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U.S. Citizenship  
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Services

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FILE: WAC 08 800 02484 Office: CALIFORNIA SERVICE CENTER Date: **FEB 02 2009**

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

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.

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, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The AAO will dismiss the appeal.

The petitioner 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 indicates that it was organized in July 2007 to propagandize Buddhism and to teach Chinese Shaolin Kung Fu in the United States. It seeks to employ the beneficiary as a Chinese martial arts trainer 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 and is one of the small percentage who has risen to the very top of his field of endeavor.

On appeal, counsel for the petitioner asserts that the evidence submitted is sufficient to establish that the beneficiary meets the criteria for an alien with extraordinary ability in athletics, primarily based on his achievement of several martial arts championships in China. Counsel requests that the AAO re-examine the beneficiary's credentials and submits a brief and additional documentary evidence in support of the appeal.

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). 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 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:

*Evidentiary criteria for an O-1 alien of extraordinary ability in the field 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;
  - (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 request for additional evidence (RFE) and the petitioner's reply, the director's decision, an appeal and brief, and additional evidence supporting the appeal. The beneficiary in this case is a native and citizen of China who last entered the United States on May 15, 2007 as a B-1 nonimmigrant. The beneficiary is described by the petitioner as a "nationally renowned martial arts trainer and performer." The petitioner seeks to classify the beneficiary as an alien with extraordinary ability as a Chinese martial arts trainer.

In denying the petition, the director 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). The director

also found that the petitioner failed to submit evidence that the beneficiary meets three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The director reviewed the evidence in its entirety and concluded that the record does not demonstrate the type of sustained national or international recognition of accomplishments necessary for O-1 classification.

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 performing as a "Chinese martial arts trainer." The petitioner indicated on the O and P Classification Supplement to Form I-129 that the beneficiary will "help to establish the Chicago Shaolin Temple and expand Chinese martial arts training operation." The petitioner described the beneficiary's proposed duties as follows: "[p]ropagandizing Buddhism and giving Chinese martial arts classes and community performance."

In its letter dated November 29, 2007, the petitioner indicated that the beneficiary "is a nationally renowned martial arts trainer and performer with extraordinary ability in the martial arts." The petitioner stated that the beneficiary "will continue his work as a trainer and performer in martial arts," and indicated that it requires the services of an individual "who could offer the expertise required to develop our training program." The petitioner states that it will cover the beneficiary's living expenses and that he will volunteer "as a martial arts trainer."

Based on the petitioner's representations, it must be concluded that the beneficiary will be working in the United States primarily as a martial arts trainer/instructor, and not as a competitive martial arts 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 a nationally or internationally recognized prize or award for excellence in the field.

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

- An Honor Certificate issued by the National Martial Arts Contest Commission, which states that the beneficiary won the title of "[REDACTED] Arts" in [REDACTED]
- An Honor Certificate issued by the National Martial Arts Contest Commission, which states that the beneficiary won the title of "[REDACTED] Martial Arts" in [REDACTED]
- An Honor Certificate issued by the Zhenzhou International Traditional Martial Arts Contest Commission, stating that the beneficiary won the title of "[REDACTED] in [REDACTED] in September 2006.

The director issued a request for evidence (RFE) on May 15, 2008. The director instructed the petitioner, *inter alia*, to provide additional evidence to establish that the alien has received nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The director noted that initial evidence did not establish the significance of the beneficiary's national or international awards. The director requested that the petitioner submit evidence to establish the origination, purpose, significance and scope of each award.

In response, the petitioner submitted a letter dated June 30, 2008 from [REDACTED] who states that he was the head referee for the 2004 National Wushu Championship, representing the Wushu Management Center of General Administration of Sport of China. Mr. [REDACTED] indicates that 37 groups and a total of 204 athletes competed in the competition, which was held at South China Normal University in May 2004. He confirms that the beneficiary won the title "Rod Champion," and named the champions of approximately 10 other events. Mr. [REDACTED] states that national Wushu competitions have been held in China since 1953, and that the competition has been known as the "National Wushu Championship," since 1989. He states that the competition is organized by the Wushu Management Center of General Administration of Sports of China, and is 'the highest level of Wushu competition in China."

The petitioner also submitted a letter from [REDACTED] head of referees for the 2005 National Wushu Competition, representing the Wushu Management Center of General Administration of Sport of China. He states that the 2005 National Wushu Competition was held in August 2006 in Hunan Province Stadium. He indicates that 173 top Wushu athletes in 30 groups from all over China participated in six matches with 45 sport events, and indicates that the beneficiary won the title of "Knife Champion." Mr. [REDACTED] states that the competition is organized by the Wushu Management Center, and its purpose is to "set up a platform to let Wushu athletes to

perform and promote Wushu competition."

Finally, the petitioner submitted a letter dated June 25, 2006 from [REDACTED], head of referees for the 2006 Zhenzhou International traditional Shaolin Martial Arts Contest. He states that the contest was held in Zhenzhou in September 2006, and organized by the World Wushu Association. Mr. [REDACTED] indicates that 2008 athletes from 66 countries participated in the contest "and celebrated Wushu convention," and that the beneficiary won the title of champion in the fist competition. Mr. [REDACTED] stated that the athletes who represented China "were carefully recommended by different provinces with special skills."

The petitioner claims that the evidence is sufficient to establish that the beneficiary has received national and international awards for excellence in his field as a Wushu competitor. Upon review, the evidence of record provides no specific information regarding any individual athletes who have been trained or instructed by the beneficiary, much less evidence that he has trained athletes who have received significant national or international awards. Accordingly, the petitioner has not established that the beneficiary meets this criterion as a martial arts trainer.

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. The petitioner did not indicate that the beneficiary is a member in any associations in his field, nor did it submit documentary evidence to satisfy this criteria.

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 submitted a copy of an article titled [REDACTED] [REDACTED] is invited to perform; Chicago Shaolin Temple is becoming well-known," published on November 26, 2007 in the Chicago China Star newspaper, which is described as a local publication. The article provides biographical information regarding the beneficiary, including information regarding his achievements as a competitor and performer, and indicates that he will soon teach martial arts for the petitioner. The petitioner has not established that this article was published in a major trade publication or otherwise constitutes "major media" about the alien. 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 petitioner did not submit any documentary evidence related to this criterion, or otherwise claim that the beneficiary could satisfy this criterion.

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). The director found that the beneficiary's success in competitions and participation in performance events was "successful performance of one's basic job duties," and "not an original contribution of major significance." On appeal, counsel states that the petitioner disagrees with the Director's assessment and explains as follows:

Beneficiary is a wushu athlete. Under wushu culture in China, his major job duty is to propagandize the spirits [sic] of wushu, promoting better health both in physical and spirits by teaching others or making performance. Participation of Wushu Competitions is not required for his job duty. Only those who have been trained for many years by masters in the field and developed their own unique skills and techniques will be capable to participate in national or international competitions. These athletes are making their own contributions to wushu field by applying their own developed unique skills and techniques to compete during Competitions. The Beneficiary not only participated in highest level national and international Competitions stated above, but also received three titles of Champions from the Competitions. Beneficiary did make great contribution to the wushu field than that of others in his field. Without his extraordinary ability in terms of wushu skills and techniques, the Beneficiary would certainly not be able to get such highest achievements.

Counsel's argument is unpersuasive. Neither the petitioner nor counsel has adequately explained how the beneficiary's successful participation in an athletic competition amounts to "an original scientific, scholarly or business-related contribution of major significance in the field" of Chinese martial arts. 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 Wushu practitioners participate in athletic competitions does not lead to a conclusion that the beneficiary made an "original contribution" to the field by being among Wushu practitioners who are successful competitive athletes. 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 Chinese martial arts, but none of the submitted attestations discuss any such contribution. The petitioner submitted a letter dated November 13, 2007 from [REDACTED], Vice President of Beijing Sports University. Mr. [REDACTED] states that he was the "head of the committee" at the national Wushu Championship of 2004, and was impressed by the beneficiary's "excellent performance and skills." Mr. [REDACTED] indicates that the beneficiary "is one of the excellent Wushu talents in China."

The petitioner also submitted a recommendation letter from [REDACTED], who states that he is the president and head coach of the Beijing Shaolin Wushu Academy, vice president of the Chinese Wushu Association, vice president of the Research Institute of Wushu, a national coach, and a national top level referee. He states that he and the

beneficiary "knew each other in a National Wushu Championship." He states that he beneficiary "represented our Academy to visit other countries and competed in national and international Wushu contests and received several champions." Mr. [REDACTED] indicates that the beneficiary also "performed in several cultural exchange programs and was highly appraised by Wushu experts in China."

The petitioner submitted a letter from [REDACTED], vice president of [REDACTED] who stated that the beneficiary "studied and practiced in our Academy from 2004 to 2005," and that he "worked very hard and performed excellently." Mr. [REDACTED] states that the beneficiary "possesses excellent Wushu skills and personality," and that such skills have been acknowledged by him and by other teachers at the Academy.

The petitioner submitted a letter dated July 21, 2008 from [REDACTED] President of the Shaolin Temple Overseas Headquarters in New York. Mr. [REDACTED] states that the temple invited several Wushu performers, including the beneficiary to the United States to perform in several events, and that they invited the performers because "they possess very special Wushu talents." Mr. [REDACTED] notes that "very few people in Wushu circles could win titles three years in a row in different categories because these competitions reflect highest level of skills that Wushu elites in China possess."

Finally, the petitioner has submitted a letter dated May 18, 2008 from [REDACTED] who describes herself as a professional martial artist and owner of a fitness and martial arts business in Chicago. Ms. [REDACTED] states that the beneficiary's receipt of three national and international titles in China is evidence of his high level of skill and "the extraordinary ability he has in Chinese martial arts."

The testimonials serve to confirm that the beneficiary satisfies the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) as a competitive athlete who has received nationally or internationally recognized awards for excellence as a competitive wushu athlete; however, they do not support a finding that the beneficiary has received national or international recognition for an *original contribution* to his field as an athlete or trainer.

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). Counsel for the petitioner asserts that this criterion is inapplicable to this matter because "Wushu field has a non-written tradition that even masters or grandmasters keep their skills and techniques in their mind and not in written form."

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). On appeal, counsel argues that the petitioning organization has employed the beneficiary in a critical or essential capacity "because he is a leading wushu trainer for the Temple and some members from local community come to the Temple, especially looking for his training due to Beneficiary own [sic] developed excellent skills and techniques." Counsel states that the petitioner, which was established in 2007, now has more than 100 people receiving wushu training and "is receiving distinguished reputation in local community," as evidenced by the beneficiary's participation in the Chicago Chinese New Year Parade in 2008. Counsel's argument is not persuasive. The evidence of record does not indicate that the beneficiary has earned sustained national or international recognition as a result of employment as a martial arts trainer for an organization or establishment with a distinguished reputation.

The record contains no documentary or testimonial evidence that the beneficiary has ever worked as a martial arts trainer for any organization or establishment, prior to coming to the United States to assist the petitioner on a volunteer basis as a B-1 nonimmigrant. Furthermore, the petitioner will not be considered to have a "distinguished reputation" based on counsel's unsupported assertions. Without documentary evidence to support the claim, the assertions of counsel will not 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). The fact that the petitioning organization has a growing number of students and was able to participate in a local Chinese New Year's parade is notable, but not sufficient to satisfy this evidentiary criterion.

It appears that the beneficiary has previously been selected to represent various Chinese martial arts schools or groups in international events as a performer. However, there is insufficient evidence to establish his "employment in a critical capacity," nor does the evidence of record establish that the organizations have a distinguished reputation. 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)).

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 the beneficiary will work as a martial arts trainer on a volunteer basis in exchange for room and board provided by the petitioner. The petitioner does not indicate or provide evidence that the beneficiary has previously commanded a high salary for services.

On appeal, counsel asserts that this criterion is inapplicable because the petitioner is a non-profit organization organized for religious purpose, and intended to propagandize Buddhism and teach Chinese Shaolin Kung Fu. Counsel asserts that employees of Chinese temples are traditionally volunteers with room and board being paid by the temple, and that temples across the United States follow the same tradition. The AAO agrees that that the petitioner has not met this criterion.

On appeal, counsel contends that the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) applies to the instant matter. The full text of 8 C.F.R. § 214.2(o)(3)(iii)(C) reads: "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 wording implies that there must be some showing that the criteria "do not readily apply to the beneficiary's occupation." As to who must make that showing, there is no presumption in the petitioner's favor. Section 291 of the Act, 8 U.S.C. § 1361, places the burden of proof on the party seeking benefits. It is the petitioner's burden to show that the criteria do not readily apply to the beneficiary's occupation, and it is also the petitioner's burden to establish that the alternative evidence is, indeed, comparable to the caliber of evidence described in the standard criteria listed at 8 C.F.R. § 214.2(o)(3)(iii)(A) and (B).

Furthermore, whether or not one relies on the "comparable evidence" clause, the burden is still on the petitioner to show that the beneficiary "is one of the small percentage who have arisen to the very top of the field of endeavor" as required by 8 C.F.R. § 214.2(o)(3)(ii) and has earned "sustained national or international acclaim" as required by section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(1)(ii)(A)(1).

Counsel's argument is unpersuasive for two reasons.

First, the petitioner in this matter does in fact claim that the beneficiary can meet at least three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B), and only notes that only two of the criteria do not apply. Since the petitioner does not feel that the other six criteria are inapplicable to the beneficiary's occupation, the AAO can find no reasonable basis for exempting the petitioner from meeting the regulatory criteria in this case and considering comparable evidence.

Second, the comparable evidence the petitioner wishes to have considered consists of the above-referenced statements from [REDACTED] and the referees of the three national and international competitions in which the beneficiary received the title of champion. Counsel asserts that the testimonials meet the requirements set forth at 8 C.F.R. § 214.2(o)(iii)(B), and that the regulations do not require "independent" evidence. The regulation at 8 C.F.R. § 214.2(o)(iii)(B) states:

Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability. . . . shall specifically described the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

With respect to the testimonial evidence, counsel asserts:

All of [the] recommendation letters and affidavits mentioned the very fact that the Beneficiary won Champions in national or international Competitions. As a common sense [sic], the winning of Champions [sic] itself is an indication of being one of that small percentage who have risen to the very top of the field of endeavor as long as the Competitions at highest national level in China, which they are.

Counsel further asserts that [REDACTED]'s statements that the beneficiary's achievement "is the representation of the highest level in China" and "one of the excellent Wushu talents in China," are equivalent to a determination that the beneficiary is "one of that small percentage who have risen to the very top of the field of endeavor."

The AAO disagrees. The petitioner's entire argument is based on the beneficiary receipt of one international and two national awards between 2004 and 2006. As noted above, the petitioner has established that these awards satisfy the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1). However, the petitioner has not established that the beneficiary has received the requisite sustained national or international acclaim as a result of winning these awards. While the beneficiary appears to be a successful and highly skilled wushu athlete, and well-respected by others who know him and have worked with him personally, the statute requires that the petitioner demonstrate that his "achievements have been recognized in the field *through extensive documentation.*" Section

101(a)(15)(O)(i) of the Act. Furthermore, as noted above, the record is devoid of any evidence of the beneficiary's achievements and recognition as a Chinese martial arts coach or trainer. Even if the petitioner had established that the beneficiary meets the criteria for extraordinary ability as a competitive athlete, the petition would not be approvable absent evidence that he sustained his national or international acclaim as a coach or instructor.

Finally, the petitioner submits on appeal an advisory opinion letter from the American Guild of Variety Artists (AGVA) on appeal. Counsel asserts that the letter should be considered "independent and competent evidence" of the beneficiary's qualifications for this classification. However, given that the petitioner seeks to classify the beneficiary as an O-1 athlete, the AAO finds the AGVA's opinion that the beneficiary meets the current regulations as a performing artist to be confusing at best. If the petitioner seeks to reclassify the beneficiary as a performing artist, the filing of a new O-1 nonimmigrant petition is warranted. Based on the job duties described, the AAO finds that the petitioner's initial classification of the alien as an athlete is appropriate; therefore, the AGVA's opinion is not relevant and will not be given any evidentiary weight.

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). The petitioner likewise failed to establish that those criteria did not readily apply to his occupation and provide comparable evidence in lieu of the specified criteria. 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.