



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

[Redacted]

File: [Redacted] Office: Nebraska Service Center Date: JUL 11 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:

[Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

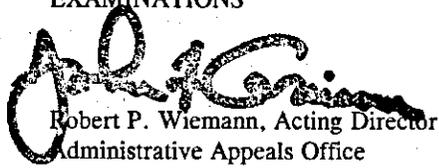
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

The petitioner states that she seeks employment on the "clinic staff" at [REDACTED] & Chinese Herbs. Counsel asserts that the petitioner "has effectively established herself as one of the world's leading experts and a doctor of extraordinary ability in the use of traditional Chinese medicine and folk remedies to treat hypertension and other diseases."

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, counsel 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 submits documentation of seven awards. All but one of these awards is entitled "Achievement Awards of Henan Province." By the name, the awards appear to be provincial rather than national or international, and the petitioner has not shown otherwise. The remaining award is from the "Scientific and Technical Achievement Awards of the Public Health Bureau of Beijing City." Counsel claims that this last award is an international award which was "granted by the Chinese capital city government and WHO (the World Health Organization of the United Nations), both of which were involved in assessing and issuing this award." The record, however, contains no evidence to support this assertion. The award certificate contains no mention of the WHO; its plain wording indicates that it is a municipal rather than national or international award.

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.

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

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 satisfies the above three criteria by virtue of a research project which she undertook on behalf of the WHO. Counsel states:

[The petitioner] was singled out to lead a project funded by the World Health Organization (WHO) of the United Nations soon after she graduated from the College of Traditional Medicine in Henan Province, based on her excellence as a student and her ground-breaking research at the Research Institute of Traditional Chinese Medicine. From 1984 to 1990 she organized research in 13 Chinese provinces to study the effects of

hypertension on coronary disease, and how numerous traditional Chinese medicine treatments and folk remedies could lower hypertension. The project, under [the petitioner's] direction, was highly successful in concluding that traditional Chinese treatments would in fact lower hypertension, and effectively reduce incidents of coronary disease, one of the top three causes of death in the world.

Several witness letters discuss the petitioner and her work on this project. [redacted] research scientist at Stanford University School of Medicine, states that the petitioner "is one of the world's leading experts in the use of traditional Chinese medicine and Chinese folk medicine in the treatment of hypertension and other diseases." [redacted] adds that the petitioner's project was "extremely successful. Specifically, [the petitioner] discovered a number of traditional Chinese medicine methods that were very effective in treating hypertension . . . including QI cultivation, fire-cupping, specific sea water showers, bee stings, etc."

[redacted] who identifies herself as a "visiting doctor¹ of medicine" at the National Center for Infectious Diseases, asserts that the petitioner is "[w]ithout question . . . one of the top practitioners of traditional Chinese medicine in the world today."

[redacted] Cao of the Monoclonal Antibody Production Laboratory (funded by the National Cancer Institute) states:

I knew [the petitioner] as I had cited an article of hers on the intrinsic feature of hypertension diseases years ago. I agreed with her opinion that people may be born with intrinsicness [sic] which can favor the development of illnesses.

[redacted] director of Nursing at Four Seasons Health Care Center, asserts that the petitioner has won acclaim for her past work, but must become a permanent resident in order to secure research funds in the United States. [redacted] one of the petitioner's patients, asserts that "[t]he effectiveness of [the petitioner's] treatment has been very obvious." [redacted] indicates that these treatments have consisted of "acupuncture and Chinese herb plasters." [redacted] who identifies herself as a "self-employed consultant of psychology" and who claims no training in the petitioner's field, describes the petitioner's career in considerable detail. She does not indicate the source of this knowledge. If the source is the petitioner herself, then [redacted] comments amount to repetition, rather than corroboration, of the petitioner's claims.

[redacted] claims no M.D. or Ph.D. degree, but rather asserts that her position title includes the term "doctor."

The petitioner submits no objective evidence to demonstrate that she has formulated effective new treatments for hypertension. If the remedies described by the witnesses are indeed "folk" remedies, then by definition the petitioner did not invent them and her description of those remedies is not reasonably described as an "original contribution." Also, while the petitioner claims major advances in the treatment of hypertension, the record does not contain first-hand evidence to establish that the petitioner's methods have been widely accepted and implemented. For example, the petitioner makes much of the fact that the WHO funded her research, but there is no WHO documentation in the record to establish that the WHO endorsed or disseminated the petitioner's findings. The petitioner has also failed to show that her work has come to the attention of recognized authorities such as the American Heart Association and the New England Journal of Medicine, both of which take an active interest in seeking and promoting effective new treatments for dangerous diseases.

The petitioner has not established that, by leading one WHO-funded project, she played a leading or critical role for the entire WHO as counsel implies. We note that the record does not contain any documentation or confirmation from any WHO officials.

Witnesses assert that the petitioner also "played a very important role with the Research Institute of Traditional Chinese Medicine of Henan Province, which also has a very distinguished reputation in China, and throughout the world." Again, the record does not corroborate or expand upon this claim.

Counsel claims that the above letters establish that the petitioner has acted as a judge of the work of others, but does not explain how this is so.

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 written or co-written 23 articles and conference presentations, as well as a book of folk remedies. Various witnesses assert that the petitioner's work is heavily cited, but they offer no direct evidence to support this claim. The witnesses also offer no direct evidence that the journals in which the petitioner's work has appeared are major national or international publications. The word "major" appears repeatedly in the wording of the regulation; it cannot suffice simply to show that copies of the journal are shipped across national borders.

The director informed the petitioner that the documentation submitted with the petition was not sufficient to establish the petitioner as an alien of extraordinary ability. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, and specified that the Service has defined "extraordinary ability" as "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."

In response to this letter, the petitioner submits new letters and copies of previously submitted documents. [REDACTED] identified above, addresses several of the points raised in the director's request. [REDACTED] states that, although the petitioner's awards "were in name granted . . . by the government of Henan province, in actuality these are national awards because the competition for them is among all researchers in all Chinese provinces." [REDACTED] asserts that the awards were actually presented under the aegis of major national associations and government agencies. [REDACTED] offers no documentary support for these assertions, nor does [REDACTED] establish personal involvement in selecting the winners of the awards (which would give [REDACTED] standing to attest to the means by which winners are selected).

[REDACTED] makes several more unsubstantiated assertions. It is not that we question [REDACTED] sincerity or motives. Rather, at issue is that many of [REDACTED] key assertions ought to be verifiable by direct documentary evidence, which is nevertheless absent from the record. If a major national organization, for instance, is behind an award which the petitioner received, it is not unreasonable to expect corroboration from that organization.

[REDACTED] director of the Vital Statistics Unit, Health Statistics Section at the Colorado Department of Health and Education, and [REDACTED] research associate at Colorado State University, also make various assertions which ought to be readily verifiable through first-hand documentation. For example, [REDACTED] refers to the "frequent citation of [the petitioner's] articles," but submits no evidence of such citations. If [REDACTED] is not in possession of such evidence, then it is not clear how [REDACTED] could be in a position to attest to the frequency of those citations. The sources of the petitioner's letters appear to suggest that the petitioner's reputation within the United States is heavily concentrated among Chinese researchers who are (or have been) based in Colorado where the petitioner now resides.

The director denied the petition, stating that the record contains insufficient information and evidence to support many of the petitioner's claims. The director also concluded that the letters in the record "do not establish that the alien's work is known and considered unique outside her immediate circle of colleagues."

On appeal, counsel asserts that the director "erred by ignoring substantial evidence favoring the petition." Counsel notes that 8 C.F.R. 204.5(h)(4) allows for the submission of "comparable evidence" when the ten principal criteria do not apply, and counsel argues that the director "has essentially deprived the Petitioner of this opportunity" to submit such evidence. Counsel contends that, because "primary evidence . . . was not available to the Petitioner, secondary evidence was submitted instead" in the form

of witness letters. Counsel contends, in effect, that the director erred in failing to accord the witnesses' letters the same weight that would have attached to primary evidence.

There are several flaws in the above argument. The petitioner has not established that primary evidence is unavailable to support many of her key claims. For example, counsel claims that the petitioner played a critical role for the World Health Organization, but the record contains nothing at all from any WHO official. We cannot determine the WHO's reaction to the petitioner's research or the significance which the WHO attached to the petitioner's project. If the petitioner performed a major study for a major international health organization, and the results of that study were of "ground-breaking" importance (as has been claimed), then we simply cannot accept that the WHO would have purged all of its documentation relating to that study, or that the WHO would refuse to provide such documentation to the petitioner. We cannot rely on the second-hand attestations of witnesses who have no apparent connection with the WHO.

Similarly, if primary evidence such as an award certificate plainly states that the award was presented by the government of Henan Province, then the petitioner cannot outweigh this plain statement simply by submitting third-party letters from witnesses who claim that the awards are actually from China's national government and the WHO. In this instance, the primary evidence contradicts, or at the very least fails to support, the secondary claims. The witnesses have not identified the source of their information. If they are simply repeating information that the petitioner told them, then their letters are meaningless as corroboration. 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).

Furthermore, the cited regulation allows for the submission of comparable evidence if the ten criteria "do not readily apply to the beneficiary's occupation." The majority of the criteria do appear to apply readily to the beneficiary's occupation; the fact that this particular petitioner cannot meet those criteria is a separate issue. This visa classification is extremely restrictive, and indeed the criteria are meant to exclude the vast majority of workers in any given field; otherwise they would be useless as a means of identifying those who are at the very top of the field. An alien's inability to meet criteria which do apply to her field is a sign of ineligibility, rather than a trigger for the "comparable evidence" clause.

Counsel asserts that the petitioner's "large number of publications . . . is itself evidence of the extent to which the Petitioner has had an impact on her field." The record does not establish that the petitioner has published a disproportionately large number of articles for a professional in her field, and it is virtually

silent about the impact of those articles. Several witnesses claim that the petitioner's work is heavily cited, but they also assert that there is no evidence to support their claims.

Counsel asserts that the director erred by dismissing the statements of the various witnesses. Counsel asserts that the witnesses have deemed the petitioner to be a world authority in her field. If the petitioner were such an authority, then one could justifiably expect a broad variety of evidence to confirm this fact. Instead, the petitioner submits a handful of letters, mostly from doctors in Colorado (in specialties other than pharmacology and cardiology) and one from someone with no evident medical training at all (Kate Walker's only claimed credential is a bachelor's degree in social work). The fact that some of the petitioner's witnesses are employed by government agencies does not in any way imply that those agencies have officially endorsed the petition.

The sum total of the evidence presented is not sufficient to show that the petitioner is, as claimed, a major national or international authority on hypertension or other medical issues. The petitioner's most important claims are not corroborated by any official with demonstrated competence to support those claims.

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 herself as a physician or as a medical researcher to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.