

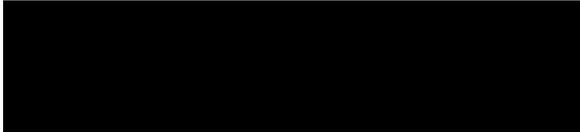


U.S. Citizenship
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FILE: [REDACTED]
SRC 05 008 51371

Office: TEXAS SERVICE CENTER Date: OCT 11 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:

SELF-REPRESENTED

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, Texas 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. 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 earned sustained national or international acclaim at the very top level.

This petition, filed on October 12, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a "Chinese Medical Acupuncturist." The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since 1999. 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 pertaining to 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 certificate (dated August 1997) stating: “‘Ten Techniques of Massage,’ composed by [the petitioner] won the Second Prize for the Forth [sic] ‘National Outstanding Science Publication Award.’”

There is no evidence of publicity surrounding the petitioner’s receipt of this prize or evidence showing that it enjoys a significant level of recognition. In this case, the record contains no supporting documentation from the awarding entity or print media to establish that the petitioner’s prize is a nationally recognized prize for scientific excellence. Furthermore, pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (CIS) 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. The translation accompanying the petitioner’s certificate was not certified as required by the regulation.

In addition to the above deficiencies, the record contains no evidence showing that the petitioner has won any significant prizes subsequent to 1999. The absence of such prizes indicates that the petitioner has not sustained whatever acclaim he may have earned in China during the 1990’s.

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, minimum education or 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. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. 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 submits what are alleged to be his membership certificates for the China Acupuncture Association (issued in October 1993) and the Chinese Clinical Medicine Association (issued on December 6, 1998). The record, however, does not include the membership bylaws or official admission requirements for these associations. There is no evidence showing that admission to membership in these organizations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

The petitioner also submitted three qualifications certificates (i.e., "Special Technology Position Qualification Certificate" issued on June 30, 1993 indicating that the petitioner is a "Doctor" of "Chinese and Western Medical Massage"). We cannot conclude, however, that such certifications, which represent standard entry requirements for a particular medical specialty or profession, are adequate to demonstrate "outstanding achievement" in the medical field.

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

The petitioner submitted what he alleges is evidence of his authorship of an article entitled "What does it Mean to do Acupuncture" in *The Youthful Readers*. The translation accompanying this article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Furthermore, there is no evidence showing that this article was actually published under the petitioner's name or evidence of its significant national or international distribution. Nor is there supporting evidence (such as citations) showing that the petitioner's article is viewed throughout his field as significantly influential.

As noted previously, the petitioner submitted a certificate stating that his article "'Ten Techniques of Massage' . . . won the Second Prize for the Forth [sic] 'National Outstanding Science Publication Award.'" Aside from this certificate, however, there is no evidence showing that the petitioner actually published this article.¹ Nor is there any evidence of the article's national distribution or significant influence.

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 a one-sentence "Notarial [sic] Certificate" stating that he was employed as "the Assistant Factory Director and Dress Designing [sic] in Yanbian International Trading Building Co., Ltd. State Joint Clothing Factory from Oct. 1988 to Dec. 1995." We note that this certificate was issued by Li Chunguo, a Notary in the Jilin Province, rather than by an official of the factory.²

On appeal, the petitioner argues that his employment at the factory satisfies this criterion. The record, however, contains no evidence to support this conclusion. The plain wording of this criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." In this instance, the petitioner has failed to submit evidence of his earnings at the factory. There is no evidence showing that his compensation was significantly high in relation to others in his field. Furthermore, subsequent to his arrival in the United States in 1999, there is no indication that the petitioner earns a level of compensation that places him at the top of his field.

¹ Interestingly, the petitioner has not provided a copy of the article or the publication in which it appeared.

² The petitioner does not adequately explain how employment as an Assistant Factory Director relates to acupuncture. According to the documentation submitted by the petitioner, he was working at this factory during the same period in which he was admitted to membership in the China Acupuncture Association (October 1993) and received a "Special Technology Position Qualification Certificate" as a "Doctor" specializing in "Chinese and Western Medical Massage" (June 30, 1993).

It should be noted that the record contains a copy of the petitioner's passport, issued in Jilin by the Ministry of Foreign Affairs of the People's Republic of China on February 17, 1998. Under "Profession," the passport identifies the petitioner as a "Manager," despite the petitioner's claim that he is nationally recognized as a Chinese medical acupuncturist. The petitioner has not resolved this discrepancy. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

In this case, the petitioner 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 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 eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The September 21, 2004 letter accompanying the petition does not adequately detail how the petitioner intends to continue his work in the United States.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.