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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **MAR 26 2006**

EAC 06 061 50739

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

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.

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, a martial arts school that operates several gyms, 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.

On appeal, the petitioner submits a letter of support from [REDACTED] of McLean, Virginia, a taekwondo master and President of the Jhoon Rhee Foundation, discussing the significance of the beneficiary's athletic achievements.

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 the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on December 19, 2005, seeks to classify the beneficiary as an alien with extraordinary ability as a martial arts instructor and taekwondo competitor. At the time of filing, the beneficiary was working for [REDACTED] in Virginia. A December 13, 2005 letter from counsel states: "The Petitioner

desires to hire the Alien Beneficiary for his expertise and services in events that involve the martial art Taekwondo; to instruct students of various age groups and skill levels and participate in tournaments and demonstrations.”<sup>1</sup>

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). In his December 13, 2005 letter accompanying the petition, counsel argues that the beneficiary’s first place Gold Medal in Sparring at the 14<sup>th</sup> Annual U.S. Open Taekwondo Championships in 2005 and his first place victory at the National Championship for selecting representatives of the Korean National Team in 1997 qualify as “major, internationally recognized awards.”

Given Congress’ intent to restrict this category to “that small percentage of individuals who have risen to the very top of their field of endeavor,” the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at \*6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the alien’s field as one of the top awards in that field.

The letter from [REDACTED] states:

The U.S. Open Tae Kwon Do Championships are the most prestigious international event held in the U.S. each year, second only in distinction to Olympics and University Games events. Despite the title, “U.S.,” the event is international in its nature and is regularly attended by top competitors from 15-20 nations. Placing a gold medal at [a] U.S. Open event is by no means an insignificant achievement. The second most notable achievement I see on [the beneficiary’s] resume is the gold medal he earned in 1997 Selection Round for Korean National Representative. This event is a national precursor to major international event, such as Asian Games, Olympics or the like. Winning (or being selected) a Korean national representative is quite an honor, as most medals in Tae Kwon Do is [sic] still being won by Koreans, who invented and developed the martial art.

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<sup>1</sup> The record reflects that the petitioner has competed as recently as March 2005 at the 14<sup>th</sup> Annual U.S. Open Taekwondo Championships in Atlanta, Georgia.

█ states that the U.S. Open Taekwondo Championships “is international in its nature and is regularly attended by top competitors from 15-20 nations,” but the record contains no documentary evidence to support his assertion. There is no evidence establishing the international significance and magnitude of this competition. For example, there is no evidence that the awardees received international media attention in the general or martial arts sports media of multiple countries worldwide. Nor is there evidence establishing █ connection to the 2005 U.S. Open Taekwondo Championships. 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)). CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. at 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Even if the petitioner were to submit objective documentary evidence corroborating █ statement, he indicates that the level of distinction associated with the U.S. Open Taekwondo Championships is secondary to that of events such as the “Olympics and University Games.” We cannot ignore that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3) qualifies the phrase “international recognized award” with the limitation “major.” Without evidence distinguishing the level of acclaim associated with earning a gold medal at the U.S. Open from that of other international taekwondo competitions, we cannot conclude the beneficiary satisfies the regulation.

With regard to the beneficiary’s first place at the 1997 National Championship for selecting representatives of the Korean National Team, Jhoon Rhee describes this event as a “national” taekwondo competition limited to Koreans. The documentation submitted by the petitioner reflects that this competition is a national competition rather than an international competition such as the Olympics or the Taekwondo World Championships. Clearly an award with a geographically restricted pool of competitors cannot serve as a major, international prize on the level of an Olympic medal or a comparable major internationally recognized award in the martial arts. As the plain language of the regulation at 8 C.F.R. § 204.5(h)(3) requires a “major, international recognized award,” we cannot conclude that the beneficiary’s involvement in a competition limited to only Korean participants satisfies the regulation.

In light of the above, the petitioner has not established that the beneficiary is the recipient of a major, internationally recognized award. While beneficiary’s first place victories at the 1997 Korean National Championship and the 2005 U.S. Open Taekwondo Championships are evidence of national recognition in his sport, the petitioner has not established that the beneficiary’s awards from these competitions are evidence of “major, international” recognition as required by the regulation.

Barring the alien’s receipt of a major, internationally recognized 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 an alien’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.

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

As discussed previously, the petitioner submitted evidence showing, *inter alia*, that the beneficiary won first place awards at the 2005 U.S. Open Taekwondo Championships and the 1997 National Championship for selecting representatives of the Korean National Team. As such, we find 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, 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 a July 12, 2002 certificate from the Korea Taekwondo Association (KTA) stating that the beneficiary attained “4<sup>th</sup> Dan.” While the beneficiary passed “a test conducted in accordance with the rules and regulations” and achieved a 4<sup>th</sup> level Dan, there is no evidence that the KTA requires a 4<sup>th</sup> level Dan to become a member.<sup>2</sup> Further, there is no evidence identifying the specific requirements that must be satisfied to achieve this ranking.

The petitioner also submitted a March 4, 2004 “Award of Commendation” presented to the beneficiary by the Maryland Tae Kwon Do Association (MTA) and a May 9, 2004 recommendation letter from the Virginia State Taekwondo Association (VSTA) endorsing the O-1 nonimmigrant visa petition filed in the beneficiary's behalf. In his December 13, 2005 letter accompanying the petition, counsel asserts that the preceding documents are evidence of the beneficiary's membership in the MTA and the VSTA. Neither of these documents, however, specifically state that the beneficiary holds “membership” in the MTA or VSTA. Without documentary evidence to support the claim, 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 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*,

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<sup>2</sup> There is no evidence that first, second, and third level Dans are excluded from membership in the KTA.

17 I&N Dec. 503, 506 (BIA 1980). The record includes no evidence identifying the beneficiary as a member of the MTA or VSTA.

In this case, there is no evidence (such as membership bylaws or official admission requirements) showing that the KTA, the MTA, or the VSTA require outstanding achievements of their members, as judged by recognized national or international experts in the beneficiary's field or an allied one. As such, 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 publication or from a publication not published in a country's predominant language. 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.<sup>3</sup>

The petitioner submitted material about the beneficiary which counsel states "appeared in the January 1997 issue of *Taekwondo*[,] a magazine published by the Korean Taekwondo Association." This material states that the beneficiary earned gold at the "'97 National Representative Championship." According to the beneficiary's "Certificate of Achievement" and 1<sup>st</sup> Place certificate from the KTA for this event, he won the 1997 National Representative Championship on February 14, 1997. Therefore, counsel's claim that the preceding material about the beneficiary was published in "January 1997" is incorrect. The preceding material did not include the author's name or the correct date of publication as required by the plain language of this criterion. Further, there is no evidence (such as circulation statistics) showing that *Taekwondo* qualifies as a professional or major trade publication or other form of major media.

In response to the director's request for evidence, the petitioner submitted a July 18, 2005 article in *The Korea Daily* entitled "Let's Go, Win!," but this article mentions several individuals and is not primarily about the beneficiary. Further, the author of the material was not identified and there is no evidence showing that this publication qualifies as a professional or major trade publication or other form of major media.

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

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

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<sup>3</sup> 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.

In order to establish that the beneficiary performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of the beneficiary's role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted a letter from [REDACTED], Master Sergeant, Korean Marine Corps 2<sup>nd</sup> Division, stating: "[The beneficiary], a lieutenant reserve, worked as a Taekwondo trainer from March 2000 to January 2002. He worked as the coach to the Taekwondo Team of the 2<sup>nd</sup> Division, Korean Marine Corps enabling the Team to achieve excellent results that year." The record, however, includes no documentary evidence of the team's competitive results.

The petitioner also submitted a May 20, 2004 letter from [REDACTED] Head Master, Ma Song Tae Kwon Do Academy, Korea, stating:

[The beneficiary] began teaching from June 2002 to present as a full time Master Instructor . . . . During this time, he assisted me and prepared class materials. He is good at handling children and nice to all students. He taught competition team members of my studio to participate [sic] national championship and local championships. He taught student with enthusiasm and made very [sic] effort to convey some knowledge of Taekwondo.

The record, however, includes no documentary evidence of the team members' results from these championships. With regard to the taekwondo students taught by the beneficiary, there is no evidence that any individuals or teams under his direct tutelage distinguished themselves nationally or internationally.

In response to the director's request for evidence, the petitioner submitted a September 5, 2006 letter from [REDACTED] President, Tiger Den, Inc., stating: "Tiger Den, Inc. has employed [the beneficiary] since April 2003 to the present as a Martial Arts (Taekwondo) Instructor and Athlete. [The beneficiary] works full-time, 40-hours, five days per week . . . . We are satisfied with [the beneficiary's] job performance . . . and we wish to continue his employment . . . ."

The petitioner submitted promotional material (such as brochures) for Tiger Den, Inc., but this self-serving material is not adequate to demonstrate that its martial arts school has a distinguished reputation. For example, the record includes no official competitive records from USA Taekwondo or other evidence establishing that Tiger Den's students have distinguished themselves through winning national or international championships. Nor is there evidence showing that the other organizations for which the beneficiary has worked have distinguished reputations. The record also lacks evidence demonstrating how the beneficiary's role differentiated him from the other instructors employed by the above organizations. As such, the petitioner has not established that the beneficiary was responsible for his employers' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

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

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The record includes the beneficiary's income tax forms reflecting earnings of \$30,900 in 2005, \$6,600 in 2004, and \$17,651 in 2003. In response to the director's request for evidence, the petitioner submitted a letter from stating that the beneficiary "receives a pre-determined salary of \$30,000 per year." The plain language of this regulatory criterion requires the petitioner to submit evidence that the beneficiary has commanded a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that the beneficiary's compensation was significantly high in relation to others in his field. There is no indication that the beneficiary has earned a level of compensation that places him among the highest paid martial arts instructors or taekwondo athletes in the United States or any other country.

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).

While CIS has approved an O-1 nonimmigrant visa petition filed on behalf of the beneficiary, that prior approval does not preclude CIS 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 CIS 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).

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 CIS 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.