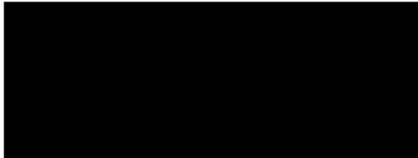




U.S. Department of Justice  
Immigration and Naturalization Service

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



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File: WAC 98 140 50092 Office: California Service Center Date:

MAR 27 2000

IN RE: Petitioner:  
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:



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

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California 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 business and the sciences. 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.

The petitioner seeks employment as the vice president of [REDACTED] an importer of tea leaves. [REDACTED] Vice President of [REDACTED], states:

We are extremely impressed with [the petitioner's] expertise in tea history, development and research. We would like to utilize [the petitioner's] talents to expand our international

trading division by not only importing tea leaves from various parts of the world but also grow tea in the US. . . . [The petitioner] with his extraordinary knowledge and understanding of tea and its cultivation would give us a big edge in promoting various types of tea and their health benefits to the American public.

[The petitioner's] main duties would be to propagate and grow tea leaves. Moreover, [the petitioner] will investigate and develop different methods of growing tea, plan and carry out breeding studies to develop and improve varieties of tea with respect to characteristics such as yield, quality, adaptation to specific soils and climates, and resistance to diseases and pests.

This petition seeks to classify the petitioner as an alien with extraordinary ability in business and the sciences, as a scholar and marketer of Chinese tea. 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, he claims, 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.*

Counsel states that the petitioner's "expertise in tea has been unanimously acknowledged by top Chinese government officials." To support this contention, counsel cites photographs of the petitioner "being praised for his achievements" by various top government officials of the People's Republic of China, as well as "congratulatory autographs from high level government officials and paintings from well-known Chinese painters for the publication of his books." While the attention of top government officials carries some weight, congratulations, praise, autographs and gifts do not constitute nationally or internationally recognized prizes or awards.

Furthermore, the photographs of the petitioner with the government officials cannot establish the context in which the petitioner met the officials. One witness indicates that the petitioner "served as vice governor of [redacted] and [redacted]." It is highly likely that the petitioner met with higher government figures in conjunction with his official posts, rather than due to his expertise pertaining to tea.

*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.*

Counsel states that the petitioner "was one of two keynote speakers at the [REDACTED] Convention of the [REDACTED] for [REDACTED] in [REDACTED]" and that the petitioner "has recently become a member of the [REDACTED] in [REDACTED]."

Professor [REDACTED] of the [REDACTED], states [REDACTED] [has] now become one of the largest Chinese-American professional organizations in this country with over 2000 members in many states. Each year, we invite well-known scholars to give keynote speeches at [REDACTED] annual conventions." While Prof. [REDACTED] describes the petitioner as "a tip-top tea expert in the world," who "is currently working with several other [REDACTED] members on the development of new medicines based on tea for treatment of diseases such as cancer," the letter does not specify what criteria prospective members must meet to qualify for admission into the organization. Prof. [REDACTED] statement that [REDACTED] is one of the largest organizations of its kind would seem to suggest that its membership requirements are not extremely strict.

Dr. [REDACTED] President of the [REDACTED], describes [REDACTED] as "a major organization for Chinese-heritage pharmaceutical professionals in the US." Dr. [REDACTED] asserts that the petitioner has "earned . . . international recognition as an outstanding tea expert," but does not state what requirements one must meet in order to become a member of SAPA.

*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 articles from Fujian Daily, the Hong Kong newspapers the Mirror and the New Evening Paper, Life Magazine for the Hunan Provincial Government Institutions, and China's Wind magazine.

All of these articles are in the Chinese language. The above regulatory language requires the submission of "any necessary translation." Another regulation, at 8 C.F.R. 103.2(b)(3), states:

Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

In this case, the foreign-language articles are accompanied only by brief capsule summaries, and not all of the articles are dated. The burden is on the petitioner to establish that the publications are national or international in character. At least some of the publications appear to be local or provincial in nature.

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

Counsel states that the petitioner's "most important findings" include:

1. That tea had its earliest origins in Sichuan in southwestern China, and not in India, as was theorized by some scholars
2. That historical Chinese textbooks had confused the city of Wuyang with the city of Wudu . . . ; and
3. That tea has a "strong anti-hypertensive effect and prevent[s] platelet aggregation."

Excerpts from one of the petitioner's books demonstrate where the petitioner has posited the above findings, but do not establish their significance. Beyond the above three numbered findings, counsel asserts that the petitioner visited representatives of the U.S. Food and Drug Administration ("FDA") in 1980, and that the petitioner "has been credited for the successful introduction and sale of Chinese Oolong Tea in Japan."

To corroborate these assertions, the petitioner submits a letter from Dr. [REDACTED] a research associate professor at the College of [REDACTED] of [REDACTED], [REDACTED]. Prof. [REDACTED] states that a 1978 article by the petitioner "not only revealed the healing power of tea regarding hypertension and cardiovascular disease but also demonstrated how to inhibit cancer's spread, reduce tumor size and possibly cause complete remission by drinking tea." Prof. [REDACTED] also contends that the petitioner "proved that tea trees were first grown and found in the South-West China and finally settled more than one hundred years' academic disputes on the origin of tea." Prof. [REDACTED] asserts that the petitioner introduced a "canned tea drink" which "aroused a great sensation in the Japanese tea market," increasing a hundredfold the sales of Chinese Oolong tea in Japan. With regard to the petitioner's meeting with the FDA, Prof. [REDACTED] asserts that the petitioner's 1980 "tea-tasting party in New York . . . was highly appreciated by Mr. [REDACTED] a tea compliance officer of FDA."

The involvement of an FDA official at a tea-related event does not endorse the claimed medicinal effects of tea; as its name indicates, the FDA has jurisdiction over food products as well as drugs.

Dr. [REDACTED] cites no specific sources for many of his above assertions. As a professor of dermatology, he has studied the medicinal effects of tea,<sup>1</sup> but it is not immediately clear what expertise or standing he possesses that would allow him to speak as an authority on the other subjects he discusses. His repetition of counsel's assertions, without primary supporting evidence, does not represent persuasive corroboration of counsel's claims.

[REDACTED] Chairman of the China International Tea Culture Institute, states that one of the petitioner's books, Modern Tea Classics, is "the best selling book in the whole world tea industry, having sold over 100,000 copies in several languages. Mr. [REDACTED] repeats several of the above assertions regarding the petitioner's research into the history and medicinal uses of tea.

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

The petitioner has published several books about the history of tea. Although the petitioner claims to have discovered revolutionary medicinal effects in tea, the record does not show that the petitioner has written any scholarly articles in peer-reviewed medical journals. Peer review and journal publication are essential safeguards to maintain the integrity of scientific research. The format of scholarly articles, unlike the petitioner's books, require the researcher to set forth not only one's findings, but the exact methods used to arrive at those findings. In this way, other researchers can attempt to duplicate that research. Many purported revolutions in science, such as "cold fusion," have been refuted when extraordinary results proved to be irreproducible. Witnesses have stated that the petitioner's discoveries about the cancer-fighting properties of tea date back to 1978, but the petitioner has submitted no primary documentation to establish that his findings have had the expected major impact in cancer research.

The record does not identify the publisher of the petitioner's books. If the petitioner published the book himself, privately, then the publication carries significantly less weight than a scholarly article which is anonymously and objectively analyzed before publication. The petitioner submits no documentation to support claims regarding how well his books have sold.

*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 held a number of high-level management positions in both government and private sectors."

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<sup>1</sup>Lipton, a major tea company, sponsored this research.

Among these positions, according to [REDACTED] (identified above), are:

Executive Vice-President of [REDACTED]  
 [REDACTED] Tea Professor of [REDACTED] and  
 Tea Specialty of [REDACTED] General Director  
 of [REDACTED] for  
 Overseas Chinese; and Vice Chairman of [REDACTED]  
 [and] deputy manager of [REDACTED]  
 [REDACTED] By-Products Import and  
 Export Corporation; plenipotentiary of Fujian Provincial  
 Foreign Trade Corporation to Japan; board Chairman and general  
 manager of [REDACTED] deputy  
 governor and director of Foreign Trade Commission, Fujian  
 Province; deputy general manager of [REDACTED]  
 [REDACTED] specially appointed counselor of  
 Zhejiang Provincial Government and board chairman and general  
 manager of [REDACTED]; vice governor of  
 Hunan Province in charge of foreign trade and economy and vice  
 chairman of the Committee of All-China Federation of Returned  
 Overseas Chinese.

The petitioner thus claims a lengthy history of important positions in China's tea industry, which would satisfy this criterion. Apart from the petitioner's position at [REDACTED] [REDACTED] however, it is not clear what standing Jiayang Wang has to attest to the petitioner's employment. The record contains no documentation from the entities named, confirming the petitioner's employment there. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The director denied the petition, stating that the petitioner has not met any of the ten regulatory criteria to establish sustained national or international acclaim.

Counsel, on appeal, contests the director's finding that the petitioner seeks "classification as an alien of extraordinary ability as a vice president." Counsel maintains that the petitioner is "a tea expert and consultant." On the Form I-140 petition, under "Job Title," appear the words "Vice President." The phrase "expert and consultant" appears nowhere on the petition. Part 9 of the petition indicates that the document was prepared by counsel. Service regulations at 8 C.F.R. 292.3(a)(15)(i) state "[a]n attorney or representative engages in frivolous behavior when he or she knows or reasonably should have known that his or her actions lack an arguable basis in law and fact." For counsel to write "Vice President" on the Form I-140 petition, and then claim as a basis for appeal that the director characterized the petitioner as a vice president, appears to hover perilously close to this definition of frivolous behavior.

Counsel maintains that the petitioner "has met at least seven of the ten criteria listed in 8 CFR 204.5(h)(3)," and lists previously-submitted evidence, but does not explain how these submissions satisfy the criteria. For instance, counsel does not demonstrate that "congratulatory autographs" represent nationally recognized prizes. Counsel discusses the petitioner's "invitation to the U.S. by the Food and Drug Administration in 1980," but the record contains no corroboration from any FDA official. The only evidence which approaches corroboration of this claim consists of two witness letters which indicate that an FDA official was present at the "tea-tasting party" which the petitioner attended in New York in 1980.

Several new exhibits accompany the appeal. The petitioner wrote a paper which was selected as the Best Paper at the [REDACTED] as certified by the China National Food Industry Association and the China Association for International Science and Technology Cooperation. The petitioner submits only an unattested translation of the award certificate; the record does not contain the Chinese-language certificate. The petitioner has offered nothing to establish what level of national or international prestige attaches to the Best Paper award. Given the sheer number of international conferences in the research community, the international nature of this conference proves nothing.

A March 28, 1998 article from the Asian American Times indicates that the petitioner, "the famous Chinese Tea Specialist," will attend a seminar on April 4, 1998." The newspaper in which this article appeared is published in the United States in the Chinese language, a language which the vast majority of Americans do not read. This article therefore cannot be said to constitute "major media," as it is targeted at a small sector of the population.

A certificate dated May 1, 1998 indicates that the petitioner has been invited to serve as president of the [REDACTED]. Counsel asserts that this position was honorary, and that the organization is based in Flushing, New York. The record contains no documentation about this organization. Furthermore, the petition was filed on April 20, 1998, and therefore documentation from May 1998 cannot establish the petitioner's eligibility as of the filing date. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Dr. [REDACTED] Vice President of the [REDACTED] repeats the assertions of various witnesses regarding the petitioner's various contributions to the cultivation, sale and study of tea. Dr. [REDACTED] also states that the petitioner was the subject of a 500-page biography published in China in 1997. The record does not contain a copy of this book or

other proof of its existence or significance, let alone evidence to show the circumstances under which it was supposedly written and published. A book privately published with the intent of supporting the visa petition would, obviously, carry negligible weight.

The petitioner submits a certificate showing that his biography will appear in Biographies of VIPs in the World - China. The record is silent as to the criteria for inclusion, and the significance of the book.

Subsequent to the filing of the appeal, the petitioner has submitted a supplementary letter from Dr. ██████████ President of ██████████ Dr. ██████████ asserts that the petitioner is "a world-recognized tea authority," although the record is devoid of evidence that the petitioner has earned any recognition at all outside of China and the Chinese expatriate community in the northeastern United States. Dr. ██████████ repeats the claims of earlier witnesses and makes additional, equally unsubstantiated assertions.

The petitioner has made a number of claims which are readily amenable to verification and corroboration, but he has submitted minimal evidence to support those claims. For example, the assertion that he increased tea sales in Japan could be supported by audited sales figures, but the petitioner has submitted only the testimony of two witnesses, one of whom is a New York dermatologist with no direct expertise in tea sales and distribution. This office cannot ignore the serious lack of material corroboration for claims which, if true, are of a magnitude which would imply the existence of ample supporting evidence. Instead, the petitioner has relied upon witness statements alone, leaving the direct, documentary evidence conspicuous in its absence.

The petitioner's claim that tea is an effective cancer treatment, and that he discovered this property over twenty years ago, would carry far greater weight if the petitioner had submitted medical literature showing that the mainstream medical/scientific community had acknowledged these powers attributed to tea, and that tea research has led to significant progress in the fight against cancer since 1978. The record contains no such evidence.

Scientific knowledge, by its nature, is blind to ethnic or national divisions; its truths are universally applicable, and can be found by any researcher with the proper equipment and training. The discoveries of Alexander Fleming, Louis Pasteur and Albert Einstein have been acknowledged worldwide, rather than being restricted to the British, French and Swiss communities, respectively. In this case, the petitioner has not shown that his claimed medical research has attracted any serious notice among non-Chinese researchers, even though cancer has been the target of one of the most concerted and sustained global efforts in the history of medical research. When anti-cancer drugs, such as tamoxifen, are derived from natural sources, the discovery makes headlines around

the world. The petitioner has not even submitted verified statistics to show that, all other factors being equal, tea drinkers suffer lower rates of cancer. Without even this rudimentary evidence, this office can lend no weight to the claim that the petitioner will benefit the United States by fighting cancer through the use of tea.

The support for the petitioner's claims in this case is at best uneven, and at worst utterly absent. The evidence submitted in this case falls far short of the threshold to establish that the petitioner has consistently enjoyed national or international recognition 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 his field 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 petitioner has relied on personal testimony to establish claims which, by their nature, would be far better served by primary documentation. It has not been shown that the petitioner's entry would substantially benefit prospectively the United States. 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.