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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

MAR 24 2003

File: EAC 02 099 53226 Office: VERMONT SERVICE CENTER Date:

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)

PUBLIC COPY

ON BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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 Hayward
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 sustained and the petition will be approved.

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 for that visa classification.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the pertinent regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

The petitioner is an instructor, and former champion athlete, in the sport of Taekwondo. Much of the record consists of background information regarding the martial art of Taekwondo. The petitioner submits several exhibits to establish that Taekwondo is a medal event at the Olympic Games, but not that the petitioner competed at the Olympic level. The petitioner does not appear to have actively competed in the sport since the late 1980s. Counsel refers to the petitioner as an "educator" and states:

> Although the Olympics is the ultimate goal, while working toward this goal, there are many other youth Taekwondo competitions such as The AAU Junior Olympic Games and The US Junior Taekwondo Champion Competition, where American youth teams could tremendously benefit from [the petitioner's] expertise.
>
> Not only the US youth teams, but also regular US Teams will greatly benefit from [the petitioner's] extraordinary expertise and knowledge in preparation for Olympics and many other international Taekwondo competitions such as:
>
> World Taekwondo Championships
> World Games, World Cup
> Pan American Taekwondo Championships
> Pan American Games
> International Goodwill Matches

The record contains no direct evidence that the petitioner has actually trained or coached athletes at the level of the above-named games. A simple list of major Taekwondo competitions has no evidentiary weight without documentation that the petitioner's athletes have actually been involved at that level of competition. While some witnesses assert that the petitioner's pupils have been successful at high levels of competition, the record lacks specific details.

The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary criteria.

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

A certificate from the president of the Korea Taekwondo Association shows that the petitioner won numerous national-level awards in his weight class between 1979 and 1989. The president of the association had presented the petitioner with several citations, most recently a Citation for Excellent Instruction in 1995.

Counsel states that, because Korea is the birthplace of Taekwondo, the petitioner's "winning awards and praise in Korea as an outstanding educator in Taekwondo is in itself extraordinary." We reject counsel's assertion that the petitioner's awards carry added weight by virtue of being

from Korea (which is the petitioner's native country). Nevertheless, the petitioner satisfies this criterion. He has submitted documentation from numerous authoritative sources of national and international awards as a competitive athlete. More significantly for the purposes of this petition, the 1995 citation from the president of the Korea Taekwondo Association (affirmed by the same official) shows that the petitioner continued to receive national recognition as an instructor, several years after the end of his competitive career. The petitioner has also received local (and thus non-qualifying) awards for his work as a coach and educator, indicating that the petitioner has acted as the Chungbuk province team's head coach at national competitions.

> *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 articles published in Korean newspapers during the 1980s. The petitioner is the main subject of some of these articles, but others merely mention him in the course of general descriptions of various tournaments. A 1997 article states that, in the years following his competitive career, he "has become an acclaimed and very highly respected educator winning many awards." In 1994, another newspaper interviewed the petitioner on the occasion of the selection of Taekwondo as an Olympic medal event beginning with the 2000 games in Sydney.

The record does not establish that these newspapers constitute major media, affording the petitioner national rather than limited local coverage. Strictly local coverage, centered in the petitioner's home city or province, does not convey national acclaim. Had the petitioner submitted evidence about the publications in which these articles appeared, he might have readily satisfied this criterion.

> *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.*

A 1998 certificate reflects the petitioner's "distinguished work as the presiding judge at the 28th National Competition of Taekwondo Teams for the Daegu Taekwondo Association President Flag." There are other references to judging work as well, but this certificate is the clearest indication that the petitioner has indeed acted as a judge at the national or international level.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

Several plaques presented to the petitioner indicate that they reflect "extraordinary contribution[s]" by the petitioner, but there is little information about what these contributions were or what made them significant. In general, the contributions were to corporations or to local teams, rather than contributions at the national or international level.

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

The petitioner has submitted letters from officials of various provincial, national, and international associations. The highest such official appears to be [redacted] secretary general of the World Taekwondo Federation, who states "[b]ased on his excellent performance in various championships and years of training, education and experience, I can assure you that [the petitioner] is one of the most qualified Taekwondo instructors in the World." The initial letters are at times vague regarding the nature of the petitioner's accomplishments.

The director requested additional evidence, such as more recent media coverage with evidence of national or international circulation. The director, observing that much of the petitioner's evidence concerned the petitioner's activities in the 1980s, requested evidence that the petitioner's acclaim has been sustained up to the present. The director also requested information regarding the petitioner's intended work in the United States. In response, the petitioner states that he intends to focus on training "as many possible US instructors as I can reach."

The petitioner has also submitted witness letters. [redacted] chairman of education for the United States Taekwondo Union and president of the Eagle Taekwondo Federation, states "[t]he world probably has to wait 100 years to see another athlete of [the petitioner's] talent and abilities," and adds that the petitioner "has also been an extraordinary educator. . . . I personally requested [the petitioner] to be our organization's advisor and instructors' instructor in the USA.' [redacted] chairman of education for the World Taekwondo Federation, states that the petitioner "is globally recognized as one of the greatest Taekwondo World Champions" and "an important leader in Taekwondo education." He adds:

> Since the year 2000, as an advisor/coach on Taekwondo technique, [the petitioner] played a crucial role in the Chinese National Team's winning medals at the Olympic Games and other International Taekwondo competitions. In March 2002, in recognition of his contribution, the World Taekwondo Federation appointed him as the international Master Instructor Envoy to Beijing, China, to direct their instructors in training of the Chinese National Taekwondo Team.

While the above letters contain some impressive claims, these assertions are not always substantiated. For instance, the record contains nothing from China's Taekwondo team to show how much credit the petitioner deserves for the team's performance at the 2000 Olympics. Still, these officials have direct standing to attest to the petitioner's activities on behalf of the organizations. Thus, we can conclude from the available information that the petitioner has played critical roles for distinguished Taekwondo organizations.

The director denied the petition, stating that the petitioner has failed to submit "extensive documentation" of acclaim as the statute requires. The director acknowledged the petitioner's

significant success as an athlete during the 1980s, but found that the petitioner has not established comparable acclaim as an educator/instructor.

On appeal, counsel states that the director's characterization of the petitioner as an "educator/instructor" is an unfair characterization because it excludes the petitioner's significant accomplishments as an athlete. It remains, however, that the petitioner does not seek to come to the United States to compete in his own right. The petitioner's detailed statement of his future plans shows that the petitioner (who, as of this writing, is 40 years old) seeks to devote his time to "the training/coaching of the younger generation of Taekwondo Athletes." While we certainly will not ignore the petitioner's highly successful competitive record, that phase of his career appears to have permanently ended and cannot serve as the foundation of future immigration benefits. The petitioner's claim of future benefit to the United States rests on his ongoing educational work rather than on championships that he won over a decade ago while competing under another country's flag.

Counsel asserts "[t]o be an extraordinary educator/instructor in Taekwondo, the teacher himself must possess extraordinary Taekwondo athletic ability." Even if we accept this contention without proof, it does not logically follow that every extraordinary Taekwondo athlete will prove to be an extraordinary educator/instructor in the sport.

Counsel places considerable emphasis on the petitioner's ranking within Taekwando's "Dan" system. In the initial filing, dated January 2002, counsel repeatedly observed that the petitioner is a 6th Dan black belt. Subsequently, the petitioner has submitted evidence that he was promoted to the 7th Dan in June 2000, over a year and a half before the filing date. A letter from a top official of a major governing body indicates that there are only about 250 7th Dan black belts in the world, which raises the question of why the petitioner's promotion to 7th Dan was not considered worth mentioning in the initial petition (which did include documentation of his earlier 5th and 6th Dan promotions). In any event, it is problematic to place too much weight on the petitioner's Dan ranking. In the sport of Taekwondo, the very top ranking is not 7th Dan, but rather 9th Dan, and the petitioner is a Master rather than a Grandmaster. Thus, to emphasize the petitioner's standing in the hierarchy is to call attention to the higher tiers that he has not yet reached. Furthermore, the Dan system is largely based on length of experience. To reach the 7th Dan, an athlete must be at least 36 years old, an age which seems to be well above the average age of active competitors in the sport. The petitioner himself was only 27 years of age when he ceased competing. Thus, the Olympic athletes and current champions are highly unlikely to be 7th Dan black belts, yet there is little doubt that an Olympic medalist who is still competing today is at the top of the sport.

Counsel is on firmer footing with the observation that the petitioner has won awards as a coach and instructor, thus demonstrating recognition that has outlasted his competitive career. Counsel also correctly observes that coaches tend to receive considerably less media coverage than the athletes who rely on them, and that the director has emphasized regulatory criteria that the petitioner does not claim to have met (such as evidence of a high salary).

Furthermore, the director's assertion that "sustained national acclaim, in and by itself, does not automatically establish that the beneficiary is, in fact, one of those few who are at the very top of their field of endeavor" appears to disregard the plain wording of the controlling statute. As cited above, section 203(b)(1)(A)(i) states that an alien qualifies for the immigrant classification sought if "the alien has extraordinary ability . . . which has been demonstrated by sustained national or international acclaim." While the phrase "small percentage at the very top of the field" derives from the legislative history, that phrase does not supersede the plain language of the statute, which established the "sustained acclaim" threshold.

Upon careful consideration of the record, while many of the petitioner's claims could have been more thoroughly documented, on balance the petitioner's evidence is sufficient to warrant approval of the petition. The petitioner has demonstrated that his acclaim did not cease upon his retirement from competition, but rather he has continued to attract national and even international attention within his sport for his continued educational activities.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.