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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

[redacted]

File: [redacted] Office: Nebraska Service Center Date: JAN 17 2003

IN RE: Petitioner: [redacted]
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:

[redacted]

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

Elizabeth Hayward

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. 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 seeks to classify the petitioner as an alien with extraordinary ability as a Qigong Master. 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.

In his initial brief and throughout the proceedings, counsel relies on 8 C.F.R. 204.5(h)(4), which allows for "comparable evidence" when the ten criteria do not readily apply to the petitioner's field. Counsel argues that the ten criteria are not applicable to [redacted] as it is "less 'established' in the U.S. than is Western medicine, for example." As "comparable evidence," counsel requests that the Service consider the "respect one commands by those in both the alternative and mainstream medical communities within the U.S." The ten criteria set forth in 8 C.F.R. 204.5(h)(3) all require objective evidence. The subjective opinions of references selected by the petitioner are not "comparable" to the objective evidence required under 8 C.F.R. 204.5(h)(3).

Moreover, we are not convinced that the ten criteria do not readily apply to the petitioner's field. In "Alternative Medicine Meets Science," an editorial in the *Journal of the American Medical Association* (November 11, 1998), Phil B. Fontanarosa, M.D. and George D. Lundberg, M.D. state:

> There is no alternative medicine. There is only scientifically proven, evidence-based medicine supported by solid data or unproven medicine, for which scientific evidence is lacking. Whether a therapeutic practice is "Eastern" or "Western" . . . is largely irrelevant except for historical purposes and cultural interest. . . .

If counsel means by less "established" that [redacted] has yet to be clinically proven in controlled studies, such an argument is not persuasive. Rather, the petition has been filed prematurely. Moreover, the petitioner has submitted evidence of local media coverage and letters arguing that the petitioner has contributed to the field of [redacted] The petitioner's failure to meet a criterion does not necessarily indicate that a criterion is not readily applicable to his field. In addition, the record contains letters from individuals who have authored books on Qigong. As such, there are scholarly publications in the field.

If the Service were to receive a petition from a physician or biomedical researcher who claimed extraordinary ability based on having developed cures or effective treatments for now-incurable cancers, it would be irresponsible for the Service to accept subjective witness letters as "comparable evidence" where objective evidence of such claims should be readily available. The petitioner in this proceeding does not entitle himself to a different threshold of evidence simply because his claims are based on ancient traditions rather than on controlled, clinical research. Individual, anecdotal self-reports by small numbers of satisfied clients cannot suffice in this regard. In light of the above and for the additional reasons discussed below with regard to the individual criteria, we do not find that we need accept comparable evidence in this case.

The petitioner has submitted evidence that appears to relate to 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.*

Counsel argues that the "demand" for the petitioner's services are equivalent to nationally or internationally recognized prizes or awards. We do not find this claim persuasive. Awards are

recognition from one's peers for past accomplishments, whereas demand for one's services can be obtained simply by having satisfied clients.

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.

Counsel concedes that to be named a "highly 'recommended' master of the Qigong Association of America, one need only fill out a simple on-line form." The record contains no evidence of the petitioner's membership in more exclusive associations.

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 submitted five newspaper articles about his work. One of the articles appeared in the *Saint Paul Pioneer Press*, a second appeared in *Bodywise*, a third appeared in the *Saint Paul Voice*, and the final two appeared in two unidentified papers that appear to be local Saint Paul papers. The record does not establish that any of these publications have a significant circulation outside Minnesota or otherwise constitute major media. As stated below, one of the petitioner's references in his field claims to have been covered in *USA Today* and *Newsweek*. While counsel continues to rely on the submission of "comparable evidence" on appeal, the failure to meet an applicable criterion does not mandate that the Service accept allegedly comparable evidence. Given the nature of some of the claims made by the references, such as that Qigong can put cancer into remission, the lack of major media coverage is notable. A controlled study, with reproducible results, showing that cancer could be put into remission through Qigong exercises would almost certainly come very rapidly to the attention of the National Cancer Institute, the American Cancer Society, and major publications such as the *Journal of the American Medical Association* and the mainstream media.

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.

Several references assert that the petitioner instructs students on performing Qigong for themselves and also instructs on how to teach Qigong to others. Evaluating the progress of one's students and prospective teachers is inherent to the Qigong instruction. We do not find that such evaluation is indicative of national or international acclaim.

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 has developed an easier form of Qigong, Spring Forest. The evidence supporting this assertion consists of the letters submitted in support of the petition. Dr. Todd Patton, a family practitioner and one of the petitioner's students, discusses the importance of

finding inexpensive treatments for untreatable diseases and notes that the National Institutes of Health (NIH) has placed a priority on testing Qigong for treating serious diseases. We do not question that producing an inexpensive cure for untreatable diseases would be a major contribution. The record lacks evidence that Qigong fills this role. The quote from the NIH report in Dr. Patton's letter implies that, when studying Qigong, it should be a priority to test its benefits for serious diseases. This statement in no way implies that Qigong has already been shown to have benefits for serious diseases. Rather, the NIH feels that, when designing studies to test Qigong, it should be a priority to test its benefits on serious diseases before testing Qigong for minor ailments. None of this language concludes that Qigong has already been clinically proven effective for serious diseases or, more importantly for this petition, that the petitioner is nationally renowned for his contribution to Qigong.

Dr. Neil Kay, Medical Director of the David Hickok Memorial Cancer Research Laboratory, Abbott Northwestern Hospital, asserts the laboratory is "well known for its clinical research in treatment of human cancers" and is "able to attract the very top international Complementary Therapy or Alternative Medicine practitioners." Dr. Kay expresses his pleasure that the petitioner agreed to teach Qigong at the hospital and asserts that the petitioner's style is simpler than other Qigong styles. Finally, Dr. Kay asserts that the laboratory intends to study the benefits of the petitioner's Qigong style. Dr. Kay does not indicate that this study has been completed or even begun.

Dr. Bill Manahan, author of a nutrition book and editor of the *Holistic Medicine Journal* as well as a family practice instructor at the University of Minnesota, asserts that the University of Minnesota is currently studying the benefits of the petitioner's style of Qigong on stiff neck problems. He then discusses the importance of energy healing as a whole, asserting it will revolutionize the medical work the way antibiotics and immunizations already have. Whether energy healing will one day prove as important as antibiotics and immunizations have is irrelevant to whether the petitioner personally already enjoys national or international acclaim as a practitioner of this form of healing.

Dr. Norman Shealy, a neurosurgeon and psychologist who founded the American Holistic Medical Association, asserts that he met the petitioner and is "personally convinced that he is indeed one of the outstanding Masters in the field of Qigong. I know several individuals who have monitored his work closely and given me many examples of significant benefits." Dr. Laurence H. Altshuler, an internist and Medical Director of the Balanced Healing Medical Center, asserts that he recommends Qigong and that the petitioner is a highly reputable practitioner of Qigong and that Dr. Altshuler hopes to use the petitioner in future symposiums. Dr. Bart Main, Chief of Psychiatry, asserts only that the petitioner is "likely" to make a contribution.

Dr. Jim Concotelli, Executive Director of the Lexington Wellness Center in Kentucky and a practitioner of Qigong himself, discusses the importance of Qigong but fails to single out the petitioner's contributions to the practice of Qigong nationally. As noted by the director, Dr. Concotelli attests to his own belief that the petitioner "will" become respected and widely known in the United States. Teresa Landers, a yoga instructor at the Lexington Wellness Center, provides similar information. Dr. Concotelli's colleague, Dr. Christian N. Ramsey, Jr., Associate Dean for

Clinical Affairs at the University of Kentucky, simply rates the petitioner as a reputable practitioner of Qigong and asserts that his students gain skill and knowledge in Qigong. Any competent teacher will impart knowledge and skill to his students. Another colleague at the University of Kentucky, Dr. Eugene Gallagher, a professor in the Department of Behavioral Science, asserts that Qigong is important for reducing stress in people with chronic diseases.

Nancy Kampa, a nurse at Birchwood Centers in Minnesota, discusses the importance of Qigong and asserts that there are insufficient Qigong masters in the United States. While she asserts that the petitioner founded Spring Forest Qigong, she does not provide examples of how this form of Qigong has influenced the practice of Qigong nationwide.

Dr. Rolf Sigford, a physician in Minnesota and Chairman of the Pediatric and Adult Asthma and Allergy Department at HealthPartners, discusses the reluctance of medical practitioners to accept new ideas, citing the failure to recognize the significance of smallpox vaccines and penicillin when first discovered. We must note that controlled clinical studies have been able to scientifically establish the major benefits of these treatments and even the more modest benefits of "complementary" techniques such as acupuncture and Tai Chi. Dr. Sigford does not assert that there are anywhere near the number of articles about Qigong as there are about acupuncture (6,000 according to Dr. Sigford.) While Dr. Sigford cites examples of studies that have found benefits to acupuncture and Tai Chi, the record does not establish that these studies have proven the existence of "Qi," the energy life force on which they are traditionally based. Thus, the fact that these other "Qi" based techniques that involve physically invading the skin or exercise have been shown to be useful is not evidence that Qigong, which, according to Betsy Cassady, involves breathing and energy direction without physical contact, will prove equally useful. Finally, Dr. Sigford asserts that in order to study the benefits of Qigong, it is necessary to have Qigong masters in the United States, of which there are few. The unavailability of others in the petitioner's field is not a consideration for this classification. Finally, regarding the petitioner specifically, Dr. Sigford says only that he is dedicated, vigorous, has been teaching regularly at a community college, and has been written up in a local paper. None of these accomplishments are evidence of a major contribution to the field as a whole.

Three occupational therapists from HealthSystem Minnesota assert that they have learned Qigong from the petitioner and have used it successfully with their own patients.

The petitioner also provided two letters from individuals described by counsel as world-renowned Qigong Masters. Dr. Zeng is the founder and Director of the International Institute of Chinese Medicine. The record contains no evidence of the reputation of this "international" institute. Dr. Zeng notes that the petitioner received his Qigong training from highly accredited teachers in China. This claim, also put forth by counsel, is unsupported in the record. In addition, Dr. Zeng asserts that "the letters submitted with this petition certainly attest to the tremendous help his guidance has provided." This statement strongly suggests that Dr. Zeng is basing his opinion on the reference letters, and had not previously heard of the petitioner prior to the preparation of the evidence for this petition. By definition, national acclaim requires that members of the petitioner's field who have not met him are aware of his reputation.

Kenneth Cohen, another Qigong master, indicates that he is the author of a book on Qigong and more than 150 articles on Qigong, a contributor to a U.S. medical school textbook on "alternative" medicine, and that his work has been featured in *USA Today, Time, Newsweek* and on National Public Radio. These accomplishments suggest that the top of the petitioner's field is considerably higher than the level he has achieved. Mr. Cohen asserts that the petitioner has special knowledge of herbal treatments for sports injuries and has had unique opportunities to learn contemplative Qigong. Mr. Cohen asserts that the petitioner is skilled at presenting Qigong in an easy-to-understand manner. These assertions do not demonstrate the petitioner's major contribution to the field of Qigong.

The petitioner also submitted a letter from Dr. Bruce Nerad compiling several case studies with patients showing demonstrable improvement after Qigong and citing them as an indication that further studies, with control groups, were warranted. Case studies reflecting the possible benefits of Qigong are, as Dr. Nerad concedes, only an initial positive indication of Qigong's effectiveness, and must be followed by more clinical studies. Moreover, these case studies, even if considered evidence of Qigong's effectiveness, are not indicative of the petitioner's contribution to Qigong nationwide.

The petitioner submitted letters evidencing invitations to speak at Midwest Odyssey's annual summer conference, a lecture for students at the Institute of Transpersonal Psychology, the 14th National Hispanic Women's Conference, LifeExpo 2000, a presentation for the staff at OhioHealth, the Bakken Library and Museum in Minneapolis, and the Mercy Holistic Council at the Mercy Health System of Maine. None of the letters suggest that the petitioner is being sought as a lecturer based on his "contribution" of the Spring Forest method to the field of Qigong. In addition, these requests are not from practicing Qigong masters wishing to learn about the Spring Forest method.

Further, the petitioner submitted nine letters from students and parents of students providing general praise and testimonials to the health benefits they experienced as a result of their treatment with the petitioner. That the petitioner has satisfied his students is not evidence of his acclaim beyond those he has taught.

Finally, the petitioner submitted letters from politicians requesting that the Service give fair consideration to an earlier appeal filed on a visa petition seeking to classify the petitioner as an alien of exceptional ability and seeking a waiver of the labor certification requirements in the national interest. While these politicians discuss the importance of researching promising alternative therapies, they do not provide examples of major contributions by the petitioner to Qigong.

The above evidence documents that many members of the health care and fitness profession find Qigong to be very promising and consider the petitioner to be a talented practitioner of Qigong. While a few of the letters assert that the petitioner's technique, Spring Forest, has made Qigong easier to learn, they provide few examples of how Spring Forest has influenced the field of Qigong as a whole.

On appeal, the petitioner submits more letters. Dr. Kay once again provides general praise of the petitioner's ability to teach his students and impact their health. In addition, Dr. Kay asserts that the Spring Forest program is now available for distribution. Additional evidence submitted on appeal indicates this material was not commercially available until after the date of filing. A petitioner must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Similarly, Dr. Concotelli provides his personal appraisal of Spring Forest in comparison to other Qigong programs and asserts that the petitioner has presented Spring Forest techniques at national conferences attended by Qigong practitioners. Other references reiterate the information previously provided, such as by Dr. Zeng, and Mr. Cohen.

The ten regulatory criteria at 8 C.F.R. 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

More significant than the evidence above, the petitioner provides evidence on appeal from new references regarding the recent spread of the Spring Forest method including praise from the National Qigong Association and some objective evidence. Of this evidence, the most objective is a letter from Learning Strategies Corporation that markets the petitioner's audio and video taped course materials, released in January 2000, after the petition was filed. Pete Bissonette asserts his belief that the $320,000 in sales as of May 2000 has "eclipsed" any other Qigong program available in the United States. In addition, in a letter to Mr. Bissonette, Richard Couch, President of American Media Partners, Inc. in Maine, expresses interest in preparing a 28-minute radio promotion of the program. In another letter to Mr. Bissonette, Christopher Payne, Managing Director of Life Tools in England, asserts that he will be ordering more tapes and hopes to schedule the petitioner for a presentation.

While the record now includes somewhat more evidence that Spring Forest might be becoming commercially successful, the evidence relates to the Spring Forest program's commercial distribution after the date of filing. Moreover, it is not clear that the sale of Spring Forest audio and video materials represents an influence on the field of Qigong. The record still lacks evidence that experienced Qigong masters are adopting the petitioner's techniques. For example, Mr. Cohen and Mr. Zeng do not indicate that they personally have been influenced by Spring Forest. Regardless, even if we concluded that the petitioner had made a contribution of major significance to Qigong, nearly the entire record addresses this criterion alone. A petitioner must meet at least three criteria. For the reasons discussed above and below, the record falls far short of establishing that the petitioner meets any other criteria.

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

As stated above, one of the petitioner's references, Kenneth Cohen, has authored a book on Qigong. In addition, Dr. Todd Patton refers to an article by Wen-Hsien Wu and others published in

Alternative Therapy Health Medicine on how Qigong can reduce pain symptoms. That article and other published case studies on patients treated with Qigong are in the record. Thus, this criterion is clearly applicable to the petitioner's field.

The petitioner submitted a research proposal to study the effect of Qigong on a patient diagnosed with Attention Deficit Disorder and a letter from Robert Patterson describing a planned research project to test the effects of the petitioner's Qigong style on patients with torticollis. The record, however, contains no evidence that, at the time of filing, the petitioner had authored any articles, scholarly or otherwise, on Qigong. Moreover, to be evidence of national or international acclaim, the petitioner would need to demonstrate the influence of such articles, such as evidence that they had been widely cited.

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

In his initial brief, counsel asserts that, "unlike Western medicine," one cannot evaluate the reputation of the hospital (or, presumably, the research institution) at which one works. Yet, the record contains evidence that many prestigious hospitals and research institutions, such as the National Institutes of Health, are researching Qigong. Had these prestigious institutions already discovered the benefits claimed by some of the petitioner's references, nationally renowned Qigong Masters would be in demand by all or at least most of the prestigious hospitals and research institutions. As this demand has not arisen, we need not decide whether a Qigong master employed at a hospital or research institution would play a leading or critical role for these institutions above and beyond the large number of talented surgeons and medical researchers.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

While this criterion is readily applicable to the petitioner's field, the record contains no evidence regarding the petitioner's remuneration.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

As stated above, on appeal, the petitioner submits a letter purporting to document the sales of the petitioner's audio and video taped Qigong materials. The materials were not released until January 2000, after the petition was filed, and cannot establish his eligibility at the time of filing. Thus, we need not consider whether $320,000 in sales over five months is evidence of commercial success.

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 Qigong 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 indicates that the petitioner shows talent as a Qigong practitioner, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.