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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

D8

PUBLIC COPY

[redacted]

FILE: LIN 05 262 51156 Office: NEBRASKA SERVICE CENTER Date: NOV 07 2007

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under 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:

[redacted]

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a martial arts training studio. The petitioner seeks to extend the O-1 nonimmigrant classification of the beneficiary, as an alien with extraordinary ability 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 him temporarily in the United States as a Taekwondo coach for a period of one year at an annual salary of $31,200.

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

On appeal, the petitioner submits a brief from counsel and new exhibits.

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 "extraordinary ability" in the field of science, education, business, or athletics as "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."

Pursuant to 8 C.F.R. § 214.2(o)(3)(iii), 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 either:

(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.

In a cover letter accompanying the initial submission, counsel claimed that much of the petitioner's initial documentation qualifies as both "Evidence of Major Internationally Recognized and Lesser Nationally or Internationally Recognized Prizes or Awards." Counsel did not specify which of these exhibits (some of which are not prizes or awards at all) constitute a major internationally recognized award (or awards). The materials so described consist of a job offer letter from the petitioner; a certificate showing that the beneficiary has attained the fifth Dan; and materials relating to medals that the beneficiary has won.

The record indicates that attaining the fifth Dan in Taekwondo is not an award, but rather the foreseeable outcome of a standard process by which Taekwondo practitioners advance from one Dan level to the next. The evidence shows that such advancement is a promotion within the ranks of the sport, but does not establish that the fifth Dan is a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A) or a nationally or internationally recognized prize or award for excellence in the field pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*).

Counsel claimed that the beneficiary "from 1984 through 1996, was one of the best Taekwondo players in the world in his weight class. In 1991 through 1995, he was clearly the best in the world in his weight class." A "Certificate of Taekwondo Experience" from the Korea Taekwondo Association lists medals that the beneficiary won between 1984 and 1996, including a gold medal at the 1991 Taekwondo World Cup. The certificate is dated July 8, 2002, six years after the beneficiary won his last medal in June 1996.

While a number of the described medals appear to be significant, the petitioner has not shown that any of them rise to the level of a major, internationally recognized award, pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A). Furthermore, the petitioner seeks to classify the beneficiary not as a competitive athlete, but as a coach. The beneficiary's past achievements, more than a decade ago, as a *competitor* do not establish a presumption of sustained acclaim and extraordinary ability as a *coach*. *See Lee v. Ziglar*, 237 F.Supp.2d 914 (N.D. Ill. 2002). Nonetheless, given the nexus between competing and coaching, in a case where an alien has clearly achieved

national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national or international level, Citizenship and Immigration Services (CIS) may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. In this case, however, the record does not establish that whatever acclaim the beneficiary may have achieved in the past has been sustained in his subsequent work as a coach.

The petitioner submits "Certificates of Taekwondo Experience" relating to several other athletes. Counsel claimed that these individuals were the beneficiary's students. The certificates do not identify the athletes' coach or coaches. The petitioner has not established that the beneficiary coached these athletes. Even assuming that the beneficiary had coached them at some point, the record does not show when the beneficiary began coaching them. The certificates show medals going back as far as 1992, and there is no evidence that the beneficiary was a coach before 1995. Therefore, it appears that at least some of these athletes, and possibly all of them, were winning competitions before the beneficiary began to coach them. Without evidence to show when the beneficiary began coaching these athletes, there is no way to determine how their performance changed or improved under the beneficiary's tutelage compared with their earlier efforts under other coaches.

The beneficiary also received several certificates for his work as a coach, some of which do little more than verify past coaching experience. Counsel described only one of these certificates in any detail. Regarding a 1997 "Certificate of Honor" from the World Tae Kwon Do Coaches' Society, counsel claimed: "This is awarded to only one coach each year. The honor goes to the coach of the best performing Taekwondo team where the players being coached perform well and receive the highest quality of awards." The body of the certificate in question reads, in its entirety:

The World Tae Kwon Do Coaches' Society
Recognized by the World Tae Kwon Do Federation

Certificate
of
Honor
presented to
[the beneficiary]
in recognition of
your dedicated service and outstanding
contribution to the development of Tae Kwon Do

The beneficiary's name is handwritten into a blank space on the document. The record contains no documentary evidence to support counsel's claims regarding the uniqueness or importance of the certificate.

Other certificates are from local organizations, with no demonstrated national or international recognition. A number of these certificates contain the phrase "dedicated service and outstanding contribution," suggesting that the phrase is not rarely encountered on such documents. A translated "Certificate of Superior Leadership" issued March 25, 1997 by the Seoul Metropolitan Taekwondo Association reads:

> This Certificate of Superior Leadership is presented in recognition of your thorough sense of mission and responsibility for accurate instruction which provided outstanding contribution to the development of Taekwondo. Your dedicated leadership is exemplified to the other leaders, especially during the Taekwondo Individual Competition and Taekwondo Team Competition of and [*sic*] 17th Seoul Metropolitan Ministry of Education.

On December 19, 2005, the director issued a request for evidence (RFE), stating that "the beneficiary's achievements as a taekwondo athlete, while clearly noteworthy, are not relevant to the issue at hand, which is the beneficiary's accomplishments as a taekwondo coach." The director stated that the petitioner's initial submission omitted significant evidence, such as "evidence establishing that the beneficiary served as coach for [the named] athletes."

The petitioner's response to the RFE consisted almost entirely of witness letters rather than first-hand documentation. Some of the petitioner's current students and their parents offer letters; the only letter to include evidence is from [redacted] who submits photographs from a state-level competition in Oregon in 2005. Witnesses in Korea attest, in relatively general terms, to the beneficiary's success in that country, but the petitioner's RFE response does not show that the beneficiary was the coach for the previously named athletes at the time they won their various medals.

[redacted] President of the World Taekwondo Federation (WTF), stated that the beneficiary has coached at "high schools with outstanding Taekwondo teams." WTF Chief Clerk [redacted] stated that the beneficiary served as a Technical Advisor to the National Taekwondo Teams of the Philippines and Mexico in 2001.

Grand Master [redacted] of Sunrise Tae Kwon Do, Clackamas, Oregon, stated: "To my knowledge, the Korean superior leadership award is given to only a few, one to two coaches a year. The significance of the award is highly recognized." The RFE response, however, shows that the beneficiary received three such certificates in the space of fifteen months. [redacted] irector of the Seoul City Taekwondo Association, stated "Generally, only one or two certificates are issued *after any major competition*" (emphasis added). We note that the awarding entity is not any national or international organization, but rather a local (city) association. The petitioner has not established that the certificates are recognized nationally or internationally.

Most of counsel's original arguments concern the beneficiary's documented and claimed awards. The only other regulatory criterion to which counsel referred directly was 8 C.F.R. § 214.2(o)(3)(iii)(B)(*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. Counsel claimed that the beneficiary's "Dan Certificate" from Kukkiwon World Taekwondo Headquarters, showing that the beneficiary attained the fifth Dan in 2004, is "proof of membership [in an] association which requires outstanding achievement." Counsel did not identify the "association" in which the beneficiary purportedly became a member by virtue of his fifth Dan ranking.

Grand Master [redacted] explained the Dan system:

> In taekwondo there are nine Dans. Each level of black belt carries responsibilities and indicates levels of achievement. In order to be an international level coach it is necessary for the coach to have obtained the level of at least fourth Dan. One achieves fifth Dan after having performed successfully in major international competitions as a coach. . . .
>
> Although *the fifth Dan is not rare* there are only eight persons in the greater Portland, Oregon area who have achieved that level

(Emphasis added). The record contains no corroboration, such as official publications from a governing body of Taekwondo, to confirm the claim that one must coach at "major international competitions" to achieve the fifth Dan. The beneficiary's own "Dan Certificate" does not mention coaching at all. Rather, it reads: "This is to certify that the person named above has attained the Dan at a test conducted in accordance with the rules and regulations of the Kukkiwon for promotion test." Although this certificate shows that "rules and regulations" exist pertaining to the "promotion test," the petitioner has not submitted them.

The director, in the RFE, repeated the full list of regulatory criteria, but the petitioner, in the RFE response, did not claim to have fulfilled any additional criteria not claimed previously. Therefore, at the time of the director's decision, the petitioner had claimed to have satisfied only two of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B), in addition to the claim of a major, internationally recognized (but unidentified) award.

The director denied the petition on August 25, 2006. The director stated that the petitioner had satisfied 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*) because "[t]he evidence indicates that the beneficiary has won several competitions that are recognized, at least on a national level." The director acknowledged that acclaim as an athlete does not necessarily translate into acclaim as a coach, but the director determined that the beneficiary has coached at a sufficiently high level to demonstrate a relationship between the beneficiary's achievements as an athlete and, later, as a coach. While granting the beneficiary's receipt of awards, the director did not find that the beneficiary had submitted sufficient evidence under any of the remaining regulatory criteria. Upon consideration, the AAO concurs with the director's conclusions.

Counsel devotes a considerable portion of the appellate brief to the argument that the beneficiary has coached award-winning athletes. The director acknowledged that the petitioner had satisfied the criterion relating to prizes (although, as we have discussed, much of this evidence is weaker than counsel has claimed), so counsel's expansion on this point adds nothing of substance to the record. The director did not find that the beneficiary had won a major, internationally recognized award. While counsel initially claimed that the beneficiary had won such an award, counsel never identified the award, much less established its significance.

On appeal, counsel repeats the assertion that the beneficiary's fifth Dan certificate demonstrates the beneficiary's "membership in associations in the field . . . which require outstanding achievements of their members, as judged by recognized national or international experts." Counsel states:

> [The beneficiary's] ability to ascend to the elite level of a 5th Dan holder within the World Taekwondo Association is essentially a 5th Dan membership position within the World

> Taekwondo Association. One cannot become such a member without having accomplished outstanding achievements, and only can do so after other recognized Taekwondo masters adjudicate the candidate's application.

We do not share counsel's opinion that a fifth Dan ranking "is essentially a 5th Dan membership." Counsel's contentions are not corroborated by any objective documentary evidence. As noted above, the beneficiary's own Dan Certificate states only that the beneficiary passed a "promotion test." The petitioner has chosen not to submit a copy of Kukkiwon's "rules and regulations" regarding the promotion test, and there is no documentary support for counsel's claims regarding the beneficiary's fifth Dan "membership." The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Also, membership in one association would not satisfy 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*), which requires "[d]ocumentation of the alien's membership in associations in the field," rather than membership in one association.

For the first time, counsel asserts on appeal that the beneficiary meets 8 C.F.R. § 214.2(o)(3)(iii)(B)(*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. Prior to the appeal, even after the director mentioned judging in the RFE, the petitioner had never claimed that the beneficiary satisfied this criterion. The director concluded that any "judging" that the beneficiary performs is integral to his basic job duties, and not indicative of sustained acclaim or extraordinary ability.

Counsel states that the beneficiary qualifies as a judge because "[a]s a 5th Dan holder, [the beneficiary] has the power to judge 4th Dan applicants . . . under World Taekwondo Association, Inc. rules." This argument presupposes that *every* fifth Dan holder qualifies as a judge, in addition to the prior argument that *every* fifth Dan holder is a member of an association which requires outstanding achievements of its members. However, one achievement cannot serve to meet two (or more) criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The regulation permits a beneficiary to establish eligibility through a single achievement in only one circumstance: receipt of a major, internationally recognized award, such as the Nobel Prize. 8 C.F.R. § 214.2(o)(3)(iii)(A).

The petitioner has provided little information about the "promotion test" to the fifth Dan, apart from these assertions from [redacted]

> In order for one . . . to be promoted to the next level Dan, one must meet time passage and age limit requirements as well as successfully demonstrate one's Taekwondo skills, techniques, form, sparring and breaking abilities during the test. . . .
>
> There are a total of nine Dans in Taekwondo. . . .
>
> From 4th to 5th, one must be at least 25 years of age and must wait four years.

The requirements outlined above do not readily suggest that attaining the middle level of nine Dan levels is indicative of sustained national or international acclaim. This information also seems to conflict with [redacted] own prior assertion that "[o]ne achieves fifth Dan after having performed successfully in major international competitions as a coach." Given these somewhat inconsistent assertions, we cannot grant the assertions of [redacted] solicited expressly to support this petition, the same evidentiary weight as objective, published regulations maintained by [redacted] or other applicable governing bodies.

Also in the area of judging, the petitioner submits a list of five "Northwest regional competitions" that the beneficiary is said to have judged between May 2003 and March 2006. The record contains no documentary evidence of the beneficiary's judging at these competitions, only a letter from an individual who "personally witnessed" the beneficiary acting as a judge. Two of the five competitions took place after the filing date, and even if the beneficiary's judging at those competitions was documented, it could not be considered. The petitioner must establish the beneficiary's eligibility at the time of filing. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Furthermore, these regional events, involving "athletes from Washington and Oregon," are by definition not national or international in scope, and therefore there is no basis to conclude that the beneficiary's activity in these events demonstrates national or international (as opposed to regional) acclaim.

On appeal, counsel argues that the director "should have given deference to the prior grant of O-1 status" to the beneficiary. Counsel cites a memorandum from William R. Yates, Associate Director of Operations, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity* (April 23, 2004). Counsel acknowledges that, according to that memorandum, "[t]here are certain circumstances under which deference need not be given. However, none of those circumstances are present in this case." We do not agree with this assessment. One of the circumstances is "material error with regard to the previous petition approval." The AAO does not have before it the record of proceeding for the previous O-1 petition, but the evidence submitted in support of the present petition does not meet the minimum threshold for eligibility. If the prior petition included essentially the same evidence, then that petition was approved in error. Even if the prior petition included sufficient evidence, the petitioner chose not to incorporate that evidence into its new filing. 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. 1988). It would be absurd to suggest that CIS 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 had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at *3 (E.D. La. Mar. 15, 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

The petitioner initially articulated claims regarding only two of the eight regulatory criteria: 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*), relating to the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor, and 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*), pertaining to the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members. On appeal, the petitioner, through counsel, claims to have satisfied a third criterion, 8 C.F.R. § 214.2(o)(3)(iii)(B)(*4*), pertaining to 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. We concur with the director's finding that the beneficiary meets only the first of these criteria. The petitioner's claims regarding the remaining two criteria revolve in whole or in part around the beneficiary's status as a fifth Dan holder. Counsel's unsubstantiated claims about that status cannot satisfy the statutory demand for extensive documentation of sustained national or international acclaim.

The record does not establish that the beneficiary is an alien of extraordinary ability in athletics, which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O)(i) of the Act. The petitioner failed to establish that the beneficiary has received a major, internationally recognized award or that he satisfies at least three of the evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O)(i) of the Act and the petition cannot be approved.

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 not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.