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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: APR 13 2009

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 F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petition 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 to the United States will substantially benefit prospectively the United States.

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 has 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 July 18, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a taekwondo 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 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.

We note that much of the petitioner's evidence documents his achievements as a competitor in taekwondo. The petitioner, however, indicates that he intends to work as a coach in the United States. The regulation at 8 C.F.R. § 204.5(h) requires the petitioner to "continue work in the area of expertise." While a martial arts competitor and a coach certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching 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. Nevertheless, we acknowledge that there is a nexus between playing or competing in and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, in a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, we will consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the petitioner's area of expertise. Specifically, in such a case we will consider the level at which the alien acts as coach. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not. Thus, we will examine whether the petitioner has demonstrated his extraordinary ability as a coach or as an athlete. If the petitioner has demonstrated extraordinary ability as an athlete, we will consider the level at which he has successfully coached.

The petitioner did not initially allege that his evidence was applicable to any specific criterion. Rather, he submitted the documentation that he first presented with his petition as a nonimmigrant alien under section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i). We note that while U.S. Citizenship and Immigration Services (USCIS) has previously approved an O-1 nonimmigrant visa petition filed on behalf of the petitioner, that prior approval does not preclude USCIS 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 USCIS 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). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also*

Texas A&M Univ. v. Upchurch, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the beneficiary's qualifications).

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 USCIS 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).

The petitioner has submitted evidence that, he claims, meets the following criteria.¹

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 copies of the following:

1. A 1992 diploma from the Bulgarian Taekwon-do Federation, indicating that the petitioner placed 2nd in the Open Tournament of Taekwon-do in the "under 50 kg" category.
2. A March 19, 1995 diploma from the Macedonian Open Tournament of Taekwon-do Macedonian Taekwon-do Association, indicating that he placed first in his weight category at the World Championship – Skopie '95.”
3. A June 16, 1996 diploma from the Second Bulgarian Army Department "Battle Training," indicating that he won second place in the Army's Championship of Taekwon-do.
4. A 1996 diploma from the Bulgarian Taekwondo Federation, indicating that he placed first in "sparring men/64 kg" at the Republican Championship of Taekwondo.
5. An October 18, 1997 diploma from the Bulgarian Taekwon-do Federation, indicating that he placed first in his weight category at the "4th Traditional Tournament of Taekwon-do WTF for the cup 'Orhanie.'”

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

6. An April 25, 1998 diploma from the Bulgarian Taekwon-do Federation, indicating that the petitioner placed first in his weight category at the “6th Traditional Tournament of Taekwon-do WTF for the Cup of the Ministry of Internal Affairs – P. Genchev.”
7. An October 24, 1998 diploma from the Bulgarian Taekwon-do Federation, indicating that the petitioner placed first in the 62 kg/sparring category at the Open Tournament for the Cup ‘Orhanie II.’”
8. An April 24, 1999 diploma from the Bulgarian Taekwon-do Federation, indicating that the petitioner placed first in his weight category in the “Memorable Tournament ‘Petko Genchev.’”
9. A June 26, 1999 diploma from the Bulgarian Taekwon-do Federation, indicating that the petitioner placed first in his weight category at the Republican Championship for Men and Women.

The petitioner submitted no documentation to establish that any of the listed awards are nationally or internationally recognized as awards of excellence in the field of taekwondo. Further, we note that the last competition won by the petitioner was in 1999. The petitioner must establish that he has achieved *sustained* national or international acclaim. The petitioner submitted no documentation of any prizes or awards or other recognized acclaim as a competitor in the seven years preceding the filing of the petition. Thus, he has not established the sustained acclaim as a taekwondo competitor necessary for this visa classification.

As it relates to individuals that he coached, the petitioner also submitted a copy of an award certificate for [REDACTED] and copies of certificates of participation presented to [REDACTED] and [REDACTED]. However, the petitioner did not indicate the significance of these documents.

In a request for evidence (RFE) dated March 15, 2007, the director acknowledged the certificates for [REDACTED] and [REDACTED], but advised the petitioner that there was not evidence that he served as coach of these individuals. The director instructed the petitioner to

[P]rovide official documentary evidence which establishes your services as a coach to these individuals including a list of all other trainers and coaches involved with the particular athletes. Further, you must demonstrate your contributions and any resulting acclaim in relation to any other trainers/coaches involved. Also, you must provide copies of the actual awards won by the individuals along with documentary evidence that establishes the significance of the awards.

In response, the petitioner submitted a copy of a DVD that he stated is “video evidence” of his coaching of [REDACTED] and [REDACTED]. The DVD is purportedly of [REDACTED] competition at the 14th Annual U.S. Open Taekwondo Championships in 2005. The DVD, however, does not identify the petitioner or [REDACTED] or document her finish in the competition. The petitioner also provided documentation regarding competitions in which [REDACTED] participated in 2007. However, as these competitions occurred subsequent to the July 18, 2006 filing date of the petition, they are not evidence of the petitioner’s eligibility as of the date the petition was filed. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1),(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

In denying the petition, the director determined that the petitioner had not established that he was the primary coach for the athletes, and that he had failed to establish his actual role in training the individuals. On appeal, counsel asserts that “[t]here has been no denial by the Service that the petitioner is the coach of [REDACTED] and [REDACTED]” The petitioner provides [REDACTED] professional biography and evidence that [REDACTED] and [REDACTED] have advanced during the World Junior Championships Open. Counsel alleges that this is evidence to support the petitioner’s claim that he meets this criterion.

Regardless of their success, the petitioner has failed to establish his role as coach with the individuals named. The petitioner submitted no documentation to corroborate that [REDACTED] and [REDACTED] are his students. 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 petitioner has failed to establish that he meets this criterion, either as a competitor or as a coach.

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.

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 work 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. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

In response to the RFE, the petitioner submitted a copy of a letter from the website of USA Taekwondo, accessed on March 21, 2007. The letter is addressed to [REDACTED] and

indicates that he had successfully renewed the petitioner's membership as a coach in the association. The petitioner also submitted copies of his membership cards for 2005 and 2006 as an athlete and coach. The petitioner submitted no documentation that membership in USA Taekwondo required outstanding achievements as judged by national or international experts of its members.

On appeal, counsel states that the petitioner holds the 4th Dan degree, which allows the person to be a referee and a peer reviewer. However, reaching a particular level of expertise does not necessarily equate to outstanding achievement. The petitioner again failed to submit documentation to establish that USA Taekwondo requires outstanding achievement as a condition of membership to the association.

The petitioner has failed to establish that he meets this criterion either as a competitor or a coach.

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.

With the petition, the petitioner submitted a copy of a March 22, 2006 letter from the Pan American Taekwondo Union, signed by [REDACTED] who identified himself as the president of the union. [REDACTED] stated that the petitioner "is a certified referee and frequently judged the performance of other Taekwondo participants." The petitioner also submitted a copy of a September 14, 2002 "certificate of participation," certifying that he participated in a "Referee Seminar" conducted by the United States Taekwondo Union, and a copy of a September 14, 2002 "referee certification," certifying that he had "achieved Referee class International Referee." The petitioner also submitted a copy of a March 9, 2006 "certificate of referee results" from the Bally Total Fitness Corporation, signed by [REDACTED] as Executive Director of the company's Taekwondo Masters Academy. According to the certificate, the petitioner served as referee for the company at four tournaments from May 2004 to October 2005. These tournaments were held at William Rainey Harper College and York High School. The document indicates that each tournament involved 500 participants but did not otherwise indicate the scope of the tournament.

In his June 5, 2007 letter accompanying the petitioner's response to the RFE, counsel asserted that the director's statement that he was not persuaded that "serving as a referee constitutes judging the work of others within the meaning of this criterion" is "troubling and baseless." Counsel stated that according to Webster's Ninth New Collegiate Dictionary, "a referee is a sports official usually having final authority in administering a game."

According to the petitioner's documentation "Foundations of Refereeing:"

The referee is an official of the competition who manages the match according to the rules and who starts and ends the match. His/her duties are to make decisions and apply the rules during the match.

In this case, it does not appear that a referee in Taekwondo judges a competitor's skills or technique but rather enforces the rules of competition and "fair play." In addition, while the petitioner submitted the certificates regarding attending a referee seminar and achieved "referee class," the sole evidence that he actually refereed any event related to competitions for Bally's. Such competitions appear to be for local, amateur competitions and therefore, are not indicative of the national or international acclaim required for this highly restrictive classification. The AAO interprets this regulation to require that the selection and participation process for serving as the judge of the work of others in the field be indicative of national or international acclaim in the field. The evidence does not establish that the petitioner's role as a referee was because of his national acclaim.

The petitioner provides no additional evidence of this criterion on appeal. Accordingly, the petitioner has failed to establish that he meets this criterion either as a competitor or a coach.

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

In his letter accompanying the petitioner's response to the RFE, counsel asserted:

Viewing the petition as a whole, specifically with the numerous championships and now coaching prowess of the petitioner clearly sets forth that he has achieved that small percentage, based on his personal achievements in his sport, as well as that of his students. Furthermore, the very nature of the attained belt rank, which has not been dismissed by the Service, clearly shows that the petitioner has met this criteria [sic].

The director noted the letters of reference submitted on behalf of the petitioner attesting to his talents and abilities as a competitor and coach, and his "extraordinary ability" in the martial arts. However, neither of the witnesses attests that the petitioner has made a contribution of major significance to Taekwondo or the martial arts.

On appeal, counsel asserts that "the petitioner's level of Dan is indicative of his expertise in the field." Nonetheless, attaining a certain level of expertise does not, by itself, establish that the petitioner has made a contribution of any significance to the field. Further, we note that, according to the petitioner's documentation, the Dan belts are a function of both age and expertise.

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

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

The petitioner submitted a copy of a DVD which he stated is evidence of this criterion.

As noted by the director, the wording of this criterion indicates it is intended for those in the visual arts such as sculptors and painters. Counsel asserts that “[t]he Service is placing too rigid of a burden in this matter and needs to look at the sport in closer detail and without a preconceived generality as to all sports and coaching in sports.” However, the petitioner’s evidence does not establish that, other than in competition, his work has been displayed in a specific forum designed for that purpose.

The petitioner has failed to establish that he meets this criterion either as a coach or a competitor.

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

To meet this criterion, the petitioner must show that he performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

Counsel alleges in his June 5, 2007 that “[d]ue to the very nature of Taekwondo, the coaching of athletes sets forth the criterion.” The petitioner submitted copies of photographs that counsel alleged were of the petitioner’s students and his referee status. The petitioner also submitted a March 9, 2006 “certificate of coach results” from the Taekwondo Masters Academy, certifying that he “served as a coach for the Taekwondo Masters Academy Elite Team for Bally Total Fitness Corporation.”

The petitioner submitted no documentation that his role as a coach for the Taekwondo Masters Academy Elite Team was in a leading or critical role or that the Taekwondo Masters Academy Elite Team is an organization with a distinguished reputation. Further, the petitioner submitted no documentation to establish that he served in a lead or critical role for any individual who has a distinguished reputation. Accordingly, the petitioner failed to establish his eligibility for this criterion either as a competitor or a coach.

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

Counsel alleges that “Due to the very nature of Taekwondo, high remuneration levels do not exist,” and that:

This should not be a basis, however, for denial or a lack of meeting this prong . . . for the qualifications of the petitioner in relation to his petition and the sport of Taekwondo must be looked at not as a whole as to other coaching disciplines but uniquely and individually as to the sport. In so doing, the degree of remuneration should only be a basis for approvability and not a basis for denial.

Counsel's argument is without merit. First, the regulations do not require that each and every criterion must be analyzed in connection with a petitioner's specific field of endeavor. They are merely guidelines in aiding the petitioner in establishing his extraordinary ability under this visa classification. Second, the criterion clearly states that in order to meet this criterion, the petitioner must only establish his or her remuneration is high relative to others in the field. The petitioner is not required to establish that his remuneration is high in relation to others in competitive sports, only in connection with coaches in Taekwondo.

On his Form I-140, Immigrant Petition for Alien Worker, the petitioner indicated that his expected income was \$450 per week. The petitioner submitted no documentation to establish that this remuneration is high in relation to other coaches of Taekwondo.

The petitioner failed to establish that he meets this criterion..

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a Taekwondo competitor or coach 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. 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.