B2

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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 17 2004

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]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy
PUBLIC COPY

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.

Mari Johnson

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 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 she 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 practitioner of feng shui. 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, 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.*

As evidence that she meets this criterion, and in response to the director's request for evidence (RFE) dated April 10, 2003, the petitioner submitted a certificate of recognition from f America for her participation in classes and activities" for the year of 2003, and an "honorary award" presented by the same organization "in recognition of her exceptional talent and outstanding performance." This "award" is dated June 12, 2003. No evidence of record establishes that this recognition by Shinji Shumekai of America is a nationally or internationally recognized prize or award. Further, as both certificates honoring actions occurred after the filing date of the visa petition, they would not establish that the petitioner meets this criterion. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The petitioner also submits a copy of a diploma from the Overseas Chinese Horoscope and Feng Shui Research Association certifying that she has completed the association's advanced vocational training course and is "awarded" an associate membership in the association. A diploma is not an award within the meaning of this criterion. There is no evidence that the petitioner's membership in the association constitutes a nationally or internationally recognized award. Membership in organizations and associations are addressed in a separate criterion below. 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.

The petitioner bases her claim of meeting this criterion on her membership in the Overseas Chinese Horoscope and Feng Shui Research Association, the Chinese Feng Shui Services International, and the Chue Foundation. The record is unclear as to the relationship between the Overseas Chinese Horoscope and Feng Shui Research Association and the Chue Foundation. A letter from Mr of the Chue Foundation states that to become a member of that organization, the individual must complete an approved two-year training course and pass an examination. The petitioner appears to have been invited to join the Overseas Chinese Horoscope and Feng Shui Research Association on the basis of her passing the Chue Foundation's examination. In any event, neither of these organizations selects members based on their outstanding achievements. Completing a training course and passing an examination are not indices of outstanding achievement in the field.

The petitioner submits a "Certificate of Achievement" from Chinese Feng Shui Services International (CFSSI) that acknowledges that she is qualified to practice Chinese feng shui. The record contains no explanation of what CFSSI is, whether it has members, or the requirements of membership. The petitioner documents her completion of several training courses. As stated above, completion of training, even if associated with a particular association, is not evidence of outstanding achievement.

The petitioner states that her membership in the Universal City North Hollywood Chamber of Commerce also satisfies this criterion. The chamber of commerce is a business advocacy organization whose membership is based on application and payment of dues. Although nominally requiring a recommendation and approval of a board, no evidence suggests that the organization requires outstanding achievements of its members. The petitioner has not established that she 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.

The record includes a copy of a "sample script" for a radio talk show called the "Daily Feng Shui." The script implies that the petitioner is the co-host of the show, but the record does not reflect that the show actually aired. Further, even if the show did air, the script suggests that the petitioner is attempting through the program to educate the public on feng shui; such a show hosted by the petitioner is not published work primarily about the petitioner as required by this criterion.

The record also contains an article about the petitioner that was printed in three different media: the August 31, 2001 edition of *Lifestyles*, the August 24-30, 2001 edition of the *Philippine Times*, and an undated issue identified by counsel in a cover page as the *Kent Messenger*. The petitioner also submitted an article from the February 17, 1999 edition of the *Gravesend Messenger,* and another article from the January 2003 edition of the *East-West Journal*. No evidence indicates that any of these newspapers or magazines is major media as required by this criterion. Furthermore, the article from the *East-West Journal* is dated after the filing date of the petition and cannot be considered to determine if the petitioner meets this criterion. *Matter of Katigbak*, 14 I&N Dec. at 49. Additionally, the evidence presented indicates this article is written by the petitioner and is not written about her as required by the regulation.

The petitioner submits an advertisement announcing a lecture by her at a Hollywood bookstore. Counsel identifies the media as the December 2001 edition of "The Whole Person." No evidence identifies the media in which the advertisement appeared as a professional or major trade publication or other major media. Additionally, an advertisement about an upcoming lecture is not a published article about the petitioner or her work. Furthermore, counsel's assertions do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner also submits several articles written by her that were published in the magazine *Forum Asia*. Articles written by the petitioner are the subject of another criterion and do not satisfy the plain language of this criterion, which requires that the published work be about the petitioner and her work. The record also contains captioned photographs of the petitioner in connection with an interview of the petitioner about her work. No evidence appears in the record regarding the interview, indicating who conducted it or when or where it was published. The petitioner has not established 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.

To support that she meets this criterion, the petitioner submitted copies of flyers indicating that she would be the guest speaker at certain events, copies of correspondence that she exchanged with others seeking advice on feng shui, and documentation of work she has done. Speaking at events and advising others are not evidence of judging the work of others in the field. The record contains copies of work assignments that the petitioner apparently reviewed. The petitioner's annotations on the work indicate that her review was of her students' work and the work of other feng shui practitioners, but no other evidence in the record supports these statements. 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). Further, it appears that these evaluations all occurred in 2003, after the filing date of the petition. As stated above, facts that came into existence after the filing date cannot be used to establish eligibility for visa preference. *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner also included an article on feng shui in architecture. The record does not reflect that she was involved in the article and it is unclear how it helps her in meeting this criterion. The petitioner has not shown that she meets this criterion.

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

In her response to the RFE, the petitioner claims to meet this criterion based on her literary contributions to *Forum Asia* magazine and articles printed in other media, her consultation fees for providing feng shui services, and a job in progress as the host of a VH-1 TV show. Although the record contains evidence that the petitioner was a contributing columnist to *Forum Asia* with articles on feng shui, it does not establish that these articles or any of the others constitute a contribution of major significance to feng shui. The record also contains a brochure advertising feng shui for professionals performed to be performed by the petitioner. There is no evidence that the brochure advertising the petitioner's practice of her craft for professionals constitutes a major contribution to the field of feng shui.

The record contains a copy of a contract between the petitioner and Brainiac Productions for the development of a television show to be assigned to VH-1. The agreement is dated after the filing date of the petition and cannot be considered to determine visa preference eligibility. *See Matter of Katigbak, supra.* Moreover, the record also does not contain evidence that the show ever entered into production or that the program is or has made a significant contribution to feng shui.

The petitioner's consultation fees for her services do not evidence that she has made a significant contribution to the field. Evidence of her fees is discussed under a separate criterion.

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

The petitioner has published several articles in the magazine *Forum Asia*; however, the record does not establish that the magazine is either major media, or a professional or major trade publication. The petitioner also submitted evidence that she is in the process of writing a book and has had some interest from publishers.

However, the record contains no evidence that the book has been published. There is no evidence that the petitioner meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

In support of this criterion, the petitioner submits several photographs of herself at various events and photographs of her "tools of the trade." She also submits several letters either inviting her to participate as a speaker or thanking her for being a speaker, and several notes and e-mails thanking her for her work with certain clients. The wording of this criterion strongly suggests it is for visual artists such as sculptors and painters. The petitioner has not submitted any evidence that indicates that she meets criterion.

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

As evidence that she meets this criterion, the petitioner submits testimonials from satisfied clients who credit her with the positive changes in their lives. Most of these customers are individuals and thus do not satisfy this criterion as they are neither organizations nor establishments. The petitioner submitted evidence of having done feng shui consulting work for a few organizations. However, the petitioner was not an employee of those organizations and has not established that her feng shui consultations played a leading or critical role for the organizations.

Ms. President of Neysa Entertainment, states:

> [The petitioner] is extremely vital to a proprietary intellectual property currently under development for television, radio, publishing, syndication, recording and mass merchandising of consumer products. Without her rare talents and expertise, this project would be unable to come to fruition and the exhaustive time and effort that has already gone into its upcoming launch would be lost as a result.

No evidence of record corroborates this statement. Ms s apparently referring to the talk show intended for televising over VH-1. However, as previously stated, the record does not contain evidence that this show was actually developed or aired. and of Newton Enterprises state that the petitioner is their business associate in Sunrider International, an herbal company. They state that she is "building a large business organization" while "working with and assisting many other individuals in achieving optimum health and financial success." The Newtons do not explain the nature of this business association with the petitioner. Mr. President of Group Dynamics, states that the petitioner is "one of 6 Feng Shui Masters in the Imperial Discipline. Of these 6 Masters, there are only two who teach. [The petitioner] is the only one who teaches in the Western Hemisphere. [She] conducts our Feng Shui training programs and is an invaluable member of our team." There is no other evidence regarding Group Dynamics in the record or of the petitioner's role in the organization. Further, there is no evidence that Neysa Entertainment, Brainiac Productions, Newton Enterprises or Group Dynamics are organizations with distinguished reputations.

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 submits evidence of her income expectations for the Star Chi television show that is scheduled to air over VH-1 television. As the evidence does not establish that this show has been developed and aired, the revenue to be generated by the show is speculative at best. Further, the record contains no evidence that the petitioner has already commanded a high salary for her work in the show, as required by this regulation. The petitioner further submits evidence of the fees she charges for feng shui consultations. The record also contains what appear to be inquiries by the petitioner of a few others who practice feng shui about their fees, and a copy of a website about seminar fees for another feng shui practitioner. The evidence provided is not a comprehensive survey of others in the trade and is insufficient to establish that the petitioner commands high remuneration relative to others in the field.

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

In her response to the RFE, counsel submitted a videotape of the petitioner appearing on two TV shows. The director indicated that this criterion was inapplicable to the petitioner as it applies to performing artists. With the appeal, the petitioner submitted a CD entitled "Feng Shui for Everyone Part 1" and a video entitled "Feng Shui Seminar for Investors Part 1." As noted by the director, this criterion is intended for those in the performing arts. Nonetheless, the petitioner provided no evidence to indicate that the CD and video are offered for sale or of the revenue generated from their sales. The petitioner has not established that she 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 feng shui practitioner 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 talented and skilled in feng shui, 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.