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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: LIN 06 164 51716 Office: NEBRASKA SERVICE CENTER Date: APR 24 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:

SELF-REPRESENTED

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 Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed with a finding of fraud and material misrepresentation.

The petitioner seeks classification as an “alien of extraordinary ability” in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

On February 23, 2009, this office advised the petitioner of derogatory information and our intent to dismiss the appeal and enter a formal finding of fraud. This office afforded 15 days in which to respond. As of this date, more than six weeks later, this office has received nothing further. Thus, for the reasons discussed below, the petitioner has not demonstrated the necessary sustained national or international acclaim, has not provided any evidence of his future employment plans and has willfully misrepresented material facts warranting a formal finding of fraud.

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).

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.

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, 60898-9 (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.

The petitioner did not complete part 6 of the petition regarding the proposed employment. In response to the director’s request for additional evidence, the petitioner indicated that he wished to teach karate.

While not addressed by the director, the petitioner’s bare assertion that he intends to teach karate does not satisfy the evidentiary requirements of the regulation at 8 C.F.R. § 204.5(h)(5). Specifically, that regulation provides:

No offer of employment required. Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

The petitioner’s statement included no detailed plans and he did not submit letters from prospective employers or prearranged commitments.

As noted by the director in his request for additional evidence, if the petitioner intends to coach, he must demonstrate extraordinary ability as a coach. Specifically, the regulation at 8 C.F.R. § 204.5(h) requires the beneficiary to “continue work in the area of expertise.” While a karate competitor and a coach certainly share knowledge of karate, 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. *See Lee v. I.N.S.*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002).

While this office has recognized that there exists a nexus between playing and coaching a given sport, to assume that every extraordinary athlete’s area of expertise includes coaching would be too speculative. As such, 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 can 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. In this matter the petitioner has not established that he has any experience as a karate coach and, for the reasons discussed below, the petitioner has not established the necessary acclaim as an athlete.

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, international 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.

Initially, the petitioner submitted what purport to be certificates of rank, status as a referee, membership and awards. The petitioner also submitted what purports to be an article in an unidentified foreign language newspaper. Finally, the petitioner submitted photographs from what appear to be sparsely attended competitions. In response to the director's request for additional evidence, the petitioner submitted the alleged requirements to be appointed as a referee. On appeal, the petitioner submits similar evidence and the programs for the 10th World Cup and the 25th Anniversary Celebration sponsored by the International Martial Arts Federation (IMAF).

On February 23, 2009, the AAO advised the petitioner of the following discrepancies. Specifically, the programs submitted on appeal are full of typographical errors, including on copies of letters that purportedly originated from the White House. More significantly, the petitioner's name appears on page 129 of the 10th World Cup program as one of the recipients of the "Top of the Wold [sic] Award" in martial arts. The petitioner is identified as the president of Japan Oriental Therapy, Inc. The petitioner is also listed as a Chief Instructor on page 4 of the 25th Anniversary program. In both instances, however, the petitioner's name is pasted over the name originally printed in the program. In both cases, although the preprinted characters appear to resemble the Japanese characters for the petitioner's name, the underlying English name originally printed in the program appears to start with an "R," which is not the first letter of the petitioner's name. The record contains no evidence that the petitioner is the President of Japan Oriental Therapy. In fact, although a Los Angeles phone number is provided in the program, a search of the California Secretary of State's Business Portal website, <http://kepler.sos.ca.gov/list.html> (accessed February 20, 2009 and incorporated into the record of proceeding) provides no results for "Japan Oriental Therapy."

In light of the above alterations, the AAO reviewed the documents submitted originally. As stated in the February 23, 2009 notice, the Certificate of Rank for the title of Master Instructor, appears to have been altered to add the petitioner's name. Specifically, the bottom of "hereby grants to" is cut off as well as the underlying orange image of the document. Thus, it appears that the petitioner's name was added to the document before the document was photocopied. Similarly, the Italian language certificate from the 10th Wushu World Cup in Milan shows the edges of a piece of paper that was used to cover the original honoree's name prior to photocopying, partly covering the line for the honoree's name. In fact, some evidence of the original name can be seen below the pasted paper. The petitioner's name was subsequently added over this paper.

The altered documents discussed above raise serious concerns regarding the credibility of the documentation discussed and the remaining evidence. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Thus, the AAO advised that the petitioner could not overcome the above findings simply by offering a written explanation. Moreover, the AAO advised that it would obviously not accept any photocopied documentation or letters as evidence to overcome the above derogatory information. The AAO noted that pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), USCIS has the discretion to request the originals of any photocopies submitted. Finally, 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. Thus, given the obvious alternations discussed above, the remaining evidence has no evidentiary value.¹ Nevertheless, we will consider the evidence as it relates to the regulatory criteria.

The petitioner has submitted evidence relating 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.

The petitioner submitted two certificates purporting to document his first place finish at the December 2005 10th World Cup in Milan, Italy sponsored by the IMAF, a Los Angeles entity. As stated above, one of these certificates has been clearly altered by pasting over name of the original awardee and adding the petitioner's name prior to photocopying. Thus, this document has no evidentiary value and raises serious doubts regarding the authenticity of the second certificate. The two certificates are also very different for certificates purportedly issued by the same entity at the same event. The petitioner also

¹ While not mentioned in our previous notice, much of the evidence comes from the IMAF, based in Los Angeles. We note that, according to the California Business Portal, <http://kepler.sos.ca.gov> (accessed on April 10, 2009 and incorporated into the record of proceeding), the corporate status of this corporation is suspended. In addition, many of the materials suggest that the IMAF is affiliated with the International Kung Fu Federation. The federation's name appears along with IMAF on several documents and the golden seal for the IMAF includes the abbreviation "IKFF." According to their website, www.internationalkungfu.com (accessed on April 10, 2009 and incorporated into the record of proceeding), the abbreviation for the International Kung Fu Federation is "IKF," not "IKFF." IKF is the international governing body of the national and international Kung Fu and Tai Chi organizations in the world. Moreover, their website suggests no affiliation with IMAF. IKF is not based in the United States and its U.S. affiliate is the American Kung Fu Association located in Alabama. Moreover, the logo for the IKF includes a map while the IKFF seal on the materials submitted includes a shield (either with or without athletes) or a globe with a ring. (A search for "IKFF" on www.google.com (accessed April 10, 2009 with the results incorporated into the record of proceeding) reveals that this abbreviation is for the International Kettlebell and Fitness Federation.)

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

submitted what purports to be an article about the Los Angeles team's success in Milan. The petitioner did not identify the publication in which this article purportedly appeared.

The petitioner also submitted another Certificate of Merit confirming his "Gold Medal" at the 8th World Cup sponsored by the IMAF in Japan in 2001. Finally, the petitioner submitted a "Golden Award" from the IMAF on October 5, 2001 confirming that the petitioner had "passed the evaluation administered by the committee of the Eight [sic] World Cup International Martial Arts Championship Conference."

The director concluded that the petitioner had not demonstrated the significance of the above awards.

On appeal, the petitioner submits the aforementioned program for the 2005 10th IMAF World Cup in Milan, Italy. While the program includes several letters from high level politicians, it is clear that the letters were issued in appreciation of donations or in response to a written request. These letters do not establish the significance of the competition. Regardless, as stated above, the petitioner's name is pasted onto a list of the "Top of the Wold [sic] Award for Outstanding Martial Artist." This altered document has no evidentiary value.

The petitioner also submits a September 4, 2006 "Gold Medal Award" from the IMAF certifying that the petitioner "passed the examination of the 25th Anniversary Special Demonstration Championship Evaluation Committee." This certificate postdates the filing of the petition. The petitioner must establish his eligibility as of that date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Thus, we will not consider this certificate or the petitioner's assertions that he will win more medals at an upcoming event.

Finally, the petitioner submits an uncertified translation of the abovementioned newspaper article. Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), translations must be certified. The translation reflects that the article mentions the petitioner's alleged success in Milan, Italy along with other competitors from Los Angeles. The record still does not identify the publication in which this article allegedly appeared. Thus, the petitioner has not established that this competition garners any attention in the major media. Regardless, the director explicitly requested a certified English translation in the request for additional evidence and the petitioner did not submit any translation in response. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

We concur with the director that the petitioner has not established that the competitions where he allegedly won awards are nationally or internationally recognized. Moreover, for the reasons discussed above, much of the evidence submitted to meet this criterion has been altered, casting doubt on the

remaining evidence. Thus, the petitioner has not submitted credible evidence establishing 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 submits certificates of his rank, "Dan" level and membership in the International Kung-Fu Federation. As stated above, the certificate of rank purporting to confirm the petitioner's rank as a "Master, 4th Dan" is altered. Specifically, the original grantee's name has been pasted over and the petitioner's name added. The "Certificate of 4 Dan" awarded by the Japan Sohryukan Kempodo Union reflects that the petitioner's name has been written over another name which may or may not have been his name originally. The record also contains a certificate for 5th Degree Black Belt status in weapons from the IMAF. Finally, the membership certificate from the International Kung Fu Federation is printed on Goes stationary, which is commonly sold at business supply stores.³

In response to the director's request for additional evidence, the petitioner submitted the IMAF's regulations for application of belt levels. The materials reflect that belt progression is based on an examination and demonstration of skill. The petitioner did not submit the membership requirements for the International Kung Fu Federation.

The director concluded that the record lacked evidence that the petitioner was a member of any organization that requires outstanding achievements. On appeal, the petitioner asserts that black belt is the highest level the petitioner can obtain at his age and that fifth degree is already the level of "Sifu." The petitioner further asserts that he will soon reach the sixth degree and pass the Grand Master and Grand Judge exam. As stated above, however, the petitioner must establish his eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner also submitted the application for Membership in the "International Martial Arts / Kung Fu Federation" in Los Angeles, California. The application suggests that membership is based on fee payments alone. Fee payments are not outstanding achievements. Moreover, routine progression in Dan levels through examination is not an outstanding achievement. Thus, even if the evidence submitted were credible, it would not establish that the petitioner 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.

The petitioner submitted what purports to be a single article that is about the success of several athletes from Los Angeles in Milan, Italy. The article is not primarily about the petitioner. The petitioner did

³ As stated in footnote 1, supra, the International Kung Fu Federation actually goes by the abbreviation "IKF." Thus, this membership certificate, which includes the IMAF/IKFF seal, is suspect.

not submit the required translation until appeal despite being expressly requested to do so. As stated above, we will not consider the translation on appeal pursuant to *Matter of Soriano*, 19 I&N Dec. at 766; *Matter of Obaigbena*, 19 I&N Dec. at 537. Finally, without the name of the publication and evidence as to its circulation, we cannot determine whether the article appeared in major media. Thus, even if the evidence was credible, it would not establish that the petitioner 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 petitioner submitted an "Official International Referee Certificate" issued by the World Karate Federation. While the certificate is a photocopy, including the signatures of the officials, the petitioner's name is in original ink which bled through the paper. The certificate is also undated and the grade, if it was ever added, has been blotted out. In response to the director's request for additional evidence, the petitioner submitted the requirements for referees and judges from the World Karate Federation. Candidates must be a certain age and have reached the third Dan level. Referees must progress through five levels.

Even if the petitioner was certified as a referee, the record lacks evidence that he actually judged any competitions. The regulation at 8 C.F.R. § 204.5(h)(3)(D) requires evidence of actual judging experience. Regardless, for the reasons stated above, the certificate lacks any credibility. Thus, the petitioner has not established 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 the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a karate athlete 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. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Beyond upholding the director's decision, we are also making a formal finding of fraud. As stated above, 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. *See Matter of Ho*, 19 I&N Dec. at 591-92. In this case, we find substantial and probative evidence that the petitioner submitted falsified material in support of the petition. The petitioner signed the Form I-140 under penalty of perjury and attested that he is solely responsible for submission of evidence with this petition.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Under Board of Immigration Appeals (BIA) precedent, a material misrepresentation is one which “tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in a proper determination that he be excluded.” *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

Finally, by filing the instant petition and submitting evidence purporting to document awards and referee and instructor certification, the petitioner has sought to procure a benefit provided under the Act using fraudulent documents. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that the above documents are all fraudulent, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed based with a finding of fraud and willful misrepresentation of a material fact on the part of the petitioner, [REDACTED]

FURTHER ORDER: The AAO finds that the petitioner, [REDACTED], knowingly submitted documents containing false statements in an effort to mislead USCIS and the AAO on an element material to the petitioner’s eligibility for a benefit sought under the immigration laws of the United States.