



B2

U.S. Department of Justice
Immigration and Naturalization Service

Identifying data deleted to
prevent clearly unwarranted
invasion of personal
privacy

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



12 SEP 2007

File: WAC 00 013 50538 Office: California Service Center Date:

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]

[Handwritten signature]

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

[Handwritten signature]

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, filed on October 25, 1999, seeks to classify the petitioner as an alien with extraordinary ability as an acupuncturist/medical practitioner. 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 sustained acclaim necessary to qualify as an alien

of extraordinary ability. The petitioner has submitted evidence that, 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 two certificates (1997 and 1999) from the second and fourth conferences of the "World Chinese Medicine & Herbs United Association" stating that the petitioner "has passed the examination administered by the Committee... and has received the above Golden Award for His/Her Excellence." Counsel declares the Golden Award to be the "highest honor bestowed" by the association, but provides no information regarding the association or its criteria for selecting award recipients.

The petitioner also submits an "Honorable Certificate" from the "6th World Cup Martial Arts Championships" (1997) involving the "United States and Argentina." The petitioner has not shown whether this certificate recognized his achievements in the martial arts or acupuncture, whether he competed for the certificate, or whether he received the certificate for anything other than giving a presentation at the event.

The significance and importance of the above awards are not self-evident. Two of the awards are pre-printed "form" documents with the petitioner's name handwritten into blank spaces. The record does not indicate how many Golden Award and World Cup Honorable Certificate recipients were named at these events, but the existence of pre-printed "form" documents suggests multiple winners. The petitioner has failed to submit evidence establishing the degree of recognition accorded to the above awards or the entities presenting them. It has not been shown that the awards were significant beyond the context of the events where they were presented.

The petitioner submits documentation notifying him of his listing in the Chinese publications: *Who's Who in the World*, *Scientific Chinese Talent Bank of Chinese Experts*, and *International Most Talented and Outstanding Medical Person* (certified translation not provided). By regulation, any document containing foreign language submitted to the Service shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). The petitioner also submits evidence from the Chinese Talent Research Institute reflecting his entry into an international talent database on the internet. The petitioner, however, has not shown the level of acclaim associated with the above listings. Recognition can come from a national organization and still not be highly significant, particularly when there are numerous other individuals included in the listings. Furthermore, simply being "listed" in a publication or entered into a database does not constitute the petitioner's receipt of a "prize" or "award."

The petitioner also submits an Honorable Commendation Award from Los Angeles County in recognition of his dedicated service to the local community. This award and two others

submitted from localities in China reflect regional, rather than national, recognition.

On appeal, the petitioner provides a certificate from the Shanghai Office of the *Guinness Book Of World Records* (2000) declaring the petitioner "Best Acupuncturist" for making 20,646 deep punctures. The certificate states: "If there was no new record at the end of 2000, this certificate would be effective." This evidence came into existence subsequent to the petition's filing. See *Matter of Katigbak*, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Even if we were to accept this evidence, it has not been shown how effectively administering 20,646 punctures demonstrates a high level of national or international renown.

Section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The petitioner must provide sufficient evidence to establish that his awards enjoy significant national or international stature. Simply alleging that an award is nationally or internationally recognized cannot suffice to satisfy this very restrictive criterion.

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 numerous certificates reflecting his appointment to various councils, committees, societies, editorial positions and honorary positions. The petitioner, however, must show that these associations require outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, memberships in associations that judge membership applications at the local chapter level do not qualify. It is clear from the regulatory language that members must be selected at the national or international level, rather than the local level. Finally, the overall prestige of a given association cannot satisfy the criterion, because the key issue is membership requirements rather than the association's overall reputation.

The petitioner has failed to submit supporting documentary evidence showing that his various memberships require outstanding achievement as judged by national or international experts in the medical community.

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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. An alien cannot earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend.

The majority of the published pieces provided by the petitioner were featured in Chinese language newspapers that were published in the United States. No evidence has been provided showing the extent of the circulation of these newspapers.

The petitioner, however, submits additional published pieces indicating that he has garnered some attention from the Chinese media. Articles featuring the petitioner appeared in the *People's Daily*, the "principle newspaper of the Chinese government," *Wenhui Daily* of Shanghai, and *Apple Daily*, "one of the largest newspapers in Hong Kong." The petitioner submits two additional articles from *Jian Kang Bao (Health News)*, a medical newspaper circulated throughout China. Thus, the petitioner's coverage in the Chinese media appears sufficient to minimally satisfy this criterion.

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.

Counsel states that the petitioner satisfies this criterion through his committee memberships. A review of the record, however, reveals no evidence to confirm that the petitioner ever served as a judge of others on these committees. 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). Simply providing proof of the petitioner's committee memberships cannot suffice to satisfy this criterion. The petitioner must submit direct evidence of his participation as a judge to satisfy the statutory demand for "extensive documentation" set forth in section 203(b)(1)(A)(i) of the Act.

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

Counsel asserts that the petitioner's "invention of the Deep Puncture of Mute Point Theory" is of major significance to the field. The petitioner submits a letter from [REDACTED] Senior Professor, China Academy of Traditional Chinese Medicine. He states:

[The petitioner's] most amazing achievement is his use of the mute-gate point above the vertebrae to cure complicated diseases. He has cured a large number of patients with advanced and complicated diseases. In thirty years, he has used this technique on more than 20,000 patients without accident. The miracle achievement is based on his great

technique, and accurate control of the angle and depth of the acupuncture needles... [The petitioner] has been sought after by many patients.

Additional letters and clippings from Chinese language newspapers published in the United States credit the petitioner with healing the illnesses of various patients. Such evidence is inherently anecdotal, and does not show that the petitioner has earned national or international acclaim throughout the medical community. For example, the petitioner does not show that the U.S. medical community, at a national level, has acknowledged or recognized his methods.

██████████ also states that the petitioner “has published several acupunctural theses in professional magazines.” The record, however, contains no evidence that publication is a rarity in medical science, nor does the record sufficiently demonstrate that independent medical researchers have heavily cited or relied upon the petitioner’s findings in their research. The petitioner must demonstrate that his articles have garnered national or international attention from throughout the scientific research community. We will further address the petitioner’s published works under a separate criterion.

While the petitioner is credited with successfully treating patients with various ailments, it does not follow that every practitioner of alternative medicine who successfully utilizes his own technique has made a major contribution to the medical field. The fact that the petitioner published his method or practiced it on “more than 20,000 patients without accident” carries little weight. Of far greater importance in this proceeding would be the importance to the field of the petitioner’s discoveries. The petitioner has not provided sufficient evidence that his research, to date, has consistently attracted significant attention from prominent medical researchers. In sum, the impact of the petitioner’s treatment methods does not rise to a level that would demonstrate sustained national or international acclaim.

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 evidence that he has authored several research theses on acupuncture. Counsel indicates that at least three of petitioner’s theses were published in journals of Traditional Chinese Medicine. The petitioner, however, offers no evidence regarding the extent of the circulation of the journals that published his findings. Thus, it cannot be determined whether they qualify as major media. Furthermore, the publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community’s reaction to those articles. When judging the influence and impact that the petitioner’s work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner’s conclusions. Frequent citation by independent researchers would demonstrate more widespread interest in, and reliance on, the petitioner’s work. The petitioner offers no evidence showing independent citation of his work. In sum, the petitioner has not established the reputation or distribution of the publications featuring his findings, nor has he

shown the degree to which his articles have won him recognition throughout the medical community.

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

On appeal, counsel asserts that the petitioner satisfies this criterion. The assertions of counsel do not constitute evidence. See Matter of Laureano, Matter of Obaigbena, and Matter of Ramirez-Sanchez, supra. In order to establish that the alien performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must submit evidence establishing the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. The petitioner, however, offers no such evidence.

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. In this case, the petitioner has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

As noted by the director, the petitioner has demonstrated an impressive career as an acupuncturist. 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 the 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.