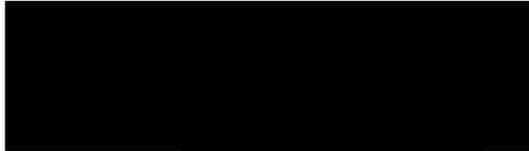


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FILE: [Redacted]
SRC 07 021 52600 (I-140)
SRC 07 184 53908 (I-290B)

Office: TEXAS SERVICE CENTER Date: **OCT 17 2009**

IN RE: Petitioner: [Redacted]
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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.¹ 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. The director also found the petitioner had not established that he is one of that small percentage who have risen to the very top of his field of endeavor.

On appeal, counsel argues that the petitioner 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.

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.

¹ The petitioner filed two Forms I-290B, Notice of Appeal or Motion, on May 31, 2007 (SRC0718453923 and SRC0718453908). On both forms, counsel checked box B. under Part 2, indicating that the petitioner was “filing an appeal.”

This petition, filed on October 31, 2006, seeks to classify the petitioner as an alien with extraordinary ability in the martial arts (karate and judo). According to a statement from the petitioner detailing his plans for work in the United States, the petitioner intends to work as a karate instructor and compete in tournaments. 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 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.²

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

In an affidavit accompanying his petition, the petitioner asserts that he won "two gold medals in martial arts" at the "South Asian Regional Martial Arts Competition held in India in 2005." The petitioner further states: "I will submit certificates later because it is being mailed from Nepal and I am waiting the mail [sic]."³ 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)). The record includes no primary evidence of these awards or evidence that they are nationally or internationally recognized. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). With regard to the petitioner's affidavit, the regulation at 8 C.F.R. § 103.2(b)(2) provides:

Submitting secondary evidence and affidavits. (i) General. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

³ The record includes no evidence showing that the petitioner subsequently submitted these certificates.

As stated above, the non-existence or other unavailability of required evidence creates a presumption of ineligibility. Where the regulations require specific, objective evidence of achievements, such as awards, the primary evidence of such awards would be copies of the awards themselves. Secondary evidence might be newspaper reports of the competition results. Rather than submitting primary evidence or secondary evidence of his receipt of awards at the South Asian Regional Arts Competition in 2005, the petitioner instead submitted a self-serving affidavit attesting to his receipt of the two gold medals. In this instance, the petitioner has not overcome the absence of primary and secondary evidence demonstrating that he received these awards.

The petitioner also submitted the following:

1. Certificate from the Nepal Karate Federation stating that the petitioner placed 1st in the 60 kilogram weight category during the “Second District-Wide Inter Dojo Karate & Kick Boxing Championship 2005.”
2. Certificate from the Nepal Karate Federation stating that the petitioner placed 1st in the 60 kilogram weight category during the “First Valley Karate & Kick-boxing Championship” (2005).
3. Certificate stating that the petitioner “participated in the World Karate Challenge Trophy & Grand Demonstration held from 6-7 April 2004” and received a “Gold Medal in 55 to 60 kg weight group of Sr. Boys & Girls.”
4. Certificate from the Nepal Karate Federation stating that the petitioner placed 1st in the 50 kilogram weight category during the “1st International High School Karate & Kick Boxing Championship” (2002).
5. Certificate stating that the petitioner placed 1st in the 60 kilogram weight category at the “Indo-Nepal School Level (Goodwill) Judo Championship” (2002).
6. Certificate from the Nepal Karate Federation declaring the petitioner “Best Fighter” at the “8th International Panathlon High School Karate and Kick Boxing Championship” 2001.

The record does not include supporting evidence demonstrating the significance of the preceding competitive achievements. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. There is no evidence showing that the preceding awards reflect national or international recognition rather than regional recognition. With regard to the awards won by the petitioner at the “Sr. Boys” (item 3) and high school level (items 4, 5, and 6), we do not find 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). CIS 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 60899.⁴ Likewise, it does not follow that an athlete who has had

⁴ 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

success in national or international competition limited to “Sr. Boys” and high school students 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.”

The petitioner also submitted letters and certificates of appreciation from the United States Marine Corps, the United States Army, and the Diplomatic Security Service for the United States Embassy in Baghdad thanking him for providing security services to Multinational Forces in Baghdad during Operation Iraqi Freedom. While the petitioner’s service in Iraq as a United States Department of Defense contractor is certainly admirable, there is no evidence showing that the preceding honors constitute nationally or internationally recognized prizes or awards for excellence in the martial arts.

In light of the above, the petitioner has not 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.

The petitioner submitted a certificate and membership card from the Central Judo Institute of Nepal indicating that he attained the rank of 1st Dan Black Belt in judo in 2001. The petitioner also submitted a certificate and membership card from the Nepal Karate Federation reflecting that he attained the rank of 1st Dan Black Belt in karate in 2003. While the petitioner has met the testing requirements to obtain his belt ranking, there is no evidence that either of the preceding organizations require a 1st Dan black belt to become a member.⁵ Nor is there evidence identifying the specific requirements that must be satisfied to achieve a 1st Dan black belt ranking. The record does not include evidence (such as membership bylaws or official admission requirements) showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the martial arts.

In light of the above, the petitioner has not established that he 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 petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify

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 CIS’s interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

⁵ For example, there is no evidence showing that lower belt rankings are excluded from membership in Central Judo Institute of Nepal and the Nepal Karate Federation.

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. 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.⁶

The petitioner submitted articles about him published in *Gorkhapatra*, *Kantipur*, *Samacharpatra*, and the *Annapurna Post*. The authors of these articles were not identified as required by the plain language of this regulatory criterion. Further, there is no evidence (such as circulation statistics) showing that the preceding publications qualify as professional or major trade publications or other form of major media.

In light of the above, the petitioner has not established that he 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 petitioner’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). For example, judging a national competition for top athletes is of far greater probative value than judging a regional youth competition.

The petitioner submitted a September 17, 2006 letter from the Chief Coach and President of the Nepal Karate Federation stating that the petitioner “has participated as a referee and proves [sic] himself a good referee.” The petitioner also submitted a certificate stating that he participated as a referee in the “Kathmandu Utsav Karate & Kick Boxing Championship – 2001.” The record also includes a Certificate of Merit expressing appreciation for the petitioner’s “contribution as a referee in Her Majesty Queen’s birthday cup valley wide karate and kick boxing championship held in [K]athmandu, [K]alimati from 26-27th Feb. 2006.” However, according to the petitioner’s Form G-325A, Biographic Information, he was employed by and residing at the United States Embassy in Baghdad, Iraq in February 2006. With regard to this discrepancy, 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). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

⁶ 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 response to the director's request for evidence, the petitioner submitted a March 2004 letter from the Chief Coach and President of the Nepal Karate Federation stating: "[The petitioner] has been working as a Shito-Ryu Karate instructor and referee in Naxal DOJO in Kat[h]mandu[,] Nepal, [s]ince January, 2003 to March, 2004." With regard to the preceding letters and certificates stating that the petitioner has served as a "referee," the record lacks official competition rules showing that serving as a referee is tantamount to participation as a judge of the work of others. The petitioner's response to the director's request for evidence also included a "Certificate of Judge" stating that he "worked as a Judge for the First International Karate Tournament organized by Shito Ryu Karate Banepa Dojo on January 2-5, 2004, Kavre, Nepal."

Regarding the documentation submitted by the petitioner for this regulatory criterion, there is no supporting evidence establishing the level of acclaim associated with serving as a judge or referee at these events and the means by which the petitioner was selected to participate. Further, there is no evidence showing the names of the athletes evaluated by the petitioner, their level of expertise, the specific competitive categories he judged, and the significance and magnitude of the competitions. Without evidence showing, for example, that the petitioner's activities involved judging top athletes in national level competition (such as senior black belts) or were otherwise consistent with sustained national or international acclaim at the very top level of his sport, we cannot conclude that he meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

We acknowledge the letters of support from the Chief Coach and President of the Nepal Karate Federation, the Chief Instructor of Japan Karate Do Ryobu-Kai Nepal, members of the United States Armed Forces in Iraq, the Administrative and Human Resources Manager of First Kuwaiti Trading and Contracting, four of the petitioner's neighbors in Baltimore, and the Director of the Julie Community Center in Baltimore. We note that the petitioner's work for the Julie Community Center in the summer of 2007 occurred subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider the petitioner's work for the Julie Community Center's summer program in this proceeding. The preceding letters express admiration for the petitioner's skill, his service as a contract employee in Iraq, and his contribution to the local community in Baltimore. Some of the letters briefly mention the petitioner's competitive awards. These awards have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance in the field, CIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

With regard to the petitioner's athletic and coaching achievements, the letters of support do not specify exactly what the petitioner's original contributions in taekwondo and judo have been, nor is there an explanation indicating how any such contributions were of major significance to the martial arts. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner has helped his students with their skills and training and served

admirably in Iraq, there is nothing in the reference letters to suggest that he has developed original training techniques, as opposed to methodologies passed down from his own tutelage in the sport. Further, even if the techniques taught by the petitioner were found to be original, there is nothing to demonstrate that these techniques have had major significance in the martial arts. For example, there is no evidence to indicate that the petitioner's techniques have been widely adopted throughout his sport or have significantly influenced other martial arts competitors and instructors.

In this case, the letters of support submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS may, in its discretion, use as advisory opinion 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 of support from the petitioner's personal contacts 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. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of that one would expect of a martial arts athlete or instructor who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his sport, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

In this case, the petitioner has failed to demonstrate 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).

Review of the record does not establish that the petitioner 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 petitioner's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established 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.