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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.
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Washington, D.C. 20536

File: WAC 01 217 53427 Office: CALIFORNIA SERVICE CENTER

Date: **SEP 26 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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

We note that, before present counsel became involved with this proceeding, the petitioner had submitted materials from attorney Ken S. Horio. The record does not contain any Form G-28 Notice of Entry of Appearance from Mr. Horio, and therefore Mr. Horio never formally represented the petitioner. The term "counsel" shall herein refer only to the present attorney of record.

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. 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 achieved sustained national or international acclaim are set forth in Service regulations at 8 C.F.R. 204.5(h)(3):

Initial evidence: A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of

expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) 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;
- (iv) 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;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner is a Japanese finger pressure therapist. Mr. Horio, in a statement accompanying the initial filing, stated:

[The petitioner] has perfected a program of finger pressure therapy from over 25 years of highly specialized experience treating clients with many different health

problems. His treatment involves applying exact pressure on different nerve points which stimulates them or "wakes them up." There are over five hundred of these nexus points and only a few people in the world can successfully and correctly stimulate these intricate areas.

The record contains no background documentation to verify many of Mr. Horio's assertions, which are simply presented as fact. Mr. Horio does not even cite sources for these assertions. 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 petitioner's initial submission consists almost entirely of copies of letters from various witnesses. Two of the letters are from legislators, U.S. Representative Billy Tauzin and Louisiana State Senator Butch Gautreaux. Mr. Horio states that these letters represent qualifying prizes or awards. This argument is not persuasive, because a letter is not a prize or award, regardless of who wrote it or what the writer states in the letter. The petitioner has not shown that letters from members of the state or national legislatures are nationally or internationally recognized as prizes or awards.

Mr. Horio asserts that other witness letters demonstrate that the petitioner has "performed with excellence in his field of endeavor." The petitioner does not establish eligibility simply by showing that witnesses whom he has selected consider him to be excellent in his field. Positive witness letters, regardless of their sincerity, are not prizes or awards and they do not demonstrate national or international acclaim.

Section 203(b)(1)(A)(i) calls for "extensive documentation" of sustained national or international acclaim. 8 C.F.R. 204.5(h)(3) reflects this requirement by calling for a broad variety of documentary evidence. While 8 C.F.R. 204.5(h)(4) allows for the submission of comparable evidence when the listed criteria do not apply to a given occupation, the comparable evidence clause does not imply that a successful claim can rest entirely or primarily on subjective witness letters. Furthermore, the petitioner has not shown that the criteria at 8 C.F.R. 204.5(h)(3) do not readily apply to his occupation, which is a necessary condition to trigger the comparable evidence clause. The clause does not apply when the criteria do in fact apply to the alien's occupation, but the alien himself is simply unable to meet those criteria.

Keeping in mind the above, we will examine the letters themselves. Rep. Tauzin's letter does not state or imply that the petitioner has a national reputation. He states only that the petitioner "is a popular practitioner of Eastern Medicine in the Morgan City area of Louisiana" who "has helped dozens of people with various ailments." The remainder of the letter deals with the petitioner's efforts to secure an extension of his nonimmigrant visa. We can find nothing in this letter that would mark it as a nationally recognized prize or award as claimed by Mr. Horio.

Sen. Gautreaux states that the petitioner's "healing technique has lowered my blood pressure without the aid of medication and relieved me of chronic back pain." Sen. Gautreaux, like Rep.

Tauzin, refers to “dozens of others who have enjoyed [the petitioner’s] healing powers.” Like Rep. Tauzin, Sen. Gautreaux makes no statement that could reasonably be construed as reflecting sustained national or international acclaim. Sen. Gautreaux appears to know of the petitioner because he himself is a patient; Rep. Tauzin’s knowledge appears to derive from letters sent to his office.

The other letters, from a cardiovascular specialist, a podiatrist, a chiropractor, a nurse, and various clients not trained in medicine, assert that the petitioner has provided effective treatment for hypertension, chronic pain, and other ailments. Most of the witnesses are based in or near Houston, Texas or Morgan City, Louisiana, where the petitioner had practiced prior to relocating to California. Some witnesses had traveled from overseas for treatment, at the recommendation of relatives or friends whom the petitioner had previously treated. All of these witnesses have either been treated by the petitioner, or else referred patients to the petitioner for treatment. The letters, for the most part, praise the effectiveness of the petitioner’s shiatsu and acupuncture treatments. Client satisfaction, especially when it is largely contained within small geographic areas, is not comparable to or synonymous with national or international acclaim.

Mr. Horio contends that the witness letters are evidence of the petitioner’s high remuneration for services. We see nothing in the letters that shows the amount of the petitioner’s compensation, let alone provides a basis for comparison with that of others in the field as required by 8 C.F.R. 204.5(h)(3)(ix). Mr. Horio also cites the success of the petitioner’s business in Houston, but he does not explain why the petitioner subsequently shut down the business and left the Houston area.

Mr. Horio asserts “[t]he evidence is of high quality because the effectiveness of his treatment is written by persons considered to be in their top fields of expertise.” Assuming Mr. Horio means that the witnesses are “at the top of their fields of expertise,” we note that only a handful of the witnesses are medical professionals, and they do not claim in their letters to be at the top of their respective specialties. In any event, the petitioner must establish that he himself is at the top of his field, not merely that favorable witnesses are at the top of theirs.

On February 5, 2002, the director instructed the petitioner to submit further evidence to establish eligibility. The director repeated the regulatory criteria from 8 C.F.R. 204.5(h)(3), and instructed the petitioner to submit documentary evidence to substantiate Mr. Horio’s claims (for example, tax returns to support the assertion regarding the petitioner’s remuneration). In response to this notice, the petitioner has submitted a statement from counsel and further witness letters. Counsel asserts that the letters “are primary evidence of the achievements accomplished by [the petitioner] in the field of therapy.”

The new letters are all from individuals in southern California, where the petitioner had relocated prior to filing his petition. The letters are essentially very similar to the previously submitted letters. Each witness describes a medical complaint or series of complaints, and asserts that these ailments did not respond to standard treatments but have disappeared or improved greatly in response to the petitioner’s technique.

With regard to the petitioner's remuneration, counsel does not provide any figures or documentation that would reveal those figures. Instead, counsel states only that the petitioner's "earning capabilities are verified by the numerous recipients previously mentioned. His earnings are well beyond normal traditional fees due to the unique ability to perform his art of healing. [The petitioner] earns well over normal customary fees." The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaighena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Counsel does not specify what evidence he has examined that would lead him to conclude that the petitioner's earnings are significantly high. If counsel has not seen any such evidence, then counsel has no reasonable basis for asserting that the petitioner commands higher remuneration than others in his field. We reject outright the assertion that client satisfaction is presumptive evidence of high remuneration. The director had specifically requested documentary evidence not only of the petitioner's earnings (in the form of, e.g., copies of the petitioner's tax returns) but also "proof of the earnings level of other therapists or medical practitioners in the petitioner/beneficiary's field of expertise." The petitioner has obviously failed to provide this documentation, but counsel offers no explanation as to why the petitioner has repeatedly claimed high earnings while refusing to offer proof of that claim. The petitioner completely disregarded the director's request for evidence showing the earnings of others in the petitioner's field.

The director denied the petition on June 14, 2002, once again stating the regulatory criteria. The director acknowledged that the witness letters show that the petitioner has "earned some respect among [his] peers and clients," but maintained that the letters do not establish sustained acclaim or place the petitioner at the very top of the field.

On the appeal form, counsel states that a brief is forthcoming and offers two reasons for the appeal:

- A. The applicant is qualified as a person with extraordinary ability.
- B. The applicant has the necessary years of expertise in [the] field of healing therapy, earnings beyond normal fees, and unique ability.

The first point is not an argument at all, but simply a flat assertion that the petitioner qualifies for the classification sought. This is not a substantive ground for appeal; the petitioner's belief in his own eligibility is apparent from the very existence of the petition, and the petitioner does not establish Service error simply by disagreeing with the director's finding.

The statement that the petitioner "has the necessary years of expertise" is irrelevant, because length of experience is not a criterion for eligibility. Even then, the record does not prove that the petitioner has the claimed 25-plus years of experience; the record consists almost entirely of letters from the last six years. The assertion regarding "unique ability" is vague, and as we have already discussed, the bare assertion that the petitioner commands "earnings beyond normal fees" is not, and cannot under any circumstances be, documentary evidence that the petitioner earns significantly high remuneration in relation to others in his field.

In the subsequent brief, counsel contends “the Reviewing Officer erred in not taking into consideration the evidence presented in support of the application.” Counsel argues:

While the reviewing officer need not simply accept Appellant’s assertion, he must at least review and *consider* the evidence presented. He may not simply reject Appellant’s assertions merely because they are not traditional. In this case, Appellant belongs to a unique profession which is not readily recognized here in the United States. He is apparently the victim of the reviewing officer’s unwillingness to accept different standards and professions.

(Emphasis in original.) The above argument has no discernible bearing on the director’s decision. The decision rests not on any alleged bias against the petitioner’s occupation, but on the total lack of documentation to support any of the petitioner’s material claims relating to remuneration, prizes, and other materials that are relevant to the regulatory criteria at 8 C.F.R. 204.5(h)(3). The record consists almost entirely of witness letters, and the director did, in fact, consider those letters, referring to them in the notice of decision. The implication that the petitioner is somehow entitled to a lower standard of proof simply because his “profession . . . is not readily recognized” is specious. The statute and regulations demand documentary evidence of sustained national or international acclaim. By freely choosing to work in the United States, the petitioner voluntarily subjects himself to U.S. standards of national acclaim, whether or not his methods are relatively novel to most people in the U.S.

Counsel argues “[t]here can be no dispute that Appellant has conclusively established his membership in the healing profession.” The petitioner’s occupation is not in dispute in this proceeding, and therefore counsel’s assertion, while correct, is entirely without effect. Counsel continues: “Appellant has established his major contribution to the field by virtue of the support he has gained of others in the healing profession. Appellant has demonstrated through the numerous and diverse testimonials that from 3 states, two countries, members of congress, superior court judges, comparable evidence of his ability.” Satisfied clients in “3 states” out of 50 does not document or imply sustained acclaim at a national level. The petitioner has witnesses from three states only because he has relocated twice, each time establishing a reputation that is overwhelmingly local in nature. Given that the petitioner, rather than the Service, selected the witness letters, and given that the petitioner can hardly be expected to submit letters from dissatisfied clients, the positive tone of the letters is unremarkable. Given, also, that the petitioner claims to have practiced for a number of years, it is not surprising that the petitioner has accumulated a considerable number of clients. It remains that a favorable reputation among one’s own local clients is not tantamount to sustained acclaim at a national or international level. It is not a sign of sustained acclaim that the petitioner’s clientele happens to include a state legislator and a superior court judge. Neither of those witnesses has offered the slightest indication that the petitioner is nationally known in his field, or that they would have retained his services even if he had not already been practicing in the immediate geographic area. The letters do not indicate that the petitioner has earned sustained national acclaim, and therefore they do not constitute comparable evidence under 8 C.F.R. 204.5(h)(4), regardless of the quantity of such letters.

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 Japanese finger therapy 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 petitioner has demonstrated enthusiastic support from those clients who have offered letters on his behalf, but that is all that he has established. The petitioner has not even shown that the letters represent the views of a majority of his clients. 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. The petitioner has submitted no documentary evidence to satisfy any of the regulatory criteria set forth at 8 C.F.R. 204.5(h)(3). 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.