



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

B2

**PUBLIC COPY**



**NOV 19 2009**

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

LIN 06 217 50899

IN RE:

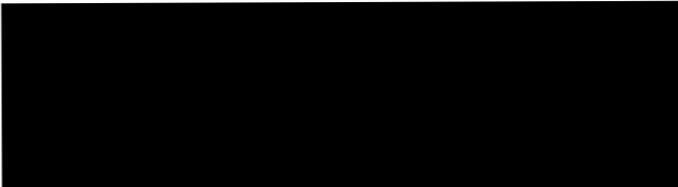
Petitioner:



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 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).

*Perry Rhew*  
Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied this employment-based immigrant visa petition on January 25, 2008. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision on April 13, 2009. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motions will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration (USCIS) policy. 8 C.F.R. § 103.5(a)(3).

On motion counsel argues:

An issue raised by the Service and the AAO is whether the petitioner has either had recent acclaim as a competitor or whether he has been a coach for a prolonged period of time. The totality of the circumstances should apply in this matter, as there has been some time between the competitive stages of petitioner's career and his coaching duties. [Adjudicator's Field Manual] AFM at 22.2(i)(1)(C). The petitioner thus disputes the argument that he needs to show that he is in the top of his profession, as the success of his students, his attainment of 4<sup>th</sup> Dan rank, and his referee status all show that he has attained a high if not international level. The development and timing of their achievements are ongoing and as such must be taken into context in the review of his petition.

In our original decision, incorporated here by reference, we noted that the majority of the evidence submitted by the petitioner pertained to his achievements as a *competitor* in taekwondo. However, the petitioner indicated, such as his response to Parts 5 and 6 on Form I-140 signed by the petitioner on May 10, 2006, that he is a taekwondo *coach*. The statute and regulations require the petitioner's national or international acclaim to be sustained and that he seeks to continue work in his area of expertise. See sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). In this instance, the record shows that the petitioner last competed six years prior to filing. 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. See *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002). In the present matter, there is no evidence showing that the petitioner has sustained national or international acclaim through achievements as a taekwondo competitor subsequent to 2000. Further, the evidence is clear that the petitioner has been and intends to continue work as a taekwondo instructor. While the petitioner's athletic accomplishments as a competitor are not completely irrelevant and will be given some consideration, ultimately he must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through his achievements as an instructor and coach.

As cited above, counsel refers to section 22.2(i)(1)(C) of the AFM which provides in pertinent part:

The evidence provided in support of the petition need not specifically use the words "extraordinary." Rather the material should be such that it is readily apparent that the alien's contributions to the field are qualifying. Also, although some items in the regulatory lists occasionally use plurals, as indicated above, it is entirely possible that the presentation of a single piece of evidence in that category may be sufficient. On the other hand, the submission of voluminous documentation may not contain sufficient persuasive evidence to establish the alien beneficiary's eligibility. The evidence provided in support of the petition must establish that the alien beneficiary "is one of that small percentage who have risen to the very top of the field of endeavor."

In this case, if the petitioner stops competing or no longer sustains national or international acclaim as an athlete, and now coaches individuals, the petitioner must demonstrate his extraordinary ability claim as a coach rather than an athlete. Similarly, the petitioner can be found eligible as an athlete and coach as long as the petitioner can establish "sustained national or international acclaim" for both occupations. Finally, an alien's success at the competitive level does not necessarily translate to the coaching level. While an alien's accomplishments at the competitive level may demonstrate his or her ability and knowledge to coach students, it is not indicative of coaching success.

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).

On motion, we will address the petitioner's arguments as they pertain to the petitioner's occupation as an athlete and coach. The petitioner has submitted evidence on motion pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).

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

In our original decision, we found that the petitioner failed to establish that any of his awards as an athlete were nationally or internationally recognized awards of excellence in the field of taekwondo. Further, we found that he failed to establish sustained national or international

acclaim since the last award received by the petitioner was in 1999. Counsel did not address our findings on motion.

Counsel also discusses the petitioner's attainment of a 4<sup>th</sup> Dan Black Belt. The plain language of this regulatory criterion requires the petitioner's receipt of "nationally or internationally recognized prizes or awards for excellence in the field." Regarding the petitioner's degree of black belt, promotions in rank are based on successful completions of taekwondo skills tests. Such promotions are inherent to the martial arts and they present standardized progression to the next skill level. Accordingly, the petitioner has not established that his successful mastery of required skills and attainment of higher Dan rankings constitutes his receipt of nationally or internationally recognized prizes or awards.

Regarding coaching, we found that the petitioner failed to establish his role as coach for [REDACTED] and [REDACTED]. On motion, counsel argues:

It is confusing that the continued achievements [REDACTED] and [REDACTED] are not considered as significant by the AAO as they viewed as matters that have occurred since the filing of the original petition. Both students were coached by the petitioner at the time that the petition was filed and their continued advancement and national prominence is a direct reflection of not only their abilities, but the coaching abilities of the petitioner. As a result, a greater degree of significance must be attached to their achievements and their development with the assistance of the petitioner. Also, the AAO states that the petitioner has failed to exhibit his role as their coach, where initial documentation as well as documentation presented to the AAO did so exhibit the relationship. The petitioner is thus without a clear explanation as to why this evidence was not considered relevant.

As discussed in our original decision, the petitioner submitted Form I-140 on July 18, 2006. However, the petitioner submitted documentation for [REDACTED] that occurred in 2007, after the filing of the petition. 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).

Regardless, the documentation in the record for [REDACTED] and [REDACTED] failed to establish that the petitioner coached these individuals. On motion, the petitioner submitted documentation from the Revolution Taekwondo Training Center, which contains biographical data about the petitioner and indicates that the petitioner "is currently coaching a national champions [sic] and future Olympic hopefuls." The submitted documentation fails to establish that the petitioner coaches [REDACTED] and [REDACTED].

Further, the petitioner has not demonstrated that the awards won by [REDACTED] and [REDACTED] at the junior or amateur level constitute nationally or internationally recognized prizes

or awards. With regard to awards won by these individuals who were allegedly coached by the petitioner, such awards do not indicate that the petitioner is “one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). There is no indication that these individuals faced significant competition from throughout their field, rather than mostly limited to a few individuals in age-based or other similarly limited competition. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.<sup>1</sup> Likewise, it does not follow that a coach who has had success coaching athletes at the “junior” or amateur level, should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”

As an athlete, the petitioner failed to establish that his awards were nationally or internationally recognized prizes or awards, and that he had sustained acclaim as an athlete. As a coach, the petitioner failed to establish his actual coaching of any athlete, and that those athletes won any nationally or internationally recognized awards or prizes.

Accordingly, the petitioner failed to establish 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.*

We found in our original decision that the petitioner failed to establish that membership in USA Taekwondo required outstanding achievements as judged by national or international experts of its members. On motion, counsel does not address our finding. Instead, counsel refers to

---

<sup>1</sup> While we acknowledge that a district court’s decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at \*4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

reference letters of peers “which set forth the abilities of the petitioner not only as a competitor in the field in question, but also as a coach in the field.” Counsel also refers to the petitioner’s level of Dan and submitted information about taekwondo from the website *Wikipedia*<sup>2</sup>.

Counsel has failed to establish how any of these arguments demonstrate evidence of the petitioner’s membership, as an athlete or coach, which require outstanding achievement as judged by recognized national or international experts. 8 C.F.R. § 204.5(h)(3)(ii). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *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).

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. We cannot conclude that meeting the minimum time requirement for holding his preceding Dan and passing form and theory exams to progress to the next Dan level constitutes outstanding achievements as judged by national or international experts.

---

<sup>2</sup> With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site. Specifically, Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on November 12, 2009, a copy of which is incorporated into the record of proceeding. See also *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008).

Accordingly, the petitioner failed to establish that he meets this criterion.

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.*

In our original decision, we noted that the role of a referee in taekwondo is not to judge a competitor's skills or technique but rather to enforce the rules of competition and "fair play." Further, we found that the petitioner's only evidence that he actually refereed any event related to local, amateur competitions for Bally's, which were not indicative of the national or international acclaim required for this highly restrictive classification.

On motion, counsel argues that the petitioner "has had a role in awarding black belts to student of Taekwondo." Counsel has not submitted any documentary evidence in support of his assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Regardless, judging local, amateur, or student competitions is not indicative of "that small percentage of individuals that have risen to the very top of their field of endeavor." *Matter of Price*, 20 I&N Dec. at 954. *See also, Kazarian v. USCIS*, 2009 WL 2836453, \*5 (9<sup>th</sup> Cir. 2009) (Internal review of student work is not indicative of or consistent with national or international acclaim and, thus, cannot serve to meet this criterion).

Accordingly, the petitioner failed to establish that he meets this criterion.

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

On motion, counsel argues:

The petitioner is in a field of athletic endeavor which has been present for many years, but only recently has become an Olympic level sport. Typically, remuneration is not extraordinary in such disciplines. Many times the coach in a sport such as Taekwondo does so for the love of the sport and the desire to impart his knowledge rather than to set himself financially. This should not be a basis, however, for denial or a lack of meeting this requirement as the qualifications of the petitioner in relation to his petition and the sport of Taekwondo must be looked as not as a whole as to other coaching disciplines but uniquely and individually as to this sport and the individual presenting the petition. In so doing, the degree of remuneration should only be a basis for approvability and not a basis for denial.

Counsel's argument on motion is the same argument he made on the original appeal, which we found to be without merit. Further, contrary to counsel's own interpretation of 8 C.F.R. § 204.5(h)(3)(ix), the plain language of the regulation requires demonstration that the alien commanded high salary or other significantly high remuneration for services in relation to others in the same field. In this case, the petitioner failed to submit any documentary evidence demonstrating that he commanded a high salary or other significantly high remuneration as a taekwondo athlete or taekwondo coach.

Accordingly, the petitioner failed to establish that he meets this criterion.

Finally, the conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. We note that the petitioner relies heavily on his Dan level as evidence that he meets this classification. However, in contrast to at least one of the petitioner's references, the petitioner himself has yet to attain the highest level of Dan; in fact, he has reached 6 levels out of 10. Thus, in comparison, it appears that those in his field have attained a level far higher than the petitioner. As such, we find 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. 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.

**ORDER:** The motion to reopen and the motion to reconsider are granted, the decision of the AAO dated April 13, 2009, is affirmed, and the petition remains denied.