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FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 24 2008

EAC 06 104 53028

IN RE:

Petitioner:

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:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel states: “The Vermont Service Center Director erred in concluding that the petitioner did not establish sustained national or international acclaim or meet at least three of the regulatory criteria to qualify as an Alien of Extraordinary Ability in athletics.”

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.

Citizenship and Immigration Services (CIS) 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 he has sustained national or international acclaim at the very top level.

This petition, filed on February 24, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a Taekwondo Instructor. The record reflects that the petitioner had a successful career as a taekwondo competitor in Nepal during the 1990s and that he has occasionally competed since that time. Regarding the petitioner’s plans for work in the United States, a February 21, 2006 letter from counsel states: “[The

petitioner] will continue to perform in his field of expertise in the U.S. as he will be a martial arts (Taekwondo) instructor at ATA Martial Arts. [The petitioner] will train students according to the World Taekwondo Federation.” The petitioner submitted a January 16, 2006 letter from ATA Martial Arts of Clifton, Virginia offering him “employment as a Taekwondo instructor.” The petitioner also submitted an August 30, 2006 letter from U.S. West Coast Taekwondo Association Family Martial Arts and Fitness Center Hollywood of Portland, Oregon offering him “employment as a Martial Arts Instructor and a personal trainer.” Thus, according to Part 6 of the Form I-140 petition, letters from the petitioner’s prospective employers, and the February 21, 2006 letter from counsel, the petitioner (age 38 at the time of filing) is seeking work in the United States as a taekwondo instructor rather than as a competitive athlete. The statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii), and 8 C.F.R. § 204.5(h)(5). While a taekwondo competitor and an instructor certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competing as a taekwondo athlete and working as an instructor or coach are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

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

*Id.* at 918. The court noted a consistent history in this area. In the present matter, the evidence is clear that the petitioner intends to work as a taekwondo instructor. While the petitioner’s competitive accomplishments are not completely irrelevant and will be given some consideration, ultimately he must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through his achievements as a taekwondo instructor and coach.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien’s receipt of a such an award, the regulation at 8 C.F.R. § 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria.

*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 evidence showing, *inter alia*, that he won gold medals in events such as the Nepal National Taekwondo Championships (1994 and 1996) and the 4<sup>th</sup> International Friendship Taekwondo

Championship (2005) in Hong Kong. As discussed previously, the petitioner must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through his achievements as a taekwondo instructor and coach. As such, the petitioner's awards demonstrating his past success as a national and international taekwondo competitor cannot serve to meet this regulatory criterion.

Nationally or internationally recognized prizes or awards won by athletes coached by the petitioner, however, can be considered for this criterion. In response to the director's request for evidence, the petitioner submitted an August 18, 2006 letter from [REDACTED] stating:

I know [the petitioner] very well in my capacity as an Olympi[a]n and Asian Champion in Taekwondo Martial Arts.

First of all, he has good reputation as a[n] Instructor in field of Taekwondo Martial Arts. I had trained under his good supervision more than one decade. I had the pleasure of training with his good teaching techniques. So, I always got the first place in many prestigious International Taekwondo Championships as well as . . . qualify[ing] for the Athens Olympics [sic] Games 2004.

In support of [REDACTED]'s letter, the petitioner submitted certificates showing, *inter alia*, that she was a gold medalist at the 12<sup>th</sup> Asian Taekwondo Championships and placed 7<sup>th</sup> in the "Women's Under 49kg" taekwondo event at the 2004 Olympic Games in Athens. The petitioner's supporting documentation also included several published articles about [REDACTED].

The petitioner also submitted a letter of support from the Nepal Olympic Committee stating that he coached [REDACTED] (gold medalist in the 8<sup>th</sup> South Asian Federation Games), [REDACTED] bronze medalist in the 12<sup>th</sup> Asian Games), and [REDACTED] (gold medalist in the 23<sup>rd</sup> Fort Worth International Taekwondo Championship).

In light of the above, the petitioner has established that he 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, the 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 5, 1995 promotion certificate from the World Taekwondo Headquarters stating that he attained 1st Dan through "a test conducted in accordance with the rules and regulations . . . for promotion test." This certificate lists "1 January 1966" as the petitioner's date of birth, but the record reflects that











