



02

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

File: [Redacted] Office: Nebraska Service Center Date: JUN 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)

IN BEHALF OF PETITIONER:

JAMES M. MEI
DAVIS WRIGHT TREMAINE
1300 S.W. 5TH AVE., STE. 2300
PORTLAND, OR 97201

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. The petitioner filed an untimely appeal which the director treated as a motion, pursuant to 8 C.F.R. 103.3(a)(2)(v)(B)(2). The director reopened the matter and again denied the petition. The matter 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, or that the petitioner intends to continue working in the area of claimed 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 reiterate, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The Form I-140 petition identifies the petitioner's field as "sports research and writing." In a statement accompanying the petition, the petitioner indicates that he intends "to work as a researcher/teacher for an institute or university." 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 claims that his evidence 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 received a Government Special Allowance from the State Council of the People's Republic of China ("PRC") and an Athletic Honorary Medal from the Athletics Committee of the PRC. One of the petitioner's projects received First Prize from the Athletics Committee of the PRC, and another project in which the petitioner participated received First Prize for 1996 Sports Science Achievements from the State Athletics Commission. The record contains translated certificates showing that the petitioner received these prizes, but there is nothing in the initial submission to give them context or establish their significance.

Counsel notes that one of the petitioner's papers "was selected for presentation at the 1993 Sino-South Korea School Sports Academic Meeting," and another "was accepted for presentation by the Organizing Committee of the 1996 International Pre-Olympic Scientific Congress," but public presentation of research work is hardly tantamount to a prize or award. If anything, such presentations are more akin to publication of scholarly articles, because they involve the presentation of technical material to a specialized audience.

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 submits a certificate to show that he is a member of the China Sports Institute. Counsel states that members of the institute "are accomplished leaders in the field, with professor or lecturer status, and have published several books or articles in their areas of expertise."

Counsel observes that the petitioner has served on various committees and councils. Service of this kind is not membership in associations, although it can constitute a leading or critical role for distinguished establishments, covered by another regulatory criterion.

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.

An article about the petitioner appeared in the Chongqing Industrial News, which counsel describes as "one of the well-known newspapers" in China's most populous city. The initial submission does not establish that the newspaper circulates nationally. Local media coverage can establish only local recognition and acclaim.

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.

Certificates in the record show that the petitioner served on several national evaluation committees, such as the Achievements Evaluation Committee of the State Higher Education. Through this service, the petitioner appears to have satisfied this criterion.

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

Some witnesses credit the petitioner with major original contributions, but they do not specify what those contributions are. The petitioner cannot satisfy this criterion simply by locating witnesses who say that he satisfies it.

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 several published articles, but the record offers no evidence about the publications in which the articles appeared, or the extent to which the petitioner's articles have influenced the field. We cannot determine from the evidence available that the petitioner's published work has appeared in major national or international publications.

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

The petitioner has held leadership positions on various governing bodies and advisory committees at the national level, and can be said to have satisfied this criterion.

Beyond the above criteria, the petitioner submits various exhibits. Chengling Fan, chief editor of the Sports Market Paper, states that the petitioner "is one of the outstanding young scholars in his academic research field." Professor Zeshan Wang deems the petitioner "one of the young and outstanding scientists in the field of China Sports Science." Professor Jiaying Guo states that the petitioner

"is one of the young scientists in the China sports science field . . . [who] strives to make progress in his field." The witnesses indicate not that the petitioner is a top researcher in his field, but that he is a top "young researcher," thus excluding the most experienced sports science researchers from comparison with the petitioner.

The director requested further evidence, setting forth some of the shortcomings of the above evidence. In response, the petitioner submits additional evidence which, according to counsel, further establishes the petitioner's eligibility.

The petitioner submits additional letters which are similar in tone to the letters discussed above. An unsigned certificate from the China Sports Science Institute discusses the significance of some of the petitioner's awards:

The beneficiary of "Government Special Allowance" must be an expert who made great contribution in his/her working field and is highly esteemed by his/her peers. . . .

"Science and Technology Achievements Award" . . . represents the highest level in the research field of sports science in China. . . .

"Athletic Honorary Medal" represents the highest level of rewards system in China sports activities. It is . . . awarded to the sportsman who breaks a world record or wins a world champion[ship], or the one who makes great contribution to national sports activities.

Another unsigned certificate from the China Sports Science Institute indicates that, to become a member of the institute, one "must be a scholar who made great achievements in the research of sports science." Jian Ling, associate editor-in-chief of Chongqing Industrial News, asserts that the publication "is a well-known paper throughout the country."

These letters serve to address many of the shortcomings in the evidence submitted with the initial filing. The petitioner has also, however, submitted evidence which raises further questions. Specifically, the petitioner has submitted a letter from Kaung-Fen Chau, president of Northwest Micro, Inc., who states:

NW Micro . . . is engages in manufacturing, marketing, importing and exporting computer goods and other products. . . . NW Micro is currently developing strategic alliance with several companies in P.R. China and Taiwan, ROC, for sourcing its products from China and Taiwan. . . .

[The petitioner] is an innovative sports researcher and publisher, with a remarkable combination of education and experience in China. [The petitioner's] numerous publications,

his editing work and his close working relationship with the international sports world, place him in distinguished position in the area of sports science and physical education research and publishing. [The petitioner] has substantial contacts and relationship in China, which is very relevant to our efforts to open Chinese market. I am particularly interested in his wide connection with Chinese various industries, where NW Micro is expecting to source more and more products from China within the next few years.

NW Micro is currently in the process of expanding its import and export business in China and Taiwan, and NW Micro would like to hire [the petitioner] as our **Director of Asia Operations** if his I-140 petition as a "priority worker" is approved by the U.S. Immigration and Naturalization Service.

As **Director of Asia Operations**, [the petitioner] will be responsible for:

- a. Direct and manage the company's Asian operations for marketing and product sourcing.
- b. Coordinate with headquarters in the U.S. and operations in China and Taiwan;
- c. Contacting sports and other manufacturers and suppliers in China and Taiwan; and
- d. Establish appropriate distribution network in China and Taiwan.

From the above letter, there is no indication at all that the petitioner's duties at NW Micro would be remotely akin to those of a sports science researcher. The petitioner did not submit any other evidence to establish his prospective employment opportunities in the United States.

The director denied the petition on October 27, 1998, stating:

The evidence presented establishes that the petitioner/beneficiary is highly regarded as a sports scientist in his country of China. However, the evidence fails to establish that he is one of those few to have risen to the very top of his field in the world.

The director also quoted from Kaung-Fen Chau's letter and determined "the evidence fails to establish that the petitioner will continue his work in the field of sports research and writing," because the position outlined in Mr. Chau's letter is that of a marketing executive.

The petitioner filed an untimely appeal which the director treated as a motion, pursuant to 8 C.F.R. 103.3(a)(2)(v)(B)(2). In this appeal, counsel argued that the statute and regulations do not require that the petitioner be at the top of his field in the world; rather, the law imposes a lower standard of national or international acclaim.

Counsel states that, within 15 days, the petitioner will submit "a letter from a prospective employer in the United States."

Having received no job offer letter, the director again denied the petition on December 30, 1999. The director acknowledged the erroneous standard used in the prior decision, and stated "[t]he Service apologizes for the use of language which suggests the application of a different standard." The director then concluded that "the record fails to establish the beneficiary is one of the few that has risen to the very top of the field of sports science/research," and "[i]t is not clear the beneficiary is a top sports scientist or sports researcher within China." The director also cited the job offer from Northwest Micro, and stated that the record contains no evidence that the petitioner will work as a sports researcher and writer in the United States.

On appeal from this second decision, counsel states that "the denial decisions" contain several errors, including "a wrong standard of adjudication . . . [for] which your Service apologized in the second denial decision." The director's second decision necessarily supersedes the first decision. The director has already admitted the erroneous use of an incorrect standard of proof, and issued a new decision without the contested language. This particular issue is, therefore, already resolved and requires no appellate intervention.

Counsel contends that the director did not give sufficient consideration to a letter which, counsel claims, establishes the petitioner's reputation outside of China. The letter in question is from Melba S. Morrow, secretary general of the Local Organizing Committee of the International Council of Sport Science and Physical Education. The body of the letter states, in full:

On behalf of the Organizing Committee for The 1996 International Pre-Olympic Scientific Congress, I herewith personally extend an invitation to you to attend our Congress. The meeting will be a major international event and your participation will surely enhance the quality of the meeting.

Your paper has been accepted for presentation.

We are looking forward to your participation and if you desire further information, please let me know.

This letter, which contains no specific discussion of the petitioner's accomplishments or reputation, reads like a "form" letter sent to everyone whose submissions were accepted for presentation at the event. The record contains no first-hand evidence to show that the petitioner's presentation at this 1996 meeting attracted more attention than other conference presentations, that the petitioner was to be a main speaker, or that the invitation to participate in the conference is itself a mark of sustained acclaim or extraordinary ability. The indication that the petitioner's "paper has been accepted for presentation" indicates

that the petitioner actively submitted his paper for consideration; there is no indication that the committee had actively sought specifically to involve the petitioner in the conference, or that the committee had even heard of the petitioner before he brought himself to the committee's attention by submitting his paper. The letter only serves to document the petitioner's attendance at a scientific conference, which is not unusual for an active researcher.

The appeal includes a copy of a letter, dated December 3, 1998, which counsel indicates had been submitted shortly after the filing of the initial appeal. This letter, from an official of adidas International,¹ states "[w]e have a position of Asian/China Business Development Project Manager for which we believe you are very well qualified," and the letter invites the petitioner to a meeting to discuss the position further. The letter does not detail the duties of the position, but the title of "Business Development Project Manager" does not readily suggest that the position involves teaching or sports research. The fact that adidas is a sporting goods manufacturer does not establish that the position is in the petitioner's field of expertise. Furthermore, the petitioner had already established his apparent intent to work for Northwest Micro, which, unlike adidas, has actually offered a position to the petitioner.

While the statute and regulations indicate that no job offer is required, they do require evidence that the petitioner seeks to continue working in the area of claimed extraordinary ability. Ordinarily, 8 C.F.R. 204.5(h)(5) indicates that a statement from the alien, detailing the alien's plans, will suffice in this regard. In this instance, however, the petitioner has not presented detailed plans; he merely states his intention to work at an unnamed "institute or university."

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

In this case, the nature of the positions offered to the petitioner cast doubt on his claim that he intends "to work as a researcher/teacher for an institute or university." The only potential employers that have come forward are an export company and a manufacturer of sporting goods, both of which express an intent to employ, or at least consider employing, the petitioner in a capacity which evidently has virtually nothing to do with sports research or

¹The company's correspondence consistently spells the company's name with a lowercase "a."

teaching. The petitioner, having claimed extraordinary ability in the sciences, now seeks employment in business, as is demonstrated by his discussion of marketing positions with two private corporations.

Because Matter of Ho allows for reevaluation of the remaining evidence, once a petitioner's credibility has been compromised, we reassess the sufficiency of the evidence submitted to establish sustained national acclaim in China. As discussed above, the initial submission consisted of documents with no reliable context. The petitioner has since supplemented the record, for the most part, with a series of letters rather than independent documentary evidence which one would expect to exist even if there was no visa petition. For instance, if a given prize is truly among the most significant prizes in China in the petitioner's field, then it is not unreasonable to expect for there to exist some kind of evidence showing this significance; evidence which was not created especially for submission with this visa petition. If such evidence does not exist, it is not clear how the petitioner's witnesses are aware of the importance of the prize. The statute calls for "extensive documentation" of sustained acclaim. Statements from witnesses chosen by the petitioner can only go so far in supplanting this documentation.

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. The record must also show that the petitioner intends to continue working in his field of established expertise.

While the petitioner satisfies some of the criteria for sustained acclaim, and claims to have satisfied several more, the record does not consistently document through independent, objective evidence that the petitioner is among the best known or most highly acclaimed sports researchers in China or elsewhere. The record also contains evidence which indicates that the petitioner intends to work in business and marketing, rather than as a scientific researcher or teacher as he originally claimed. 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.