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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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U.S. Citizenship
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Services

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FILE: EAC 06 036 53088 Office: VERMONT SERVICE CENTER

Date: SEP 04 2009

IN RE: Petitioner:
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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center initially approved the nonimmigrant visa petition. The director subsequently issued a notice of intent to revoke, and upon review of the petitioner's response, revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a Taekwondo school, filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in athletics. The petitioner seeks to employ the beneficiary in the position of Taekwondo Master for a period of three years.

The director approved the petition on November 22, 2005, granting the beneficiary O-1 classification for a three-year period commencing on December 15, 2005. On March 1, 2007, the director issued a notice of intent to revoke the petition approval pursuant to 8 C.F.R. § 214.2(o)(8)(iii). Specifically, the director observed that the evidence of record was insufficient to establish that the beneficiary qualifies for classification as an alien with extraordinary ability in athletics, as it had not been shown that he was among the very small percentage at the top of his field of endeavor. The director revoked the approval of the petition on November 15, 2007, noting that the evidence submitted by the petitioner in response to the notice of intent to revoke was identical to the information submitted at the time of filing.

On appeal, counsel for the petitioner asserts that the beneficiary "is an alien of extraordinary ability and is at the top of his field in Taekwondo," and that the petitioner has submitted sufficient documentation to substantiate and support this claim. Counsel asserts that the director's decision to revoke the approval was arbitrary and capricious, as none of the circumstances outlined at 8 C.F.R. § 214.2(o)(8)(iii)(A) were present. Counsel asserts that the beneficiary was nationally recognized as a member of the Korean National Demonstration Team, and that he has exhibited his work internationally. Counsel submits a statement and additional documentary evidence in support of the appeal.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 extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991).

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."

¹ Counsel indicated on the Form I-290B, Notice of Appeal or Motion, that she would submit a brief and/or additional evidence to the AAO within 30 days of filing the appeal on December 14, 2007. Counsel has since confirmed that she did not submit the brief or additional evidence as indicated on Form I-290B and the record will therefore be considered complete.

The regulation at 8 C.F.R. § 214.2(o)(8)(i)(B) provides that the director may revoke a petition approval at any time, even after the validity of the petition has expired. The regulation at 8 C.F.R. § 214.2(o)(8)(iii) sets forth the grounds for revocation on notice:

- (A) *Grounds for revocation.* The Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if it is determined that:
 - (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
 - (2) The statement of facts contained in the petition was not true and correct;
 - (3) The petitioner violated the terms or conditions of the approved petition;
 - (4) The petitioner violated the requirements of section 101(a)(15)(O) of the Act or paragraph (o) of this section; or
 - (5) The approval of the petition violated paragraph (o) of this section or involved gross error.

- (B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The Director shall consider all relevant evidence presented in deciding whether to revoke the petition.

In the present matter, the director provided a detailed statement of the proposed grounds for the revocation but did not cite to the specific provision of the regulations as a basis for the revocation. Upon review, the director revoked the approval on the basis of a finding that the approval involved gross error, pursuant to 8 C.F.R. § 214.2(o)(8)(iii)(A)(5)

The term "gross error" is not defined by the regulations or statute. Furthermore, although the term has a juristic ring to it, "gross error" is not a commonly used legal term and has no basis in jurisprudence. *See Black's Law Dictionary* 562, 710 (7th Ed. 1999)(defining the types of legal "error" and legal terms using "gross" without citing "gross error"). The word "gross" is commonly defined first as "unmitigated in any way: UTTER," as in "gross negligence." *Webster's New College Dictionary* 502 (3rd ed. 2008).

As the term "gross error" was created by regulation, it is most instructive to examine the comments that accompanied the publication of the rule in the Federal Register. The term "gross error" was first used in the regulations relating to the revocation of a nonimmigrant L-1 petition. In the 1986 proposed rule, an L-1 revocation would be permitted if the approval had been "improvidently granted." 51 Fed. Reg. 18591, 18598 (May 21, 1986)(Proposed Rule). After receiving comments that expressed concern that the phrase

"improvidently granted" might be given a broader interpretation than intended, the agency changed the final rule to use the phrase "gross error." 52 Fed. Reg. 5738, 5749 (Feb. 26, 1987)(Final Rule).

Upon review of the regulatory history and the common usage of the term, the AAO interprets the term "gross error" to be an unmitigated or absolute error, such as an approval that was granted contrary to the requirements stated in the statute or regulations. Regardless of whether there can be debate as to the legal determination of eligibility, any approval that USCIS determines to have been approved contrary to law must be considered an unmitigated error, and therefore a "gross error." This view of "gross error" is consistent with the example provided in the Federal Register. *See* 52 Fed. Reg. at 5749.

Upon review and for the reasons discussed herein, the present petition was properly revoked as the director clearly approved the petition in gross error, contrary to the eligibility requirements provided in the regulations.

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

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 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; and
 - (8) Evidence that 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 record consists of a petition with supporting documentation, a notice of intent to revoke and the petitioner's response, the director's revocation decision, an appeal and statement from counsel, and additional evidence supporting the appeal. The beneficiary in this case is a native and citizen of Korea who holds a 5th degree black belt in Taekwondo, and was formerly a member of the Korean National Taekwondo Demonstration Team. The petitioner indicates that the beneficiary has a Bachelor's degree in physical education, a certificate in sports massage, and approximately three years experience in running and managing a Taekwondo school in Korea. The petitioner seeks to classify the beneficiary as an alien with extraordinary ability as a Taekwondo master and indicates that he will work as an instructor, teacher and coach, responsible for organizing exhibitions and demonstrations.

In revoking the approval of the petition, the director found that the petitioner failed to establish that the beneficiary meets at least three of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) as a Taekwondo master. The director also observed that there was no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A).

Upon review and for the reasons discussed herein, the petitioner has not established that the beneficiary is fully qualified as an alien with extraordinary ability in athletics.

The evidence submitted in support of the petition included the following:

- A certificate issued by the Korean Taekwondo Association on December 3, 2000, which indicates that the beneficiary attained the 5th Dan level in Taekwondo.
- A certificate and transcript issued by Kyung Hee University, confirming that the beneficiary completed a Bachelor of Physical Education degree, majoring in Taekwondo, on February 20, 2002.
- A "Graduation Certificate" indicating that the beneficiary completed a course titled

"Taekwondo Special Training" conducted by The Korea National Taekwondo Demonstration Team, from March 2, 1996 through December 28, 1999.

- Certificates indicating that the beneficiary earned the qualification of "Sports Massage Master" by the Korea Hwal Bup Association on June 7, 1994.
- A certificate issued by the Korea Hwal Bup Association, indicating that the beneficiary received the "Qualification of Authorized Physical Education Correct Master" on June 7, 2004 after completion of the association's training course.
- A certificate of qualification indicating that the beneficiary passed the 3rd class qualifying examination of Taekwondo Instructor, conducted by the Kukkiwon World Taekwondo Headquarters, in August 2000.
- A Contest Trainer Certification issued by the Secretary of Cultural Tourist Department, indicated that the beneficiary is authenticated as a physical trainer, in October 2000.
- A Practical Physical Trainer Certification, also issued by the Secretary of Cultural Tourist Department, in January 2001.
- A certificate of appreciation issued on January 1, 2000 by the Kukkiwon World Taekwondo Headquarters, which states that the beneficiary was a member of the Korean National Demonstration Team and also sat on the International Olympic Committee.
- A letter of appreciation dated March 21, 2000 from Kyunghee University recognizing the beneficiary's role as a leader in a Taekwondo seminar.
- A letter of appreciation from the Korean Olympic Taekwondo Demonstration team, dated December 28, 1999, recognizing the beneficiary's "dedicated service and contribution to the development of Taekwondo."
- A certificate of appointment issued by the Kukkiwon World Taekwondo Headquarters on April 25, 1999, confirming the beneficiary's appointment to the Korean national team from April 25, 1999 until April 24, 2000.
- A certificate of appointment issued by the Kukkiwon World Taekwondo Headquarters on April 8, 1996, confirming the beneficiary's appointment to the Korean national team from April 8, 1996 until April 7, 1997.
- A certificate of participation recognizing the beneficiary's contribution to the 8th Taekwondo Hanmadang held from December 16-18, 1999.
- A certificate of participation recognizing the beneficiary's participation in the 1999 Seoul International Conference of NGOs.
- A certificate issued by the Korean Olympic Committee, recognizing the beneficiary's participation in the 109th International Olympic Committee session held in June 1999 as a member of the Korean National Demonstration Team.
- Photographs of the beneficiary which depict him: with the Korean National Team in 1999; competing in a Kyunghee University Taekwondo Hanmadang competition in 1995, competing in the 1st Mi Ruh Meh Cup Pro-Taekwondo competition; performing at various demonstrations.
- A magazine article discussing the Korean national exhibition team's trip to Europe and Africa in November 1999, which identifies the beneficiary as a team member.
- A short article published in *The Korea Times (American edition)*, which indicates that

a Taekwondo team representing Daegu established a sister relationship with the Chicago Taekwondo Association. The beneficiary is pictured in a group photograph accompanying the article.

- A short article (source and date unknown) which mentions a visit to various U.S. cities by the Daegu city Taekwondo Association's 15 member exhibition team.
- Various articles excerpted from the *Korea Christian Times* newspaper. The articles are accompanied by only a partial English translation. The beneficiary appears to be mentioned in passing in the articles as the "Chief of Kyunghee University Taekwondo."

In addition, the petitioner submitted a letter dated October 27, 2005 from its Headmaster/President, [REDACTED] who addressed the beneficiary's qualifications as follows:

[The beneficiary] is one of the best athletes in Korea and is recognized internationally in the sport of Taekwondo. He is a 5th degree blackbelt (since Dec. 2000) who was formerly a member of the Korean National Taekwondo Demonstration Team. A 5th degree blackbelt indicates that the individual has passed rigorous tests in the sport of taekwondo. It is usually obtained after about 20 years of dedicated training in the sport. [The beneficiary] is a professional athlete, coach and instructor in the sport. He is a member of the World Taekwondo Federation, which is the international governing body of our sport. The fact that he was given the honor of 5th Dan by the organization indicates his high ranking in the sport as very few individuals (most likely 1 percent) are given this rank.

also highlighted the beneficiary's bachelor's degree in Physical Education from Kyung Hee University, noting that the school is "one of the most prestigious sports-oriented universities in Korea." Mr. [REDACTED] indicated that the beneficiary has been responsible for managing the university's Taekwondo School from 2002 until 2005, and also holds a certification as a Practical Physical Trainer, and a 3rd degree referee title conferred by the Korean Taekwondo Association. [REDACTED] further stated:

There is no question that [the beneficiary] is a person of extraordinary abilities in the sport of Taekwondo. [The beneficiary] was a member of the prestigious Korean National Demonstration Team. The Korean National Demonstration Team is a world-renowned organization. It is one of the highest honors in our sport and extremely prestigious to have been selected to represent Korea and be a part of the organization that promotes Taekwondo and raises the consciousness about our sport at a worldwide level. [The beneficiary] is considered among the best in his country as few individuals are chosen to represent Korea as a delegate.

The petitioner also submitted a recommendation letter dated September 7, 2005 from [REDACTED] president of the Connecticut Tae Kwon Do Association and head coach of Yale University's Taekwondo team. [REDACTED] states that the beneficiary "is an outstanding athlete and has made great contributions to the Art and Sport of Taekwondo." He indicates that "[t]here are very few individuals in the world that have had such successful careers," and that the beneficiary's "experience and understanding of Taekwondo is unique

and extraordinary." Finally [REDACTED] emphasizes that the beneficiary would be an invaluable contributor to the sport in Connecticut.

In addition, the petitioner provided a letter dated September 4, 2005 from [REDACTED] president of the Massachusetts Taekwondo Association, who writes "to confirm that [the beneficiary] ranks among the best as an athlete and a coach in our sport." [REDACTED] states that the beneficiary "has achieved a great deal in our sport and has reached a level achieved by few." He further indicates that the beneficiary is recognized both nationally and internationally as "one of the most important individuals in our sport," and that the beneficiary's membership on the Korean National Demonstration team "testifies to his extraordinary abilities as an athlete."

[REDACTED] of B.C. Kim Olympic Taekwondo also submitted a recommendation letter, dated September 7, 2005. [REDACTED] opines that [the beneficiary] is an outstanding athlete and coach who ranks among the best in Korea." He indicates that the beneficiary's "list of medals includes winning a number of important championships, thus classifying him as one of the best in the world," and states that the beneficiary "has won significant honors and awards in his sport both nationally and internationally."

The petitioner also provided a letter from [REDACTED] of World Champion Taekwondo in North Carolina. [REDACTED] states that he has known the beneficiary for over 12 years and opines that the beneficiary "is a coach and competitor of extraordinary ability in Taekwondo." He further indicates that the beneficiary has an "uncanny" ability "to training and coach national and international caliber students."

Finally, the petitioner submitted a recommendation letter from [REDACTED], Head of the Korean National Taekwondo Demonstration Team. Dr. [REDACTED] recommends the beneficiary "as a qualified instructor of Taekwondo," and states that he appreciates "the special manner and dedication evidenced by [the beneficiary] in his teaching skills." He also notes that the beneficiary "is one of a few top level young instructors in Korea."

The director approved the petition, based on this initial evidence, on November 22, 2005.

The director issued a notice of intent to revoke the approval on March 1, 2007, requesting that the petitioner submit additional evidence to establish that the beneficiary is recognized as having a demonstrated record of sustained national or international acclaim and recognition for achievements as a Taekwondo master. The director noted that the beneficiary's achievement of the 5th Dan Black Belt did not appear to qualify the beneficiary as a member of the very small percentage at the top of his field as a coach in the sport, and that it was not evident that the beneficiary has made major contributions to the sport. Finally, the director noted that while the beneficiary has achieved a level of success, his successes have been as an athlete, rather than as a coach, in the field.

In response to the notice of intent to revoke, the petitioner objected to the director's request that the petitioner establish the beneficiary's extraordinary ability as a Taekwondo coach. Counsel for the petitioner noted that the beneficiary "provides assistance in instructing and coaching students" but that his "primary duties" will be "spearheading the creation of a demonstration team." Counsel noted that, since coming to the United States,

the beneficiary has organized a demonstration team for the petitioner which performed at tournaments, school activities and martial arts exhibitions. The petitioner also submitted a letter dated March 28, 2007 from [REDACTED] who verifies that the beneficiary has participated as a Demonstrator at Connecticut state-sponsored tournaments and championships.

In support of its response, the petitioner submitted copies of the same exhibits that accompanied the initial petition.

The director revoked the approval of the petition on November 15, 2007. In revoking the approval, the director determined that the beneficiary did not satisfy the criteria at 8 C.F.R. §214.2(o)(3)(iii)(A), or more than one of the eight criteria provided at 8 C.F.R. § 214.2(o)(3)(iii)(B). Therefore, the director determined that the approval of the petition had involved gross error.

On appeal, counsel for the petitioner asserts that there was no gross error committed in approving the initial petition, as the beneficiary was "nationally recognized prior to coming to the United States as he was a member of very prestigious Korean National Demonstration Team and had exhibited his work internationally, before the Olympic Committee and at the Olympics." Counsel submits a brief statement in which she contends that the petitioner submitted sufficient evidence to establish that the beneficiary meets the evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

Upon review and for the reasons discussed herein, the petitioner has not established that the beneficiary is fully qualified as an alien with extraordinary ability in athletics.

Preliminary, the AAO emphasizes that the statute requires that the beneficiary seek entry into the United States "to continue work in the area of extraordinary ability." Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i) (2007). Here, the petitioner indicated on Form I-129 that the beneficiary will be employed as a "Taekwondo Master" at the petitioner's Taekwondo school. In its letter dated October 27, 2005, the petitioner's president stressed that he "cannot have enough qualified and respected coaches and trainers" from Korea, and states that "it is for this purpose that I would like to hire [the beneficiary] as a Taekwondo master." The petitioner went on to state that the "it is imperative that we hire someone of [the beneficiary's] qualifications to work as an instructor, teacher and coach." The petitioner emphasized that "having our students taught and conditioned by one of Korea's best will in turn keep the United States competitive." The petitioner also stated that the beneficiary would be "spearheading our efforts in conducting exhibitions and demonstrations to further the understanding of taekwondo." In addition, several of the persons providing recommendation letters referred to the beneficiary's proposed role as a coach and instructor.

In response to the notice of intent to revoke the petitioner emphasized that the beneficiary is primarily employed as a demonstrator of the sport, and not as a coach. However, the job description submitted indicates that the beneficiary is required to "teach and instruct students on different kinds of demonstrations." On appeal, the petitioner submits a newspaper article which features two students of the petitioner's school who competed in the Chicago Open International tournament. The article states that the competitors study under the beneficiary at the petitioner's school.

Based on the petitioner's representations as a whole, it must be concluded that the beneficiary will be working in the United States primarily as a taekwondo trainer/instructor, and not as a competitive taekwondo performer/athlete.

Competitive athletics and sports instruction are not the same area of expertise and USCIS will not assume that an alien with extraordinary ability as an athlete has the same level of expertise as a coach or instructor of his or her sport. The beneficiary's past achievements as a *competitor* do not establish a presumption of sustained acclaim and extraordinary ability as a *coach or instructor*. See *Lee v. Ziglar*, 237 F.Supp.2d 914 (N.D. Ill. 2002). However, given the nexus between athletic competition and coaching or sports instruction, 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, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that it can be concluded that coaching is within the beneficiary's area of expertise. Specifically, in such a case, USCIS will consider the level at which the alien acts as a coach or instructor. Accordingly, we will address the evidence regarding the beneficiary's accomplishments as both an athlete and as an instructor.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The petitioner does not claim that the beneficiary has received a major, internationally recognized award comparable to the Nobel prize, or that he has trained students who have received major, internationally recognized awards or prizes.

As there is no evidence that the beneficiary has received a major, internationally recognized award, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). To meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), the petitioner must submit evidence that the beneficiary has received nationally or internationally recognized prizes or awards for excellence in the field.

In a letter submitted in support of the initial petition, counsel stated that the beneficiary "has led his students to win some of the major competitions in the sport of Taekwondo and is also a major champion in Korea." Counsel further stated that the beneficiary "won national competitions and he participated in important events." In addition, [REDACTED] stated in his recommendation letter that the beneficiary "won significant honor and awards in his sport both nationally and internationally," and "a number of international championships." However, the record remains devoid of evidence of any national or international awards achieved by the beneficiary, or any such awards received by his students. 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)).

Instead, as evidence of the beneficiary's receipt of "major awards," the petitioner submitted the above referenced certificates of appreciation confirming the beneficiary's membership in the Korean National Demonstration Team, a certificate confirming his role in leading a university-level seminar in Taekwondo, and a certificate of appreciation from the Head of the Korean Olympic Taekwondo Demonstration team.

While the evidence shows that the beneficiary participated in his sport at a national level, the petitioner did not explain how any of the certificates of appreciation could be considered equivalent to receipt of significant nationally or internationally recognized prizes or awards.

On appeal, counsel asserts that the beneficiary's certificate of achievement from the Kukkiwon satisfies this criterion, as the Kukkiwon is the "world headquarters for Taekwondo." The AAO assumes that counsel is referring to the beneficiary's achievement of the 5th Dan level black belt. The record indicates that attaining a certain Dan level in the martial arts is not an award, but rather the foreseeable outcome of a standard process by which martial arts 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 any of the Dan levels achieved by the beneficiary constitute a nationally or internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(B). Furthermore, the evidence in the record indicates that there are at least nine Dan levels in the sport, and the AAO cannot conclude that achieving the middle level of nine Dan levels is indicative of sustained national or international acclaim. Similarly, the beneficiary's Dan certificate and instructor qualifications alone do not establish his receipt of awards, and the petitioner provides no specific information regarding any individual athletes who have been coached or instructed by the beneficiary, much less evidence that he has coached athletes who have received significant national or international awards. Accordingly, the petitioner has not established that the beneficiary meets this criterion.

In order to establish that the beneficiary meets the second criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), the petitioner must document 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.

At the time of filing counsel indicated that the beneficiary satisfies this criterion based on his "membership as a 5th Dan (degree black belt) in the Kukkiwon," his membership on the Kukkiwon Adult Demonstration Team, and based on his seat on the International Olympic Committee in 2000. We do not share counsel's opinion that a fifth Dan ranking is a "membership." Counsel's contentions are not corroborated by any objective documentary evidence. The beneficiary's Dan Certificate states only that the beneficiary passed a "promotion test." The petitioner has chosen not to submit a copy of Kukkiwon's rules or 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).

The director ultimately concluded that the beneficiary was able to qualify under this criterion based on his membership on the Korean National Demonstration Team, but noted that the beneficiary's most recent membership on the team was in 2000, several years prior to the filing of the petition.

Upon review, the AAO concurs with the director's determination that the petitioner has failed to submit any recent or current evidence of the beneficiary's membership in a qualifying association. The regulations require that the beneficiary's qualifications be "demonstrated by sustained national or international acclaim." The beneficiary was a member of the Korean National Demonstration Team from 1996 to 1997, and from 1999 until

2000. The instant petition was filed more than five years later, and the record does not contain any evidence that the beneficiary is currently a member of any associations in his field requiring outstanding achievements. Furthermore, the petitioner has not submitted any evidence that the beneficiary meets this criterion as a coach or instructor in Taekwondo. The petitioner has not established that the beneficiary meets the second criterion.

The third criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), requires the petitioner to submit 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. In this regard the petitioner has submitted largely un-translated articles from unidentified sources. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The articles that are translated or partially translated confirm that the beneficiary was a member of the Korean National Demonstration team, but offer no further insight regarding the beneficiary or his recognition for achievements in the field of Taekwondo. Nor are the articles specifically "about" the beneficiary, as it appears that he is mentioned in passing or merely identified in the caption of a group photograph. The petitioner has not established that the submitted articles were published in a major trade publication or otherwise constitutes "major media" about the alien. In addition, the petitioner has not submitted published materials regarding the beneficiary's achievements as a coach or instructor, or regarding the achievements of the beneficiary's students. The submitted evidence does not satisfy the regulatory criterion.

In order to meet the fourth criterion, the petitioner must submit 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. 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

The director acknowledged that the petitioner provided evidence to establish that the beneficiary is qualified as a referee in the sport, but noted that "it is not evident that he participated as such a referee and if he did that the event that was refereed was at a national or international level of competition."

The AAO notes that neither the petitioner nor counsel has claimed that the beneficiary meets this criterion, or otherwise explained the significance of the beneficiary's 3rd degree Referee qualification. Therefore, the AAO concurs with the director's conclusion that the criterion has not been met.

The fifth criterion requires the petitioner to submit evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field. 8 C.F.R. § 214.2(o)(3)(iii)(B)(5). Counsel asserted at the time of filing that the recommendations letters from "distinguished members of the sport," evidence the beneficiary's "original contributions." Neither the petitioner nor counsel has adequately explained how the beneficiary's participation in athletic competitions and demonstrations amounts to "an original scientific, scholarly or business-related contribution of major significance in the field" of Taekwondo. When considering the petitioner's claim that the beneficiary meets this criterion, USCIS cannot ignore the wording of the regulation. Whereas other regulatory passages refer to "extraordinary ability in the fields of science, education, business, or athletics," 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) refers to "the alien's original

scientific, scholarly, or business-related contributions.” The omission of “athletic contributions” is a realistic reflection of the nature of athletic competition. Winning a competition is not an “original contribution;” it is expected that any given athletic event will have a winning athlete or team that outscores or outperforms rival competitors. Similarly, possessing a high level of the skills needed to succeed in a particular sport is generally a matter of degree, rather than an “original contribution” to the sport. Therefore, attestations regarding the beneficiary’s talent, skills and success will not satisfy 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) as evidence of the beneficiary’s original contributions. Counsel’s claim that not all Taekwondo athletes achieve the 5th Dan level or participate as members of the Korean National Team does not lead to a conclusion that the beneficiary made an “original contribution” to the field by being among this group. Competitive success is already taken into account by 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), pertaining to prizes and awards, and 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) instructs USCIS to take into account any major media attention that an athlete may earn by standing out from others in a particular sport.

The AAO would also consider any recognition the beneficiary may have received from experts in his field for an “original” contribution to the field of Taekwondo as an athlete or instructor. However, none of the persons who provided recommendation letters identified with specificity what exactly constitutes the beneficiary’s original contribution to the sport of Taekwondo. For example, ██████████ stated that the beneficiary is “an outstanding athlete and has made great contributions for the Art and Sport.” He did not provide any detail regarding the nature of such contributions, mention any recognition the beneficiary has received for his contributions, or indicate on what basis he was able to render this opinion. Similarly, the testimonial letter from ██████████ indicates that the beneficiary is “one of the most important individuals in our sport,” but he failed to identify any specific basis for this conclusion, or any specific contribution made by the beneficiary as an athlete or coach.

Pursuant to 8 C.F.R. § 214.2(o)(iii)(B), affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability. . . shall specifically describe the alien’s recognition and ability or achievement in factual terms and set for the manner in which the affiant acquired such information. Affidavits must also “reflect the nature of the alien’s achievement.” 8 C.F.R. § 214.2(o)(iii)(A).

The testimonials submitted are excessively vague in describing the beneficiary’s achievements, recognition and contributions as an athlete and coach in the field of Taekwondo, and are insufficient to that the beneficiary has received national or international recognition for an original contribution to his field.

On appeal, counsel asserts that “one of [the beneficiary’s] original contributions in the field of Taekwondo that is of major significance is he instructed and coached two American students to excel and win at Chicago Open International Taekwondo Championships in 2006.” Counsel indicates that the event was an international tournament which included competitors from 55 countries. Counsel asserts that the beneficiary’s other contributions include helping to promote Taekwondo in his community, and serving as a member in the Korean National Demonstration Team.

The instant nonimmigrant petition was filed in November 2005 and therefore any evidence submitted to establish the beneficiary’s eligibility must pre-date the filing. 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). Nevertheless, the petitioner has not established that the success of two young athletes (ages 13 and 10) who are coached by the beneficiary in a single competition amounts to "an original contribution of major significance in the field."

The beneficiary's participation in the Korean National Demonstration Team, while undoubtedly a prestigious honor and a sign of the beneficiary's success as an athlete, has not been demonstrated to signify an "original contribution" to the sport. The petitioner has not demonstrated that the beneficiary meets this criterion.

In order to meet the sixth criterion, the petitioner must submit evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media. 8 C.F.R. § 214.2(o)(3)(iii)(B)(6). The petitioner does not claim that the beneficiary meets this criterion.

The seventh criterion requires the petitioner to establish that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

The director determined that "although it is evident that the beneficiary has performed with establishments that have a distinguished reputation, you have not established that he performed in a critical or essential capacity that would have put him in the lead or front of others also performing with the team."

On appeal, counsel asserts that the beneficiary's role as a coach and mentor for the petitioner "proves that he is involved in a position that is of critical capacity," as "a coach is an integral part of an athlete's success." Counsel's assertion is not persuasive. As noted above, the beneficiary's employment with the petitioning organization occurred after the petition was filed and will not be considered as evidence of his eligibility for this classification as of the date of filing.

Counsel further states:

We also argue that being a member of the Korean National Demonstration Team is in a critical capacity as it is extremely difficult to obtain membership in this team. In this team, each member is critical as the moves and demonstrations are orchestrated. The fact that this team demonstrated to an international audience shows that it is significant.

Counsel's unsupported assertion that all members of the Korean National Demonstration Team must be considered to be serving in a critical or essential capacity is insufficient to overcome the director's determination. While the record contains ample evidence of the beneficiary's membership on the Korean National Demonstration team, including a letter from the head of the team, none of the evidence specifically identifies the beneficiary's essential or critical role. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). The petitioner has not established that the beneficiary meets this criterion.

The eighth and final criterion requires the petitioner to submit evidence that the beneficiary has commanded or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence. *See* 8 C.F.R. § 214.2(o)(3)(iii)(B)(8). The petitioner indicates that it will pay the beneficiary wages of \$24,000 per year, and provide for his room, board and transportation expenses. The record does not contain any evidence of the beneficiary's past remuneration in Korea.

In revoking the approval of the petition, the director noted that the petitioner submitted evidence that it paid the beneficiary only \$9,000 in wages in 2006, and thus the evidence demonstrates that he is earning a wage that is at or below that normally found in the field. The petitioner does not address this finding on appeal, and the AAO concurs with the director that this criterion has not been met.

Finally, the regulations allow the petitioner to submit comparable evidence to establish the beneficiary's eligibility if the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) do not readily apply to the beneficiary's occupation. The petitioner has not established that the above-referenced criteria cannot readily apply to the beneficiary's occupation. Rather, the petitioner claims that the beneficiary can meet more than three of the eight criteria.

The AAO notes that the petitioner bases its argument that the beneficiary is qualified for this classification almost entirely on the beneficiary's membership in the Korean National Demonstration Team. However, the AAO emphasizes that 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 also places great emphasis on the beneficiary's achievement of a 5th Dan level black belt. As discussed above, these two achievements, considered together, are not indicative of sustained national or international acclaim, and do not exempt the petitioner from meeting the other evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

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 for this reason.

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

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ORDER: The appeal is dismissed.