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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 25 2009
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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:

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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined that the record did not establish that the beneficiary 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 the beneficiary 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 field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on November 30, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a taekwondo instructor and coach. Initially, the petitioner submitted his resume, awards, letters of recommendation, evidence of tournament judging and refereeing, certificates of dan degrees, information about tournaments in which the beneficiary's students have competed, and news articles. In response to the February 26, 2008 Request for Evidence ("RFE"), the petitioner submitted additional letters of recommendation, information about additional tournaments, information about Kukkiwon, information about news publications,

additional news articles, additional evidence of participation as a judge or referee, and information about the beneficiary's prospective employment. On appeal, the petitioner submitted additional letters of recommendation, registration for a USA Taekwondo ("USAT") tournament and the Junior Olympic Taekwondo Championships, and certification of his dan level.

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 the beneficiary's eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the beneficiary meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). 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 that the beneficiary is eligible 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 of the beneficiary's receipt of dans in the 2nd through 5th degree. 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 would not compete against the petitioner for it. The memorandum submitted to members of the Martial Arts Commission suggests that at least ten levels of dan exist and that those at the top of the profession are awarded the title "grandmaster" instead of the title enjoyed by the beneficiary of "master."

The petitioner also submitted a number of other awards awarded to the beneficiary: a citation dated August 5, 1999 given for "contribut[ing] to the development of the local community and the activity of Sports for All;" a citation dated August 25, 1998 stating that the beneficiary met the "qualif[ication] for the leader for sports for all;" a certificate of completion of the Pumsae Training Course dated March 19, 1995; gold medal in the 5th competition for the Trophy of Commanding General in 1992; silver medal in the 1992 Trophy of Commanding General; 1989 award for "doing good deeds and . . . [being a good] role model for many students;" 1989 gold medal in the high school Trophy of Superintendent Chonnam Sunchon Office of Education; 1989 bronze medal in the 2nd selection of representatives for Chonnam Province in the National Athletic Meritocrat; 1988 gold medal in the Trophy of President, Sunchon Branch Office; 1986 award for having a good attendance record over 3 years and being a good role model; 1986 award for performing well in the Trophy of President of Chonnam Branch Office; 1985 silver medal in the middle school competition for the Trophy of the President of Chonnam Branch Office; 1984 gold medal in the competition for the Trophy of the President of Chonnam Branch Office; 1983 award for having a good attendance record over 6 years; 1981 bronze medal in the competition for the Trophy of Chairman of Palma Sports Association; 1980 gold medal in the competition for the Trophy of Superintendent Chonnam Office of Education; 1980 bronze medal in a primary school competition for the Trophy of Superintendent of the Chonnam Office of Education; and 1980 special merit award. The petitioner

submitted no evidence that any of these awards accords national or international acclaim upon the recipient and many of the competitions seem to be either based in a particular region or amongst schools, i.e. restricted competitions that would not be recognized outside of the particular area in which they were held.

In any event those achievements made by the beneficiary were made as a practitioner and not as a coach. Although a nexus exists between engaging in and coaching a given sport, to assume that every extraordinary athlete's area of expertise includes coaching would be too speculative.¹ 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 or international 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. 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.

The petitioner submitted two certificates awarded to the beneficiary in his coaching capacity: 2003 "Master of the Year" awarded by the World Martial Arts Foundation and a 2002 certificate of appreciation awarded by the World Martial Arts Foundation. The petitioner submitted no evidence to show that either of these certificates conveys national or international acclaim upon the recipient. The petitioner also submitted a letter from [REDACTED] praising the four to five months that he was coached by the beneficiary. [REDACTED] submitted evidence of awards won, including the 2002 Junior Olympic Championship; however, this was prior to being coached by the beneficiary. The petitioner submitted awards won by [REDACTED] and [REDACTED] however, no evidence was submitted to show that either of these competitors is coached by the beneficiary. Even if evidence had been presented that the beneficiary acted as the competitors' coach during the time that they won these awards, no evidence was presented to show that the awards are nationally or internationally recognized. On appeal, the petitioner submitted a letter from [REDACTED] crediting the beneficiary with coaching his son to a bronze medal at the May 11, 2008 USAT Nationals regional qualifier. [REDACTED] wrote a letter praising the beneficiary's coaching of his son and crediting him with his son's gold and bronze medals in the 2008 National Tae Kwon Do Qualifier. Not only was no evidence presented regarding these tournaments to show that they conveyed national or international acclaim upon the beneficiary, but these letters describe tournaments that occurred in 2008, which was after the date that this petition was filed. A petitioner must establish the beneficiary's eligibility at the time of filing the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A letter from [REDACTED] credits the beneficiary with his son's success in tournaments in 2006 and 2008. Any success in 2008 would have occurred after the date that this petition was filed; 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49; and the 2006 tournaments were indicated as "local" so they do not indicate national or international acclaim. The letter from [REDACTED] states that her sons have earned medals under the beneficiary's tutelage, but

¹ While not binding precedent, we note that the reasoning contained in *Lee v. I.N.S.*, 237 F.Supp.2d 914, 918 (N.D.Ill. 2002), supports this interpretation:

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 instructor.

those medals seem to have been awarded at local tournaments. No evidence was submitted and no statements made by the parents to show at what level these students competed. Due to the age of the letter writers' children, it seems as if the students are novices as they are not adults or even teenagers.

Therefore, even if the petitioner had provided evidence that the competitions the beneficiary won are nationally or internationally recognized, it did not provide any evidence that he earned sustained national or international acclaim through his work coaching or training, such as through nationally or internationally recognized awards won by his students.

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

(ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, proficiency certifications, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner claims that the beneficiary is eligible under this criterion by virtue of his membership in the World Taekwondo Federation (also referred to as Kukkiwon, the Korean city in which it is based). The information submitted about this organization indicates that it is an organization of practitioners and coaches without regard to ability or achievement. No evidence in the record indicates that membership is predicated on outstanding achievement. The petitioner also claims eligibility through the beneficiary's receipt of the 5th level dan. Although the beneficiary did receive that dan, the petitioner has not shown that an association of 5th level dan holders exists.

For all of the above reasons, the petitioner has not established that the beneficiary meets this criterion.

(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.²

² 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

The petitioner submitted an article entitled “Chung’s Tae Kwon Do, A Unique Martial Art Academy in Miami Lakes Since 1989” and “Recognized Worldwide Grand Master Chung’s Tae Kwon Do in Miami Lakes” which appeared in the September 2006 *Pines & Miramar Advisor*, an article from the April 9, 2003 *Korean-American Journal*, “Florida Olympic ‘Sunshine State Game’” which appeared in the June 21, 2006 *Korean-American Journal*, “Taekwondo Championship Series in Florida – Great Success” published in the April 9-15, 2003 *Korean-American Journal*, and “[REDACTED] selected as the 24th President of Korean-American Federation – Regular meeting of Southern Florida Korean-American Federation” which appeared in the September 20, 2006 *Korean-American Journal*. None of these articles were primarily about the beneficiary as required by the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) as opposed to merely listing the beneficiary’s name as a participant or in some other secondary manner. In addition, the April 9, 2003 article in the *Korean-American Journal* does not contain the requisite translation as required by 8 C.F.R. § 103.2(b)(3), because instead of including a translation of the material, the petitioner submitted a summary of what was in the publication. A summary of what is presented in the foreign language is not the same as a translation of that item. Without the full translation, we are unable to determine that this article is relevant to this criterion. The petitioner also submitted articles from the *Korean-American Journal* and *The Korean News* about certain tournaments or about the practice of Taekwondo in general. These articles are not primarily about the beneficiary and the petitioner provides no reasoning for why these articles would be applicable under this criterion.

Finally, as it relates to the regulatory requirement that the material be published in major media, the information submitted about the publications amounts to a statement from an unidentified source stating that “*The Korean-American Journal* and *The Korean News* are newspapers that are distributed among the Korean Americans in Florida.” First, this statement gives no information indicating that either publication is a professional or major trade publication or other major media such as by providing circulation statistics or comparisons to other comparable publications. Second, the statement indicates that the publications are regional in nature since they are distributed only in Florida, so they could not amount to professional or major trade publications or other major media and could not illustrate national acclaim.

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

(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 beneficiary’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

County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county

national competition or a competition for top athletes is of far greater probative value than judging a regional, youth or amateur competition.

The petitioner submitted evidence of the beneficiary's participation as a referee and judge in the 2002 and 2003 Florida State Tae Kwon Do Championships, a referee at the 6th and 7th Annual Taekwondo Invitational tournaments in 2002 and 2003, a referee at the 2002 and 2003 President's Cup World Martial Arts Championships, and a referee and judge at the 2006 Florida "Olympic Sunshine States Games. The petitioner submitted no information about these tournaments such as information about individuals who were judged by the beneficiary or about how he was selected to be a judge for these competitions. The information submitted about the President's Cup indicates that both children and competitors over the age of 16 competed, but the information does not indicate whom the beneficiary judged. In addition, the petitioner submitted no information about the reputation, significance, or magnitude of these tournaments for us to be able to ascertain whether the beneficiary's participation as a judge is indicative of the national or international acclaim at the very top level of the martial arts field that is required for this highly restrictive classification.

In light of the above, the petitioner has failed to establish that the beneficiary meets this criterion.

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

Letters of recommendation submitted by the petitioner alone 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. 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.

The letter from _____ president of the Florida State Tae Kwon Do Union, states that the beneficiary "is extraordinary. He has evidently practiced and trained his whole life." _____ continues: "The United States needs qualified instructors to train our students to compete . . . we need instructors with the desire to win and compete against the Korean teams" and _____ believes that the beneficiary fits in this category. The letter from _____ states that the beneficiary "is the best" and "most qualified" coach in the state of Florida and that the beneficiary "has been able to change the most undisciplined, disrespectful children into scholar students and wonderful, well-rounded people." In addition, as referenced above, the petitioner submitted letters from parents of the beneficiary's students praising the beneficiary's abilities as a coach and mentor. Although complimentary of the beneficiary's abilities, these letters do not indicate that the beneficiary has made an original contribution of major significance to the field as a whole as opposed to making a contribution of major significance to the lives of his students.

Counsel stated that although taekwondo has a long history in Korea, it is a fairly new endeavor for residents of the United States so that “[t]he most significant contributions to the sport today involve its slowly developing reputation throughout the world.” The petitioner submitted no evidence that the beneficiary has helped to develop the practice’s reputation in the United States outside of the small group of students that he coaches especially when [REDACTED] letter states that the state of Florida alone has hundreds of taekwondo instructors.

In light of the above, the petitioner has not established that the beneficiary is eligible under this criterion.

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

On appeal, counsel claims that the beneficiary meets this criterion because “taekwondo has a long history as a demonstration sport” and that “demonstration is a valuable and important role for the sport and should be considered when evaluating whether [the beneficiary] qualifies as exceptional in the field.” 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. Even if we accept counsel’s assertion that taekwondo is an art form that is displayed similarly to an artistic exhibition in certain instances, the petitioner submitted no evidence showing that the beneficiary’s coaching abilities were showcased in any exhibition that could be considered illustrative of his national or international acclaim as a coach.

As such, the petitioner failed to establish that the beneficiary meets this criterion.

On appeal, the petitioner relied upon the approval of the beneficiary’s O-1 nonimmigrant visa petition as persuasive in this matter. An approval of an O-1 nonimmigrant visa petition does not mandate the approval of a similar immigrant visa petition. The regulation at 8 C.F.R. § 214.2 (o)(3)(iv), relating to nonimmigrant aliens of extraordinary ability in the arts, provides different eligibility criteria than those for the immigrant classification discussed below. Section 101(a)(46) of the Act provides: “The term ‘extraordinary ability’ means, for purposes of subsection (a)(15)(O)(i) of this section, in the case of the arts, distinction.” 8 C.F.R. § 214.2(o)(3)(ii) defines “distinction” as follows:

Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The regulation relating to the immigrant classification, 8 C.F.R. § 204.5(h)(2), however, defines extraordinary ability in any field 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.” While the ten criteria set forth at 8 C.F.R. § 204.5(h)(3) appear in the nonimmigrant regulation at 8 C.F.R. § 214.2(o)(3)(iii), those criteria apply only to aliens who seek extraordinary ability in the fields of science, education, business or athletics. Separate criteria for nonimmigrant aliens of extraordinary ability in the arts are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(iv). The distinction between these fields and the arts, which appears in the

nonimmigrant regulations at 8 C.F.R. § 214.2(o), does not appear in the immigrant regulations governing this petition at 8 C.F.R. § 204.5(h). As such, the beneficiary's approval for a non-immigrant visa classification under the lesser standard of "distinction" is not evidence of his eligibility for the similarly titled immigrant classification. Each petition must be adjudicated on its own merits under the statutory provisions and regulations which apply to the classification sought.

Review of the record does not establish that the beneficiary has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. **Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.**

ORDER: The appeal is dismissed.