U.S. Department of Justice

Immigration and Naturalization Service

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

File: EAC 01 281 54412 Office: VERMONT SERVICE CENTER Date: FEB 27 2003

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: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Elizabeth Heyward
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office 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. 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 achieved sustained national or international acclaim are set forth in Service regulations at 8 C.F.R. § 204.5(h)(3):

> Initial evidence: A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:
>
> > (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

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

(iii) 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;

(iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought;

(v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

It is noted that the Form I-140 petition (and thus the director's correspondence) identifies [redacted] as the petitioner. [redacted] part 9 of the petition form, indicating that she had prepared the form, but the alien beneficiary signed part 8, thereby taking legal responsibility for the accuracy of the petition. Because the beneficiary, rather than [redacted] signed the controlling part of the form, the alien himself shall be considered to be the petitioner.

The petitioner seeks employment as a "master instructor" of the martial art of hap ki do. He describes his initial evidence as follows:

> My [first exhibit is a] certificate from the Korea Hap Ki Do Association, which shows that I am a 4th dan Master of Hap Ki Do. Second is a videotape and still photographs of a recent display and exhibition of myself at a Martial Arts tournament and demonstration which took place 3/31/01 in Mahwah New Jersey. Third, I am submitting 2 letters to show that I am under consideration for employment in martial arts. Both letters of recommendation are from Masters of martial arts schools in the New York/New Jersey area. They also verify that I have been instructing and participating in promotion tests of many students of Tae Kwon Do and Hap Ki Do.

The petitioner does not explain the significance of being "a 4th dan Master of Hap Ki Do." The title, by itself, does not convey any information about the degree of acclaim inherent in that title.

While 8 C.F.R. § 204.5(h)(3)(vii) discusses the display of the alien's work in the field at artistic exhibitions or showcases, not every public "display" of one's work carries equal weight. The videotape mentioned above shows two minutes of footage from a demonstration that took place in an unidentified gymnasium. A few dozen spectators are visible on the tape, which appears to be amateur footage. There is no indication that the event is national or international in scope, or that the footage has been broadcast internationally, nationally or locally. Thus, the tape does not show that the petitioner has "displayed" his work to a national or international audience.

The still photographs show the petitioner practicing and training students. Visible in the background is a storefront-type window with an inscription that reads, in part, "Meditation Center . . . Training . . . Therapy – Meditation." These pictures show that the petitioner is active in training students in the martial arts, but the pictures were taken in what appears to be a practice room rather than in a stadium or arena. The presence of a photographer does not cause this training/practice session to become an artistic display.

The letters referenced above show that the petitioner's potential employers regard him as a highly skilled athlete and teacher, dedicated to the discipline of his martial art, but do not establish the degree of acclaim required to establish that the petitioner is an alien of extraordinary ability in the martial arts.

The director requested additional evidence to establish the petitioner's eligibility. The director reiterated the ten criteria set forth at 8 C.F.R. § 204.5(h)(3). In response, the petitioner has submitted copies of additional certificates and photographs.

One certificate, from the Korean Ki Do Association, has a printed inscription in both Korean and English, with blank spaces for specific information such as the date and the recipient's name. The English half, however, remains blank, and the record contains no translation of the Korean inscription.

Another certificate is an Award of Appreciation from the World Hwa Rang Do Association, issued October 9, 1999. The certificate does not specify any particular achievement by the

petitioner; a preprinted inscription refers to "their [sic] unwavering loyalty and perseverance" as well as "their outstanding support and sincere dedication in the neverending pursuit of spreading HWA RANG DO throughout the world."

The record contains little information about the World Hwa Rang Do Association, which issued the above certificate. Another certificate in the record, signed by the mayor of Union Township, New Jersey, was presented to the petitioner after the "14th Battle of the Orient Open National Martial Arts Championships," organized by the World Hwa Rang Do Association, East Coast Headquarters. The certificate indicates that the event took place "at Union High School on Sunday, October 7, 2001." This event did not take place until after the petition's filing date of May 1, 2001. The certificate does not clearly specify whether the petitioner actually competed at this event. The record contains no other information about this competition. The use of the term "national championships" is not self-evident proof of the importance of the event. Major national championship athletic events in the United States (such as the Super Bowl and the World Series) do not generally take place in high school gymnasiums.

The director denied the petition, noting that the petitioner has not established that he has been the subject of attention from the media or from top martial arts figures. On appeal, the petitioner submits copies of additional certificates and photographs. Several of the certificates are generic certificates of appreciation, recognizing unspecified contributions and general dedication to the sport. Some certificates are signed by In Sun Seo, identified first as a 9th dan, and later 10th dan, grand master. Given that there are demonstrably 10 dan levels, it does not appear that an individual at the 4th dan level stands at the very top of his field.

In Sun Seo, writing as president of the World Ki-Do Federation, states "[t]he fact that [the petitioner] has achieved the rank of 4th Dan (Black Belt) shows that he has excelled in Korean martial arts. . . . [H]e will be eligible to test for his 5th Dan (Black Belt) this year. The rank of 5th Dan (Black Belt) is the start of 'Master' level in Korean martial arts." As noted above, In Sun Seo is a 10th dan grand master, and thus demonstrably ranks far above the petitioner. This letter does not indicate that the petitioner enjoys national or international acclaim or that he has won recognition beyond others of his rank. The assertion that the "master" level begins at the 5th dan raises the question of why the petitioner's initial submission repeatedly referred to the petitioner as a 4th dan master.

In a personal statement submitted on appeal, the petitioner states his desire to stay in the United States, and asserts that he would be proud to live here given the chance. While the petitioner's statement is surely heartfelt, the sincerity of the petitioner's desire to immigrate is not at issue in this proceeding. It cannot suffice for the petitioner to show that he wants to live in the United States, or that he has had a successful and productive career as an athlete and instructor. The petitioner, by statute and regulation, must provide extensive documentation of sustained national or international acclaim as a figure at the very top of his field of endeavor.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the

small percentage who has risen to the very top of the field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished himself as a martial artist 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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.