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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted] Public Copy

File: EAC 99 057 52682 Office: Vermont Service Center Date: APR 27 2001

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

[redacted]

identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability in the Korean martial art of taekwondo. The petitioner operates a martial arts school in Woburn, Massachusetts. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through

evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, counsel initially claimed, meets the following criteria.

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

The petitioner received a Presidential Sports Award from the President's Council on Physical Fitness and Sports in 1997. There is no evidence that this award recognizes excellence in the field. The certificate is a "form" document with the petitioner's name typed above the phrase "who has, through regular participation in sport, made a commitment to the active life."

The petitioner is a master instructor, which according to counsel "is the world's highest ranking award as a teacher of this art." The petitioner submits nothing to show that "master instructor" is a major award, rather than a hierarchical rank.

The petitioner submits several participation certificates, which are not prizes for excellence, but rather acknowledgments of the petitioner's participation in various events. Some of these certificates indicate that the petitioner has participated in the 1988 Olympic Games and other international events, but the nature of his participation is not clear from the certificates; there is no evidence that he competed or that he coached a medal-winning athlete at these events.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner submits copies of several articles from WTF Taekwondo, a quarterly publication of the World Taekwondo Federation. Many of these articles are very brief, describing the activities of the WTF Taekwondo Demonstration Team of which the petitioner was a member; these articles do not single out the petitioner from the other team members, and many of these articles do not mention the petitioner by name at all.

The petitioner is the main subject of some very brief pieces, generally one-sentence captions to photographs in the publication. The most substantial article about the petitioner in WTF Taekwondo is a five-sentence article reporting the petitioner's return from

Congo after a two-month training visit. Another article discusses the petitioner's visit to Monaco, but the dominant focus of the article is the state of taekwondo in Monaco rather than on the petitioner's work there.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

Counsel asserts that the petitioner wrote a textbook in his field. This statement is something of an exaggeration; the petitioner is one of eleven credited "writers-editors" of Taekwondo Textbook, and the credited author is Kim Un-Yong. Several photographs in the book, illustrating various moves and positions, depict the petitioner, but his appearance in the photographs does not establish that he wrote the accompanying text.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Counsel asserts that the petitioner has satisfied this criterion, but does not explain which of the organizations named in the record the petitioner has served in this way. From 1993 to 1997, the petitioner was the vice chairman of the Kukkiwon Taekwando Demonstration Team, and from 1988 to 1992 he was the instructor for Gabon's National Defense Taekwondo Team. While the petitioner certainly played a major role for these groups, the petitioner must establish that these entities have a distinguished reputation in comparison to other martial arts teams. Various documents identify the petitioner as an "official" at various events but there is no indication of the petitioner's duties and responsibilities.

Counsel notes that the petitioner achieved the level of a 7th Dan in 1990, which "is the penultimate ranking for taekwando practitioners all over the world." The record does not indicate the total number of 7th Dan or 8th Dan taekwondo masters, or the qualifications which one must meet to reach these levels.

On April 21, 1999, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish the petitioner as an alien of extraordinary ability. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, and specified that the Service has defined "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor."

In response to this letter, the petitioner has submitted documentation regarding his activities during the spring and summer of 1999. Most of these documents did not even exist until after

the director requested further evidence. In Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Evidence concerning the petitioner's activities during 1999 cannot retroactively demonstrate the beneficiary's eligibility as of December 1998, when he filed the petition. The documents indicate, among other things, that the petitioner "is a member of the [U.S. Taekwondo Union] National Board of Martial Art," but there is no indication as to when he became a member of this board, nor does the record make clear the significance of this membership.

The director denied the petition, acknowledging that the petitioner "has experienced . . . a measure of success" but finding that the evidence of record is not sufficient to establish that the petitioner has earned sustained acclaim at the very top of his field.

The director acknowledged the published articles about the petitioner but stated that the record contains no articles "from major publications not directly or indirectly related to the art of Taekwondo." On appeal, counsel argues that the director should not discount the published evidence simply because the publications are related to taekwondo. Counsel's objection is sound, because the plain wording of the regulation encompasses published materials in "trade publications." One need not come to the attention of the popular media to satisfy this criterion. The regulation does, however, require that the publications in question be "major" publications. The petitioner has not submitted any information regarding WTF Taekwondo to establish that it is a major trade publication, circulated widely in the field, rather than a more restricted publication or internal newsletter distributed only to WTF members.

Counsel states that the director should have regarded Taekwondo Textbook "as equivalent to evidence of the alien's authorship of scholarly articles or evidence of [the petitioner's] contribution of major significance in the field." As noted above, the book identifies the petitioner as one of eleven "writer-editors," and credits only one person (not the petitioner) as the "author." Nothing in the record indicates the extent of the petitioner's contribution to this book. Furthermore, we cannot find that Taekwondo Textbook represents a contribution of major significance without some independent evidence to show that the book has had a major influence on the practice of taekwondo. If the book merely lists and explains the postures and movements already established in the discipline and taught worldwide, then it is not clear to what extent the book is original.

Counsel states that the director should have considered "the numerous articles, pictures and letters from acknowledged experts as evidence of the [display of the] alien's work in the field of artistic exhibitions or showcases," which pertains to another of the regulatory criteria. The "display" criterion applies primarily to the visual arts. "Display" of an athlete's work, in the form of performance before spectators, is universal in the sports world and thus counsel's standard would apply to every athlete who has ever competed in front of spectators. A more apt comparison would be to another of the criteria, requiring evidence of commercial successes in the performing arts, as shown by box office receipts or other evidence. In this context, the petitioner might establish that sporting events in which he is involved tend to draw more spectators than other comparable taekwondo events. The petitioner, however, has established only that he has performed before spectators; there is no indication that he has drawn larger crowds than most other taekwondo masters.

Counsel asserts that the director should have given more weight to the petitioner's "contribution to the training of American Taekwondo Athletes for the Olympic Games in Australia in the year 2000." (The appeal was filed in October 1999, well before the Olympic Games in Sydney.) The record, however, contains no documentation from the U.S. Olympic Committee or other official U.S. organization to establish the extent to which the petitioner was involved in training these athletes. Some witnesses have indicated that the petitioner contributed to the acceptance of taekwondo as an Olympic event, and he participated in a demonstration of the art at the 1988 Olympics (held in his native South Korea); but there is no direct evidence from any competent authority to show that he was involved in training the 2000 U.S. Olympic team. Even the petitioner himself, in a statement dated July 8, 1999, made no mention of the Olympics; he focused his remarks on his intention of making his new school "one of the best Taekwondo academ[ies] in the New England area."

In addition to the remarks discussed above, counsel states on appeal that a brief is forthcoming within 30 days. To date, over 18 months after the filing of the appeal, the record contains no further submission and we shall render a decision based on the record as it now stands.

The petitioner has established that he has been involved in taekwondo at the national and international level, while achieving the second-highest ranking available. We note, however, supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) which states "[t]he Service disagrees that all athletes performing at the major league level should automatically meet the 'extraordinary ability' standard." By this same logic, we cannot conclude that affiliation with a major national or international organization can suffice to establish that the petitioner, as an

individual, has earned sustained acclaim nationally or internationally as one of the best-known figures in his field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself in the martial arts to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner has been successful in his field, but is not persuasive that the petitioner's achievements set him significantly above almost all others in that field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.