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FILE: [REDACTED]
EAC 02 277 53092

Office: VERMONT SERVICE CENTER

Date: JUN 14 2005

IN RE: Petitioner: [REDACTED]
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:



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, Vermont 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 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.

According to Part 6 of the petition, the petitioner seeks to classify himself as an alien with extraordinary ability as a medical researcher. The record demonstrates that the petitioner focuses on diagnosis and treatment of "human acariasis," defined by counsel as "infestation of acarids [a division of arachnida] inside [the] human body." Counsel asserts that the petitioner discovered that "wriggling acariasis could cause the diseases such as acne, pimples, [and] brandy nose." In addition, "[r]espiratory acariasis would cause cough and asthma to such an extent that people would suffocate." Counsel asserts that human acariasis can be misdiagnosed as "lung infection, bronchitis, allergic reaction to asthma and paragonimiasis." In addition, "[u]rological acariasis could cause incurable haematuria and protein uremia." Counsel further asserted that the petitioner's "success of cure is as high as ninety-eight percent among his patients." While the record is almost silent as to what treatments the petitioner has developed, he indicated on Part 6 of the petition that he would be applying acupuncture. The petitioner's Form G-325A submitted in support of his concurrent Application to Register Permanent Residence

or Adjust Status, Form I-485, indicates that the petitioner has been working, apparently without authorization, as an acupuncturist.

Finally, we note that while the petitioner claims to have a 1991 Ph.D. in Medical Science from the International Hygienic Medical Academy,¹ the record does not support that assertion. The record contains a degree certificate from that institution, but the degree type is in Chinese and the petitioner did not submit a translation. The record contains no evaluation of this foreign degree. The petitioner's remaining academic credentials include a 1987 graduation certificate affirming the petitioner's "Bachelor of Medicine" degree from the Heilongjiang Institute of Traditional Chinese Medicine and a 1987 "diploma" certifying:

[The petitioner] enrolled in our school's Western medical doctor learn [sic] traditional Chinese medicine class, Chinese massages classes. He has completed all the required courses with excellent grades. Graduation is hereby granted and this diploma issued.

The record contains no evaluation of the foreign degree and diploma.

On appeal, counsel asserts that the petitioner "is in fact, one of that small percentage who have risen to the very top of the field of 'Study and treatments of Human Acariasis.'" Previously, however, the petitioner concedes that there "used to be a shortage of research on human acariasis around the world." We will not narrow an alien's field to the point where there are so few people in it that comparison is meaningless. Moreover, we will not consider "traditional" or "alternative" medicine as a separate field.

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 unconventional or mainstream, or involves mind-body techniques or molecular genetics is largely irrelevant except for historical purposes and cultural interest.

Fontanarosa PB, Lundberg GD, "Alternative medicine meets science," *Journal of the American Medical Association* 280: 1618-1619, 1998.

We note that, according to English-language abstracts, the petitioner has been claiming to isolate mites in saliva, feces and cerebrospinal fluid (1981), urine and venous blood (1984), skin biopsies (1985) and phlegm (1990). Thus, plenty of time has passed for his theories to enter mainstream science if validated.² Thus, the petitioner

¹ The website address provided on the degree certificate, www.ihma.net, expired May 13, 2005 and a search of the name of the academy in an Internet search engine produces no responses.

² For example, in 1991, Stanley Prusiner reported the existence of prions, a previously unknown cause of disease. While the concept of prions was initially viewed with skepticism and is still controversial, an Internet Search engine search of "prions" reveals 632,000 responses and a search for Dr. Prusiner's name results in 19,700 responses. In comparison, a search of "human acariasis" results in eight responses and a search of the petitioner's name results in no responses. We acknowledge that the type of international acclaim enjoyed by Dr. Prusiner is not required for this classification. Nevertheless, the comparison in this footnote is provided in support of our position that a scientist who has accomplished what the petitioner in this case claims to have accomplished, should be able to demonstrate far greater acclaim in the mainstream scientific community than demonstrated in the record.

must demonstrate that his achievements compare with those at the very top of the field of mainstream parasitology or immunology.

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.³

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 awards for medical and technology achievements from government entities in Heilongjiang Province from 1992, 1995 and 1998. These are provincial awards. The petitioner also submitted a 1997 award from the Science and Technology Commission of the People's Republic of China. While the award recognizes research on human acariasis, the commission appears to have presented the award to the Health Preventive Station of Heilongjiang Province. The petitioner, however, is named as the project leader. The petitioner also received "First Golden Cup Award" for a paper he presented at a conference sponsored by World Traditional Medicine in the United States in 2000. The record contains no evidence regarding the national reputation of this organization, such as journalistic coverage in mainstream science journals or in a general media publication⁴ with a national distribution.

The director concluded that the petitioner had not established the significance of these awards. On appeal, counsel notes the role of the Chinese government in China and asserts that government awards are major. The petitioner submitted a 2003 award from the China Institute of Science Management. Counsel asserts that this award is competitive. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, a 2003 award does not establish the petitioner's eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The only national award that predates the date of filing is the 1997 award from the Science and Technology Commission of the People's Republic of China. The record, however, is absent evidence regarding how projects are selected for this award and how many awards are issued. Thus, we concur with the director that the petitioner has not established the significance of this award and, therefore, he cannot meet 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.

³ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

⁴ To be considered significant, the publication would need to be published in a language comprehended by the majority of the citizens of the country in which it is distributed.

The petitioner submitted evidence of his membership in the Chinese Science and Technology Association as of 1993 and the Heilongjiang Chapter of the Chinese Preventive Medicine Association as of 1993. The petitioner also submitted certification of his election to the Board of Directors of the East West Association of Chinese Medicine and Acupuncture. The petitioner did not submit the membership requirements for these associations. The director concluded that the petitioner had not established that these memberships are restrictive.

On appeal, counsel references two appointments as a senior research fellow as evidence to meet this criterion. Appointments are not memberships. Rather, these appointments will be considered below as evidence relating to the petitioner's role for an organization.

We concur with the director that the petitioner has not demonstrated that he is a member of an association that requires outstanding achievements as judged by national or international experts in their field. The record lacks the membership criteria for the associations of which the petitioner is a member. Moreover, membership in a local chapter of a national association typically cannot serve to meet this criterion. Thus, the petitioner has not established that he 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.

The petitioner submitted the Ministry of Health, People's Republic of China's "Assembling of Technological Achievements in China's Public Health." It includes a page on the projects ongoing at the Public Health and Epidemic Prevention Station of Heilongjiang Province. The petitioner's work on human acariasis is summarized on this page. The petitioner also submitted three newspaper articles in Chinese, the most recent from 1996. The petitioner submitted a one-line summary of each article. He did not submit full and complete translations.

The director stated that if the petitioner was a renowned medical expert in China, some evidence of an international reputation should exist. The petitioner noted that the published material was all in Chinese. On appeal, counsel notes the number of people in the world who are fluent in Chinese. Counsel also references the above award from the China Institute of Science Management to meet this criterion. That award, issued after the date of filing, relates to the awards criterion and has already been considered above.

An alien need only have national, not international, acclaim in order to be eligible for the classification sought. That said, the director's statement is not wholly without merit. If the petitioner had truly discovered a new means of infection for serious diseases such as asthma, it can be expected that, in the 14 years between this discovery and the filing of the petition, including four years residing in the United States, the petitioner would have gained some type of recognition beyond the Chinese-language media. Moreover, the petitioner must demonstrate sustained acclaim. The petitioner did not demonstrate any coverage in the media after 1996, including after moving to the United States in 1998. Finally, as stated above, the petitioner did not submit full and complete translations of the published articles. As such, we cannot determine whether they are primarily about the petitioner. Moreover, the petitioner did not submit the distribution data for any of the publications. As such, we cannot determine whether any of the publications constitute major media. In light of the above, the petitioner has not established that he meets this criterion.

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

The petitioner submitted two "monographs." The introduction to the exhibit containing the 1994 monograph "Human Acariasis in China" provides:

This monograph is a must for medical students, clinical doctors, epidemiologists, pharmacists and public health officials. It [is] also a general reference for faculty and students of the institutions of general higher learning.

The petitioner submitted no evidence, such as course curricula, indicating that this monograph is commonly assigned in medical schools across China.

The petitioner also submitted alleged "before and after" photographs to demonstrate the success of his acne treatments. We note that acne is not always a constant condition and two photographs of the same person with and without acne are not persuasive evidence without supporting articles in peer-reviewed scientific literature reporting statistically significant results. The record does contain articles in Chinese journals. The record lacks, however, any evidence that these journals are peer reviewed or that the petitioner's articles in particular have influenced the field. For example, the record contains no evidence that articles in mainstream medical journals (or any other journals) have cited the petitioner's work. The record also lacks letters from top officials at major medical clinics and hospitals around China affirming that they have reproduced the petitioner's findings (for example, by finding mites in cerebrospinal fluid) and confirming their use of the petitioner's treatments.

Director of the China Human Acariasis Prevention and Treatment Center in Beijing, attests to the importance of the petitioner's work and his success in treatment of previously untreatable diseases. Such general praise without specific examples of the impact of the petitioner's research is not persuasive. The record contains no information regarding the reputation of the center of which is a director. The petitioner provides a similar letter from Doctor Chief at the Acariasis Research Institute of Heilongjiang Harbin China. We note that Professor and Dr. are both coauthors of the petitioner's articles. The petitioner submitted a similar letter from his professor or acupuncturist. The letters referenced in this paragraph are not from independent experts. Moreover, Mr. states that the petitioner "was employed by Acariasis Association in the Commissioner and secretariat of banch [sic] of Heilongjiang [sic], China Prevention Mediche [sic] Association from April 1993 to date." The letter is dated March 23, 2001, but the petitioner had resided in the United States since 1998. Thus, Mr. credibility is somewhat diminished.

The petitioner also provided letters with general praise from Professor and Research Fellow at the Allergy Research Laboratory, Medicine College of GuangZhou; Professor of Epidemiology at the Medical University of Harbin and Envil Chou of the Taiwan Unison Bio-Tech Company. None of these references claim to have reproduced the petitioner's findings, such as isolating mites in blood or cerebrospinal fluid, or to be teaching the petitioner's treatment methods. Moreover, Mr. states that the petitioner is "a postgraduate of [the] department of epidemiology of [sic] M.D[.] degree at the International Hygienic Medical Academy in 2000." If Mr. is implying the petitioner received a degree in 2000, the degree is actually dated 1991. If Mr. is suggesting that the petitioner was a postdoctoral researcher in China in 2000, the petitioner has actually been residing in the United States working as an acupuncturist since 1998. Either way, Mr. letter has reduced evidentiary value.

Finally, [REDACTED] a Senior Research Fellow and parasitologist at the Rockefeller University, reiterates the claims made in the other letters. Once again, however, he does not claim to have reproduced any of the petitioner's findings, to have confirmed the existence of mites living in human blood, urine or cerebrospinal fluid, or to be applying the petitioner's purported cures. Moreover, the record does not contain Mr [REDACTED] curriculum vitae. Thus, we are unable to evaluate his own credentials.

The director acknowledged the letter from Mr [REDACTED] but concluded that the record lacked evidence regarding the impact of the petitioner's work. On appeal, counsel asserts that the petitioner's monograph has been circulated in China, Japan, North Korea, South Korea, Taiwan, Singapore, Malaysia and Vietnam and that the impact has been "gigantic and tremendous."

As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The record contains no evidence of the distribution of the petitioner's monographs in China or beyond. As discussed, the record contains no evidence, such as class curricula at mainstream medical schools, demonstrating that the petitioner's monographs are required reading. The record contains no evidence of the number of monographs sold and distributed. Moreover, the record contains no evidence that a single mainstream scientist has isolated the mites identified by the petitioner, thus reproducing his results, or even cited the petitioner's work. Thus, we cannot evaluate the impact of these monographs. We reiterate that while international acclaim is not required for the classification sought, the petitioner claims to have discovered a new basis for serious diseases and a treatment with an extremely high cure rate. The discovery of a new pathogen or infectious agent for serious diseases such as asthma and a corresponding cure can be expected to generate intense media coverage both within the medical community (such as heavy citation in peer-reviewed journals) and beyond. Without evidence of such a response, such as occurred when Dr. Stanley Prusiner isolated prions, the petitioner's claimed contribution is simply not persuasive.

In light of the above, the petitioner has not demonstrated that he 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.

As stated above, the petitioner has authored monographs and articles. He has also presented his work at conferences of undocumented significance. As discussed above, the petitioner must demonstrate comparable acclaim with the top members of the medical research field. It is inherent to this field to publish one's findings. Thus, we must evaluate the response to the petitioner's published work.

The director expressed concern that the petitioner's monographs had not been translated into Chinese. As stated above, counsel asserts on appeal that the petitioner's monographs are widely distributed in Asia. The petitioner also submitted two articles published in the *Chinese Journal of Public Health Management*. These articles post-date the date of filing and, thus, do not relate to the petitioner's eligibility as of that date.

As discussed above, the record contains no evidence of the distribution of the petitioner's monographs or the impact of these monographs or his articles. As repeatedly stated, the record contains no evidence that medical researchers have reproduced the petitioner's work or that articles in peer-reviewed journals have cited the petitioner's work. In light of the above, the petitioner has not demonstrated that he meets this criterion.

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

As of the date of filing, the petitioner had been appointed as a professor at the International Hygiene Medical Academy. The envelope, postmarked 2000, is addressed to the academy itself. At the time, the petitioner was residing in the United States, working as an acupuncturist. Moreover, the petitioner provides no explanation for how he obtained this appointment in China while residing in the United States. Regardless, the record contains no evidence that the petitioner accepted this appointment, returned to China, and filled this role. As such, he did not "perform" this role, whether leading or not. We note that not every professor plays a leading or critical role for the institution where he teaches.

On appeal, the petitioner submits appointments as a senior research fellow with the China Acariasis Treatment Center and the Heilongjiang Institute of Acariasis Monitoring and Treatment Center. These appointments are dated 2001 and October 1, 2002. Only the 2001 appointment predates the date of filing. As with the appointment discussed above, however, the record contains no explanation for this appointment given the petitioner's residence in the United States and no evidence that he served in this role for the institutions that issued the appointments.

To meet this criterion, the petitioner must establish the nature of the role he was hired to fill and the national reputation of the entity that hired him. The record contains no evidence that the petitioner was hired into a leading or critical role for either the International Hygiene Medical Academy, the China Acariasis Treatment Center or the Heilongjiang Institute of Acariasis Monitoring and Treatment. Moreover, the record contains no evidence that any of these institutions enjoy a distinguished reputation nationally. Thus, the petitioner has not demonstrated that he 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 the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a medical 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 indicates that the petitioner is a prolific author with some degree of exposure in the Chinese epidemiology literature, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field of medical research. 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.