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U.S. Department of Justice
Immigration and Naturalization Service

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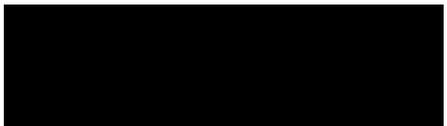
Date: 23 SEP 2002

IN RE: Petitioner:
Beneficiary:



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, Vermont 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 claims extraordinary ability "in the field of Traditional Chinese Medicine (TCM) and Acupuncture, specializing in the area of stroke prevention and treatment."

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.

A letter from the Chinese Medicine Research Association states that the petitioner "will be [awarded the] 'Golden Elephant'" at the 21st Century International Medical Development Conference in Bangkok, Thailand, in March 2001. It is not clear whether the Chinese Medicine Research Association was the organizer of the conference, or was otherwise the entity responsible for presenting the petitioner with the award. The petitioner states that he did not attend this conference, and he submits no documentation that he actually received the award. The record also contains no evidence to establish that the "Golden Elephant" is a significant national or international award.

The petitioner submits a partial translation of a letter which, he states, documents his receipt of an "Excellent Thesis Award" from the World Pharmaceutical Research Center and Hong Kong China International Exchange Trade and Press Co., Ltd., in 1997. Most of the letter appears to be computer printed except for handwritten information in three blank spaces. Among the pre-printed information are several dates, including the year 1997. Among the handwritten information is the number 325; the partial translation states that this number was assigned to the petitioner's thesis. The existence of a "form" letter of this type, with the petitioner's specific information added into blank spaces, is not inconsistent with a large number of papers receiving "Excellent Thesis Awards." In the absence of a complete certified translation, we cannot determine the full content of the letter.

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 states that his "name is listed in 'The Outstanding Medical Professionals and Talented Persons in World China Series – Chinese Famous Doctors Canon.'" The petitioner compares this publication to the *Who's Who* series of biographical directories. Excerpts submitted with the petition indicate that the publication is several hundred pages long, with roughly five listings per page, suggesting that several thousand doctors are listed in the book. Nothing in the petitioner's listing distinguishes him from the other doctors listed, and the petitioner has not submitted evidence to show how doctors are selected for inclusion in the volume.

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.

A letter from the Chinese Famous Doctor Association states that, because of the petitioner's inclusion in the above book, he "will be a member of a council of [the] Chinese Famous Doctor Association." We note that the membership invitation letter is from the World Pharmaceutical Research Center and the Hong Kong China International Interchange Press, the same entities that published the above directory. The letter also states that the "Chinese Famous Doctor Association

has been established," implying that the organization is a new one. It is not certain what function the association serves apart from promotion of the book (which in turn appears to be, in effect, a membership directory for the association). Given that these same two entities are also named on the letter referring to the petitioner's "Excellent Thesis Award," it is evident that much of the documentation of the petitioner's purported acclaim comes from a single source.

Other awards in the record are from individual employers or from lower-level government entities, and plainly do not qualify as national or international awards.

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.

The petitioner states that he "was often invited [to serve] as expert judge for the various science research award committees." The petitioner does not specifically identify these committees, much less provide first-hand documentary evidence to show that he has acted as a judge at a level commensurate with national or international acclaim.

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

The petitioner states "[t]he most prominent contribution I made to the field of TCM is that I am the originator and inventor of the unique method of treatment for acute strokes and other cerebral vascular diseases applying acupuncture therapy." He adds:

Based on the research and clinical trials and numerous case studies, I have created a new method using needling manipulation or promoting circulation of channel Qi (Qi is an element which is considered in TCM as the essence of health or cause of ailment) to treat acute ischemic stroke. This method has [been] proven [to] have a cure rate of 50.7% and an overall effective rate of 91.3%. The unique contribution of this method is that it also [uses] modern technology [in the form of the] ultrasonic quantitative blood [flow] meter (QFM) to measure the volume and velocity of the blood flow, the caliber of the vessel, and the change of the displacement of the common artery. It increases significantly the chances of early diagnoses of dynamic changes in the cerebral circulation. The method can speed up the velocity of dynamics changes in the cerebral circulation.

The petitioner submits several witness letters. A number of witnesses essentially repeat claims made by the petitioner, or state with little elaboration that the petitioner is at the top of his field. Others describe the petitioner's training and proficiency. Irregularities in spelling and grammar make some of the translated letters occasionally difficult to comprehend.

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

The petitioner states that his "research work has been published and highly regarded in many professional journals," and that he has made presentations at "important international conferences." The petitioner submits copies of three articles that appeared in a book of conference proceedings, *1998 New York International Symposium of T.C.M.*, and two journals, *The Practical Journal of Integrating Chinese with Modern Medicine* and *Chinese Manipulation and Qi Gong Therapy*. The petitioner has not established the significance or circulation of these publications. The record contains copies of letters from various government officials, wishing success to the participants at the 1998 New York International Symposium of TCM, but there is no indication that it is unusual for officials to welcome conventions and trade shows in this way. Absent evidence that only the top researchers in the petitioner's field publish their work, we cannot find that the very existence of published material by the petitioner is *prima facie* evidence of sustained acclaim or extraordinary ability.

The director instructed the petitioner to submit additional evidence, stating that "the evidence does not adequately distinguish him from other members of the medical acupuncture profession." The director discussed the ten criteria set forth at 8 C.F.R. 204.5(h)(3).

In response, the petitioner has submitted additional evidence pertaining to awards, certificates, and memberships. Two of the three award documents are below the national level (one provincial, one for students at a particular college). The third is not clearly an award at all; it signifies the acceptance of the petitioner's thesis for inclusion in the proceedings of the 1998 New York conference mentioned above.

The certification documents show that the petitioner has passed various examinations necessary to receive acupuncturist credentials in the United States. Possession of necessary professional credentials are not evidence of extraordinary ability or national acclaim. With regard to memberships, the petitioner submits a copy of his membership certificate from the Chinese Medical Association, but no evidence to establish that the association requires outstanding achievements of its members.

In denying the petition, the director acknowledged the petitioner's awards, certificates, and membership, but the director found that the petitioner had failed to establish the national significance of the awards and certificates as well as the membership requirements of the association. The director noted "[n]o other primary evidence was offered" with the response to the notice.

On appeal, counsel asserts that the evidence previously submitted demonstrates that the petitioner "is one of the top three-four persons in the field of . . . TCM and Acupuncture, specializing in the area of stroke prevention and treatment." Counsel describes the petitioner's participation in various conferences but does not explain how these activities show that he is one of the top three or four members of his specialty. Counsel states that the petitioner received the "Golden Elephant" award, "issued by [the] Chinese Medicine Research Association," although the record does not clearly indicate that the association was the issuing entity. Furthermore, the award was not issued in China, so it is far from certain that a Chinese entity would have issued such an award.

The petitioner submits documentation of a previously unclaimed award which the petitioner received in Hong Kong on December 12, 2001. This award had not been presented as of the petition's filing date in July 2001, and it cannot retroactively establish eligibility as of that date. See Matter of Katigbak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Even then, the petitioner has not established the significance of the award. Not every award carries equal probative value, and the burden is on the petitioner to establish the significance of a given award. Other awards documented on appeal are awards from a particular hospital. Such awards are not national or international because the pool of candidates is limited to the staff of that hospital.

The remainder of counsel's brief is similar in tone. Counsel describes material already submitted and already considered, and argues that this evidence establishes eligibility. Counsel repeats, for example, the assertion that the petitioner has invented a revolutionary new treatment for stroke patients, but submits no documentary evidence to show that this method has been widely implemented or even made available to U.S. physicians. Presumably, a treatment with a 50% cure rate as claimed would have come to the attention of major neurology centers at top universities, clinics, and research facilities. The director had already put the petitioner on notice that further evidence and explanation was necessary to establish the petitioner's eligibility. The petitioner cannot meet this burden or overcome the shortcomings listed by the director simply by maintaining that the petition should be approved based on the existing evidence.

The record amply establishes that the petitioner has been active in his field, and has become something of a respected figure in his specialty. The evidence, however, stops short of establishing that the petitioner is nationally or internationally acclaimed as one at the very top of that field. We note that, as of the petition's filing date, the petitioner had been in the United States for nearly three years, but the record contains nothing to show that the petitioner had earned significant recognition in the U.S. during that time.

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 TCM 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.