submitted by the petitioner. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Counsel asserts that the director denied the petition in part based on an "assumption that Wushu competition is an athletic sports [*sic*] rather than a performance." Counsel also indicates that the director "requested additional evidence to support the conclusion that the beneficiary's qualifications meet the requirements of 8 C.F.R. § 214.2(p)(6)(i) and (ii)," regulations which apply to P-3 petitions for artists or entertainers under culturally unique programs. Counsel appears to be suggesting that the petitioner sought to establish that the beneficiaries are members of an internationally recognized entertainment group or culturally unique artists or entertainers, as opposed to members of an internationally recognized athletic team.

Counsel's claim is unpersuasive. In its letter dated August 30, 2010, the petitioner stated: "This letter is submitted in support of the petition of [the petitioning entity] to classify [the beneficiaries], Chinese national[s], as a P-1 Martial Arts Athlete Team to compete in various Chinese martial arts tournaments in the United States." The petitioner went on to specifically reference the evidentiary criteria applicable to internationally recognized athletes and athletic teams, pursuant to 8 C.F.R. § 214.2(p)(4)(ii), and all exhibits submitted in support of the petition referenced the beneficiaries' qualifications as "outstanding martial arts athletes." Contrary to counsel's assertions, the request for evidence issued by the director on October 7, 2010 referenced only the regulations applicable to internationally recognized athletes and athletic teams, and did not address the beneficiary's qualifications as culturally unique artists or entertainers pursuant to 8 C.F.R. § 214.2(p)(6)(i) and (ii). The petitioner's response to the Request for Evidence reflected that the petitioner was indeed seeking to classify the beneficiaries as members of an internationally recognized athletic team.

While counsel suggests that the director should have evaluated whether the beneficiaries' proposed athletic competitions qualify as "performances," the AAO emphasizes that USCIS will only consider the visa classifications that the petitioner annotates on the petition. The Ninth Circuit has determined that once USCIS concludes that an alien is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the alien is eligible for an alternate classification. *Brazil Quality Stones, Inc., v. Chertoff*, Slip Copy, 2008 WL 2743927 (9th Cir. July 10, 2008). The petitioner did not request classification of the beneficiaries as an internationally recognized entertainment group or as culturally unique artists or entertainers, and the director clearly did not err by adjudicating the petition under the requested P-1 classification. If the petitioner believes that the beneficiaries may qualify as a P-1 entertainment group, or as P-3 artists or entertainers, then it may file a new petition with the required filing fee and initial evidence applicable to the requested classification.

Counsel further objects to the director's observation that evidence originating from *Wikipedia* is not considered reliable. The director noted that the petitioner had submitted *Wikipedia* articles in support of its assertion that the beneficiaries will compete in athletic competitions that have a distinguished reputation and which require the participation of internationally-recognized athletes. Regarding the information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.[1] *See Lamilem Badasa v. Michael Mukasey,* 540 F.3d 909 (8th Cir. 2008).

Further, even if the director favorably reviewed the evidence from *Wikipedia* and determined that the beneficiaries are coming to participate in athletic events that have a distinguished reputation, the petitioner's appeal does not address the director's determination that the petitioner also failed to establish that the events require the participation of internationally recognized athletes or athletic teams. Rather, counsel appears to claim on appeal that the martial arts competitions listed on the submitted itinerary should be considered "performances" in the arts or entertainment field, rather than athletic events.

Finally, counsel asserts that he believes that "evidence submitted has indicated that the group has achieved an international recognition and reputation." The director devoted four pages of a nine-page decision to a thorough discussion of why the petitioner's evidence: (1) failed to establish that the beneficiaries have ever competed as a group or team under the applicable definitions at 8 C.F.R. § 214.2(p)(3); and (2) failed to establish that the individual beneficiaries are internationally recognized athletes in their own right. Although counsel expresses his disagreement with the denial of the petition, he has not acknowledged or addressed the fundamental deficiencies that formed the basis of the director's denial as a basis for the appeal.

The denial of this petition is without prejudice to the filing of a new petition by the petitioner accompanied by the appropriate supporting evidence and filing fees.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

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[1] Online content from *Wikipedia* is subject to the following general disclaimer:

> WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

[redacted] accessed on July 20, 2011 a copy of which is incorporated into the record of proceeding.

ORDER: The appeal is summarily dismissed.