

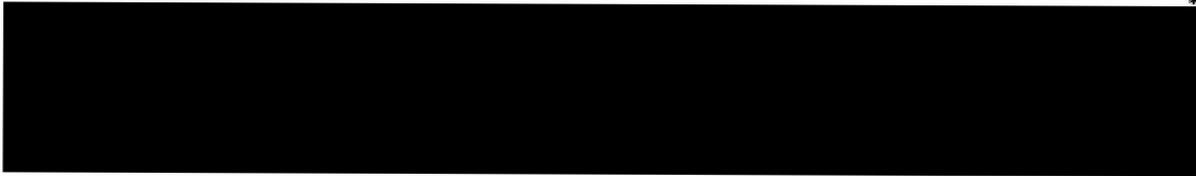
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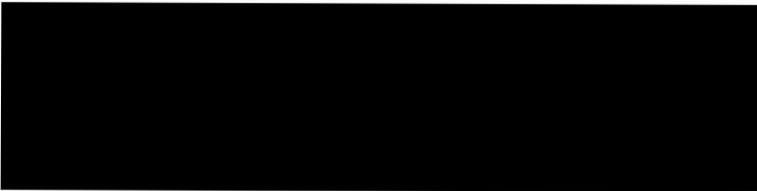
FILE: LIN 05 193 53002 Office: NEBRASKA SERVICE CENTER Date: **JUL 18 2006**

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition in a decision dated March 29, 2006. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner, [REDACTED] seeks O-1 classification of the beneficiary, as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ her in the United States as a taekwondo coach.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has received sustained national or international acclaim as a coach and is that she is one of a small percentage who have risen to the very top of his field of endeavor.

The petitioner submits a timely appeal, dated April 24, 2006, with additional evidence.

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.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

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

(2) 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;

- (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
 - (4) 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;
 - (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
 - (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
 - (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
 - (8) 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.
- (C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The beneficiary in this matter is a native and citizen of Nepal. The evidence on the record indicates that the beneficiary last entered the United States as a B-2 nonimmigrant visitor on June 13, 2005. The petitioner filed the instant petition in the beneficiary's behalf on June 10, 2005. The petition was denied by the director on March 29, 2006. In denying the petition, the director first determined that the petitioner failed to establish that the proffered petition requires a person of extraordinary ability. We can find no support in the statute or regulations for the director's proposition that the petitioner must establish that the proffered position requires someone of O-1 caliber. We, therefore, withdraw this particular finding of the director.

In addition to the error discussed above, the director's decision also fails to adequately discuss the petitioner's arguments and evidence and the relevant criteria. After careful review of the record, contrary to the director's determination, we find the record sufficient to establish that the beneficiary is an alien with extraordinary ability in athletics.

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

The director found that the petitioner established the beneficiary meets this criterion. We concur with this finding.

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

In his decision, the director indicated that the petitioner had submitted evidence that the beneficiary was “a bona fide member” of the Nepal Taekwondo Association. The director denied the petition, in part, because he determined that the petitioner failed to establish that this association requires outstanding achievements of its members, as judged by recognized national or international experts.

On appeal, although the petitioner acknowledges the director's finding regarding the petitioner's membership in this organization, petitioner does not submit any documentation from the Nepal Taekwondo Association or other pertinent evidence to establish that the association requires outstanding achievements of its members. Instead, the petitioner submits a letter from the [REDACTED] Nepal and a letter from [REDACTED] attesting to the qualifications of the beneficiary. Neither of the letters provides any information regarding the Nepal Taekwondo Association or its membership requirements.

The petitioner has not established that the beneficiary meets this criterion.

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation.

Despite counsel's specific reference to and citation of exhibits related to this criterion and the submission of several published articles which document the beneficiary's receipt of medals, prizes and money, and the fact that she was presented the Subikhayat Trishaktipatta (third) decoration by the King of Nepal, the director failed to discuss this evidence or to make any finding regarding this criterion in his decision.¹ Upon review of the evidence, we find the petitioner has established that the beneficiary meets 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.

As evidence to establish this criterion, the petitioner submitted certificates and other documentation to show that the beneficiary has participated in a “Taekwondo Referee Seminar” and that she has served as a referee at Taekwondo matches. The director found this evidence sufficient to establish that the beneficiary meets this criterion. We do not agree.

¹ Although the director's request for evidence made reference to the submission of “several news articles about the beneficiary, relating to her accomplishments as a Taekwondo competitor,” the director indicated that the articles did not contain the name of the publication, the title, date or author, and did not relate to the beneficiary's accomplishments as a coach. As indicated, we find the evidence contains sufficient detail to establish that the beneficiary has been the subject of published material.

First, the record contains no evidence which demonstrates that the beneficiary actually participated as a referee in any event. The fact that she completed a seminar does not establish her actual participation. The letter from [REDACTED] President of the Nepal Olympic Committee, which indicates that the beneficiary is a “national player and coach, as well as a National Taekwondo Referee” is not sufficient to establish that she has been a referee at any event.

More significantly, even if the petitioner had established that the beneficiary did referee at a taekwondo event, we do not find that in her participation as a referee, she *judged* the work of others. The duties of a referee are not to assess the work or expertise of the individuals involved in the competition. Rather, the responsibility of the referee is to ensure that rules and procedures are being followed and that the match is safe and fair. The referee does not evaluate or judge the skills or qualifications of the participants.

Accordingly, we withdraw the determination of the director and find that the beneficiary does not meet this criterion.

Evidence of the alien’s original scientific, scholarly, or business-related contributions of major significance in the field.

For criterion number five, the petitioner submits numerous letters which praise the beneficiary’s skills as a competitor and coach. However, while we do not dispute the writers’ high opinion of the beneficiary, the record does not contain any evidence which demonstrates that beneficiary made an *original contribution*, such as the introduction of new skills, training techniques or coaching methods, that are *of major significance*, in her field of endeavor.

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

Evidence of the alien’s authorship of scholarly articles in the field, in professional journals, or other major media.

No evidence was submitted in relation to criterion number six.

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

In his decision, the director determined that the beneficiary did not meet this criterion because the petitioner failed to show that the tournaments participated in by the beneficiary did not have a distinguished reputation. The director failed to consider any of the evidence regarding the beneficiary’s employment as a coach.

The record contains evidence that the beneficiary was a coach at the [REDACTED] in Katmandu, Nepal from 2000 to 2004 and the Assistant Coach for the Nepal National Sports Council Training and Coaching Department (NNSCTCD) from 2002 to 2004. The petitioner also submits a letter from [REDACTED] Founder of the Maitri Taekwondo Dojang which indicates that the beneficiary was the chief training coach for the Maitri Taekwondo Dojang for the 1st and 2nd International Friendship Taekwondo Championships. The record, however, is absent evidence which demonstrates that these schools have a distinguished reputation. Moreover, we

do not find that the beneficiary's position as an assistant coach demonstrates that she was employed in a "critical" or "essential" capacity for the NNSCTCD.

Despite our finding regarding the lack of evidence related to the reputation of these schools, we note that the record contains significant evidence which demonstrates that the beneficiary was a coach of Nepal's national team. Specifically, the letter from [REDACTED] President of the Nepal Olympic Committee, indicates that the beneficiary became a national coach in 1998. The record also contains several certificates and copies of credentials which show that the beneficiary was a coach of the national team. We find such evidence sufficient to establish that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

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.

With the initial filing, the petitioner did not provide any argument or offer any evidence to establish that the beneficiary meets this criterion. In the director's request for evidence, the director noted that that the beneficiary's proffered annual salary of \$33,020 did not appear to be considered high in comparison to other coaches or scouts in the Portland, Oregon area. No further evidence was submitted in response to the request for evidence or on appeal.

The petitioner has not established that the beneficiary meets this criterion.

Based upon the above discussion, we find that the petitioner has established that the beneficiary is an alien of extraordinary ability in the field of athletics who has demonstrated sustained national or international acclaim and has satisfied three of the eight criteria.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.