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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



File: [Redacted] Office: Vermont Service Center Date: AUG 6 2001

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

IN BEHALF OF PETITIONER:



Identifying 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 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.

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 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. We stress, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

On the Form I-140 petition, the petitioner states that he seeks employment as a "medical scientist" at Columbia University, where he intends to "develop [a] new method to treat brain disorder disease" [sic]. Counsel states:

[The petitioner] is an international renowned medical scientist. He is known for his invention of "Tongue Acupuncture" method, which has proven effective in treatment of many neurological

diseases such as stroke, Parkinson's Disease, Alzheimer's Disease, brain death and Rett's Syndrome etc.

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 received gold medals at the 1995 Annual Meeting of the East West Association of Chinese Medicine and Acupuncture and the 1996 International Conference of Chinese Traditional Treatment, and from the United Nations ("UN") Qi Gong Society and Chinese Traditional Medicine and Health Society in 1997.

The award certificate for the 1995 prize indicates that the petitioner "received the Golden Prize . . . in the 6th Annual Meeting of the East West Association of Chinese Medicine and Acupuncture."

There is no evidence that the 1996 or 1997 awards involved gold medals. The 1996 award appears to consist of a plaque, a certificate and a trophy. Only the inscription on the plaque is legible, and it makes no reference to a gold medal. With regard to the 1997 award, the record contains a photograph of a plaque, labeled "Certificate of Award," from the "UN Chinese Traditional Medicine [sic] and Health Society."

The record contains no evidence to show that these awards, all of them presented in the United States, are widely recognized as significant medical awards by U.S. or international standards.

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 eight articles. Four of these articles are from Chinese-language newspapers published in the United States. Because the vast majority of U.S. residents do not speak or read Chinese, the circulation of these newspapers is necessarily specialized and limited to an extent that we cannot consider them to represent "major media." For the petitioner to earn national acclaim in the United States through media exposure, the media must make him known throughout the United States and not just to Chinese immigrants.

The petitioner submits copies of articles from newspapers in Hong Kong, Macao, Malaysia, and Singapore, but he provides no evidence that these papers represent major national media. While the translator certifies that the translations of the articles are "complete," the translator also indicates that the translations are "summaries" rather than full, literal translations.

Witnesses have indicated that the petitioner is widely known in China for inventing tongue acupuncture, and that the method's "magic effects have been widely reported by most state level media in China." Nevertheless, the initial submission contains no direct evidence of Chinese media coverage of the petitioner's work with tongue acupuncture. The assertion by witnesses in New York that the petitioner has been covered by unidentified Chinese media does not constitute evidence of media coverage. The regulation requires the submission of "published material" rather than third party assurances that such published material exists.

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 record contains an untranslated certificate, which according to counsel indicates that the petitioner has been "appointed Judge of Liaonang Province Invention and Creation Justice Committee to evaluate others' invention and creation works." The record contains no indication that the petitioner has acted as a judge at a national or international, rather than provincial, level.

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

Counsel cites various letters to satisfy this criterion. Two letters, on UN letterhead, indicate that the petitioner gave presentations to the UN Qigong Club and the UN Qi Gong Society (it is not clear whether the club and the society are in fact the same entity).

Dr. Q.Y. Ma, associate professor of Electrical Engineering at Columbia University, describes a proposed collaboration with the petitioner to use magnetic resonance imaging to determine the effect which tongue acupuncture produces in the brain. From Dr. Ma's letter, it is not entirely clear whether the study had yet commenced, let alone produced any results.¹ An experiment or project is not

¹While Dr. Ma states that the "collaboration was tentatively set for six months (from Nov. 1997 to May 1998)," which would indicate that the study was underway as of December 15, 1997, when Dr. Ma wrote the letter, Dr. Ma never states that the November 1997 starting date was anything but "tentative." Dr. Ma also repeatedly refers to the study in the future tense, for instance stating "my

inherently a contribution of major significance; its importance is determined by its results rather than by the very fact that it occurred.

Other Columbia University faculty (in the Radiology Department) assert that the petitioner has succeeded where "countless other specialists" have failed. Although most of the disorders which the petitioner claims to treat are neurological disorders, he has not submitted any letters from recognized neurologists, nor from specialists in any of the fields that study the diseases that the petitioner purports to treat.

Charles Wang, former vice chair of the U.S. Commission on Civil Rights and assistant commissioner of the New York State Department of Social Service, states:

[The petitioner] is one of the most accomplished Chinese doctors I have ever met. He is well known in China for his invention of tongue acupuncture, and in recent years he got much attention from [the] international acupuncture community. . . .

As an advisor to [the] American Acupuncture Association and one who moved the Bill of Acupuncture to adoption in the State of New York, I am ex[c]ited to learn that the tongue acupuncture developed by [the petitioner] could treat many neurological diseases such as stroke, Parkinson's Disease and epilepsy.

Mr. Wang cites no medical documentation to demonstrate the neurological effectiveness of tongue acupuncture, nor does he himself claim expertise in the field of neurology which would enable him to competently evaluate claims regarding the effectiveness of tongue acupuncture.

Shan Leung, president of the Association of Chinese Herbalists, Inc., states:

[The petitioner] is one of few people in the area of traditional Chinese medicine who has sustained national and international acclaim. He is known for his Tongue Acupuncture method. He is the first expert in the world who has completely systematized the basic theory and clinic application of Tongue Acupuncture. It has been proven by a great deal of clinic[al] observation that [the petitioner's] Tongue Acupuncture is very effective in treatment of the disorders of Central Nervous System such as Parkinson's Disease, Alzheimer's Disease etc.

Lee Fongyang, president of the UN Qi Gong Society and Chinese Traditional Medicine and Health Society, states that the petitioner's "remarkable achievements are recognized by many in the filed" [sic]

group will carry out sensing/imaging experiments while [the petitioner] will perform the acupuncture on volunteers."

and asserts that "a little American girl" who suffers from Rett's Syndrome "became reactive to her environment, and her arms and legs began to move" following treatment with tongue acupuncture. Dr. Roger E. Lope (a New Jersey chiropractor) and Donna M. Lope, the parents of the child in question, assert that the petitioner's work yielded "great progress" which diminished when treatment was interrupted.

Professor Wang Xue-Tai, vice president of the China Acupuncture Society and chairman of the World Federation of Acupuncture-Moxibustion Studies, confirms that the petitioner invented tongue acupuncture, and states that "[a] great deal of clinical observations proved that [the petitioner's] Tongue Acupuncture is comprehensively indicated for many conditions" that are "usually considered difficult to be treated with Western Medicine and traditional acupuncture." Prof. Wang asserts that the method is effective against "Parkinsonism, Alzheimer's disease, Atrophy of Cerebellum, Pseudobulbar palsy, Infantile cerebropalsy, Multiple Sclerosis, Syringomyelia . . . [and] disorders in cardiovascular, respiratory, digestive and endocrine systems."

Almost all of the witnesses are based in or near New York City, suggesting a local rather than national reputation in the United States (where the petitioner now resides and practices).

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

The petitioner submits partial copies and summary translations of four books, all published by the China Overseas Chinese Press during 1997. It is not clear where these books were published; the name of the publisher suggests it was not published in China (otherwise it would not be "overseas" to a Chinese reader). The record does not contain sufficient information to establish whether these publications are considered "major" in the field (the word "major" appearing repeatedly in the regulatory criteria).

The director requested further evidence. Specifically, the director requested evidence that the petitioner "has commanded a high salary or other significantly high remuneration for services," and "evidence of front page coverage of the [petitioner] in major magazines or other media." The director also instructed the petitioner to submit evidence to establish the significance of his awards and recognition. The director further instructed the petitioner not to submit copies of previously submitted documents.

In response, the petitioner has submitted copies of previously submitted documents as well as new exhibits and arguments from counsel. The new submission includes further articles about the petitioner, some of which are from Chinese newspapers, thus providing the first documentation of Chinese media attention. Counsel asserts that many of these newspapers are "major" and among the "largest" and

"most influential" in their areas, but the assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that the petitioner "is one of few foreign medical scientists who have the honor to address . . . the United Nations twice." Counsel offers no evidence to support the assertion that few medical researchers participate in conferences and discussions in the manner that the petitioner has done, or that anyone at the UN outside of the "Qigong Club" and "Qi Gong Society" (if the two are in fact different) has taken significant notice of the petitioner's work. Counsel offers several other unsubstantiated claims regarding the significance and importance of previously submitted evidence.

A newly-submitted certificate from the Department of State of the People's Republic of China states that the petitioner is "entitled to receive a special government pension" owing to his "outstanding contributions to China's medical science." The record does not establish the significance of this document, which is a "form" certificate with information handwritten into blank spaces. The amount of this "pension" is not specified.

The director denied the petition, concluding that the petitioner has won some degree of acclaim for his work but that the evidence of record does not place him at the top of his field. The director also noted the absence of evidence to allow a meaningful comparison between the petitioner and others in his field. Simply listing the petitioner's achievements, and declaring them to be extraordinary, cannot suffice in this regard.

On appeal, counsel protests various aspects of the director's request for further information, such as the request for evidence of "front page" news coverage. While some of these complaints are valid, these comments by the director did not appear in the decision itself, and thus these arguments do not undermine the director's decision.

Counsel offers further unsupported claims regarding the significance and importance of various exhibits in the record. As noted above, the assertions of counsel do not constitute evidence. As an example of one of these claims, counsel states "[i]t is outstanding for a scientist to give lecture twice in the United Nations about his/her invention and achievements." The petitioner has not shown that he addressed the UN General Assembly or any major group within the UN. The affiliation of the UN Qigong Society with the UN does not imply that the UN, as a whole, has endorsed or acknowledged the petitioner's work. There is no evidence that the petitioner's work has received a comparable reception from the UN's principal medical organization, the World Health Organization.

Counsel states that "experts in the field" have attested to the significance of the petitioner's work with regard to "brain disorders disease." None of these "experts," however, are recognized

neurologists, who unlike other physicians have received specialized training in the function and disorders of the brain. One would expect that a new treatment modality, once shown to be effective against previously untreatable conditions of the brain, would very rapidly attract attention and careful study, but the record contains no such evidence. Although the petitioner has worked intermittently in the United States since at least 1996, the record contains nothing from any peer-reviewed U.S. medical journal that even discusses tongue acupuncture, let alone confirms its effectiveness. The record contains only anecdotal discussions, and only a single case is discussed in anything approaching detail. The record contains nothing to establish that tongue acupuncture reverses "brain death" as claimed by counsel at the outset of the petition process.

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 as a medical researcher 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 won some degree of recognition for his work, but is not persuasive that the petitioner's invention of tongue acupuncture represents a proven contribution of major medical significance, or 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.