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U. S. Citizenship and Immigration Services
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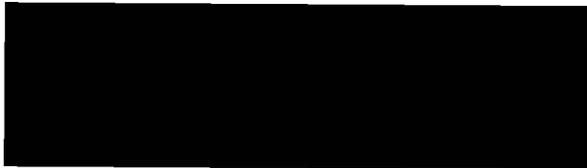
IN RE:

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)

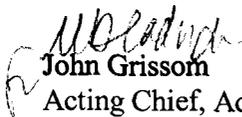
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office 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 and business. The director determined that the record did not establish that the petitioner had achieved the sustained national or international acclaim required 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.

Section 203(b) of the Act states, in pertinent part:

(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.

U.S. Citizenship and Immigration Services (USCIS) 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 August 11, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a martial artist and business owner. Initially, the petitioner submitted information about Tang Soo Do, black belt identification, award and participation certificates, studio certification, photographs and news articles, and letters of recommendation. In response to the May 2, 2007 Request for Evidence ("RFE"), the petitioner submitted photographs, news articles, invitations to tournaments, an accreditation certificate with the United Nations Environment Program ("UNEP"), instructor certifications, information about the petitioner's business in Pakistan, and additional letters of recommendation.

The statute and regulations require that the petitioner seek 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); 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how he intends to continue his work in the United States. On his I-140, the petitioner stated that he would work at Nippon Advertisers, located in Peshawar, Pakistan. In counsel's appellate brief, he states that "[the petitioner] has a number of prospective opportunities that continue to be in negotiation. The most attractive offer or prospect, once finalized, will enable him to pursue employment or ownership in his fields of expertise." The petitioner provided no further details about these "prospective opportunities," information about how he will continue working for the Pakistani company, nor any other statement about his prospective work in the United States. Although the alien may self-petition for an employment-based immigrant pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), the statute requires that the alien show that he will continue to work in his area of expertise in the United States. The petitioner here has failed to establish that he will pursue martial arts or business in the United States. Moreover, although the petitioner appears to have had a moderately successful career as a competitive martial artist, his area of expertise, he does not indicate that he intends to continue as a competitor but rather, as counsel states, to pursue *ownership* in his field of expertise. As business ownership and competitive sports are not the same area of expertise, the petitioner cannot rely on his prior accomplishments as a martial artist to meet this classification as a business owner. Regardless, as will be discussed, the petitioner does not meet any of the regulatory criteria either as a competitor or as a business owner.

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). We address the evidence submitted and counsel's contentions in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim and the record does not establish the petitioner's eligibility under any criteria not addressed below.

(i) 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 that he won first place at the Northwest Frontier Province ("NWFP") Open Kyokushin Karate Championship in 1990; best fighter prize in the NWFP Kyokushin Karate Championship in 1990; second place in the First InterDivisional Kyokushin Karate Championship in 1991; first place in the Interdivisional Sports Tournament in 1992; third place in the NWFP Kyokushin Karate Ranking Kyo Championship in 1992; third place in the lightweight division of the NWFP Open Kyokushin Karate Championship in 1992; best performance in the 4th NWFP Open Kyokushin Karate Championship in 1992; first place in the team category, second place in the 65+ kilo division, and third place in the 75+ kilo division of the Jashn-e-Pakistan Pepsi Sports Festival in 1994; best performance at the NWFP Karate Association's 1994 contest; first place in the middleweight division of the 6th NWFP Open Karate Championship in 1996; first place

in the heavyweight division of the Punjab Sarhad Golden Jubilee Karate Championship in 1997; fifth place in the NWFP Open Kyokushin Karate Championship in 1998; second place in the 75-80 kg division of the 28th National Games in 2001; best performance in the PPS & College Tenshinkan Karate DoJo contest in 2001; and first place in the WTSDA poster contest in 2006. The petitioner submitted a number of certificates of participation in other contests held in the 1990s and an invitation to join the Pakistan Kyokushin Karate Team in 2003. The petitioner also submitted invitations to compete in contests held in 2003-2005 and a newspaper article stating that the petitioner won an award for “best organizer in Karatay” from the Sarhad Sports Writers Association (“SSWA”).

Although documentation of these various awards appears in the record, information such as the significance or the national or international recognition of the competitions is notably absent. In addition, eight of the competitions seem to be limited to participants from the Northwest Frontier Province and no evidence was submitted to the record to indicate that such a provincial tournament is nationally or internationally recognized. In the appellate brief, counsel states that he submitted “testimonials to support the nature and scope of the competitions.” Counsel does not further identify which documents he considers to be such “testimonials” and we find no documents that contain information about the tournaments such as, for example, the number or the standing or recognition of participants in the event. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *See Matter of Obaigbena*, 19 I. & N. Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I. & N. Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). The petitioner claims that the certifications of participation and invitations to participate also qualify him under this criterion, however, such certifications and invitations do not amount to prizes or awards, and the petitioner presented no evidence to show that mere participation or the ability to participate in these events evidences national or international acclaim.

Even if the background information regarding the competitions had been presented, we note that the last award presented to the petitioner for his martial arts skills occurred in 2001, five years prior to his filing this petition. The statute and regulations require that the petitioner's national or international acclaim be sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(2)(A)(i); 8 C.F.R. § 204.5(h)(3). In this case, the petitioner submitted no evidence showing that he has won any competitions since 2001 so that any acclaim that he may have had has not been sustained.

The petitioner asserted in his response to the RFE that the award of black belt in Tang Soo Do constituted an award or prize. The training to earn a ranking in the martial arts is not an award or a prize because the petitioner did not compete against others in his quest to achieve the ranking. Instead, just as with an academic diploma, all persons who demonstrate eligibility for the ranking or diploma receive the accolade and experienced experts in the field did would compete against the petitioner for it. We also note that the petitioner submitted evidence that he achieved a black belt, second degree, the lowest degree of at least seven degrees of black belt. In contrast, the authors of the petitioner's letters of recommendation are grandmaster (Shin) or master (Khan) and each has achieved much higher than the second Dan level. The list of those who achieved each Dan during the 2005 October cycle demonstrates the exclusivity of qualifying for higher Dans: that list includes two people who qualified as 6th Dan as opposed to 45 people who qualified for 2nd Dan and over 300 people who qualified for 1st Dan.

Finally, as previously indicated, 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); 8 C.F.R. § 204.5(h)(5). While the evidence submitted in support of this criterion all relates to the petitioner's

abilities as a martial artist, the petitioner indicates that he intends to run Nippon Marks, a non-governmental organization that “advocates on behalf of Pakistani citizenry for improvements in and greater awareness of issues such as health, education, women’s rights, sanitation, anti-drugs, etc.,” in the United States. The petitioner has presented no evidence either that he has received prizes or awards based on his role as a businessman.

In light of the above, the petitioner has not established that he meets this criterion either as a competitor or as a business owner.

(iii) 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 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.¹

The petitioner submitted five English language articles appearing in *The Statesman* entitled “Qirat, Naat competition” requesting entries for a competition submitted by the petitioner’s facility, Nippon Marks School; “Blood camp held” about a blood drive sponsored by Nippon Marks and quoting the petitioner; “█ gets ‘1st Nippon lifetime achievement award;” “17th annual SSWA award ceremony” about awards given to athletes and coaches in the NWFP; and “Show arranged for special children” about Nippon Marks’ organization of a martial arts showcase; and one article in *The Khyber Mail* entitled “Nippon Gym to boost Pak-Japan friendship ties” discussing a famous Japanese martial arts performer’s trip to Nippon Marks. The petitioner also submitted nine photographs that appeared in *The Statesman*, *The Khyber Mail* (five), *The Nation*, *The News*, and *The Frontier Post* in which he appeared or in which he or Nippon Marks was referred to in the caption, without an accompanying article. Such photographs are not considered to be “published material about the alien” as required by the criterion. The petitioner also submitted six pages of news articles including those from *Daily Khabrain Pakistan* in a foreign language that do not have an accompanying certified translation as required by 8 C.F.R. § 103.2(b)(3). Without this required translation, we are unable to ascertain whether the articles support the petitioner’s claims.

The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be about the alien. None of the above listed articles talks about the petitioner or his work in depth; instead, the articles report about events sponsored by Nippon Marks. The article about the SSWA award ceremony does list the petitioner as an award recipient, but he is listed with a number of other recipients and the article as a whole is devoted to the award ceremony and not any individual award recipient. The article appearing in *The Khyber Mail* focuses on the achievements of the Japanese performer and mentions the petitioner only as he relates to the

¹ 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.

Japanese performer's story and the article about the Nippon lifetime achievement award focuses on the person who won the award and his achievements.

Even if we were to consider any of these articles to be about the petitioner, which we do not, the petitioner submitted no information about *The Statesman*, *The Khyber Mail*, *The News*, or *The Frontier Post* to show that any of these publications are professional or major trade publications or some other form of major media. The petitioner submitted information about *The Nation*, which states that the publication is "the most respected publication in English," but the information provides no circulation statistics or other data to show that the publication is a form of major media.

In light of the above, the petitioner has not established that he meets this criterion either as a competitor or as a business owner.

(iv) 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 or a competition for top athletes is of far greater probative value than judging a local, youth or amateur competition.

Although the petitioner submitted evidence that he completed judging and instructor training camps and certification programs, these certificates do not establish his actual participation as a judge of others in his sport as required by this criterion. The only evidence provided to support his contention that he judged competitions comes in the form of a letter from [REDACTED], who states: "[the petitioner] has also observed a black belt pre-testing and is aware of the protocol to conduct and oversee Black Belt testing as a Regional Instructor for Pakistan." The letter does not include, for instance, specific competitions or dates on which the petitioner judged nor does it include information about individuals who have been judged by the petitioner.

Without evidence to demonstrate that he actually served as a judge and which also shows, for example, that the petitioner's activities involved judging top athletes in national level competition (such as senior black belts) or that his actual participation as a judge was otherwise consistent with sustained national or international acclaim, we cannot conclude that he meets this criterion. It is also noted that the petitioner failed to submit any evidence regarding judging the work of others as it relates to the field of business.

Accordingly, the petitioner has failed to establish that he meets this criterion either as a competitor or as a business owner.

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

The petitioner submitted several letters of recommendation from representatives of organizations such as the World Tang Soo Do Association (WTSDA), the Pakistan Kyokushin Karate Organization NWFP, the NWFP Sports Journalists Forum, and the NWFP Tenshinkan Karate Association. The letters of recommendation speak generally of the petitioner's skill in the martial arts but do not specify what the petitioner's original contributions in the martial arts have been or how any such contributions were of major significance to his sport. 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 may have fared well at martial arts competitions, contributed positively to society, and established a successful training studio, there is nothing in the recommendation letters to suggest, for example, that he has developed original training techniques, as opposed to methodologies passed down from his own tutelage in the sport, or made some sort of other original contribution. 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 field. For instance, there is no evidence to indicate that the petitioner's techniques have been widely adopted throughout the sport or have significantly influenced how the martial arts are practiced.

Examples of the letters submitted by the petitioner include a letter from [REDACTED], President of the WTSDA, who stated "it was found that [the petitioner] has been a leading figure in the martial arts in Pakistan for over a decade. His personal skills are excellent and he is an outstanding martial artist." We note that not only does this letter not indicate that the petitioner made an original contribution to society but that the author credits the petitioner with being a leading figure in the martial arts beginning at age eight, which is before the petitioner demonstrated his dedication to the practice. A letter authored by [REDACTED], President of the NWFP Sports Journalists Forum stated that the petitioner is "a good sportsman and a hardworking person. He is also a good social worker. In this regards he arranged different walks and seminars, which was very useful for the people. He has also played a vital role for development of Marshall [sic] Arts in Pakistan." This letter by Mr. [REDACTED] is similar in language and content to the other letters of recommendation that the petitioner submitted and does not indicate that the petitioner made an original contribution of major significance to the martial arts or business.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS 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, USCIS 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; USCIS 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 experts' 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 a martial arts performer who has sustained national or international acclaim.

As the record lacks extensive documentation showing that the petitioner's work as a martial artist or businessman has been unusually influential, the petitioner has failed to establish that he meets this criterion.

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

In his April 12, 2007 letter, counsel claims that the petitioner meets this criterion because he "participated, performed and competed in exhibitions and competitions" and requests that we consider the relevant materials as comparable evidence of the petitioner's eligibility pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). However, the plain language of this criterion reveals that it relates to the visual arts, such as sculptors and painters, rather than to martial arts competition. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner's participation and success in martial arts competitions has previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Virtually every athlete "displays" his work in the sense of competing in front of an audience. The petitioner has not established that his participation in competitions compares to the artistic showcases contemplated by the regulation for visual artists. As it relates to the petitioner's work as a business owner, the petitioner submitted no evidence related to this criterion.

As such, the petitioner failed to establish that he meets this criterion either as a competitor or a business owner.

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

In his brief on appeal, counsel asserts eligibility under this criterion by virtue of the invitation issued by the WTSDA for the petitioner to train with the European Director of the WTSDA. The letter submitted from Mr. [REDACTED] states that "because of [the petitioner's] talent, [the WTSDA] sponsored him – all expenses paid – for [the] training sessions," that the WTSDA also had the petitioner travel to the United States for training, and that the petitioner was found to be qualified to serve as the Pakistan National Director. The petitioner submitted background information about the WTSDA detailing the martial arts' history and the WTSDA's philosophy and history, but that evidence did not contain information about the WTSDA's reputation. In addition, the petitioner failed to introduce evidence that he performed in a leading or critical role for the WTSDA. The petitioner claims that he performed in a leading or critical role by virtue of his training, but submitted no evidence about how his position as a student would amount to a leading or critical role for the WTSDA. The belief of the WTSDA president, [REDACTED], that the petitioner "is an outstanding martial artist" or has experience in Tang Soo Do has no relation to the role that the petitioner played in the WTSDA and his letter makes no statement regarding any such role of the petitioner.

The petitioner presented evidence that he is the founder and president of Nippon, a martial arts studio located in Pakistan. The information found on Nippon's website indicates that it is a project of Nippon Marks, the NGO mentioned above. The petitioner submitted no information about either Nippon's or Nippon Marks's reputation to show that it is distinguished. The information submitted does evidence that the petitioner performs in a leading role for Nippon as the president. The petitioner provides no evidence as to his role with Nippon Marks as he is not identified in the Nippon Marks material as a cabinet member but is instead referenced in picture captions as "the pioneer of the Nippon." The same evidence is lacking regarding counsel's claim that the petitioner performed "executive activities" for Kyokushin Karate Organization (KKO). Without further

information as to the type of role played by the petitioner with Nippon Marks and KKO, we are unable to conclude that his role is leading or critical.

Accordingly, the petitioner has failed to establish that he meets this criterion either as a competitor or as a business owner.

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 a national or international level especially when compared to the level of accomplishment achieved by those supplying letters of recommendation. Nor is there clear evidence showing that the petitioner will continue to work in his area of expertise in the United States. 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.