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U.S. Citizenship
and Immigration
Services

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FILE: LIN 06 052 52226 Office: NEBRASKA SERVICE CENTER Date: NOV 29 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition in a decision dated March 17, 2006. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, Toledo Jiu Jitsu Center, seeks O-1 classification of the beneficiary, as an alien with extraordinary ability in athletics 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 in the United States as an instructor and competitor for a period of three years.

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

The petitioner, through counsel, submitted a timely appeal on April 17, 2006.¹

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 In addition to addressing the director's denial of the Form I-129, on appeal counsel also attempts to address the director's denial of the beneficiary's application for change of status. However, as the regulation at 8 C.F.R. § 248.3(g) indicates that there is no appeal from the denial of an application for change of status, the AAO does not have the authority to address the director's decision on this issue on appeal.

- (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 Brazil. The evidence in the record indicates that the beneficiary last entered the United States as a B-2 nonimmigrant visitor on August 16, 2005. The petitioner filed the Form I-129 petition on the beneficiary's behalf on December 9, 2005. After a careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial of the petition. The petitioner has failed to establish that the beneficiary is an alien with extraordinary ability in athletics.

Field of Expertise

The statute and regulation require the beneficiary to "continue work in the area of extraordinary ability." Section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i); 8 C.F.R. § 214.2(o)(1)(ii)(A)(1). In this case, the

petitioner claims that it will employ the beneficiary as both a competitor and an instructor. The director denied the petition, in part, because the petitioner failed to establish “the beneficiary’s achievements as a martial arts instructor.”

In response to the director’s Request for Evidence (RFE), counsel argued that the beneficiary’s “skill as a fighter and competitor . . . gives rise to the determination that [he] is an extraordinary ability alien in martial arts instruction,” and therefore, that there is a “logical nexus between martial arts competition and instruction.” To support his argument, which he reiterates on appeal, counsel cites to an unpublished 1996 decision of the AAO. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the decade-old unpublished decision. Further, we note that while the regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all Citizenship and Immigration Services (CIS) employees in the administration of the Act, unpublished decisions are not similarly binding. Regardless, we do acknowledge that there is a nexus between competing and coaching. Accordingly, in cases where aliens have clearly achieved national or international acclaim as athletes and have sustained that acclaim in the field of coaching at a national or international level, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. In this case, however, the petitioner has failed to establish the beneficiary’s achievements both as an athlete and as an instructor.

Analysis of the Evidence under the Regulatory Criteria at 8 C.F.R. § 214.2(o)(3)(iii)

Receipt of a major, internationally recognized award, such as the Nobel Prize.

Counsel claims that the petitioner won the “World Jiu Jitsu Championship 2005 (Black Belt),” an award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). In denying the petition, the director found that the petitioner had failed to establish that the “World Jiu Jitsu Championship 2005” is an award equivalent to a major, internationally recognized award. Upon review, we concur with this finding. The record contains no documentary evidence regarding the significance of this competition such that the beneficiary’s receipt of a medal in the 2005 World Jiu Jitsu Championship can be considered a major, internationally recognized award. Counsel’s assertions regarding the significance of this competition are not sufficient to satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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

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

Counsel lists the following as the beneficiary’s awards as a competitor:

- Arnold Gracie World Champion (2001, 2002, 2004, 2005)
- Pan-American Championship (1998, 1999, 2001, 2002, 2005)
- Copa Pacifica Champion (2003)

- Abu Dhabi Submission World Championships (2003)
- Grappler's Quest Champion (2002, 2005)
- Rio de Janeiro State Championship (2000)
- Amazon State Champion (1991-1998)

We note that while counsel claims the beneficiary has received the 22 above-cited awards, the record does not contain evidence of all 22 awards. However, although the record lacks evidence of all of the claimed awards and their national or international recognition, the petitioner has submitted sufficient evidence to document the receipt of awards at the 2001 and 2002 Pan American Jiu-Jitsu Championships.² Such evidence adequately establishes that, as a competitor, the beneficiary has received international awards.

Accordingly, the petitioner has established that the beneficiary meets this criterion.

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

Counsel claims that the beneficiary is a "black-belt member" of the Confederation of Brazilian Jiu Jitsu (CBJJ) and the [REDACTED] (FJJ). The petitioner submitted a diploma from the CBJJ and a certificate from the Gracie Academy in [REDACTED] as well as photocopies of identification cards from each of these organizations. These documents, however, were submitted without English translations. Any document containing a foreign language that is submitted to CIS must be accompanied by a full English translation, which 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. 8 C.F.R. § 103.2(b)(3). Because the petitioner failed to submit certified translations of the documents, we cannot determine whether the evidence supports the petitioner's claim. *Id.* Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Regardless, the record contains no evidence that a diploma or black belt certification given by either association constitutes membership in the organization and that such membership requires outstanding achievements, as judged by recognized national or international experts in their disciplines or fields. For example, the petitioner submitted no evidence of the membership criteria or bylaws for either CBJJ or FJJ.

The petitioner also submitted a letter from the United States Martial Arts Association (USMA), indicating that the beneficiary was nominated for induction into the 2006 USMA International Hall of Fame as "International Grandmaster of the Year for [REDACTED]". However, this evidence is of no probative value for two reasons. First, the beneficiary has only been *nominated* for induction into the USMA International Hall of Fame. There is no evidence that he has actually been inducted. Second, and more importantly, the nomination

² For clarification, the evidence of record indicates that the petitioner competed in the "Pan American Jiu Jitsu Championship," rather than the "Pan American Games." The Pan American Championship is governed by the International Brazilian Jiu-Jitsu Federation. In contrast, the Pan American Games are held every four years in the year preceding the Olympics and are governed by the Pan American Sports Organization. We note that Brazilian Jiu Jitsu is not included among the competitive events of the Pan American Games and there were no games in 2005. See <http://www.rio2007.org.br/data/pages/8A488A8F12D856280112D88B026B6496.htm>, accessed on October 9, 2007.

occurred after the date the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 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). Accordingly, the petitioner has failed to establish 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.

As evidence to meet this criterion, the petitioner submitted a partial copy of an article that appeared in *Grappling* magazine. However, the petitioner failed to submit the date of publication of the article as required by the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). More significantly, the petitioner failed to submit evidence to establish that *Grappling* magazine is considered as a form of major media or a major trade publication in the beneficiary's field. Counsel's statements that *Grappling* magazine "is the flagship of submission fighting publications" and that it "stands alone as the only publication dedicated exclusively to the greatest submission fighters in the world today," are insufficient to establish that the magazine is a form of major media or a major trade publication. As previously indicated, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The petitioner submitted a copy of a second article that counsel states appeared in *Tatame*, "a Brazilian fighting magazine." However, as the article is in Portuguese and not accompanied by an English translation and does not contain the title, date, and author of the article, the article has no probative value. See 8 C.F.R. §§ 103.2(b)(3) and 214.2(o)(3)(iii)(B)(3). Moreover, the record contains no evidence that *Tatame* is considered major media or a major trade publication.

The petitioner also submitted photographs of the beneficiary which appeared in magazines, listings of DVDs that display the beneficiary and printouts and articles from the Internet that refer to the beneficiary. We do not find this evidence sufficient to establish that the beneficiary meets this criterion. First, the photographs and DVDs which display the beneficiary in competition or providing instruction on specific moves are not considered published material "about" the beneficiary. In addition, the petitioner has failed to demonstrate that these magazines or DVDs are considered major trade publications or major media. Similarly, the petitioner has failed to demonstrate that the "Google and Yahoo Search" of the beneficiary's name, as well as the printouts and articles from the Internet are "published materials" about the petitioner in major media or major trade publications.

Finally, counsel claims that the beneficiary was named by *Inside Kung-Fu* magazine as the "'Hall of Fame: Grappler of the Year' in 2003" and that the magazine "profiled" the beneficiary in its February 2003 issue. However, while the petitioner submitted a copy of a plaque demonstrating the beneficiary's receipt of the claimed award (evidence related to a criterion we have already found the beneficiary to have met), the record does not contain a copy of the February 2003 issue in which the beneficiary was purportedly "profiled." Moreover, even if the article was submitted, the record contains no evidence that *Inside Kung-Fu* magazine is considered a form of major media or a major trade publication.

Accordingly, the petitioner has failed to establish 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.

The petitioner did not claim that the beneficiary satisfies this criterion or submit any documents in relation to this criterion. Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

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

The petitioner did not claim that the beneficiary satisfies this criterion or submit any documents in relation to this criterion. 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.

The petitioner did not claim that the beneficiary satisfies this criterion or submit any documents in relation to this criterion. Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

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

The petitioner did not claim that the beneficiary satisfies this criterion or submit any documents in relation to this criterion. Accordingly, the petitioner has failed to establish that the beneficiary meets 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.

The petitioner did not claim that the beneficiary satisfies this criterion or submit any documents in relation to this criterion. Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

In this case, the petitioner has failed to demonstrate the beneficiary's receipt of a major internationally recognized award, or that he meets at least three of the alternative criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability and thus that the beneficiary is an alien with extraordinary ability in athletics who is one of the small percentage who have arisen to the very top of his field. Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(O)(i) of the Act and the petition must be denied.

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.