



BA

U.S. Department of Justice  
Immigration and Naturalization Service

My religious faith related to  
prevent clearly unmerited  
invasion of personal privacy.

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: Nebraska Service Center Date: 27 MAR 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:

[Redacted]

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, 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 he has sustained national or international acclaim at the very top level.

The petitioner seeks entry as a doctor, in counsel's words "specializing in the development of the use of traditional Chinese medicine for the prevention and treatment of chronic illnesses and diseases, with emphasis on the treatment of diseases of the liver and spleen."

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.*

The petitioner submits documentation of the following awards:

- "Scientific and Technical Award" from Hunan Province, 1984
- "Hemorheology Up-To-Date Technique Award" from Hunan Medical University, 1984
- Two "Great Contribution Awards in Integrated Traditional Chinese and Western Medicine," from the Committee of Integrated Traditional Chinese and Western Medicine, 1988 and 1991
- "National Achievement Award in Scientific Research" from the National Science and Technology Council of China, 1992
- "Science and Technology Improvement Award in Traditional Chinese Medicine" from the Hunan Province Health Department, 1998
- "Achievement in Scientific Research Award" from Hunan Province, 1998

The bulk of these awards are from provincial rather than national or international entities; the petitioner has not shown that the awards are widely recognized outside of Hunan Province. Only one award is clearly identified as coming from a national entity (the 1992 award from the National Science and Technology Council), and the record offers no information about this award except that the petitioner received it. An award can come from a national authority and still not be highly significant. One example of such an award is the President's Physical Fitness Award, which is nominally from the President of the United States but which merely recognizes that elementary and secondary school students have met certain basic guidelines for athletic ability. A large number of such awards are distributed annually. Because awards from national authorities clearly do not automatically result in sustained acclaim, the petitioner must establish the level of acclaim that attaches to a given award.

*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 is a member of the Association of Integrated Traditional Chinese and Western Medicine, and the Chinese Medical Association. The petitioner has not submitted any documentation to establish that either association requires outstanding achievements of its members. The only documentation that the petitioner has submitted about the Chinese Medical Association is an information sheet about its International Exchange Program.

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

The petitioner submits copies of his published work, but he has not established that these articles have appeared in major publications or that national or international acclaim has resulted from the

publication of these articles. The petitioner does not automatically or immediately satisfy this criterion simply by establishing the existence of published material that he has written.

In one of these published papers, the petitioner and his co-authors describe the treatment of "eight confirmed HIV/AIDS patients" with herbal treatments, and conclude that "AIDS is a reversible disease," with some patients restored to normal immunological functioning.

Beyond the above criteria, the petitioner has submitted four witness letters in support of his petition. Dr. William S. Livermore of the Livermore Chiropractic Center, Denver, Colorado, states:

[The petitioner] has 40 years of practice in combining Western and traditional Chinese medicine. He is an expert in treating and studying various diseases, including immune and hematological diseases including AIDS. Thousands of patients recovered after [the petitioner] treated them. . . . [The petitioner's] basic premise is that this health problem [AIDS] generally results from a disharmony of the Qi or "energy" in several organs or in the entire body, instead of just from an organ malfunction. He believes that the symptoms are only the signs of primary deficiencies in the body's energetic levels and metabolic rates. They may also be a result of a circulation or hormonal imbalance and/or neurological status. His therapy aims at correcting these primary deficiencies through natural supplements such as medicinal herbs to enhance the immune function and strengthen the patients' resistance, therefore enhancing the efficiency of AIDS treatment. Many AIDS patients enjoyed significant effects after taking [the petitioner's] combination of herbs. If it could be further confirmed and its mechanisms elucidated, this may greatly strengthen the confidence of the patients.

In addition to clinical practice, [the petitioner] is also engaged in high level advance scientific research who [sic] ultimate goal is discovering an immediate treatment for the HIV virus. . . . [The petitioner] not only studied the therapeutic effect of herbs in the experimental model of AIDS, but also the mechanisms involved in the immune response after treatment of HIV-1 infection. . . . He has presented his works at international conferences, and has brought worldwide attention to this problem.

Dr. Tit Sang Li and Dr. Nga W. Wong, both of Pacific Alliance Medical Center in Los Angeles, California, state in a joint letter that the petitioner "is presently engaged in advanced scientific researches in the management of late stage liver disease and liver transplant using Integrated Chinese Herbs Medicine and Western Medicine." The two witnesses state that they "have known [the petitioner] since Medical College."<sup>1</sup> They refer to the petitioner's "major scientific achievements in the past" but do not discuss what those achievements are, except to state that the petitioner's current work involves "the management of late stage liver disease and liver transplant using Integrated Chinese Herbs Medicine and Western Medicine."

---

<sup>1</sup> Both of these individuals attach the suffix "M.D." to their own names, but they repeatedly refer to the petitioner as "Mr." rather than "Dr." Other witnesses use the term "Dr." and state that the petitioner earned an M.D. degree.

Professor Yao-Fan Wen of the American College of Acupuncture and Oriental Medicine at Houston states that the petitioner "was my colleague in Xiangya Hospital," where the petitioner used acupuncture and other aspects of traditional Chinese medicine to treat patients while researching "new methods and compounds for many chronic diseases." Dr. Wen asserts that the petitioner "was one of the best practitioners in TCM field," and that the petitioner "was appointed the Chairperson of the Department of Chinese Medicine in Xiangya Hospital because of his outstanding ability in every respect."

Tsung Yuan Tang, president of Dong An Tang Chinese Herbal & Acupuncture Center, Inc., in Portland, Oregon, states that the petitioner "was a renowned professor at Hunan Medical University" and "is the foremost expert in immune and blood diseases":

During his research on liver blood deficiency and blood diseases, [the petitioner] discovered an alternative way in AIDS treatment using Chinese medicine. He used the traditional therapy in Chinese medicine called "clear heat and remove toxins" and "fortify immune resistance and fight off pathogens" in the treatment of AIDS and cancer patients. Their condition was significantly improved, and some of them are still healthy and well.

His magic of healing is not limited to China. In less than a year in the United States, [the petitioner] has cured four patients with infertility, one patient with psoriasis and two with neurotic dermatitis. These patients have suffered from their diseases for many years and tried a lot of treatments but all failed. He has improved the condition of three terminal phase cancer patients. They are still alive and well.

Section 203(b)(1)(A)(i) of the Act demands "extensive documentation," a requirement reflected in the regulation at 8 C.F.R. 204.5(h)(3), which calls for a variety of objective documentation to establish acclaim. Letters from personal acquaintances cannot overcome the lack of such objective documentation. If the petitioner is, in fact, "the foremost expert in immune and blood diseases," it is not unreasonable to expect there to be a substantial quantity and variety of evidence to attest to this reputation. Letters that refer to the petitioner as "the foremost expert" and offer anecdotal reports cannot suffice in this regard. Also, successful treatment of patients is not tantamount to sustained acclaim.

The director denied the petition, stating that while the petitioner has established long experience in his field, the record "does not show that the alien petitioner has sustained national or international acclaim." On appeal, counsel states that a brief is forthcoming within 30 days. To date, nearly a year after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands.

Counsel argues on appeal that "Eastern medicines and treatment methods" are gaining popularity in the United States, and that the director committed "an error of judgment" in finding that the petitioner's "expertise will not benefit the United States as a whole." The director had noted "one copy of a research document indicating that the AIDS disease is a reversible disease using medicinal herbs," but the director also found that this claim - which would surely be of major importance if confirmed - lacks the abundant and persuasive support that we must demand for such

a claim. Counsel, in his statement on appeal, does not address or rebut this finding by the director. Instead, counsel simply argues that because traditional Chinese medicine is becoming more popular, it must be beneficial, and this petitioner must benefit the U.S. because of his expertise in traditional Chinese medicine. Counsel refers to "the limitations, and sometimes failures, of traditional [Western] medical practices," but offers no evidence to show that traditional Chinese medicine is, overall, more successful at preventing, treating and curing diseases than Western medicine. Even then, general arguments and claims about the efficacy of traditional Chinese medicine do not establish acclaim.

Counsel states that the petitioner "is widely recognized throughout that nation of over 1 billion people [China] as being a preeminent physician/researcher of Chinese medicine throughout that vast nation," and that the director's decision "ignores the prominence of the [petitioner] as rising to the very top of the medical profession in a jurisdiction containing 1/6<sup>th</sup> of the world's population." This argument presupposes the petitioner's recognition. The director found that the petitioner has not established national acclaim, and counsel cannot rebut that finding simply by asserting that the petitioner has, in fact, earned such acclaim. 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 record offers no support for counsel's broad claim that the petitioner "is widely recognized throughout" China. The record reflects some level of recognition, but the petitioner's reputation, for the most part, appears to be confined for the most part to Hunan Province. Most of the witnesses who had offered letters on the petitioner's behalf have known him personally for years, and thus their familiarity with the petitioner's work is not a reflection of any larger reputation.

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 doctor or researcher 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 indicates that the petitioner has extensive experience in his field, but 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.