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U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FEB 02 2004

FILE: [redacted] Office: CALIFORNIA 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)

ON BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The petition is now before the Administrative Appeals Office (AAO) 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 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 as a martial arts master. 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 practices Wushu, or Chinese martial arts, and Qigong, which he describes as a form of physical exercise perfumed with one's "inner strength" utilizing muscle and breath control. The petitioner has submitted evidence that, he claims, establishes him as a martial artist of extraordinary ability and which 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 states that he is a Wushu 6th Dan or Level Six master. The certificate presented as evidence reads "the bearer" has passed the Wushu Dan examination and has achieved "the following Dan." However, the certificate as translated does not name the petitioner as the bearer or indicate the Dan level attained.

The petitioner states he has received the following awards:

(1) a 2002 Extraordinary Award of Performance Contribution. The Tiger Claw Foundation presented this award during a fund raising event. Although the petitioner apparently competed against other internationally known martial artists, this was a unique event for the Tiger Claw Foundation, and the evidence does not establish that the performance award is a nationally or internationally recognized award.

(2) a 2002 Best Performance at the 2002 Family Fun Moon Festival in Monterey Park, California. The petitioner acknowledges this is a city level honor and provides no evidence that the festival or award is recognized nationally or internationally.

(3) a 2001 Gold Medal in the Yang-Style Paijiquan Performance. The evidence reflects that the China Yongnian International Taijiquan Gathering, during which the petitioner won his medal, is a 10-year old event designed to "promote international friendship and exchanges between Taijiquan fields, and to bring out benefits of Taijiquan for the human being." According to the Chief Secretary of the Handan Gathering, the 2001 event included 2,300 contestants from around the world. The petitioner was first among 380 contestants in the traditional Yang-Style Taijiquan. The AAO determines that this is an internationally recognized award.

(4) a 2001 Gold Medal in the Taijiquan Tuishou Challenge Contest. This petitioner won this award during the above-described event. He was first among 60 contestants in the Taiji Tuishou 75kg contest. We determine that this is an internationally recognized award.

(5) a 2001 3rd Prize in the Compulsory-Style Taijiquan Tuishou Contest. The evidence reflects that the petitioner won this event at the 2001 "longwei" China Zhuhai International Taijiquan Exchange Program Game, described as the first event of its kind held outside Handan. The event does not appear to be an ongoing affair, and although the petitioner apparently competed against martial artists from around the world, the evidence does not establish this award is nationally or internationally recognized.

(6) a 2001 4th Place award in the Taijiquan Tuishou Contest. This award was won during the event described in number (5) above. As stated, the evidence does not establish this as a national or international award.

(7) a 1998 Outstanding Referee Award from the Sichuan Provincial Sports Committee. The petitioner submits a certificate for this award, but provides no other evidence regarding the award or his selection. Nonetheless, it appears to be a local award which is not recognized on the national or international level.

Based on his receipt of two first place medals during the China Yongnian International Taijiquan Gathering, we find that the petitioner has met this criterion.

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.

To demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner submits evidence of his membership in the International Wushu Sanshou Dao Association, O-Mei Kungfu Research Institute, China Unique Wushu Fests Research Association, Sichuan Taijiquan Research Institute, Chengdu Wushu Association and Chengdu City Sports Qigong Association. The petitioner also submits evidence of the outstanding achievements required to be an officer in several of these organizations. The criterion is based on the requirements for membership in the association, and not on the requirements to hold office within the organization. With one exception, the petitioner submits no evidence that membership in these organizations is based on outstanding achievements.

The one exception is the China Unique Wushu Fests Research Association. According to an unsigned but sealed letter from the association dated March 20, 2003, the association researches unique Chinese fests (feats), and

> attract[s] masters who possess the extraordinary abilities and are able to demonstrate their fests. According to the level of difficulty, observed effects, participatory degree, artistic quality of the fest and the distinctive abilities of the masters, we judged and recruited them to do research of Chinese unique fests in our association.

No other evidence of this association appears in the record. The evidence indicates that only certain members ("counsel members") are selected based on outstanding achievements. The letter identifies the association as an "academic research organization" whose purpose appears to be to document the unique feats of martial arts experts, and does not appear to be an organization of "recognized national or international experts in the field" as required by this regulatory criterion.

On appeal, the petitioner submits evidence that he has been accepted for membership in the Chinese Wushu Association, which appears to require some measure of achievement from its members. However, the petitioner was granted membership in the association subsequent to the filing of his petition. Circumstances that did not exist as of the filing date cannot establish eligibility retroactively. The petitioner must possess the necessary qualifications as of the filing date of the visa petition. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971).

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.

In order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submits several articles that appeared in the *Chinese Daily News* during August and September 2002. The August 26th article reviewed the petitioner's performance at a martial arts show on the 24th of that month in Foster, while the August 31st described his performance at a show on the 30th of that month in San Francisco. The latter article implies the petitioner was on tour to demonstrate his art. A September 22nd article mentioned him as one of the performers at the Monterey Park Mid-Autumn Festival. An article that apparently appeared in the September 19th edition of the newspaper was an announcement of a seminar on keeping fit using China O-Mei Wushu and Qigong with the petitioner. Though nominally about the petitioner and his work, the documentation provided is confined to a two-month period in 2002 and refers only to the petitioner's performance at local martial art shows. This is far from the extensive documentation required by the regulations to establish that the petitioner has achieved national or international acclaim. Further, although the petitioner submits information regarding the circulation of the *Chinese Daily News*, the information provided indicates that the edition of the paper in which the articles about the petitioner appeared is local or regional in nature and does not constitute major media. Other documentation submitted with the petition included a flyer announcing the Family Fun Moon Festival with the petitioner apparently listed as one of the attractions (a full translation was not provided contrary to the requirements of the regulations at 8 C.F.R. § 103.2(b)(3)), and an advertisement for the keeping fit seminar. This material is not about the petitioner or his work and fails to establish that he has met this criterion.

The petitioner also submits evidence of publicity relative to him that occurred after his petition was filed. As noted above, eligibility must exist as of the date of filing of the petition. Circumstances occurring after the filing of the petition cannot be used to establish visa preference eligibility. *Matter of Katigbak, supra.*

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.

The petitioner submitted evidence of his appointment to the "Chengdu Wushu Dan (Level) System Assessment Committee" responsible for the Wushu Dan assessments or judgments in Chengdu, and his appointment as the Chief Referee of the 1998 Sichuan Provincial Fitness Improvement Qigong Contest. In response to the RFE, the petitioner submitted evidence that he was a deputy director of the 1997 FuNanHe Ten-Thousand Persons Doing Wushu Activities Program Judging Committee. On appeal, the petitioner includes scorecards of evaluations he performed as a judge at the Sichuan Health Fitting Qigong Contest, and the Dan Level Test and Assessment in Chengdu. The evidence reflects that the petitioner's participation in the assessment of Dan level aspirants and his refereeing of contests were all done at the local or provincial level. The criteria are established to assist a petitioner is establishing national or international acclaim. Assessing or judging the work of others at the local level does not satisfy the requirements of this criterion.

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

As evidence that he meets this criterion, the petitioner submits letters from fellow Wushu masters attesting to his proficiency as a Wushu practitioner. The authors speak generally in terms of the petitioner's skills and accomplishments but do not indicate that he has made a significant contribution to the martial arts field. The one exception is Mr. Xinliang Wu, who indicates he is a holder of a Wushu 7th Dan. He states that the petitioner created a "novel O-Mei internal Qigong for fitness purposes, which is able to make the exercisers recover quickly. This novel Qigong is especially useful for diseases including insomnia, dizziness, hypertension, abdominal pain, and stomachache. It also does good to some chronical diseases." No other evidence of this "novel" O-Mei internal Qigong appears in the record and no evidence exists to support Mr. Wu's assertions as to the benefits of the exercise program. This evidence does not establish the petitioner's original contributions to the 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 and is one of the small percentage who has risen to the very top of his field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a martial arts expert 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 is a remarkable marital arts expert, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.