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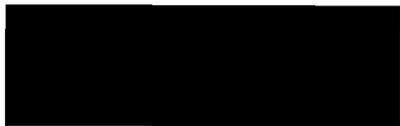
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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DATE: DEC 02 2011 Office: NEBRASKA SERVICE CENTER FILE: 

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:

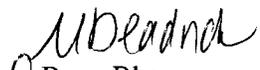


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
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 (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 that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). The AAO acknowledges that the standard of proof is preponderance of the evidence, as noted by counsel on appeal. The "preponderance of the evidence" standard, however, does not relieve the petitioner from satisfying the basic evidentiary requirements required by the statute and regulations. Therefore, if the statute and regulations require specific evidence, the petitioner is required to submit that evidence. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. §§ 204.5(h)(2) and (3). In this matter, the documentation submitted by the petitioner fails to demonstrate by a preponderance of the evidence that he has achieved sustained national or international acclaim and that he is one of the small percentage who has risen to the very top of the field of endeavor.

For the reasons discussed below, the AAO will uphold the director's decision.

## **I. Law**

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* H.R. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten categories of evidence:

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(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;

(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;

(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 specialization for which classification is sought;

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

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

*Id.* at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO

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<sup>1</sup> Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

## II. Intent to Continue to Work in the Area of Expertise in the United States

The statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). On the Form I-140, Immigrant Petition for Alien Worker, in Part 6, “Basic information about the proposed employment,” the petitioner lists his job title as “Taekwondo Headmaster & Coach.” Subsequent to his arrival in the United States in 2003, the record reflects that the petitioner worked as a taekwondo instructor and coach initially at Park’s World Champion Taekwondo in Connecticut and later at ██████████ Defense in Ohio. The petitioner submitted a February 12, 2010 letter from ██████████ stating:

We are offering [the petitioner] a permanent full-time position as Taekwondo Headmaster & Coach. [The petitioner] will train and coach our student athletes, teaching them various techniques and strategies to be successful in tournaments. . . . He will train athletes for tournaments, observe them during practices to detect and correct mistakes, and explain the rules and regulations of the tournaments.

Based on the preceding letter from ██████████, the petitioner’s employment as a taekwondo coach after his arrival in this country in 2003, and the information provided on the Form I-140, the record is clear that the petitioner intends to continue to work in the area of taekwondo coaching and instruction in the United States.

Aside from documentation establishing the petitioner’s intention to continue to work in the United States as a Taekwondo Headmaster and Coach, the petitioner submitted evidence of his athletic accomplishments as a taekwondo competitor in Korea and the United States in the 1990s. According to the petitioner’s “Certificate of Taekwondo Experience” from the Korea Taekwondo Association, his career as a taekwondo athlete ended in 1999. While a taekwondo competitor and a coach may 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. While the record demonstrates that the petitioner intends to continue working as a taekwondo coach, there is no evidence indicating that he intends to compete in taekwondo tournaments in the United States. The AAO acknowledges the possibility of an alien's extraordinary claim in more than one field, such as a taekwondo coach and a taekwondo competitor, but the petitioner must demonstrate "by clear evidence that the alien is coming to the United States to continue work in the area of expertise." See 8 C.F.R. § 204.5(h)(5). In this case, there is no evidence establishing that the petitioner intends to continue working in the United States as a taekwondo competitor. Accordingly, the petitioner must satisfy the statutory requirement at section 203(b)(1)(A)(i) of the Act as well as the regulations at 8 C.F.R. §§ 204.5(h)(2) and (3) through his achievements as a coach.

USCIS recognizes that there exists a nexus between competing and coaching in a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, a balanced approach is appropriate when reviewing the evidence of record. Specifically, in a case where an alien has achieved *recent* national or international acclaim as a competitive athlete and has sustained that acclaim in the field of coaching at a national level, the AAO can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that the AAO can conclude that coaching is within the alien's area of expertise. However, as the petitioner in the present matter has had an extended period of time to establish his reputation as a coach beyond the years in which he competed as an athlete in the 1990s, the petitioner must demonstrate his extraordinary ability as a coach.

### III. Analysis

#### A. Evidentiary Criteria

The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).<sup>2</sup>

*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 documentation showing that he received nationally recognized awards in championship competitions in Korea and the United States in the 1990s. For instance, the petitioner won the gold medal in the flyweight division at the 1993 [REDACTED]

[REDACTED] The "field of endeavor" for which classification is sought, however, is coaching. There is no evidence indicating that the petitioner seeks to work in the United States as a taekwondo competitor. Awards resulting from the petitioner's victories as a competitor in taekwondo tournaments during the 1990s cannot be considered evidence of his national recognition as a coach or an instructor. As previously discussed, the statute and regulations require that the

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<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the categories of evidence not discussed in this decision.

petitioner seeks to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, the petitioner's competitive awards in various taekwondo championships in the 1990s do not meet the elements of this regulatory criterion for purposes of establishing his extraordinary ability as a coach.

The petitioner submitted a July 7, 2009 Citation presented to him by the World Taekwondo Federation in recognition of his "dedicated service and outstanding contribution to the development of Taekwondo." The petitioner also submitted an accompanying letter from the Deputy Secretary General of the World Taekwondo Federation stating:

It is a great honor and privilege to recognize [the petitioner] with this award of citation from the World Taekwondo Federation . . . for his dedication and contributions to the development of Taekwondo. Throughout his entire academic and professional career [the petitioner] proved innumerable times his great knowledge and skill in the art of Taekwondo. He has shared his techniques and his passion in the United States for 5 years wherein physical strengthening, along with a heightened sense of etiquette and moral understanding are part and parcel of the life lessons taught on a daily basis.

There is no evidence showing that the petitioner's July 7, 2009 Citation is a nationally or internationally recognized award for excellence in taekwondo coaching rather than simply an acknowledgement of his length of service as an instructor and dedication to the sport. Further, The petitioner did not submit evidence of the national or international *recognition* of his particular award, such as national or widespread local coverage of his award in professional or general media. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. There is no documentary evidence demonstrating that the petitioner's Citation from the World Taekwondo Federation is recognized beyond the presenting organization and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

The petitioner submitted an October 5, 2009 "Presidential Physical Fitness Award" presented to him "in recognition of outstanding physical achievement and exceptional dedication to the ideal of a sound mind in a strong body" through a "program of the President's Council on Physical Fitness and Sports." The petitioner's "Table of Exhibits" states that the petitioner received this award as "part of the President's Challenge program."<sup>3</sup> There is no documentary evidence showing that the

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<sup>3</sup> The website of the President's Council on Physical Fitness and Sports states: "The President's Challenge is a program that encourages all Americans to make being active part of their everyday lives. No matter what your activity and fitness level, the President's Challenge can help motivate you to improve. Start earning Presidential awards for your daily physical activity and fitness efforts. Click on the appropriate age group and sign up today (Kids, Teens, Adults, Seniors). Click Educators or Groups to learn how to adapt the President's Challenge to your special educational need or group program." *See* [http://www.fitness.gov/home\\_pres\\_chall.htm](http://www.fitness.gov/home_pres_chall.htm), accessed on November 16, 2011, copy incorporated into the record of proceeding. According to the President's Challenge

petitioner's Presidential Physical Fitness Award is a nationally or internationally recognized award for excellence in taekwondo coaching.

The director found that the petitioner had failed to submit evidence showing that he has received nationally or internationally recognized prizes or awards for excellence as a coach and headmaster of taekwondo. On appeal, counsel argues that the director erred by failing to consider "the awards earned by [the petitioner's] students in Taekwondo competitions, both in Korea and the United States." The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires documentation of "the alien's receipt" of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Prizes or awards received by individuals other than the petitioner himself do not meet the plain language requirements of the regulation. The AAO finds that the director's analysis was consistent with the relevant regulatory language set forth in the criteria at 8 C.F.R. § 204.5(h)(3). "[N]either USCIS nor an AAO may unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5." See *Kazarian v. USCIS*, 596 F.3d at 1121 (citing *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir. 2008)). Awards received by the petitioner's students in various athletic competitions do not equate to his receipt of those prizes. Nevertheless, the awards received by athletes the petitioner has coached will not be ignored and shall be considered later in this decision under the category of evidence at 8 C.F.R. § 204.5(h)(3)(v) and again in the final merits determination.

As there is no evidence demonstrating that the petitioner has received nationally or internationally recognized prizes or awards for excellence in coaching or taekwondo instruction, the petitioner has not established that he meets this regulatory 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 submitted his 2008 USA Taekwondo Membership Card, but there is no evidence (such as bylaws or rules of admission) showing that USA Taekwondo requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

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website, students achieving a standardized physical fitness test score "at or above the 85th percentile on all five activities" are eligible to receive the "Presidential Physical Fitness Award." See <http://www.presidentschallenge.org/challenge/physical/benchmarks.shtml>, accessed on November 16, 2011, copy incorporated into the record of proceeding. "Presidential Physical Fitness Award" certificates are available for purchase online through the President's Challenge website for \$0.50. See <https://www.presidentschallenge.org/shop/product.php?i=15>, accessed on November 16, 2011, copy incorporated into the record of proceeding.

The petitioner submitted a “Dan Certificate” from the President of the Kukkiwon (World Taekwondo Headquarters) indicating that the petitioner earned his 6<sup>th</sup> Dan (Sixth Degree) Black Belt designation on April 20, 2009. The petitioner’s certificate states: “This is to certify that [the petitioner] has successfully completed the Dan promotion test by Kukkiwon.” The petitioner also submitted a July 2, 2009 letter from the Secretary General of the World Taekwondo Federation stating:

In order to obtain a Dan ranking, an athlete must possess mastery in the field, show good results in tournaments as well pass rigorous exams. The higher the Dan level a person has achieved equates his superior abilities in the discipline.

In the United States . . . there are only 902 individuals that hold 6<sup>th</sup> Dan black belt . . . .

In response to the director’s request for evidence, the petitioner submitted May 4, 2010 statistics from the Kukkiwon entitled “Current Numbers of Dan/Poomse by Evaluated Regions (by country).” According to the submitted data, 4,090,121 taekwondo practitioners worldwide (including youth) obtained a Dan ranking from the Kukkiwon and 7,530 were certified as attaining the 6<sup>th</sup> Dan. The data also indicates that 3,117 practitioners worldwide achieved 7<sup>th</sup> Dan, 1,098 achieved 8<sup>th</sup> Dan, and 499 achieved 9<sup>th</sup> Dan. Information regarding the number of worldwide practitioners who have attained the 10<sup>th</sup> Dan was omitted. In Korea, 3,740,931 taekwondo practitioners in the country obtained a Dan ranking and 4,867 were certified as attaining the 6<sup>th</sup> Dan. The data also indicates that in Korea 1,773 practitioners achieved 7<sup>th</sup> Dan, 771 achieved 8<sup>th</sup> Dan, and 387 achieved 9<sup>th</sup> Dan. Information regarding the number of practitioners in Korea who have attained the 10<sup>th</sup> Dan was omitted. In the United States, 85,311 taekwondo practitioners in the country obtained a Dan ranking from the Kukkiwon and 973 were certified as attaining the 6<sup>th</sup> Dan. The data also indicates that in the United States 576 practitioners achieved 7<sup>th</sup> Dan, 162 achieved 8<sup>th</sup> Dan, and 70 achieved 9<sup>th</sup> Dan. Information regarding the number practitioners in the United States who have attained the 10<sup>th</sup> Dan was omitted.

On appeal, counsel argues that in Korea “only 4,867 or .13% have 6<sup>th</sup> Dan membership.” Counsel’s calculation does not account for those who have attained the higher 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> Dan level certifications. Nevertheless, the issue for this regulatory criterion is not the percentage of taekwondo practitioners who have attained 6<sup>th</sup> Dan certification, but rather whether the petitioner holds membership in an association requiring outstanding achievements of its members, as judged by recognized national or international experts.

The petitioner submitted the Promotion Test Regulations as posted on the Kukkiwon’s internet site.

“Article 7: Test Performance” states:

1. Each test will consist of practical testing and theoretical study and it will be carried out in the following ways:

\* \* \*

(2) Over 6<sup>th</sup> Dan promotion testing shall conduct the practical and theoretical test. However, for a [sic] applicants staying abroad, practical test shall be conducted and recommended by the instructor who is recognized by the Kukkiwon [sic] or Member National Association. However one should submit a treatise not less than 10 page of A4 size . . . paper in Korean, English, French, German or Spanish with the application forms. Subject will be determined separately.

\* \* \*

4. Applicants worldwide for 8<sup>th</sup> and 9<sup>th</sup> Dan promotion should take physical performance test at the Kukkiwon . . . .

“Article 8: Time & Age Limits for Poom or Dan Promotion” states:

Poom/Dan	Minimum Time Required for Promotion	Age Limits for Promotion Start from Poom
1 <sup>st</sup> Dan	N/A	N/A
1 <sup>st</sup> to 2 <sup>nd</sup> Dan	1 year	15 years and above
2 <sup>nd</sup> to 3 <sup>rd</sup> Dan	2 year	15 years and above
3 <sup>rd</sup> to 4 <sup>th</sup> Dan	3 year	18 years and above
4 <sup>th</sup> to 5 <sup>th</sup> Dan	4 year	22 years and above
5 <sup>th</sup> to 6 <sup>th</sup> Dan	5 year	30 years and above
6 <sup>th</sup> to 7 <sup>th</sup> Dan	6 year	36 years and above
7 <sup>th</sup> to 8 <sup>th</sup> Dan	8 year	44 years and above
8 <sup>th</sup> to 9 <sup>th</sup> Dan	9 year	53 years and above
9 <sup>th</sup> to 10 <sup>th</sup> Dan	N/A	60 years and above

\* \* \*

Remarks:

(1) All applicants should have passed the minimum time and age required for promotion.

Article 10 identifies the subjects of the promotion test stating:

1. Test of Techniques
  - (1) Poomsae (Forms)
  - (2) Kyorugi (Sparring)
  - (3) Kyokpa (Power check)
  - (4) Special technique
2. Test of theoretical study (over 4<sup>th</sup> Dan applicant)
  - (1) Written examination
  - (2) Thesis

“Article 12: Scoring the Test” states:

1. Scoring for the test shall be performed by means of attached forms and the main principles are as follows:
  - (1) The members of the promotion board should be consisted of an odd number (3 or 5 persons) and shall score the player within 100 points.
  - (2) One who obtains over 60 points will be passed and under 59 points will be failed.

Satisfying practical testing requirements, theoretical testing requirements, and minimum time and age promotion requirements are not tantamount to outstanding achievements. Further, the AAO is not persuaded that attaining a Dan level through successful demonstration of skills or knowledge in a promotion test constitutes membership in an association. Moreover, while the petitioner has met the time and skill requirements necessary to attain his 6<sup>th</sup> Dan level certification, there is no evidence showing that the World Taekwondo Federation or the Kukkiwon require attainment of a 6<sup>th</sup> Dan ranking for admission to membership.<sup>4</sup>

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “membership in associations” in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of “letter(s).” Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS’ ability

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<sup>4</sup> For instance, there is no evidence showing that lower Dan levels are excluded from their membership bodies.

to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at \*1, \*12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*1, \*10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, even if the petitioner were to establish that his 6<sup>th</sup> Dan level certification from the Kukkiwon meets the elements of this regulatory criterion, which it does not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of the petitioner’s membership in more than one association requiring outstanding achievements of its members, as judged by recognized national or international experts.

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

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. 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.<sup>5</sup>

The petitioner submitted various newspaper articles from the 1990s mentioning his performances as a taekwondo competitor. With regard to the preceding articles, the record contains an October 27, 2009 “Certification of Translation” from [REDACTED] stating: “This is to certify that I am fluent in the Korean and English languages and that I translated the documents pertaining to [the petitioner] to the best of my abilities from the Korean to English languages.” However, it is unclear which of the articles, if any, to which the translator certification pertains. The submission of a translation certification that does not specifically identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3), which requires that any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. In response to the director’s request for evidence, the petitioner submitted an additional translator certification from [REDACTED] dated May 5, 2010. [REDACTED] certification identifies “South Korean Newspaper Publication Information Translations” as the material translated, but her certification does not

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<sup>5</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

specifically list each of the translated documents. Moreover, [REDACTED] translator certification appears to relate to documents printed from Korean publishers' websites providing distribution information for their newspapers rather than the published material written about the petitioner.

Many of the articles submitted by the petitioner are about his team in general or tournaments in which he participated and the articles only briefly mention his results along with those of the other participants. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii), however, requires that the published material be "about the alien." *See, e.g., Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1,\*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). For instance, the petitioner submitted an article in *Korean Daily* entitled "City of Young Chung Wins the Finals," but the article only briefly mentions the petitioner. Further, the date of the article was not provided as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Similarly, an October 23, 1997 article entitled "Taekwondo Dynasty is Born!" includes a photograph of the petitioner and six others, but the article is not about the petitioner. Further, the author of the article was not identified as required by the plain language of this regulatory criterion.

The petitioner submitted a May 8, 1991 article about him in [REDACTED] but the author of the material was not identified and the English language translation accompanying the article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). The petitioner's evidence included additional newspaper articles submitted by the petitioner, but none of the articles meet all of the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). For example, the remaining articles were deficient in that they did not include a date or an author, they were not about the petitioner, they lacked a full English language translation in compliance with the regulation at 8 C.F.R. § 204.5(h)(3)(iii), or they lacked evidence that they were published in major media. Moreover, none of the Korean language articles relate to the petitioner's work in coaching and instruction, the field for which classification is sought. The plain language of this regulatory criterion requires "published material about the alien . . . in the field for which classification is sought." There is no evidence indicating that the petitioner seeks to continue work in the United States as a taekwondo competitor. As previously discussed, the statute and regulations require that the petitioner seeks to continue to work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, published material about the petitioner's achievements as a taekwondo competitor does not meet the elements of this regulatory criterion for purposes of establishing his extraordinary ability as a coach.

The petitioner submitted a captioned photograph identifying him and more than a dozen other individuals from his taekwondo school in the February 13, 2003 issue of *The Trumbull Times*. The plain language of this regulatory criterion requires "published material about the alien" including "the title, date and author of the material." The captioned photograph does not meet these requirements. Further, there is no circulation evidence showing that *The Trumbull Times* qualifies as a form of major media.

The petitioner submitted a March 20, 2003 article in *The Courier* entitled "Osterberg breaks boards, earns black belt." The article is about 13-year-old [REDACTED] earning his black belt at Park's World Champion Taekwondo and the article only mentions the petitioner in passing. Moreover, there is no evidence showing that *The Courier* qualifies as a form of major media.

In light of the above, the petitioner has not established that he meets this regulatory 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 the following:

1. Certificate of Appreciation from the President of the Connecticut Taekwondo Association thanking the petitioner for his "Service as a Referee in [REDACTED]";
2. Appreciation Award from the 2006 New York State Taekwondo Championship presented to the petitioner in appreciation of his "hard work dedication to Taekwon Do";
3. Certificate of Appreciation from the President of the Rhode Island State Taekwondo Association thanking the petitioner for his "Service as a Referee in The 22<sup>nd</sup> Rhode Island Open Taekwondo Championships" (2006);
4. Certificate of Appreciation thanking the petitioner for his "participation and service in making the 6<sup>th</sup> Annual Connecticut Taekwondo Open as success" (2005);
5. Certificate from the President of the Massachusetts State Taekwondo Association thanking the petitioner for his "service as a referee during the 2006 Massachusetts State Taekwondo Open Championships";
6. Certificate of Appreciation from the President of the Rhode Island State Taekwondo Association thanking the petitioner for his "Participation and Service to The Rhode Island State & Open Taekwondo Championship" (2004);
7. Certificate of Appreciation presented to the petitioner by the President of the Massachusetts State Taekwondo Association stating: "For Your Outstanding Dedication and Tireless Contribution To The Massachusetts State Taekwondo Association. In recognition of your efforts & devotion to the promotion of the art of Taekwondo in the United States";
8. Certificate of Appreciation presented to the petitioner by the President of Young-In University stating: "With our Deepest Appreciations; To Your Support and Dedications; Your Leadership is Highly Recognized, And Valued By The Taekwondo Community 1<sup>st</sup> Young-In University Taekwondo Championships At : Harvard University, Boston" (2003).

None of the preceding certificates states that the petitioner participated as a "judge" of the work of others in his sport. Items 1, 3, and 5 thank the petitioner for his "service as a referee" and items 2, 4, and 6 – 8 thank the petitioner for his hard work, dedication, participation, service,

tireless contribution, support, efforts, devotion to the promotion of taekwondo, and leadership. Items 2, 4, and 6 – 8 do not provide specific information regarding the petitioner’s activities at the championships or otherwise establish his participation, either individually or on a panel, as a judge of the work of others in his field.

In response to the director’s request for evidence, the petitioner submitted letters of support from the President of the Massachusetts State Taekwondo Association and the President of the Rhode Island Taekwondo Association confirming that the petitioner participated as a “referee” in their states’ Taekwondo championships. Regarding the certificates thanking the petitioner for his participation as a “referee” at the 30<sup>th</sup> Connecticut Taekwondo Championships in 2006 (item 1), the 22<sup>nd</sup> Rhode Island Open Taekwondo Championships in 2006 (item 3), and the Massachusetts State Taekwondo Open Championships in 2006 (item 5), the petitioner has not established that serving as a “referee” equates to participating as a “judge” of the work of others. The petitioner’s response to the director’s request for evidence included a May 4, 2010 letter from Jun Bang Yang, Secretary General, Korea Taekwondo Association, stating:

Winners in Taekwondo competitions are determined immediately after competition. A referee and three judges officiate each match. *Judges award points* for every valid execution by an athlete (kicks landed to the opponent’s head and body, or punches to the body). Judges immediately tally all valid points used to determine the winner of the competition. The referee declares the start and end of a match, as well as the winner and loser. The *referee* controls the tournament and gives warnings, penalties, and point deductions, *but does not award points*.

[Emphasis added.]

The petitioner’s response also included the World Taekwondo Federation’s “Competition Rules & Interpretation.”

“Article 3 Competition Area” states:

2. Indication of Positions

1) Position of the Referee: The position of the Referee shall be marked at a point 1.5m back from the center point of the Contest Area to the 3rd Boundary Line and designated as the Referee’s Mark

2) Position of the Judges

The position of the 1st Judge shall be marked at a point 0.5m from the corner of boundary line #1 and boundary line #2. The position of the 2nd Judge shall be marked at a point 0.5m from the corner of boundary line #2 and boundary line #3. The position of the 3rd Judge shall be marked at a point 0.5m from the corner of boundary line #3 and boundary line #4. The position of the 4th Judge shall be marked at a point 0.5m from the corner of boundary line #4 and boundary line #1.

“Article 13 Scoring and Publication” states:

2) Valid points scored to the head shall be recorded by each judge using the electronic scoring instrument or judges scoring sheet.

4. In the case of scoring with an electronic scoring instrument or on a judge’s scoring sheet, valid points shall be those recognized by at least three or more judges.

\* \* \*

(Explanation #2)

Immediately recorded and publicized: A point having been awarded by the judges shall be immediately publicized on the scoreboard.

(Explanation #3)

Use of trunk protectors not equipped with electronic sensors: All scoring must be done according to the judge’s own decision. There must be equipment available which is capable of immediately conveying the recorded point to the scoreboard. However, when electronic publication equipment is not available, the points shall be immediately recorded on the judge’s scoring sheet and publicized at the end of the round.

(Explanation #4)

The use of electronic trunk protectors: Scoring techniques striking the body protector will be automatically recorded. Judges will award points resulting from face attacks or scoring attacks on areas outside of the scoring targets of the trunk protectors.

(Guideline for officiating)

The Judges will abide by the principle of immediate scoring regardless of the scoring system. Awarding a point at the end of the round is a violation of this regulation.

“Article 14 Prohibited Acts and Penalties” states:

1. Penalties on any prohibited acts shall be declared by the referee.

“Article 20 Refereeing Officials” states:

2. Duties

1) Referee

(1) The referee shall have control over the match.

(2) The referee shall declare “ , winner and loser, deduction of points, warnings and retiring. All the referees’ declarations shall be made when the results are confirmed.

- (3) The referee shall have the right to make decisions independently in accordance with the prescribed rules.
- (4) In principle, the center referee shall not award points. . . .
- (5) In case of a tie or scoreless match, the decision of superiority shall be made by all refereeing officials after the end of four (4) rounds . . . .

## 2) Judges

- (1) The judges shall mark the valid points immediately.
- (2) The judges shall state their opinions forthrightly when requested by the referee.

According to the World Taekwondo Federation's Competition Rules and the May 4, 2010 letter from the Secretary General of the Korea Taekwondo Association, referees have control over the match, but do "not award points" to the competitors. It is the judges who evaluate the competitors, assess points, and ultimately determine the outcome of a match. The responsibility of the referee, on the other hand, is to ensure that rules and procedures are being followed and that the match is safe and fair. A referee whose primary responsibility is to observe a competition and ensure that rules or proper procedures are followed is not judging the work of others in the context of this regulatory criterion. In this case, there is no evidence showing that during his participation as a referee, the petitioner judged the work of others. Moreover, there is no documentary evidence showing the specific event categories refereed by the petitioner and the names of the participating athletes.

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

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

The petitioner submitted a "Certificate of Taekwondo Experience" and a "Certificate of Teaching Experience" from the President of the Korea Taekwondo Association. The Certificate of Taekwondo Experience states that the petitioner coached [REDACTED]. The Certificate of Teaching Experience indicates that the petitioner served as "Head Coach" of the [REDACTED] and identifies ten athletes coached by him. The Certificate of Teaching Experience lists the petitioner's athletes' names and specifically identifies national competitions in which they placed among the top three finishers while under the petitioner's direct tutelage in Korea from 2002 – 2003. The petitioner also submitted a May 4, 2010 letter from the Secretary General of the Korea Taekwondo Association identifying and discussing national taekwondo competitions in Korea in which petitioner's students received awards (such as the President's Flag Taekwondo Championship and the Selection Tournament for Korean National Delegates). The petitioner's evidence also includes online material from the Korea Taekwondo Association's website confirming the significance of the competitions.

██████████ Head Coach of the Taekwondo teams for Gyeongsangbuk-do (also known as Gyeongbuk) province in Korea, states:

As Head Coach of the province, I select the Head Coaches for the cities of Gyeongbuk. Qualifications of selected head coaches for the cities are then forwarded to the respective mayor for approval. . . . I . . . selected [the petitioner] to coach the male Yeong Cheon City Hall Taekwondo Team.

When [the petitioner] was Head Coach of the Yeong Cheon City male team, there were 10 members in the team, and all 10 have placed in national competitions! This was an outstanding feat! . . . All of [the petitioner's] players have won a gold, or silver or bronze medal at the Presidential Flag Taekwondo Championships, National Sports Festival, and the Selection Tour for National Delegates. These competitions are all national in scope and participated by thousands of top Korean athletes. To this day, the Yeong Cheon City Taekwondo team has never quite equaled the overall performance achieved by the team when [the petitioner] served as Head Coach.

As Taekwondo Head Coach for Gyeongsangbukdo, I am tremendously proud to have selected [the petitioner] to serve as ██████████

The petitioner submitted a May 8, 2010 letter from ██████████ Chief Executive Officer, USA Taekwondo, the national governing body of Taekwondo for the United States Olympic Committee, stating: "Some of [the petitioner's] students have participated and won at the U.S. Open and Junior Olympics, including: ██████████ and ██████████

In support of ██████████ letter, the petitioner submitted an award certificate from the 2007 U.S. Open Taekwondo Championships stating that ██████████ "won Gold in Sparring 14-17 Female Black 59.1 – 63.0 kgs (Middle)." The petitioner also submitted two certificates from the 2005 Junior Olympic Taekwondo Championships for Leah Shipchack in the 14-15 age group reflecting that she won gold medals in "World Sparring" and "Elite Sparring," but these awards were in the lesser "Red" belt division. The petitioner's evidence included a "Participation Certificate" reflecting that ██████████ participated in the 8-9 age group at the 2005 Junior Olympic Taekwondo Championships in the lesser "Red" belt division, but there is no evidence showing that he earned a medal by placing in the top three in his competitive category. The petitioner also submitted award certificates reflecting that ██████████ won the gold in Sparring in the 8-9 age group and that ██████████ won the bronze in Sparring in the 12-13 age group at the 2004 Junior Olympic Taekwondo Championships, but both of their awards were in the lesser "Red" belt division. The petitioner's evidence included additional awards received by his U.S. students, but these remaining awards were from local or regional competitions rather than nationally recognized taekwondo championships.

The AAO finds that the medals won by the petitioner's students in Korean national competitions from 2002 – 2003 and that the gold medal won by his student [REDACTED] in the 14-17 age group "Black" belt division at the 2007 U.S. Open Taekwondo Championships are sufficient to demonstrate that the petitioner meets this regulatory criterion as a coach.

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

On appeal, counsel argues that the petitioner performed in a leading or critical role for the Yeong Cheon City Hall Taekwondo Team. As previously discussed, the petitioner submitted a "Certificate of Teaching Experience" from the President of the Korea Taekwondo Association showing that the petitioner served as [REDACTED] and identifying the athletes coached by him. The petitioner also submitted a letter from [REDACTED] stating that the petitioner served as [REDACTED]. The preceding documentation indicates that the petitioner performed in a leading or critical role as Head Coach for the Yeong Cheon City Hall Taekwondo Team, but the evidence submitted by the petitioner is not sufficient to demonstrate that the team had a distinguished reputation during the petitioner's tenure as its coach.

The petitioner submitted a letter of support from [REDACTED] former President of the U.S. National Collegiate Taekwondo Association and Senior Lecturer, Department of Kinesiology, Iowa State University, asserting that the Yeong Cheon City Hall Taekwondo Team "is considered among the most celebrated teams in Korea." The petitioner also submitted a letter from [REDACTED] 1992 Olympic Gold Medalist and operator of World Champion Tae Kwon Do in Oregon, stating that the Yeong Cheon City Hall Taekwondo Team "is one of the most prestigious teams in Korea." The letters from [REDACTED] and [REDACTED] however, do not point to specific evidence to support their assertions. The letter of support from Jong Wook Yoon states: "There are bigger cities in Gyeongbuk, which have more athletes and therefore more opportunities to win in national Korean competitions, but none have topped Yeong Cheon City's performance under [the petitioner's] leadership." The record does not include documentary evidence to support the preceding claims. For instance, the petitioner failed to submit official competitive results (such as comprehensive team rankings or team points comparisons) distinguishing the Yeong Cheon City Hall Taekwondo Team's results from those of other successful Korean taekwondo teams. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Further, 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

In response to the director's request for evidence of the Yeong Cheon City Hall Taekwondo Team's distinguished reputation, the petitioner submitted a printout of Google search results (ten entries) for the term "Yeongcheon City Taekwondo Team." Without copies of the full articles

identified in the Google search, the AAO cannot conclude that the team had a distinguished reputation in relation to other city taekwondo teams in Korea. Further, the Google search results identified articles from 2009 and 2010 which fail to demonstrate that the Yeong Cheon City Hall Taekwondo Team had a distinguished reputation during the petitioner's tenure as head coach from 2002 – 2003. Aside from the petitioner's failure to demonstrate that the Yeong Cheon City Hall Taekwondo Team had a distinguished reputation when he coached the team, the record does not include evidence documenting the petitioner's leading or critical role for any other organizations or establishments with a distinguished reputation. As previously discussed, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the submission of evidence that the alien has performed in a leading or critical role for "organizations or establishments" in the plural. Therefore, even if the petitioner were to submit supporting documentary evidence showing that the Yeong Cheon City Hall Taekwondo Team had a distinguished reputation, which he has not, the plain language of this regulatory criterion requires evidence of a leading or critical role for more than one distinguished organization or establishment.

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

#### *Summary*

The AAO concurs with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

#### ***B. Final Merits Determination***

The AAO will next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-20. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the AAO's discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (iv) and (viii).

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), this decision has already addressed why the awards post-dating the petitioner's competitive athletic career do not rise to the level of nationally or internationally recognized awards for excellence in the field. There is no evidence demonstrating that the petitioner has received nationally or internationally recognized prizes or awards for excellence in coaching or taekwondo instruction. Regarding the awards received by the petitioner as a taekwondo athlete,

there is no evidence indicating that the petitioner has received any awards in national or international competition subsequent to the 1990s. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim has been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) is not commensurate with *sustained* national or international acclaim as of the petition's March 26, 2010 filing date.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), as previously discussed, there is no evidence showing that the petitioner holds membership in associations that require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field. Regarding the petitioner's "Dan Certificate" indicating that he earned his 6<sup>th</sup> Dan, the AAO cannot conclude that satisfying practical testing requirements, theoretical testing requirements, and minimum time and age promotion requirements for a Dan ranking are tantamount to outstanding achievements. The petitioner has not established that his memberships are indicative of or consistent with sustained national acclaim.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii), all of the petitioner's submissions were deficient in at least one of the regulatory requirements such as not including a date or an author, not being about the petitioner or his coaching, or not being accompanied by evidence that they were published in major media. Further, the English language translations of the articles submitted by the petitioner do not comply with the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, there is no evidence indicating that the petitioner has been the primary subject of published material since the 1990s. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim has been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) is not commensurate with *sustained* national or international acclaim as of the petition's filing date.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(iv), the petitioner has not established that serving as a "referee" in taekwondo competitions equates to participating as a "judge" of the work of others. Further, there is no evidence showing that the petitioner's participation in statewide or regional competitions is indicative of national or international acclaim. The petitioner failed to submit evidence demonstrating that he judged top taekwondo competitors at the national or international level rather than youth or intermediates at the local or regional level. *Cf.*, *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994); 56 Fed. Reg. at 60899 (USCIS has long held that has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability"). The documentation submitted by the petitioner does not establish that his level of judging is commensurate with national or international acclaim at the very top of the field. Moreover, there is no documentary evidence of the petitioner's participation as a judge or referee subsequent to 2006. The statute

and regulations, however, require the petitioner to demonstrate that his national or international acclaim has been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iv) is not commensurate with *sustained* national or international acclaim as of the petitioner's filing date.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v), the AAO acknowledges that athletes coached by the petitioner have received awards in national taekwondo competitions. For example, the petitioner submitted an award certificate from the 2007 U.S. Open Taekwondo Championships stating that [REDACTED] "won Gold in Sparring 14-17 Female Black 59.1 – 63.0 kgs (Middle)." The petitioner also submitted evidence of awards received by his U.S. students at the Junior Olympic Taekwondo Championships in the lesser "Red" belt division. Awards won by the petitioner's athletes in junior, intermediate, or age-restricted competitive categories do not establish that his coaching places him among "that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability." *Matter of Price*, 20 I&N Dec. at 954; 56 Fed. Reg. at 60899. Likewise, it does not follow that a taekwondo coach who has had success coaching athletes in age-group, Junior Olympic, or Red belt level competition should necessarily qualify for approval of an extraordinary ability employment-based immigrant visa petition. The AAO notes 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 [REDACTED] ability with that of all the hockey players at all levels of play; but rather, [REDACTED] 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.

The court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. 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." Further, there is no documentary evidence showing that athletes under the petitioner's principal tutelage have received national or international awards in top taekwondo competitions subsequent to February 2007. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim as a coach has been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) is not commensurate with *sustained* national or international acclaim as of the petitioner's March 26, 2010 filing date.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner has not established that he has performed in a leading or critical

role for organizations that have a distinguished reputation. Moreover, the AAO notes that the petitioner's role as head coach for the Yeong Cheon City Hall Taekwondo Team ended when he came to the United States in November 2003. There is no documentary evidence establishing that the petitioner has performed in a leading or critical role for an organization with a distinguished reputation since his arrival in the United States. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim as a coach has been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii) is not commensurate with *sustained* national or international acclaim as of the petitioner's filing date.

The petitioner's evidence included several letters of support discussing the petitioner's achievements as taekwondo competitor, instructor, and coach. The content of many of these letters has already been discussed under the pertinent regulatory criteria at 8 C.F.R. § 204.5(h)(3). While the recommendation letters submitted by the petitioner provide important details about his experience and activities, they 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 (Comm'r 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 795-796; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a taekwondo coach or instructor who has sustained national or international acclaim at the very top of the field.

The AAO notes that many of the petitioner's references' credentials are far more impressive than those of the petitioner. For example, Sun H. Kim, who holds the title of Grandmaster, states:

I am the [REDACTED]

\* \* \*

I hold 8<sup>th</sup> Dan degree Black belts in Taekwondo, Hapkido, Yudo and Kumdo, and served as a Taekwondo and Hand-to-Hand Combat Instructor with the Korean Special Forces. I am also currently serving as [REDACTED]

██████████ states that he coached “the U.S. team that went to the World Junior Taekwondo Olympics” and that he was “the former Head Coach of the Mexico Taekwondo Team.”

██████████ states:

I was ██████████ under the USA Taekwondo. . . . I am the three-time recipient of the NCTA Coach of the Year award, and coached the United States National Taekwondo Team in numerous international tournaments, including the Pan-American Championships and Goodwill Games with Mexico and Ukraine.

██████████ is the owner of ██████████ and holds the title of Grand Master. ██████████ states that he is ██████████ holds an 8<sup>th</sup> Dan degree black belt, and received the “Developmental Coach of the Year” award from the U.S. Olympic Committee.

██████████ states:

I am one of the few 9<sup>th</sup> Dan degree black belts (Certified by Kukkiwon, World Taekwondo Headquarters). During my tenure as President of the United States Taekwondo Union (now known as USA Taekwondo), I was instrumental in securing for Taekwondo the official sanction and elevating Taekwondo to Class A Status of the United States Olympic Committee and supporting of the International Olympic Committee. I have been . . . Head of U.S. Team for numerous international events. My current positions include National President, United States Taekwondo Instructor’s Union (1991-present) and President and Tournament Chairman of the Annual U.S. Cup Taekwondo Tournament. Also I have been a Member of Team Service Committee of the United States Olympic Committee.

██████████ states that he is a 1992 Olympic Gold Medalist, that he was on the Korean National Team for a decade, that he was Team Captain of the National Team at the Sydney Olympic Games, and that his name ██████████

██████████ states that he is a 7<sup>th</sup> dan Taekwondo Master and ██████████. He further states:

I have won numerous Taekwondo championships in Korea and also took the World Games Championship Title in Taekwondo in 1981. I have been twice awarded with the Medal of Honor by the President of Korea for my contributions to Taekwondo. I trained players at Korean National University from 1987 to 1990. In 1990, I moved to the U.S. and opened my first Taekwondo school in Solon, OH. In 2000, I served as the U.S. National Team Coach at the 12<sup>th</sup> Pan American Taekwondo Championships held on December 7-9, 2000 in Oranjestad, Aruba. I was also the U.S. National Collegiate Head

Coach for 2002. In 2008, I served as the American Taekwondo United (ATU) National Team Coach. At present, I am the ATU Secretary General.

states:

In 2000, I was appointed coach of the Korean Junior Taekwondo National Team. As the players I coach continue to do extremely well under my guidance, I was approached by the Philippine Taekwondo Association to serve as head coach and mentor of their national team. I gladly accepted the position and led the Philippine National Taekwondo Team from 2002-2004. I served as

While the petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought, it appears that the very top of his field of endeavor is above the level he has attained. The petitioner has not established that his achievements at the time of filing were commensurate with sustained national or international acclaim as a competitive athlete or a taekwondo coach, or being among that small percentage at the very top of the field of endeavor. The submitted evidence is not indicative of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The conclusion the AAO reaches by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

### ***C Prior O-1 Nonimmigrant Visa Status***

The AAO notes that the alien is the beneficiary of approved O-1 nonimmigrant visa petitions for an alien of extraordinary. These prior approvals do not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. Each case must be decided on a case-by-case basis upon review of the evidence of record. 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 (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 alien'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'r 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 alien, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, \*1, \*3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

#### **IV. Conclusion**

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

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.