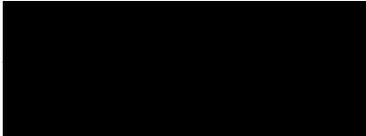


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U.S. Department of Homeland Security  
Citizenship and Immigration Services

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street, N.W.  
Washington, DC 20536

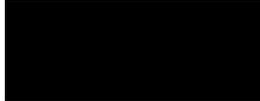


File: WAC-02-174-50059

Office: California Service Center

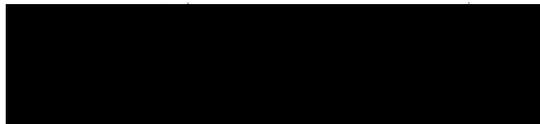
Date: OCT 8 - 2003

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)

ON 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 Citizenship and Immigration Services (CIS) 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.

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 Administrative Appeals Office 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 CIS 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 "Chinese herbal expert and entrepreneur." 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 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 submitted a certificate for outstanding achievement presented at the 1996 International Conference and Exposition of Significant New Developments in Chinese Medicine sponsored by the American International Institute of Chinese Medicine; a certificate for the Prize of Distinguished Paper on TCM awarded at the same conference, and a Certificate of Distinguished Paper awarded at the 1997 International Integrated Traditional and Western Medicine Symposium in Korea. The petitioner also received several certificates relating to business and traditional medicine from local and provincial entities. In 1995 the China Medical and Hygiene Achievement and Practical Technology Exhibition Organization in Thailand awarded the petitioner's company a Gold Prize for the petitioner's "Liverguard" soaking decoction. In 1997, the Chinese Product Quality Ten Thousand Miles Tour Activity Organization awarded the petitioner's company the First Choice Purchasing Brand Award for the same decoction.

The director noted that some of the awards were local and requested evidence regarding the significance of the remaining awards. In response, the petitioner resubmitted copies of the awards. The director concluded that the petitioner had not submitted "independent objective evidence to establish the significance of the awards" or evidence that the local awards "carry any national or international recognition."

On appeal, counsel does not directly address the director's concern other than to state that "some detailed evidence requested by [CIS] is not possible to be obtained from agencies in China." Neither counsel nor the petitioner explains why the petitioner is unable to obtain evidence regarding the significance of his awards. It remains, the record contains no evidence of their significance, such as the number of awardees, selection criteria, or evidence of major media coverage of the award selections. Thus, we concur with the director that the petitioner has not established that he meets this 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.*

Counsel attempts to include the petitioner's political memberships as evidence under this criterion. Specifically, the petitioner submits a signed photograph of George W. Bush thanking the petitioner for his support, a certificate from the Republican Leadership of the United States Senate confirming the petitioner's inclusion on the Ronald Wilson Reagan Founder's Wall in recognition of his support, and the petitioner's membership card with the Republican Presidential Roundtable. The record contains no evidence that these memberships are based on the petitioner's outstanding achievements in medicine as judged by recognized national or international experts in the field of medicine, and not simply based on the petitioner's contributions of time or money.

The petitioner also submitted evidence of membership related to his field of medicine. The petitioner was appointed as a member of the third committee of the Qiannan Medicine Association and China Medicine Association Guizhou Qiannan sub-branch. The petitioner was also an elected member of the

second committee of the Guizhou Provincial Red Cross Association and the seventh committee of the China Red Cross Association. The petitioner was recognized as an "Excellent Member" of the Duyun Administrative Bureau of Industry and Commerce and the Second Guizhou Buyi Nationality Association. Finally, the petitioner is the chairman of the American Chinese Minority Federation.

The only evidence submitted initially regarding any of these organizations is a recommendation letter from the China Red Cross asserting that it is "a high-ranked social organization." The letter continues that "all of the members of the China Red Cross Association possess extraordinary qualification, as well as outstanding contribution to the society."

The director requested the minimum requirements and criteria for the above memberships. In response, the petitioner submitted additional information regarding the humanitarian works of the China Red Cross. None of this documentation addresses the membership requirements for the society other than the statement: "Every Chinese citizen can voluntarily join the Red Cross on the condition of recognizing the mandate of RCSC and paying the membership fee."

The director concluded that the petitioner had not established that the organizations of which he is a member require outstanding achievements of their members, noting that the materials submitted do not address membership requirements. The director further noted that the American Chinese Minority Federation was founded to promote the history and culture of China and is not associated with the petitioner's field of medicine and herbal marketing.

On appeal, counsel reiterates that the petitioner is a member of the China Red Cross and also "donated his expertise, medicines, and millions of dollars for disasters [that] happened in China, etc." While the petitioner's philanthropy may reflect well on his character, it is not evidence of his national acclaim in the field of medicine or herbal marketing. The letter from the China Red Cross is too general in its claim regarding its members; it does not provide the specific membership requirements and the selection process. It remains that the record contains no evidence that any of the relevant (medical) organizations to which the petitioner belongs have exclusive membership requirements.

*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 advertisements in the *Los Angeles Times* purchased for his U.S. business promoting his herbal remedies. In addition, the petitioner submitted several articles in foreign language U.S. newspapers without translations. Despite the lack of translations, at least some of these "articles" appear also to be advertisements as they include order forms.

In response to the director's request for additional documentation, the petitioner submitted an article about him in the *China Daily* and his brief biographical excerpts in the *Dictionary of Prominent Doctors* and *Who's Who of Buyi Tribe, China*.

The director concluded that the record did not establish that inclusion in two collections of multiple biographies was indicative of national acclaim. The director further noted that advertisements in major newspapers and articles in a foreign-language publication are insufficient to meet this criterion. Counsel does not address these concerns on appeal and we concur fully with the director's analysis and conclusion. Advertisements are not independent journalistic reportage covering the petitioner and his work. Newspapers in a language that the majority of the population cannot comprehend are not major media insofar as articles in those papers are not evidence of national acclaim among the general population. Finally, appearing as one of thousands, or even hundreds of other successful individuals, in a frequently published directory is not evidence of national acclaim.

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

The basis of the petitioner's claim to meet this criterion appears to be that he copied an herbal recipe given to him by his grandfather, tested it for three weeks on either 510 or 570 subjects,<sup>1</sup> published those results in the proceedings of two Chinese medicine conferences, and successfully marketed it in China as a treatment for Hepatitis B. The director requested evidence as to how the petitioner's work in his field was considered original and how it has made a major contribution of significance to the field of herbal medicine. In response, the petitioner submitted a certificate from the Guizhou Tese Type B Hepatitis Prevention and Therapy Institute asserting that Liverguard "can effectively prevent and cure Hepatitis B."

The director concluded that the petitioner had not demonstrated that his herbal treatments "have had any demonstrable impact or effect on the field of medicine." The director noted that lack of evidence that the petitioner's products have received significant attention by other medical professionals.

On appeal, counsel asserts that the petitioner's "invention of Chinese herb medicine [redacted] (Liverguard) soaking decoction" has cured many patients suffer[ing] Hapatitis [sic] in China, etc." The only indication in the record that the petitioner's herbal treatment has "cured" Hepatitis B is counsel's own assertion, the promotional materials of the petitioner's own company, and the certificate from Guizhou Tese Type B Hepatitis Prevention and Therapy Institute. The record contains no information regarding the latter institution.

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<sup>1</sup> Both of his abstracts on his 1993 study report 510 total subjects broken down as 343 males and 227 females, which adds up to 570, not 510. The 194 members of the comparison group were treated with oleanolic acid. The method and treatment section of the abstract indicates only that those treated with oleanolic acid were required to stop taking any other medicine during the testing period. The results section states that the petitioner's herbal treatment "can improve the symptoms and function of the liver, [and is] safer and more effective than oleanolic acid." The record contains no evidence that oleanolic acid is or was the most effective treatment for Hepatitis B; it is not listed on NIH's website as a typical treatment for that disease. The drugs listed are interferon and Iamivudine. [Http://digestive.niddk.nih.gov](http://digestive.niddk.nih.gov).

In order to constitute a contribution of major significance the petitioner must demonstrate not only that he has been successful in marketing his treatments, but that they are effective and recognized in the medical community as such. The petitioner is claiming that his herbal treatments cure a disease that the medical community is devoting considerable resources to curing or treating. As such, it is relevant to consider "Alternative Medicine Meets Science," an editorial in the *Journal of the American Medical Association* (November 11, 1998), by Phil B. Fontanarosa, M.D. and George D. Lundberg, M.D. The authors 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. . . .

As noted by the director, the record contains no evidence that the petitioner's herbal treatments have impacted medical practice in treating Hepatitis B. The petitioner has been marketing his herbal treatments in the United States since 2000, two years prior to the filing date of the petition. Yet, the record contains no letters from the most prestigious U.S. research organizations investigating Hepatitis B or from high-level officials at the relevant U.S. government agencies such as the National Institutes of Health (NIH), the Centers for Disease Control (CDC) or the Federal Food and Drug Agency (FDA).<sup>2</sup>

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

The petitioner submitted articles published in the *Proceedings of the First Annual International Conference and Exposition of Distinguished Doctor and Significant New Development in Chinese Medicine* and the *Proceedings of the 1997 Integrated Traditional and Western Medicine Symposium*.

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<sup>2</sup> NIH reports on their website that the treatments for Hepatitis B include interferon, Iamivudine, and surgery. [Http://digestive.niddk.nih.gov](http://digestive.niddk.nih.gov). The CDC specifically states that there is currently no cure for Hepatitis B once it has been contracted. (There is a preventative vaccine.) [Http://www.cdc.gov](http://www.cdc.gov). The Hepatitis Foundation International states:

*Beware of "Nutritional Therapies."* Herbal treatments and alternative liver medicines need to undergo rigorous scientific study before they can be recommended. "Natural" or diet treatments and herbal remedies can be quite dangerous.

We do not infer that remedies derived from plants are never effective. When such remedies are scientifically proven to be effective, however, they are reported in the major media in the same manner as other scientific breakthroughs. For example, in 1999, BBC News reported that a South Asian plant remedy had undergone clinical tests where it was demonstrated to stop the Hepatitis B virus from multiplying. [Http://news.bbc.co.uk](http://news.bbc.co.uk). The record contains no such coverage in the major media of the petitioner's remedies.

The director requested evidence as to how these articles were significant. The petitioner's response did not include such evidence. The director concluded that the petitioner had not demonstrated either that these articles had been referenced in any peer-reviewed scientific journals or that the journals that published the petitioner's articles were professional or major trade publications or other major media. Counsel does not address the director's concerns on appeal and we concur fully with the director's analysis and conclusion. It can be presumed that a cure for Hepatitis B would generate significant coverage in major medical journals. It remains that the record contains no such evidence.

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

As discussed above, the petitioner is a member of the China Red Cross and has donated "medicines" to this organization as well as donating money to the Guizhou Buyi Nationality Culture Education Research Center and the Central Nationality University. In response to the director's request for additional documentation, the petitioner submitted a certificate from the China Red Cross asserting that the petitioner is a committee member, has been participating in development plans and policies, social donations and promotion activities. The certificate concludes that the petitioner is "one of the important members" of the society. The director concluded that the petitioner had not established that his role for China Red Cross was leading or critical. On appeal, counsel reiterates that the petitioner is a member of the executive committee of the China Red Cross and notes that the petitioner has donated money and "medicines" to this society. The petitioner has not submitted sufficient evidence regarding the organization of the committees and the society as a whole to establish that his membership on a committee served a leading or critical role for the society as a whole.

In addition, the petitioner submitted a "Professional Technical Title Evaluation Certificate confirming his position as physician in chief for the Guizhou Qinqi Type B Hepatitis Research Institute. The petitioner was also the Vice Chairman of the Guizhou Duyun Administrative Bureau of Industry and Commerce from October 1996 to October 2001. The record contains no evidence regarding the reputations of either organization.

The petitioner was invited as a visiting professor by the Biochemistry Department at the College of Science, Central Nationality University in China. A letter from the China Central Nation University asserts that it is a "high ranking university in China," and that "all of our visiting professors possess extraordinary qualification, as well as outstanding contribution to the society." In response to the director's request for additional documentation, the petitioner submitted more information on the university. We cannot conclude that every visiting professor plays a leading or critical role for the university he visits.

As stated above, the petitioner is the Chairman of the U.S. Chinese Minorities Federation, a federation that has received congratulatory plaques on its formation from a local official and various Chinese associations. The petitioner also donated \$20,000 to this organization. As concluded above, this organization does not appear related to the petitioner's field.

Finally, the petitioner is the owner of several Chinese herbal medical businesses in China, Canada, and the United States. While the petitioner documented that these are registered businesses, he did not submit any evidence of their national reputation.<sup>3</sup>

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 medical marketer 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 had some financial success, 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.

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<sup>3</sup> We note that the petitioner entered the United States in 2000 as an immigrant investor under Section 203(b)(5) of the Act. This program provides conditional lawful permanent resident for two years with the potential to remove conditions at that time should the investor be able to demonstrate that he has sustained his investment. Assuming that the petitioner's U.S. business had performed successfully enough to obtain a nationally distinguished reputation, it is unclear why the petitioner would be unable to remove the conditions on his residence pursuant to 8 C.F.R. § 216.6. The petitioner's filing of the instant petition raises the possibility that his U.S. business has not performed successfully and, thus, may not have a distinguished reputation nationally.