

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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

DATE: **MAY 16 2013** Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:

[Redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking classification of the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(iii), as an artist or entertainer in a culturally unique program. The petitioner is self-described as a Chinese martial arts production company. It seeks to employ the beneficiary as a martial arts performer for a period of one year.

The director denied the petition, concluding that the petitioner failed to submit evidence that the beneficiary possesses culturally unique skills as an artist or entertainer or that all of his performances or presentations would be culturally unique events. The director further found that the beneficiary is neither an artist nor an entertainer, but an athlete, and as such, his proposed activities do not fall within the plain language of the statute, set forth at section 101(a)(15)(P)(iii)(I) of the Act, or within the regulatory definition of "arts."

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, counsel for the petitioner rejects the director's finding that the beneficiary's Chinese martial arts practices are not a culturally unique art form and that Chinese martial arts are an athletic and competitive endeavor as opposed to an artistic endeavor. Counsel submits a brief, and documentation in support of the appeal including a print-out of an entry from Wikipedia entitled "Chinese culture" and a print-out of an entry entitled "Chinese Kung Fu" from chinahighlights.com, a website marketing travel to China.

## **I. The Law**

Section 101(a)(15)(P)(iii) of the Act provides for classification of an alien having a foreign residence which the alien has no intention of abandoning who:

- (I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and
- (II) seeks to enter the United States temporarily and solely to perform, teach, or coach as a culturally unique artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique.

Congress did not define the term "culturally unique," leaving that determination to the expertise of the agency charged with the enforcement of the nation's immigration laws. By regulation, the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services (USCIS)), defined the term at 8 C.F.R. § 214.2(p)(3):

*Culturally unique* means a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

The regulation at 8 C.F.R. § 214.2(p)(2)(ii) states that all petitions for P classification shall be accompanied by:

- (A) The evidence specified in the specific section of this part for the classification;
- (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;
- (C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and
- (D) A written consultation from a labor organization.

The regulation at 8 C.F.R. § 214.2(p)(6)(i) further provides:

- (A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.
- (B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) states that a petition for P-3 classification shall be accompanied by:

- (A) Affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill, or
- (B) Documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials; and
- (C) Evidence that all of the performances or presentations will be culturally unique events.

Finally, the regulation at 8 C.F.R. § 214.2(p)(3) defines "arts" as follows:

*Arts* includes fields of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts.

## II. Discussion

### A. Factual Background

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 22, 2012. In a letter dated August 17, 2012, the petitioner explained that it has been engaged in performance and instructing adults and children in kung fu, also known as wushu and Chinese martial arts, at its four locations since 2007. The petitioner indicates that it is seeking "to spread the rich heritage of Chinese traditional Martial Arts" through both its instructional programs, and by showcasing kung fu in a variety of non-profit and commercial events. The petitioner referred USCIS to visit its public website at [REDACTED] for more information.

The petitioner stated that the proffered position of martial arts instructor and practitioner would require the beneficiary "to perform as a guest performer in scheduled special seminars and demonstrations of martial arts; impart his expertise of Chinese traditional Kung Fu and Wu Shu to the students of the institute; and serve as judge in scheduled competitions." The petitioner indicated that it will pay the beneficiary \$120 for a performance, \$80 for a seminar and \$25 per hour for coaching.

The petitioner submitted a 2012/2013 itinerary listing the beneficiary's performance schedule which includes the follow events: [REDACTED]

The beneficiary is a native of China who began his training in Chinese martial arts in 2000, when he was ten years old. As evidence of the beneficiary's qualifications, the petitioner quoted from an article in [REDACTED] dated July 27, 2012 entitled [REDACTED] as follows:

[The beneficiary] has successfully competed in numerous martial arts tournaments in China. He won 1<sup>st</sup> place in men's Broad Sword and men's Staff at the [REDACTED] Tournament. At the [REDACTED] he won 1<sup>st</sup> place in Ground Boxing and 1<sup>st</sup> place in Self-Selected Tai Chi Fist Forms. Attending the [REDACTED] [the beneficiary] won 2<sup>nd</sup> place in the individual all-around. In recognition of his achievements the Chinese government awarded {the beneficiary} with the title of [REDACTED] . . .

As further evidence of the beneficiary's qualifications, the petitioner submitted the following:

- Certificate of Award, 1<sup>st</sup> Place Self-Selected Tai Chi Fist Forms, 1<sup>st</sup> Place Ground Boxing, [REDACTED]
- Certificate of Award, 2<sup>nd</sup> Place, Bajji Fist Forms, [REDACTED]
- Certificate of Award, 2<sup>nd</sup> Place Type One (Long Fist) Forms, 1<sup>st</sup> Place Group Forms, [REDACTED]
- Certificate of Award, 3<sup>rd</sup> Place Pu Dao Forms, Chaoda Cup China (Nanning) – [REDACTED];
- Certificate of Award, 2<sup>nd</sup> Place Soft Weapon Forms, [REDACTED]
- Certificate of Award, 1<sup>st</sup> Place Ground Boxing, [REDACTED]
- Awarded the title "[REDACTED]" by the [REDACTED]
- Certificate of Award, 1<sup>st</sup> Place Traditional Soft Weapon Forms, 2<sup>nd</sup> Place Traditional Empty Hand Forms – [REDACTED]
- Certificate of Award, 3<sup>rd</sup> Place Men's Soft Weapon Forms, [REDACTED]
- Certificate of Award, 3<sup>rd</sup> Place Southern Fist, "Longchuan Cup" [REDACTED]

**B. Artist or Entertainer**

As a preliminary matter, the AAO notes that section 101(a)(15)(P)(iii)(I) of the Act provides P-3 classification to aliens who perform as *artists or entertainers*, individually or as part of a group, or as an integral part of the performance of such a group. The term "arts" includes "fields of creative activity or endeavor" and includes, but is not limited to, fine arts, visual arts, and performing arts. *See* 8 C.F.R. § 214.2(p)(3).

Therefore, it is necessary to determine whether wushu is a "creative activity or endeavor" such that its practitioners could be considered "artists" according to the regulatory definition of arts. In support of the appeal counsel states "strictly speaking, Chinese martial arts are not an athletic sport because they aren't listed as an athletic sport in the Olympics," but did not further elaborate as to how the petitioner's school is dedicated to the "arts" or how the beneficiary's services as a coach or instructor are artistic, rather than athletic, in nature, given the context of the terms and conditions of his employment.

With respect to wushu martial arts, the petitioner stated:

First, Chinese Martial Arts are an essential facet of traditional Chinese culture, and are culturally unique . . .

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Second, Broad Sword, Staff and Tai Chi that Beneficiary is skilled at are all styles of Chinese martial arts, so they are culturally unique.

The petitioner did not further elaborate with respect to the traditional Chinese culture of which Chinese martial arts is an essential facet.

The AAO does not doubt that the petitioner's school teaches authentic Chinese wushu styles, but it has failed to explain or demonstrate why the beneficiary should be deemed an "artist" for purposes of this classification. According to the evidence submitted, wushu is a sport with an international governing body (the International Wushu Federation, as stated in the consultation letter). Wushu sporting events at the world, continental, and national levels are held all over the world, and the beneficiary has been successful as a wushu competitive athlete.

Therefore, while wushu is a martial "art," it has not been shown to be a "field of creative activity or endeavor." It is a sport whose practitioners are recognized as athletes. The beneficiary is coming to the United States to coach students in an athletic discipline and perform in scheduled demonstrations of that athletic discipline. The beneficiary is not coming to the United States as an artist, performer or entertainer. As such, the AAO finds that the beneficiary is not an alien who can be classified as a P-3 artist or entertainer, and the petition cannot be approved for this reason.

### **C. Culturally Unique Program**

Even assuming, *arguendo*, that the petitioner established that the beneficiary is an artist or entertainer as required by the statute, the AAO concurs with the director that the petitioner did not meet the evidentiary requirements for a petition involving a culturally unique program, as set forth at 8 C.F.R. § 214.2(p)(6)(ii).

Specifically, the regulation at 8 C.F.R. § 214.2(p)(6)(ii) requires that the petitioner establish that the beneficiary's performance or art form is culturally unique through submission of affidavits, testimonials and letters, or through published reviews of the beneficiary's work or other published materials. In a request for evidence ("RFE") issued on September 14, 2012, the director requested both forms of evidence, as well as evidence that the beneficiary is coming to the United States to participate in a cultural event or events that will further the understanding and development of his art form. The petitioner's evidence will be discussed below.

#### *1. Affidavits, testimonials or letters from recognized experts*

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A) requires the petitioner to submit affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and

giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill.

The petitioner initially submitted evidence of the beneficiary's awards and certificates as evidence of the authenticity of his culturally unique skills and two testimonial letters.

In the RFE, the director instructed the petitioner to provide affidavits, testimonials or letters from recognized experts attesting to the authenticity of the beneficiary's skill in performing or presenting the unique or traditional art form. In response to the RFE the petitioner submitted two additional testimonial letters.

The first letter is from [REDACTED], President of the [REDACTED], discusses the beneficiary's training at "the most prestigious sports university in China, [REDACTED]. He also discusses in detail the many awards the beneficiary has won "at different traditional martial arts competitions during his study at [REDACTED] and states the awards indicate "that [the beneficiary's] Kungfu skills are traditional and professional." He states his opinion that the beneficiary "has authentic talents and skills in unique and traditional Chinese Kung Fu" and that the petitioner "provides its students the opportunity of learning the most authentic Chinese Traditional Martial Arts in the U.S."

The second letter is from [REDACTED] a wushu grand master. [REDACTED] discusses the beneficiary's training in China at [REDACTED] and the many awards the beneficiary won. He states that the beneficiary "has authentic capabilities and skills in unique and traditional Chinese Kung Fu" and that the beneficiary "practices, performs, presents and teaches unique and traditional Chinese Kung Fu."

The third letter is from [REDACTED] president of the [REDACTED]. He states that he worked with the beneficiary at the [REDACTED] where the beneficiary judged wushu competitions and performed a demonstration of his wushu skills at the opening ceremony. He states as follows:

In conclusion, [the beneficiary] is an excellent practitioner of authentic traditional Chinese martial arts. As a master of *Gun* (staff) and Tai Chi, he is an inheritor to the fine traditions practiced uniquely by the Chinese people, engrained in Chinese culture, and produced by the history of China.

The final letter is from [REDACTED] a wushu master. [REDACTED] discusses the beneficiary's training in China at [REDACTED] and the many awards the beneficiary won. He also provides a description of Broad Sword and Tai Chi, which he refers to as "pivotal forms of expression within the Chinese martial arts repertoire." He states that the beneficiary is an expert in Broad Sword and Tai Chi, and praises the beneficiary's abilities. He further states:

The seed of Chinese martial arts was planted in China several thousand years ago . . . Only in the ancient land of China can a master like [the beneficiary] arise; he is one of

those individuals of tremendous talent and skill, a true inheritor and promoter of traditional Chinese martial arts. No other nation in the world can produce the culturally unique art that [the beneficiary] practices or adequately nourish the culturally unique skills that [the beneficiary] possesses.

The director found that the submitted letters were generalized in terms of describing how Chinese wushu, and the beneficiary's specific skills in the sport, qualifies as a culturally unique art form. The AAO agrees. While we do not doubt that [redacted] are experts in wushu, or the beneficiary's abilities as a wushu athlete and teacher, we note that none of the letters attest with any specificity to the cultural or traditional elements of the beneficiary's athletic performance.

[redacted] makes a blanket assertion that the beneficiary possesses "culturally unique skills" because he was trained in the sport in China and because Chinese wushu is "an essential facet of traditional Chinese culture. The Chinese people widely regard martial arts as forming the core of their cultural system." However, he fails to identify what makes Chinese wushu, and the specific forms of wushu practiced by the beneficiary, unique from the form of the sport that is practiced worldwide and governed by the [redacted]. In addition, [redacted] opines that the beneficiary's proposed martial arts training and teaching activities are culturally unique since, other than China, "[no] other nation in the world can produce the culturally unique art that [the beneficiary] practices or adequately nourish the culturally unique skills that [the beneficiary] possesses." Since there are no major martial arts forms that originated in the United States, following [redacted] logic, any sport that originated from the traditions of another country would be considered culturally unique. [redacted] did not attest with any specificity to what makes the beneficiary's style of Chinese wushu culturally unique. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 18 (D.C. Dist. 1990).

Furthermore, the AAO notes that [redacted] refer to the beneficiary having attended [redacted] which they variously characterize as "the most prestigious sports university in China," "the best sports university in Asia," "China's premier athletics university" and ranked number one "among all the athletic universities in China," further supporting the AAO's conclusion that the beneficiary is an athlete and athletic instructor rather than an artist or entertainer.

The regulation at 8 C.F.R. § 214.2(p)(6)(ii) specifically requires "letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill." As a matter of discretion, USCIS may accept expert opinion testimony.<sup>1</sup> USCIS will, however, reject an expert opinion or give it

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<sup>1</sup>Letters may generally be divided into two types of testimonial evidence: expert opinion evidence and written testimonial evidence. Opinion testimony is based on one's well-qualified belief or idea, rather than direct knowledge of the facts at issue. Black's Law Dictionary 1515 (8th Ed. 2007) (defining "opinion testimony"). Written testimonial

less weight if it is not in accord with other information in the record or if it is in any way questionable. *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

While the AAO acknowledges that wushu is a Chinese martial art, simply establishing that the beneficiary is a skilled and well-qualified wushu teacher and athlete trained in China is not sufficient to demonstrate his eligibility for this classification. Here, the four letters submitted cannot be deemed probative of the "culturally unique" nature of the beneficiary's performance. As the petitioner submitted no other affidavits, testimonials or letters from recognized experts, the petitioner has not satisfied the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A).

## 2. Documentation that the performance of the alien or group is culturally unique

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) requires the petitioner to submit documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials.

The petitioner has submitted general articles regarding wushu from *Wikipedia* and one other source. We note that there are no assurances about the reliability of the content from *Wikipedia*, which is an open, user-edited Internet site. Therefore, we will not assign weight to information from *Wikipedia*. See *Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008).<sup>2</sup> The petitioner also submitted an article from [REDACTED] dated February 3,

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evidence, on the other hand, is testimony about facts, such as whether something occurred or did not occur, based on the witness' direct knowledge. *Id.* (defining "written testimony"); see also *id.* at 1514 (defining "affirmative testimony").

Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

<sup>2</sup> See also a copy of the online content from [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on November 10, 2011, and copy incorporated into the record of proceeding noting that the content is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GURANTEE 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. . . .

2012 entitled [REDACTED] about its performance of wushu at the high school. However, the regulation requires the petitioner to submit evidence that the beneficiary's performance is culturally unique, as evidenced by reviews in newspapers, journals or other published materials. Since these materials do not mention the beneficiary by name they do not satisfy this criterion.

The petitioner has also submitted an article about the beneficiary dated July 27, 2012, published in [REDACTED] entitled [REDACTED]

The article reviews the beneficiary's wushu training in China and the awards he received in martial arts tournaments there. The article further states that the beneficiary's international trips to perform martial arts allow others "to fundamentally experience the profoundness of Chinese martial arts and culture." The article does not address with specificity the cultural or traditional elements of the beneficiary's athletic performance and, therefore, it does not satisfy this criterion.

*3. Evidence that all of the performances or presentations will be culturally unique events*

The director determined that the beneficiary's proposed performances or presentations as a martial arts instructor will not be culturally unique events pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(C).

We concur with the director's conclusion. The "events" in which the beneficiary will participate are martial arts classes for students of various levels, scheduled competitions at which the beneficiary will judge and demonstrations of martial arts at scheduled special seminars. He will not be "performing" or "presenting" as an artist or entertainer, and the AAO cannot conclude that a wushu class is a culturally unique event.

On appeal, counsel asserts the Chinese wushu tradition, as currently practiced in China and by the petitioning company and the beneficiary, should rightly be considered to be "culturally unique" within the meaning of 8 C.F.R. § 214.2(p)(3).

The further detailed explanation and analysis on how the skills that the beneficiary possesses are culturally unique among these 'different styles of martial arts' can't be finished within 2-3 pages of an expert's letter, but there should be research papers or an academic book, or a series of academic books on it. . . We don't think the Service is an academic institution that needs to see the academic papers or books to determine the culturally [sic] uniqueness of Chinese martial arts, which is evident to most people . . .

The petitioner cannot establish the beneficiary's eligibility as a culturally unique artist simply by claiming that he will be performing Chinese wushu and establishing that he was trained in the

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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.

sport in China. The petitioner must establish that the instant beneficiary's performance, and the specific artistic or entertainment event for which his services are sought, are culturally unique. The petitioner bears the burden of establishing through submission of evidence that the beneficiary's performance and the event itself is in fact unique to a particular country, nation, society, class, ethnicity, religion, tribe or identifiable group of persons with a distinct culture. 8 C.F.R. § 214.2(p)(3). Vague references to "Chinese martial arts" skills, styles or practices are insufficient to establish the beneficiary's eligibility.

Based on the foregoing, the petitioner has not established that the beneficiary will be performing as an artist or entertainer at culturally unique events, as required by 8 C.F.R. § 214.2(p)(6)(ii)(C).

### **III. Conclusion**

In summary, the statute requires that the beneficiary be an "artist or entertainer" and that he enter the United States solely to perform, teach, or coach under a "program that is culturally unique." Section 101(a)(15)(P)(iii)(II) of the Act, 8 U.S.C. § 1101(a)(15)(P)(iii)(II). To obtain classification of the beneficiary under this section of the Act, the petitioner must submit evidence that all of the beneficiary's performances or presentations will be events that meet the regulatory definition of the term "culturally unique." 8 C.F.R. § 214.2(p)(3), 214.2(p)(6)(ii)(C). The petitioner failed to meet these evidentiary requirements. Accordingly, the appeal will be dismissed.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

Nothing in this decision should be taken to suggest that the AAO fails to recognize the talent the beneficiary possesses as a wushu athlete and instructor. 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. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.