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FILE: LIN 04 037 54758 Office: NEBRASKA SERVICE CENTER Date: JAN 09 2006

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Nebraska Service Center Director denied the nonimmigrant visa petition. A subsequent appeal was rejected by the director as untimely filed; however, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2), the director treated the late appeal as a motion and affirmed his prior decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a “regional consulting company that lends its martial arts and business expertise to over twenty-three Taekwondo schools and programs in the Chicago area.” The petitioner seeks O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in athletics. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a master-consultant of taekwondo.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary has sustained recognition as being one of a small percentage at the very top of his field of endeavor.

The record consists of a petition with supporting documentation, a request for additional documentation and the petitioner's reply, the director's decision, an untimely appeal treated by the director as a motion and the director's decision affirming his original decision, and an appeal.

On appeal, counsel cites several unpublished AAO decisions. However, it is unclear as to how these decisions support or distinguish the present petition. Further, while 8 C.F.R. § 103.3(c) provides that precedent decisions of Citizenship and Immigration Services (CIS) are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who has arisen to the very top of the field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). 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. § 214.2(o)(3)(iii). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a master martial arts instructor. The regulation at 8 C.F.R. § 214.2(o)(3)(iii) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, nationally or internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines eight criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

The regulation at 8 C.F.R. § 214.2(o)(1)(ii)(1) requires the beneficiary to “continue work in the area of extraordinary ability.” The beneficiary intends to work as an instructor or coach in the United States. While a martial arts competitor and a coach certainly share knowledge of the sport, the two rely on very different sets

of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Nevertheless, recently this office has recognized that there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is appropriate. In a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the petitioner's area of expertise. Specifically, in such a case, we will consider the level at which the alien acts as coach. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not. Thus, we will examine whether the petitioner has demonstrated the beneficiary's extraordinary ability as a coach or as an athlete. If the beneficiary has demonstrated extraordinary ability as an athlete, we will consider the level at which he has successfully coached.

The petitioner has submitted evidence that, it claims, satisfies the following criteria:¹

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

The petitioner's letter accompanying the petition contains many instances where space for additional information, apparently left by counsel to be completed by the petitioner, is left blank. One such instance was the information regarding the beneficiary's receipt of nationally or internationally recognized prizes or awards for excellence. The petitioner alleged that the beneficiary had won several national and international awards for his performance in taekwondo; however, the petitioner did not specify any of these awards. Documentation submitted included a certificate indicating that the beneficiary won a gold medal in the middle weight forms division at the 12th annual U.S. Open Taekwondo Championship in February 2003, and a certificate indicating that he was a first place winner in the "black belt poomse division" at the "11th USNTF International Taekwondo Championships" held three days later. In a letter dated February 16, 2004, Y.M. Park, who states that he is vice president of the United States Tae Kwon Do Union, stated that the U.S. Open Championships and the International championships are "internationally acclaimed competitions. The awarding of a gold medal and 1st place awards demonstrates the extraordinary talents of" the beneficiary. However, the petitioner submitted no other evidence regarding the two events and submitted no documentary evidence to corroborate that these awards are nationally or internationally recognized awards for excellence in the field of taekwondo.

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

In his letter accompanying the petitioner's response to the director's request for evidence (RFE) dated January 21, 2004, counsel stated that the "Request for Evidence admits that the beneficiary has received several awards for his individual achievements as well as a 4th Dan Black Belt." The petitioner submitted a copy of a certificate indicating that the beneficiary received a "presidential sports award" in October 2003, which was awarded by the President's Council on Physical Fitness & Sports, a citation from the World Taekwondo Federation in December 2001 in recognition of his "dedicated service and outstanding contribution to the development of Taekwondo," and a November 2003 citation from the Illinois Korean American Taekwondo Association for his "dedicated service and outstanding contribution to the development" of that organization. None of this recognition suggests that it is internationally or nationally recognized as awards or prizes for excellence in taekwondo.

The petitioner has failed to establish that the beneficiary satisfies this criterion.

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

The petitioner (in another instance in which it fails to fill in the information left blank by counsel) states that the beneficiary meets this criterion based on his membership in the Kukkiwon Academy of Taekwondo in South Korea, which, according to the petitioner's letter, is a "very restrictive and highly selective process." The petitioner submitted a copy of an April 2002 certificate from the Korea Taekwondo Association, certifying that the beneficiary had achieved a status of 5th Dan "at a test conducted in accordance with the rules and regulations of the Kukkiwon for promotion test." Although the petitioner's letter indicates that only a small number of the millions of taekwondo practitioners have achieved 4th or 5th Dan black belt status, it failed to submit evidence to corroborate its statements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In his November 5, 2003 letter, which serves as the petitioner's required consultation, [REDACTED] a taekwondo master with an 8th Dan black belt, states, "Any teacher of Taekwondo who holds a 4th Dan Black Belt or higher is defined as a Master of Taekwondo by WTF [World Taekwondo Federation] because he/she has demonstrated the knowledge, experience, maturity and skill to pass the rigorous promotional test of the Kukkiwon Academy." However, while the letter indicates that only those who hold a 4th Dan black belt are considered masters of taekwondo, the petitioner submitted no evidence that the beneficiary holds membership in an association that limits its membership to those of outstanding achievements.

The evidence does not establish that the beneficiary satisfies this criterion.

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

The petitioner states that, by virtue of his 5th Dan status, the beneficiary is certified to instruct, test and promote taekwondo students, and that as an instructor in various academies in South Korea, he taught and judged the work of others on a daily basis. The petitioner stated that the beneficiary also holds a referee certificate from the Kukkiwon Academy.

The record contains a copy of a March 17, 2002 "certificate of qualifications" from the Korea taekwondo Association, certifying that the beneficiary had passed the "3rd Gup referee qualifications examinations," and an August 8, 2003 "referee certification" from the United States Taekwondo Union. The petitioner submitted

no evidence, however, that the beneficiary had participated as a judge of any taekwondo competitions. Although the petitioner stated that the beneficiary had served as a taekwondo instructor, it submitted no evidence to corroborate this work. Further, it is an inherent part of an instructor's job to judge the work of his or her students. The petitioner does not allege, and submitted no evidence, that the beneficiary was chosen to judge the work of others based on his standing in the field of taekwondo.

The evidence does not establish that the beneficiary satisfies this criterion.

Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

Although the documentation submitted by the petitioner is unclear, the petitioner appears to claim that the beneficiary meets this criterion based on the proposed salary of \$36,000 per year. However, the petitioner submitted no evidence of the salaries or a comparison of salaries received by those in the practice of taekwondo. The evidence therefore does not establish that the beneficiary satisfies this criterion.

The letters from [REDACTED] attest to the beneficiary's qualifications as a master instructor of taekwondo. However, these attestations, without documentation corroborating that the beneficiary meets any of the regulatory criteria, are not sufficient to establish that the beneficiary is qualified for this preference visa classification.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for extraordinary ability, the statute requires evidence of "sustained national or international acclaim" and evidence that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized. In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements have not risen to this level.

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

ORDER: The appeal is dismissed.