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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: [Redacted]

Office: California Service Center

Date: 12 FEB 2002

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 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, 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 education. 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

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(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). On appeal, counsel asserts that the director was "arbitrary, subjective & vague" since she only addressed the evidence in its totality.

The director stated that the totality of the evidence must be considered even if the alien fulfills at least three of the criteria or more. While these statements appear to concede that the petitioner meets three criteria, it would be nonsensical for the director to conclude that the alien was eligible under the regulations but that the petition was not approvable. Thus, a more rational interpretation of the director's decision is that the petitioner submitted documentation which related to or addressed three criteria, but that the evidence itself did not demonstrate national or international acclaim. A petitioner cannot establish eligibility for this classification merely by

submitting evidence which addresses at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it establishes that the petitioner has sustained national or international acclaim. On appeal, we will address all the relevant criteria. It should be reiterated, however, that the petitioner must show that she 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 education specialist. 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, she 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 won several awards from the [redacted] (1995 and 1996) and the China Culture University (1977 and 1983). She also won several awards from the national Audiovisual Education Association of China, the most recent in 1989. In 1992 the petitioner won a "B-Class service medal" from the Executive Yuan Central Government, and in 1995 the petitioner was awarded an "honor certificate" from the Central Committee of the [redacted].

The awards from the colleges are not national awards. [redacted] issued an award to the petitioner in appreciation of her service to that institution. While the award from the [redacted] was in appreciation of 20 years of service in the field, she was a professor at that college at the time. The record does not reflect that the pool of candidates for the award included teachers and professors from around the country. Similarly, the award from the [redacted] appreciation of the petitioner's 10 years of service to the Taipei Teacher's College is also a local award from a provincial government.

The honor certificate from the Central Committee of the [redacted] indicates that it was awarded to the petitioner based on her loyalty to the party. Thus, the award does not appear related to her field of endeavor, education.

The Executive [redacted] medal was awarded to the petitioner "to certify that the professor of National Taipei Teachers College, [the petitioner], has been serviced on [sic] this occupation for twenty years with outstanding performance." Given the language of the award, it appears to be based on the length of the petitioner's service as opposed to recognition of any specific accomplishment in the field. Moreover, the record does not establish the significance of this award and whether it is a national or provincial award.

Two of the five Audio-Video Education Association Awards were actually awarded to the National Taipei Teachers College, not the petitioner personally. Of the remaining three awards awarded to

the petitioner personally, two were in recognition of publications, the other was a general appreciation award. In 1988, the association presented the petitioner with the Learning Science Award for "The Utilization of the Audio-Video Media for Elementary School Natural Science Class Research Study from the Teachers." In 1982, the petitioner again received the Learning Science Award for "Effecting Learning Research." The record does not establish the significance of these awards. For example, the petitioner has not submitted information regarding any media coverage of the awards, the number of candidates from which the petitioner was selected, the number of awards presented in a given year, or the prestige of the awarding association. Moreover, the most recent award was 1988, 10 years before the date of filing. As such, they cannot establish *sustained* national acclaim.

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 a list of associations to which she claims to belong. Specifically, the Association for Educational Communications and Technology (AECT), the National Audiovisual Education Association of China (NAVEAC), the Chinese Teacher Education Society (CTES), the Chinese Comparative Education Society (CCES), the Association for Curriculum and Instruction (ACI), and the Society for Photographic Education of China (SPE). The record, however, contains no evidence of these memberships other than a listing in the membership directory for AECT which includes the petitioner as a member and two certificates from the SPE certifying that the petitioner is a member and was the elected Standing Supervisor of SPE from 1994 to 1998. Moreover, while the record contains some general information about AECT, it does not contain the membership requirements for that association. The record simply contains no evidence that any of the associations to which the petitioner belongs require outstanding achievements of their general membership. Professional experience and payment of dues are simply not outstanding achievements.

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.

Initially, counsel asserted:

[The petitioner] has been a judge in many national mass media and educational contests, including the essay contests and the audio-visual aid contests participated [sic] by teachers, professors and mass media experts.

Counsel concedes, however, that evidence of the petitioner's service as a judge is unavailable since the names of the judges were confidential in these contests. The assertions of counsel, however, 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). Thus, the petitioner cannot establish her service as a judge in these contests without some type of independent supporting evidence.

The record does contain a memorandum to the petitioner as a member of a committee evaluating candidates for the "Public Middle School counseling works of 1996 school year in our county." The record contains no evidence, however, regarding the significance of this committee or how the petitioner was selected. If the petitioner merely volunteered for this committee, her membership cannot be considered evidence of her national acclaim.

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

The record contains several reference letters from colleagues and former students. Most of the letters simply provide general praise of the petitioner. Two of the letters, however, assert that the petitioner has contributed to her field. [REDACTED] Teachers College, writes:

[The petitioner] used to be in charge of the audio-visual education center of this school. She had successfully improved the instruction method in this school with audio-visual education. Not only does [the petitioner] teach media courses but she is also in charge of numerous courses such as Learning and Instruction Theory, Education Practicum, and Communication Theory and Skills, etc. She has contributed much in training pre- and in-service elementary and kindergarten teachers.

Dr. Joanne Peng, an associate professor at Indiana University, provides even more specifics. She states:

Since [the petitioner] has been teaching "Communication theories and skills" and "Instructional theories" courses for the past ten years, she consolidated her teaching notes, experiences, and insights from these two courses in 1997 and published a book titled "**Communication and Instruction.**" This book has been widely adopted by teachers' colleges and mass communication departments throughout higher education institutions in Taiwan.

The record does not contain support of this assertion. For example, the petitioner has not submitted letters from executive officers of any Taiwanese institutions other than her own which confirm that they have adopted the petitioner's techniques. Nor has the petitioner submitted evidence from the publishing company attesting to whether the petitioner's books have outsold other audio-visual texts.

The record also contains evidence that the petitioner has attended several seminars and conferences both in the Republic of China and abroad. The record reflects that the petitioner gave a demonstration at a conference in Japan in 1993 and a presentation at the International Symposium on New Technologies of Instruction in Taipei in 1996. The letters inviting the petitioner to attend the 1995 conference hosted by the National Policy Research Center and the 1995 annual Asian Open University conference praise the petitioner's professional reputation. It is typical, if not

expected, that a university professor attend conferences and present her theories. At best, the record as a whole minimally establishes that the petitioner meets this one criterion.

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

The record indicates that the petitioner has authored two published books and a few articles. It is inherent in the occupation of education professors to publish materials on the subject. As such, the publication of materials by a professor is not necessarily evidence of national acclaim. What is significant is the community's reaction to these materials. Other than the assertion of [REDACTED] there is no evidence that the petitioner's books and articles have been widely cited or that the techniques discussed in these publications have been adopted by institutions around the Republic of China. [REDACTED] professor in the United States, has not explained how she knows that the petitioner's techniques have been adopted in the Republic of China.

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

As stated above, the record reflects that the petitioner served as the Standing Supervisor for SPE from 1994 through 1998. The record does not include, however, evidence that the Standing Supervisor plays a leading or critical role for SPE. The record also fails to include evidence regarding the reputation of SPE.

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 herself as an education specialist 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 indicates that the petitioner shows talent as an education specialist, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.

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.