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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass., 3/F
Washington, D.C. 20536

[redacted]

SEP 10 2003

File: WAC 01 256 52882 Office: California Service Center Date:

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 Bureau of Citizenship and Immigration Services (Bureau) 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 in the sciences and business. The director determined the petitioner had not established that he qualifies 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 regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on June 28, 2001, seeks to classify the petitioner as an alien with extraordinary ability as an acupuncturist/medical inventor. The statute and regulations require the petitioner's acclaim to be sustained. In Korea, the petitioner was the founder and president of the [redacted] a producer of acupuncture needles. The record reflects that the petitioner entered the United States with an F-1 (student) nonimmigrant visa in December 1995 and has been residing here since that time. Given the length of time between the petitioner's arrival in the United States and the petition's filing date, it is reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation in this country.

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, counsel claims, meets the following criteria.

> *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.*

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, a membership in an association that evaluates its membership applications at the local chapter level would not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The record contains an uncertified translation of a "Certificate of Commission" bearing the seal of Korea's Ministry of Commerce and Industry. The certificate, dated July 10, 1992, states:

> In reference to Article 27 of the Engineering Development Law, the Ministry of Commerce and Industry of the Republic of Korea recognize and commission [the petitioner] as a member of the Medical Apparatus Evaluation Committee, a committee of the Industrial Engineering Department of the Specialized Technology Development.

The record also contains a document entitled "Medical Apparatus Evaluation Committee" stating that "eligibility for a regular member of Medical Device Subcommittee... is applied to those acupuncturists whose career and devotion to their field are for more than ten years and who developed any new medical device and obtained its patent accordingly [sic]." The document bears a signature line for a translator, but no signature was executed. Furthermore, the source document for this uncertified translation does not appear in the record. By regulation, any document containing foreign language submitted to the Bureau shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Even if we were to accept the above-uncertified translations, we find that the membership requirements for the Medical Apparatus Evaluation Committee (ten years of acupuncture experience and the patenting of a medical device) would not constitute outstanding achievement in the medical field. According to statistics

released by the U.S. Patent and Trademark Office (USPTO), which are available on its website at *www.uspto.gov*, the USPTO has approved over one hundred thousand patents per year since 1991. In 2001, for example, it received 345,732 applications and granted 183,975 patents. Therefore, given that the USPTO generally grants more than half of the patent applications it receives, we find it implausible that holding a patent would qualify as an outstanding achievement that sets the petitioner significantly above almost all others in his field.

Also submitted was a certificate stating that the petitioner is a member of the "Korean Acupuncture and Oriental Medicine Association in California." A statement signed by the president of this organization indicates that its members are required to possess a California acupuncturist license, engage in a career in Oriental medicine, and perform volunteer service activities. These membership requirements are not indicative of outstanding achievement. Further, the documentation presented indicates that this association's members are selected at the local, rather than the required national or international, level.

The record also contains an "Identification Card" dated July 20, 2000, stating: "This is to certify that [the petitioner] is a regular member of the Department of Sasang Constitutional Medicine Korean Oriental Medical Academy, Seoul, Korea." No documentary information about the academy or its membership requirements was provided.

In sum, it has not been shown that the memberships presented require outstanding achievement as judged by national or international experts in the medical community.

> *Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but they qualify as major media because of significant national distribution, unlike small local community papers.

The petitioner submitted a single article about himself appearing in the *Korean Eastern Medical Newspaper* in 1991. No evidence has been presented to show that this newspaper would qualify as a major publication in Korea. We cannot ignore the absence of published material about the petitioner subsequent to 1991. Because the statute and regulations demand *sustained* national or international acclaim, the petitioner would not satisfy this criterion unless he were the subject of sustained coverage in major national or international publications. It is further noted that although the petitioner has resided in the United States since 1995, there is no evidence to show that he has garnered any national media attention here.

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

Counsel asserts that the petitioner's acupuncture equipment inventions and patents constitute major contributions to his field. The granting of a patent documents only that a particular innovation is original; it is not automatic evidence of a contribution of major significance. Of far greater importance in this proceeding is the importance of the petitioner's work to the greater medical field.

Chin Chong, Korean Dean, Samra University of Oriental Medicine, Los Angeles, California, states:

> Since coming to the U.S., [the petitioner] has graduated with a master's degree in oriental medicine from Samra University... For the past five years, Samra University's clinic has used many medical instruments developed by [the petitioner] with great clinical results.... All of the instruments have had superior effect in the treatment of various illnesses and have been recommended to all colleges and universities of oriental medicine in the Los Angeles area.

Joseph Kihyon Kim, Licensed Acupuncturist, Encino Acupuncture & Herb Center, Encino, California, states: "I have found the products of the Haenglim Medical Equipment Company to be of tremendous benefit to my practice. Because of their experience and high manufacturing standards, I have been using their products for over ten years with excellent clinical results."

On appeal, the petitioner presents a second letter from Joseph Kihyon Kim. He states:

> [The petitioner] is a highly qualified practitioner with many years of experience in acupuncture needle research. His studies have resulted in the creation of many types of needles and accessories now patented in Korea and regularly used in clinical practices in both Korea and the U.S. The needles and accessories are highly praised by many practitioners for their efficacy and easy use.
>
> [The petitioner] is fully dedicated to his profession, and has had much success in treating those with habitual problems such as tobacco, alcohol and drug use. I believe that his in-depth knowledge of acupuncture and herbs, as well as his propensity toward radical inventions, would highly benefit the acupuncture profession and the community at large.

Shawn Kimura, Licensed Acupuncturist and Chiropractor, Los Angeles, California, states: "For the past five years I have been using the superior products of the Haenglim Medical Equipment Company. The high technical standards they maintain provide equipment that is of great benefit to my patients."

Reverend Samuel Rim, Pastor, Korean Canaan Presbyterian Church of Riverside, California, states:

> For the past few years, [the petitioner] has dedicated himself to [serving] the church and community by... curing the illnesses of many church members and non-church members.... His knowledge and skills of treatment are far better and more advanced than many other acupuncturists. Many people have experienced either a complete cure or a much better condition

> after [the petitioner's] treatment even though there was no progress made after [they] visited other medical doctors or acupuncturists.

The above evidence is inherently anecdotal, and does not show that the petitioner has earned national or international acclaim throughout the medical community. For example, the petitioner has not shown that the U.S. medical community, at a national level, has acknowledged or recognized the petitioner's work. Whatever the tradition from which the petitioner's treatment methods derive, their effect on the human body can be objectively observed and measured and must be held to the same objective, scientific standards as "Western" medicine. The petitioner has provided no objective scientific data to establish that the petitioner or his products are responsible for any significant breakthroughs in the treatment of disease or medical afflictions. Nor has the petitioner shown that health officials throughout the greater medical community have acknowledged or recognized any of the petitioner's treatment methods or medical innovations as major advancements. We find that the impact of the petitioner's treatment methods and medical innovations do not rise to a level that would demonstrate sustained national or international acclaim. With regard to the petitioner's success in making Haenglim Medical Equipment Company a profitable venture, turning a reasonable profit does not constitute an original contribution of major significance.

The absence of substantial independent testimony raises doubt as to the extent of the petitioner's reputation. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. In this case, the petitioner has not demonstrated any specific inventions or findings that have been unusually influential and acclaimed throughout the medical field. While the witnesses have stated in general terms that the petitioner is a respected acupuncturist and highly skilled acupuncture products developer, there is no consensus that the petitioner enjoys a national reputation in the United States, Korea, or any other country. Rather, the petitioner appears to have earned a reputation only among his business contacts and patients in the Los Angeles area.

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

Jung-Hee Kim, Chairman, *Dongeu Nandal* Los Angeles Branch, states:

> Magazine of *Dongeu Nandal* is a research workbook [that is published quarterly and devoted] to the time-honored tradition of Oriental medicine.... Furthermore, this magazine is a leading missionary in the field of Oriental medicine... Currently, several branches are established in the U.S.A. and Canada and they are devoting themselves to treat with care poor people anywhere.

The record contains what appear to be three articles (published in Korean) authored by the petitioner and featured in *Dongeu Nandal*. The petitioner, however, offers no evidence regarding the circulation of this magazine. The magazine appears to be an internal publication distributed only among *Dongeu Nandal*'s missionary branches. Without evidence of *Dongeu Nandal*'s significant national or international distribution, it has not been demonstrated that this publication would qualify as major media.

When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. Frequent citation by independent researchers would demonstrate more widespread interest in, and reliance on, the petitioner's work. The record, however, does not contain citation records or other evidence to establish that the medical research community regards the petitioner's published work as especially significant. While heavy citation of the petitioner's published articles would carry considerable weight, the petitioner has not presented such citations here. In this case, the petitioner has not shown the degree to which the petitioner's articles may have won him acclaim throughout the medical community.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that the petitioner meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The evidence presented in this matter does not establish that the petitioner has earned international acclaim, or national acclaim in the United States or Korea.

Review of the record does not establish that the petitioner has distinguished himself 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 his 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.