

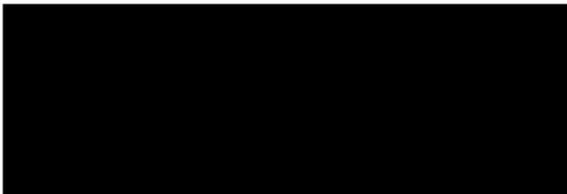
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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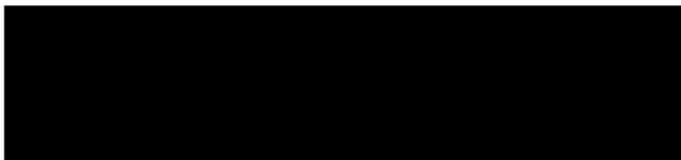
FILE: WAC 05 171 51212 Office: CALIFORNIA SERVICE CENTER Date: **FEB 02 2009**

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 BENEFICIARY:



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 appeal will be rejected as improperly filed.

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 operates a martial arts school and seeks to employ the beneficiary as a martial arts instructor, specifically, to teach tae kwon do and yoga.

The director denied the petition on December 17, 2005, concluding 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.

Although a timely appeal was filed, AAO notes that counsel indicated on Form I-290B, Notice of Appeal to the AAO, that he represents the beneficiary. The only Form G-28, Notice of Entry of Appearance as Attorney or Representative, submitted by counsel was signed by the beneficiary, and the petitioner is not named as the represented party on the Form G-28 or Form I-290B. Thus, the record shows that counsel represents the beneficiary, not the petitioner.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states:

- (B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Similarly, only an authorized party may maintain an appeal. 8 C.F.R. § 103.3(a)(2)(v) states:

Improperly filed appeal—(A). Appeal filed by person or entity not entitled to file it--
(1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

Inasmuch as neither the beneficiary nor his representative has standing to file an appeal in this matter, the appeal must also be rejected as improperly filed, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A).

ORDER: The appeal is rejected.