U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

PUBLIC COPY

U.S. Citizenship and Immigration Services

B2

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

APR 14 2004

FILE: WAC 02 189 53362 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)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Elizabeth O'Brien
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. 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 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 earned sustained national or international acclaim at the very top level.

This petition, filed on May 20, 2002, seeks to classify the petitioner as an alien with extraordinary ability as an "Oriental Medicine Doctor/Researcher." The petitioner was awarded a Ph.D. degree in Oriental Medicine from Kyung Hee University in 1996. Counsel for the petitioner states:

> [The petitioner] has recently received his California acupuncturist license. He has established KSH International Networking, Inc., a California Corporation dedicated to promoting Oriental Medicine in the U.S. through scientific research, training and consultation mainly through establishment of an Oriental Medicine university in California.

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 certified translation of a plaque of appreciation from the Association of Sasang Medicine, Korea Oriental Medicine Organization (1997), stating: "This plaque is presented to you in appreciation of your dedication and commitment as the Director of Computer Information in performing projects for this association." Also submitted was a "Certificate of Appreciation" from the 9th International Congress of Oriental Medicine certifying that the petitioner "attended" that conference in 1998. The petitioner also provided an "Award of Appreciation" from Keimyung Baylo University in California (1996) in recognition of a lecture given by the petitioner at that university. Also submitted was a mostly illegible photocopy of a certificate from an unknown organization naming the petitioner a "Paul Harris Fellow." And finally, the petitioner submitted a certificate from the Korean-American Acupuncture Society of New York stating that he received "five professional development activity points" at the Fourth International Congress of Sasang Constitutional Medicine (2000).

Awards based on participation in an event or the completion of professional training do not constitute qualifying evidence under this criterion. The above awards reflect institutional, rather than national or international, recognition. It has not been shown that these awards were significant beyond the context of the events where they were presented.

> *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, 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 petitioner submitted a certificate from the Korean Acupuncture and Oriental Medicine Association of California stating that the petitioner is an "Esteemed Member of the Sasang Constitutional Medicine Profession." Also submitted was a certificate confirming that the petitioner was a "Regular Member of the Hani External Therapy Association, Seoul Korea." The petitioner also provided documentation indicating that he holds membership in the "Society for the Korean Medical Study of Obesity" and the "Korean Herbopuncture Society, Seoul, Korea."

A translation of the membership bylaws for the Korean Acupuncture and Oriental Medicine Association of California states that regular membership is conferred upon "[t]hose who possess [a] California acupuncturist

license and abide in the purpose and mission of [the] association." "Esteemed" membership is conferred upon "[t]hose who have contributed and have been instrumental in development and advancement of this association. Such qualification shall be acknowledged by the review process from the board of directors." This description does not support the conclusion that "outstanding achievement" is an essential membership requirement. Contributing to and advancing the development of a California medical association are not indicative of outstanding achievement at the national or international level. Clearly, this association is local, rather than national or international, in scope.

The petitioner has not provided evidence of the official membership bylaws for any of the remaining organizations (the majority of which also appear to be local, rather than national, organizations). We find that the record contains no substantive evidence showing that any of the above organizations require outstanding achievement as an essential condition for admission to membership or that the petitioner's admission to membership was evaluated by recognized national or international experts.

> *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 regulation, 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. An alien would not earn acclaim at the national level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.

Here we shall address only those articles written by others about the petitioner or his work. Articles authored by the petitioner will be addressed under a separate criterion. The petitioner submitted translations of an undated article appearing in *Dae Han News* and a 1998 article appearing in *Dong-A Daily* promoting the petitioner's website devoted to Sasang traditional medical science. Also submitted were the translation of an article from 1996 appearing in *Oriental Medicine* and a 1998 article appearing in *Korea Times* (an English language publication). The petitioner also provided non-translated copies of additional articles from 1996 and 1998. By regulation, any document containing foreign language submitted to Citizenship and Immigration Services 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).

The circulation of the above publications has not been provided. Without evidence of their significant national or international distribution, the petitioner has failed to show that the above publications qualify as major media. It is further noted that the statute and regulations require the petitioner's acclaim to be sustained. The evidence presented under this criterion fails to show that the petitioner has garnered sustained attention from major national or international media or that he has enjoyed any media attention subsequent to 1998.

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

Dr. Byung-Hee Koh, Director General, Korean Institute of Oriental Medicine, served as the petitioner's "scholarly advisor for his master's and doctorate." Dr. Koh states:

> The Sasang Medicine is a field of oriental medicine uniquely developed in Korea. It has drawn more attention recently because of its effectiveness and uniqueness. It represents the excellence of Korea's oriental medicine.
>
> In the Sasang Medicine, people are classified into 4 different constitutions through clinical observations. Their outward appearance, psychological characteristics, and the universal traits are taken into consideration. With this constitutional classification as the backbone, the Sasang Medicine provides systematic theories in prevention and treatment of illness. Clinical observations have proven application of this approach to be highly effective.
>
> Furthermore, the Sasang Medicine explains the inter-relationships among people, nature and community. In addition to treating illness, it offers guidance to better attitude in life and to self-realization.

Matthew Richter, Doctor of Chiropractic and Resident Faculty, Concordia University, Irvine, California, states that he has known the petitioner "as a colleague for about five months." He further states:

> After initially meeting [the petitioner], I was humbled. I discovered that he not only runs one of the largest Sasang Constitutional Medicine clinics in Korea but is integrally involved in the implementation and development of computer software for his specialty. This software is recognized and utilized by the national insurance company of Korea and several major hospitals of oriental medicine.
>
> Through our conversations and discussions about philosophy of medicine, I gained an appreciation of what Eastern medicine can offer a western practitioner. [The petitioner's] knowledge and concepts concerning chronic illness are revolutionary and should be heard from doctors everywhere whether they practice medicine or psychology. By utilizing the theories of Sasang Constitutional Medicine, [the petitioner] is able to diagnose and successfully treat conditions that are perplexing and difficult for western practitioners. As a physician, I have a difficult time determining why one patient responds to my treatment favorably and another patient with exactly the same symptoms does not. [The petitioner's] theories concerning Constitutional Medicine address this dilemma and determine specific solutions for each patient. By grouping patients with similar "constitutions, i.e. personality types," [the petitioner] is able to integrate a person's mental and physical states to determine a direct course of treatment. I believe this to be a "missing link" in evaluating patients.

Dr. Richter's letter indicates that he was previously unaware of the petitioner's work prior to meeting him. Moreover, Dr. Richter offers no objective scientific data to support the conclusion that any of the petitioner's concepts for treating and diagnosing chronic illnesses are widely viewed throughout the greater medical community as a contribution of major significance. Whatever the tradition from which the petitioner's methods derive, their effectiveness in treating patients can be objectively observed and measured and must be held to the same objective, scientific standards as "Western" medicine.

Il-byung Song, Professor, Department of Sasang Constitutional Medicine, College of Oriental Medicine, Kyung-Hee University, states that he was the petitioner's "academic supervisor for more than 10 years." He

states: "[The petitioner] made QSCC II [Questionnaire of Sasang Constitutional Classification]. It is a computerized Sasang diagnostics program that is uniquely authorized by the Korean Society of Sasang Constitutional Medicine due to its high reliability."

Sang Park, President, U.S. Society of Sasang Constitutional Medicine, states that QSCC II has been approved by the Korean government and that the use of QSCC II was covered by Korea's national health insurance beginning May 2001. The fact that the petitioner developed a successful computer program that applies existing Sasang Constitutional Medicine theories in diagnosing medical ailments carries little weight.[1] Of far greater relevance in this proceeding is the importance to the greater scientific community of the petitioner's contribution. The petitioner must show not only that his diagnostics program is praised by individuals from the institutions where he has previously studied or worked, but throughout the greater medical community in general. For example, the record contains no first-hand evidence showing that QSCC II is widely used by Korean medical service providers on a national scale or evidence regarding the frequency of its usage. The fact that the petitioner's diagnostics program is covered by medical insurance does not automatically make it a major medical contribution. Without evidence showing that QSCC II is widely praised outside of the petitioner's professional acquaintances, the impact of his work does not rise to a level that would demonstrate sustained national or international acclaim.

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

Documentation contained in the record indicates that the petitioner has published the results of his work in publications such as *Oriental Medicine*. The very existence of published work by the petitioner, however, is not dispositive. In order to demonstrate that his published work is nationally or internationally acclaimed, the petitioner must provide citation records or other evidence to establish that the greater field 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. Moreover, independent evidence showing the extent of the circulation of publications featuring the petitioner's work has not been provided. Without evidence of their significant national or international distribution (from independent sources such as media guides), the petitioner has failed to show that the publications featuring his work qualify as professional or major trade publication or other major media.

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

In order to establish that he performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the national or international reputation of the organization or establishment. Where an alien has a leading or critical role for a division of a distinguished organization or establishment, the petitioner must establish the reputation of that division independent of the organization as a whole.

The petitioner has provided documentation reflecting his involvement in the Korean Society of Sasang Constitutional Medicine and the Suwon Oriental Medical Doctor's Association. The record, however, lacks

[1] It is noted that the petitioner based his computer program on the work of Je Ma Le, who was the first to develop Sasang Medicine.

any substantive evidence detailing the extent to which the petitioner has exercised substantial control over operational or financial decisions executed on behalf these organizations. Nor does the record adequately establish that the petitioner's oriental medical clinic has earned a distinguished reputation throughout Korea as one of that country's top medical institutions. For these reasons, we find that the petitioner's evidence falls short of establishing that the petitioner has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in his field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every medical researcher/practitioner who has established his own medical clinic, or earned the respect of a handful of his colleagues, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from experts in the field, without reaching the top of that field.

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 he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself as an "Oriental Medicine Doctor/Researcher" 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 the medical field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.