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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

Public Copy



05 DEC 2001

File: [Redacted] Office: Texas Service Center Date:

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)

IN BEHALF OF PETITIONER:
[Redacted]

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 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 that he has earned sustained national or international acclaim.

On appeal, counsel argues that the director applied an incorrect standard.

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). These criteria will be addressed 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a medical scientist. The regulation at 8 C.F.R. 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish sustained national or international acclaim. 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.

The petitioner submitted several certificates which counsel asserts are for awards "recognized as the most prestigious awards in the traditional Chinese medicine field in China." While the director did not question the significance of these awards, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, the assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

In response to a request by the director, the petitioner submitted letters from the Chinese Association of the Integration of Traditional and Western Medicine (CAITW) and the Traditional Chinese Medicine Bureau attesting to the importance of their awards. The majority of the prizes were awarded by the Association of Integrated Traditional and Western Medicine. The remaining prizes were awarded by the Traditional Chinese Medicine Research Institute of China, the Traditional Chinese Medicine Administration Bureau of China, and the sponsors of the Second American International Conference of Hua Xia Traditional Medicine and Expo. The petitioner seeks classification as an alien of extraordinary ability based on his ability to treat diabetes. The petitioner must demonstrate that his abilities are extraordinary when compared with all medical experts involved with the treatment of diabetes, not just those using traditional Chinese medicine. Any successful treatment for diabetes would attract the attention of the entire worldwide scientific community.

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.

The petitioner submitted evidence of his membership in several professional organizations. While counsel asserts that these organizations are leading and national organizations which only admit the most accomplished members, the record contains no evidence that these organizations require outstanding achievements of their members. On June 30, 2000, the director specifically requested evidence regarding the membership requirements for these organizations. In response, the petitioner submitted letters from the Secretary General of the Diabetes Professional Committee of CAITW asserting that CAITW is the foremost professional organization in the field of integrating traditional and "Western" medicine. The letter discusses the goals, tasks, subsidiaries, publications, and offices of CAITW, but does not discuss the requirements for membership. Significantly, CAITW has 35,191 members in China, suggesting that membership is not very exclusive.

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

Zhizheng Lu, a professor at the Chinese Academy of Traditional Chinese Medicine writes:

[The petitioner] advanced the theory that DIABETES IS CAUSED BY THE DEFICIENCY OF THE "YIN". He also developed the "Three Types Dialectics" method to divide diabetes into three basic types. [The petitioner's] theory and method provided objective standard for the research on diabetes, and provided a foundation for the treatment of diabetes and [its] complications with the combined application of traditional Chinese medicine and Western medicine. [The petitioner] enriched and developed the theory and method of traditional Chinese medicine. He has made creative contributions to the field.

In clinic practice, after conducting modern clinical and pathological diagnosis on patients, [the petitioner] used the method of the combined application of traditional Chinese medicine (TCM) and Western medicine, including oral TCM and non-TCM drugs, TCM enema, lavage and TCM injection, to treat patients. He added different medicines, such as Gegen, Chuanxiong Phizome, Red Sage Root Liquid into the liquid for injection according to the conditions of the patients in order to get the best result. He used blood dialysis to treat terminal patients of Diabetic Nephropathy and uremia. In recent years, he treated several thousand cases of complicated diabetes and received the best result of treatment in the medical community.

[The petitioner's] achievements in the field is [sic] best shown in the Clinical and Experimental Research on Sugar-Reducing and Vein-Facilitating Capsule (Jiang Tang Tong Mai Ning) and Its Effectiveness in the Treatment of Diabetes and Related Vascular Complication, and the Research on Treating Diabetic Nephropathy with Tang Wei Kang, a ready-to-use Chinese medicine.

These assertions are echoed by Haizhou Xie, a professor at the Beijing University of Traditional Chinese Medicine. Mr. Xie further asserts that Jiang Tang Tong Mai Ning was approved for production in December 1991 and is currently sold throughout China and abroad. Mr. Xie asserts, "this medicine is now in [the] leading position in the world in the effectiveness of treating diabetes and its vessel complications." Chengde Wang, "Chief Physician" at the Guang An Men Hospital of the Chinese Academy of Traditional Chinese Medicine, reiterates much of the above, explaining that the "Three Types Dialectics" theory concerns "Yin" deficiency as a cause for diabetes, resulting in a "Yin" and "Qi" deficiency in the middle stage, and a deficiency in "Yin," "Yang," and "Qi" in the final stage.

The director requested evidence that "Jiang Tang Tong Mai Ning" is being marketed worldwide. In response, Junping Wei, Secretary General of CAITW, asserts that the drug is not yet approved worldwide, but that the petitioner hopes to receive FDA approval.

The director concluded that the petitioner's influence had not extended beyond his colleagues. The director also stated that the petitioner's reputation did not extend outside China. On appeal, counsel correctly notes that the petitioner need only establish national acclaim. While the petitioner need only establish sustained national acclaim, it is significant that the petitioner had been in the United States for 19 months prior to filing the petition. Yet, there is no evidence that the petitioner has successfully treated diabetes patients in the United States, and, in fact, has only been offered a job by a pain clinic. Thus, it is not clear that the petitioner was able to *sustain* his acclaim after leaving China.

Regardless, the record is devoid of any evidence that the petitioner's alleged integration of conventional and traditional Chinese medicine has resulted in major contributions to the medical field as a whole. Whether or not the petitioner's reputation extends outside China, there is no evidence that the conventional medical community within China has noted the petitioner's work at all. The petitioner must demonstrate that he has contributed to the medical treatment of diabetes in its entirety, not merely to the small segment of those practicing traditional methods.

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

The petitioner submitted articles published in the American Journal of Traditional Chinese Medicine, two theses collections published by the Chinese Association of Traditional Chinese Medicine in 1998 and 1991, the Chinese Diabetic Association of the Integration of Traditional and Western Medicine, the Beijing Journal of Traditional Chinese Medicine, a thesis collection and digest published by the Chinese Association of the Integration and Traditional and Western Medicine in 1993, the Journal of Traditional Chinese Medicine, the Clinical Handbook of Internal Medicine of the Traditional Chinese Medicine, and the Journal of Changchun College of Traditional Chinese Medicine. The evidence submitted for each criterion must be evaluated in terms of whether it demonstrates sustained national or international acclaim. Once again, the evidence submitted for this criterion reflects recognition only within the traditional Chinese medicine community. As stated above, if the petitioner's treatments for diabetes were truly superior to conventional medicine, it can be expected that the conventional medical community would have taken notice. There is no evidence that the petitioner has published any articles in prestigious, peer-reviewed, conventional medical journals or that conventional medical researchers have cited the petitioner's work. The petitioner has not established that the journals which published his articles are considered prestigious beyond the traditional Chinese medicine community. In light of the above, the petitioner's published articles are not evidence of sustained national acclaim.

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

The director concluded that the petitioner had not established the reputation of the organizations for which he apparently performed in a leading or critical role. Counsel does not challenge this conclusion on appeal.

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 scientist 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 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.

In addition, Section 212(a)(5), provides:

(B) Unqualified physicians.-An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien (i) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral and written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(C) Uncertified foreign health-care workers.- Subject to subsection (r), any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is excludable unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that-

(i) the alien's education, training, license, and experience-

(I) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;

(II) are comparable with that required for an American health-care worker of the same type; and

(III) are authentic and, in the case of a license, unencumbered;

(ii) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and

(iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test, or has passed such an examination.

The petitioner indicated on the petition that he intended to work as a consultant of traditional Chinese medicine. If the petitioner is directly or indirectly involved in patient care, he must meet the above requirements. While the petitioner's references refer to him as "Doctor," the record contains no evidence that the petitioner is a licensed medical doctor or licensed as a health care professional recognized in the United States. Thus, it is not clear that the petitioner is admissible. While the petitioner's potential inadmissibility is not an issue at this stage, it is difficult to see how the petitioner can demonstrate that his entry into the United States to practice medicine meets the congressional intent of substantial prospective benefit if Congress has barred unlicensed doctors and health care providers like himself from entering the United States to practice medicine. Similarly, medical science research is based on the publication of results in peer-reviewed journals and results must be able to be duplicated in other labs. There is simply no evidence that the petitioner's work has been duplicated by independent researchers or that his drugs have been found to treat diabetes better than conventional medicine. Given the seriousness of diabetes and the limited treatments available, such a breakthrough would result in significant media attention and worldwide attention. Thus, the petitioner has not established that he will benefit prospectively the United States.

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.