U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 26 2004

IN RE: Petitioner:
Beneficiary: [redacted]

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:

SELF-REPRESENTED

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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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The petition is now before the Administrative Appeals Office (AAO) 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 has 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 she has sustained national or international acclaim at the very top level.

This petition, filed on December 10, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a medical researcher. 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.

Although on the Form I-140, Immigrant Petition for Alien Worker, the petitioner claims to seek visa classification preference as a medical researcher, the evidence she submitted indicates her field of endeavor to

be that of an herbal doctor. The petitioner has submitted evidence that, she 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 claims to satisfy this criterion based on her receipt of five major awards. As evidence of these awards, she submitted a 2001 "Certificate of Merit" from the China National Chinese Medicine Administration certifying that a drug she developed, had achieved "significant results" and was "judged as an outstanding medicine." Although the petitioner states this is a national award, she presents no evidence to establish the significance of the award or the agency awarding it. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner presents no corroboration that this certificate evidences a nationally or internationally recognized award for excellence.

The record contains a copy of a certificate indicating that the petitioner's research project won a 1997 first prize Chinese and Western Medical Research Achievement Award. As with the Certificate of Merit, the petitioner submits no evidence that this award is a nationally or internationally recognized award for excellence in her field of expertise. The petitioner's explanation regarding the significance of this award is not accompanied by documentary evidence to substantiate her statements.

The petitioner submits evidence that she won three "city level" awards. As these awards are local in nature, they do not satisfy this criterion, which requires receipt and documentation of nationally or internationally recognized awards for excellence.

The petitioner also claims to have won several international awards. She submits a document attesting that her paper submitted to the fifth conference on world traditional medicine won an award in December 2000. Another certificate indicates a 1998 award for "distinguished achievements" which are "recorded in the 'Who's Who of Contemporary Great Figures in World Traditional Medicine,' a national authoritative international biograph [sic] of China." The petitioner also submits a copy of a 1999 "Honorary Certificate" for "The Best Choice of World Outstanding Patent Technology" by the Hong Kong Sun Wah Publishing Company. As with the national awards claimed and discussed above, the petitioner attempts to explain the significance of these awards and the criteria for selection, but provides no corroborative documentary evidence.

The evidence also consists of a certificate presented to the petitioner for her participation in the 1996 6th Asia-Pacific Congress on Deafness; a 2002 certificate of appreciation for community service from a retired member of Congress; and a 2002 certificate of appreciation for her "dedication and contributions" to the association from the California Acupuncture Medical Association. The petitioner submits no evidence that these are awards for excellence in medical research or in herbal medicine, or that they are nationally or internationally recognized.

The evidence does not establish that the petitioner 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.

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, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

In support of this criterion, the petitioner submits evidence of her membership in the California Acupuncture Medical Association, the Chinese Association of Acupuncture (Zhenjiu), and the Chinese Association of Traditional Chinese and Western Medicine. The petitioner submits no evidence that these associations require outstanding achievement as a condition of membership.

A statement from the Tianjin Bureau of Public Health indicates that membership in any professional association or society requires, among other things, that an individual must be an "outstanding member" of his or her profession and must have made "significant contributions." There is no explanation as to how these factors are measured and the terms themselves do not necessarily indicate that one must make outstanding achievements in the field in order to be a member of a Chinese professional association. The petitioner submits no evidence of the membership requirements for the California Acupuncture Medical Association. The evidence does not establish that the petitioner meets this criterion.

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 order to meet this criterion, published materials must be primarily about the petitioner and 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 would qualify as major media because of a significant national distribution.

Although in her response to the director's request for evidence (RFE) dated February 24, 2003, the petitioner claimed to meet this criterion, she submitted no evidence in support of her claim. She referenced her own publication record, which is the subject of another criterion and will be discussed below. The petitioner submitted no evidence to establish that she meets this criterion.

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.

The record contains a letter appointing the petitioner as a member of the "Senior Qualification Evaluation Committee" of the Association of Traditional Chinese and Western Medicine. The petitioner states that she was nominated to evaluate the ability and evidence presented by other Chinese herbal doctors. However, the record does not contain evidence of the nature of the evaluation work to be done by the members of the committee. The petitioner's statement as to the purpose of the committee is not sufficient to meet the burden of proof. *See Matter of Treasure Craft of California, supra.* Furthermore, there is no evidence that the petitioner actually performed any evaluations with this committee.

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

The petitioner bases her claim to this criterion on her development of two "novel" drugs: one for the treatment of allergic Rhinitis and one for the treatment of children who are hearing impaired. As evidence of these accomplishments, she submits statements that she states are certificates of government acknowledgement of her research results. The documents submitted indicate that they are certificates of scientific achievement issued to the TianJin Chinese and Western Medicine and ear-nose-throat Research Lab. The petitioner is not mentioned on either certificate.

The petitioner submitted a letter of recommendation from WenSen Lin, who apparently wrote his 1998 letter on the letterhead of Tianjihshi Nankai Hospital but does not identify himself by title or position. The translation accompanying the letter does not comply with the provisions of 8 C.F.R. § 103.2(b)(3) in that the translator is not identified, did not certify that the translation was complete and accurate, and did not certify that he or she is competent to translate from the Chinese into English. The author states that the petitioner's newly developed medicine, [redacted] was awarded the "First Prize of TianJin Scientific Achievement Awards" and that she developed a new medicine [redacted] which won a scientific Advanced Prize award.

A statement from the TianJin People's Radio Station certifies that the petitioner was interviewed in 1993 and again in 1994 on the "developing process and circulation value of the newly developed medicines."

The petitioner also submits copies of her research publications in connection with the development of these drugs. However, the translations accompanying these documents contain only summary translations. The regulation at 8 C.F.R. § 103.2(b)(3) requires that documents submitted in a foreign language "shall be accompanied by a full English translation which 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."

The documents submitted by the petitioner establish a prima facie case that she developed drugs that were a contribution of major significance to the research community. However, the evidence submitted for the record is not in compliance with the format required by the regulation. As these documents are not accompanied by full English translations of their content, or do not otherwise meet the requirements of the regulation, they are of little evidentiary value and do not constitute evidence sufficient to meet the burden of proof required in this proceeding.

The director stated that the petitioner did not show conclusively that the drugs she developed have proved effective in the United States. Whether or not the drug has been proved effective in the United States is not relevant to the petitioner's visa preference classification petition, and we withdraw the director's statement. However, we concur with the director that any acclaim the petitioner may have once enjoyed has not been sustained. The evidence does not establish that the petitioner meets this criterion.

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

The record contains evidence that the petitioner published four articles on the research results surrounding the development of the drugs [redacted] and [redacted] However, as noted above, the evidence is not in compliance with the regulation regarding accompanying translations for documents submitted in a foreign language, and thus cannot be evaluated in support of this criterion.

The director indicated that as these articles have not been "circulated" internationally, they are not evidence of extraordinary ability. We withdraw this statement as it presumes to set a standard on publication that is more stringent than that required by the statute.

We note that reputable researchers are expected to publish the results of their work. The petitioner submits no evidence of having published articles beyond those associated with her research on the results of the new drugs, which were developed in the early 1990s. Further, publication alone is insufficient to establish the petitioner has sustained acclaim. The research community's reaction to those articles must also be considered. 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 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 conclusions. The frequency of citation to the articles by independent researchers would tend to demonstrate the interest in and reliance on the published research.

The petitioner submits no evidence that independent researchers have cited her work. Four publications involving very limited subject matters, with no citation record, in a career spanning almost 20 years do not establish the extensive documentation required by statute. While it appears that the drugs developed by the petitioner are prescribed for use, there is no evidence of the further study of these drugs and their effects by other independent researchers. The petitioner has not established that she meets this criterion.

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

To establish that she meets this criterion, the petitioner must show that she performed a leading role for an organization or establishment and that the organization or establishment has a distinguished reputation.

The petitioner states she meets this criterion as she was the "key" person leading the research at the China Tianjin Chinese & Western and the Ear, Nose and Throat Research Institute. As evidence, she points to her name as the lead on the papers that were published as a result of the research. A research project, however, is

not an organization or association within the meaning of this criterion. The petitioner does not submit evidence that the research projects on which she worked were of a critical nature to the organizations with which she was associated. There is also no evidence that these organizations have a distinguished reputation.

The petitioner also claims to meet this criterion based on her volunteer work with the California Acupuncture Medical Association. The petitioner submits no evidence of her work with this association, although the record contains photographs labeled by the petitioner as evidence of her voluntary work with the association. Further, the petitioner submits no evidence that the California Acupuncture Medical Association is an organization with a distinguished reputation.

The petitioner served as director of the Tianjin Guanhua Chinese & Western Hospital from 1993 to 1996, establishing that she served in a leading role for the hospital. However, the petitioner submits no evidence that the hospital has a distinguished reputation. She submits no evidence of the hospital's standing within the medical community or its reputation among patients and other consumers. The evidence does not establish that the petitioner meets this criterion.

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

The petitioner submitted evidence that as director of the Tianjin Guanhua Chinese & Western Hospital from 1993 to 1996, she participated in a profit sharing plan with the hospital where she received 20% of the after-tax profit and the hospital received 80%. Her salary ranged from RMB$150,000 in 1994 to RMB$223,000 in 1996. The petitioner states this was more than 30 times the annual salary of RMB$5,000 for the average city resident in China. However, the correct basis for the petitioner's salary comparison should have been with all herbal doctors or medical researchers throughout China. The petitioner's comparison of her salary to those of the average city worker does not assist her in establishing that her salary was significantly high in relation to others in her field of endeavor.

The petitioner submits a letter offering her employment in the United States once she obtains a permanent resident status. The letter offers the petitioner a salary of $40 per hour. However, this is a prospective salary and cannot establish that the petitioner met this criterion as of the date of her visa preference classification petition. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The petitioner states that she makes more than twice the salary of most Chinese herbal doctors. However, she submits no evidence to substantiate her salary or that of "most" Chinese herbal doctors, and does not address her salary as a medical researcher. No evidence establishes that the petitioner meets this criterion.

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 her field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a medical researcher or herbal doctor to such an extent that she may be said to have achieved sustained national or

international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner is a skilled herbal doctor, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.