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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



File: WAC 99 165 51464 Office: California Service Center Date: 18 APR 2007

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:



Public Copy

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, 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 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an "Oriental Medicine Practitioner & Researcher & Acupuncturist." The petitioner's area of expertise is traditional Chinese medicine ("TCM"). 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.

At a 1996 conference, the American International Institute of Chinese Medicine gave the petitioner two awards in 1996, an Outstanding Achievement Award and the "Prize of Distinguished Paper on TCM." The record does not establish the degree of recognition accorded to these awards or the awarding entity. It is also not clear whether the awards are significant only in the context of the conference at which they were presented.

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 copy of a certificate, showing that he is a member of the Acupuncture and Massage Institute of America, but the record does not reflect the membership requirements of this organization. It is not clear whether the petitioner submitted this certificate to meet the regulatory criterion, or merely to establish his occupational credentials.

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 is profiled in the Directory of Outstanding Chinese Doctors, published in 1998, and Overseas Chinese Newspaper interviewed him in 1999. The petitioner has not established that these publications constitute major media, widely circulated at a national or international level.

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 healed the chronic illnesses of several patients during a recent visit to the United States. The petitioner submits letters from some of these patients. Such letters are inherently anecdotal, and do not show that the petitioner has earned national or international acclaim within the medical community. While the letters indicate that the petitioner was able to treat ailments that had not responded to other treatments, the petitioner has not shown that his successful treatment of these patients elevates him to the very top of the medical field.

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

The petitioner wrote a thesis, which was published in two different anthologies of articles pertaining to traditional Chinese medicine. The petitioner also spoke at the 1996 International Conference and Exposition of Significant New Developments in Chinese Medicine. The petitioner has not established the reputation or distribution of the publications, nor has he shown the degree to which his articles have won him recognition throughout the medical community.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. The director specifically instructed the petitioner to provide more information about the awards and published materials in the record. In response, the petitioner has submitted technical documentation about some of the publications mentioned above, but these details do little to show that inclusion in the volumes is indicative of extraordinary ability or sustained acclaim. The petitioner also submits a copy of a revised edition of the Encyclopedia of Excellency in Chinese Medicine Accomplishment. The preface of that publication describes the original edition as "the master literature in modern day Chinese Medicine, highly respected by medicine societies all over the world, forever benefiting the health of all mankind." The preface further indicates that the collection compiled first-time publications and already-recognized articles.

The director denied the petition, stating that the petitioner has not provided sufficient information to establish that his evidence indicates sustained acclaim. For example, the director stated that the record says nothing about the petitioner's prizes "except that [he] won them." The director also stated "the fundamental purpose of medicine, whatever the method, is treating illness and injury," and that, therefore, to establish extraordinary ability, the petitioner must establish that he is among the most acclaimed medical practitioners, "traditional" or otherwise.

On appeal, counsel asserts that the petitioner's "highly specialized medical research had been recognized by influential institute and governmental authorities, nationally and internationally," but the petitioner has not established this to be the case. 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 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).

The director observed that the petitioner had not documented a high salary. Although the petitioner had not previously claimed a high salary, counsel responds by stating that the petitioner's salary is kept low because his employment opportunities are limited as a nonimmigrant, and that "it is very reasonable to expect he will earn [a] sizeable income when he can practice medicine again." Counsel's expectations are not evidence, and the assertion that the petitioner is limited by his immigration status does not address his previous earnings in his native China, where he claims national acclaim. The prizes and salary are the only criteria that counsel addresses on appeal.

The petitioner, in a personal statement, states that "individuals don't have [the] freedom [to] publish" in China, because the government controls the press. The petitioner also asserts that his

“thesis in particular won the first prize and praise from national judges.” Even if we were to find that the petitioner had satisfied the criterion pertaining to publication of scholarly articles (and his satisfaction of this criterion is not unambiguous), this would not establish the satisfaction of at least three of the ten criteria, as the regulation demands.

The petitioner also repeats the assertion that, in the United States, he has successfully treated patients “considered incurable by Western Medicine.” The petitioner does not show that the U.S. medical community, at a national level, has acknowledged or recognized these achievements. Now that the petitioner is in the United States, and has been since 1996, Chinese government control of the press is no longer an issue yet the record does not indicate that the petitioner has published anything in U.S. medical journals to make his work known. The record does not persuasively show that the petitioner has earned sustained acclaim in the United States, either during or after the three-year period between his May 1996 arrival and his May 1999 filing of the petition. Successful patient treatment is not national acclaim, and in his several years in the United States, the petitioner has not shown that he has established any significant reputation outside of California.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a medical practitioner 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 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.