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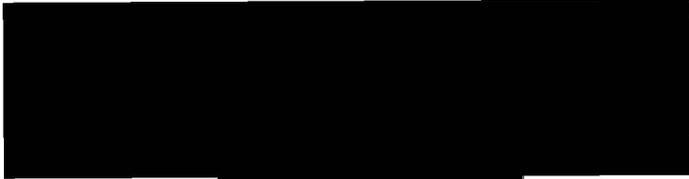
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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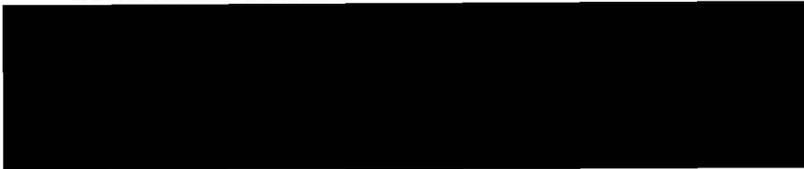
Petitioner:

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:



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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

On appeal, counsel submitted a brief and additional evidence. On May 12, 2006, this office issued a notice of intent to dismiss. In that notice, the petitioner was advised of the following inconsistencies and derogatory information.

The petitioner claims to have won nationally or internationally recognized prizes or awards for excellence in the field of endeavor, as described at 8 C.F.R. § 204.5(h)(3)(i). The petitioner submitted what purports to be a copy of a plaque awarded to the petitioner by the World Health Organization (WHO), China’s Ministry of Health and the World Federation of Acupuncture & Moxibustion Societies (WFAS) initially, in response to the director’s request for additional evidence and again on appeal. World Health Organization, however, is spelled “World **Heath** Organization” on the plaque. (Emphasis added.) While this one error by itself might not raise concerns regarding the credibility of the evidence of record, the evidence discussed below relating to the petitioner’s claim to have authored scholarly articles pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v) reveals a pattern of such errors and discrepancies both within the record and between the record and materials we located on the Internet.

The petitioner claims to have attended the Fourth World Conference on Acupuncture & Moxibustion in Beijing in 2003. The petitioner submitted a cover page from the collected essays and articles from this conference. His alleged contribution to the conference was an article on flavonoids, which the petitioner submitted. The article is paginated, beginning on page 177, consistent with a final published copy, not a draft manuscript prior to inclusion in a larger collection. This evidence has the following discrepancies:

1. The cover page of *Collection of Panel Recommended Articles, Essays and Documents Presented to the Conference* reflects that it is from the “**4rd** World Conference on Acupuncture & Moxibustion” (emphasis added) sponsored by WHO and WFAS. The proper ordinal for “4” is “4th.” Moreover, the dates of the conference are provided as October 21 through October 25, 2003. Consistent with this date, the article the petitioner claims appeared in the collection of articles from this conference includes citations of articles authored as late as 2002. The materials about WFAS provided on appeal, however, indicate that the fourth such conference was actually held in 1996, not 2003. The record does not resolve this discrepancy in dates.

2. In the body of the submitted article, the correct spelling of “flavonoids” is used. The title of the article, however, is “**Flavonois** and Triterpenses in the Treatment of Heart Diseases.” (Emphasis added.)
3. Given the above discrepancies in what purports to be a United Nations document, we attempted to verify the petitioner’s authorship of this article on the Internet. We found the article “Treatment of Cardiovascular Diseases with Chinese Herbs” at www.itmonline.org. This authentic, publicly available article is dated March 2002. Although the title and the first three paragraphs of the article in the record differ from the title and first paragraph in the article we found on the Internet, beginning with “While the use of herbs may be contradicted or limited . . .” the remaining two and half pages of the articles are exactly the same, including the references. The author of the Internet article is Subhuti Dharmananda, who is not the petitioner. The available evidence raises doubts that the petitioner participated in this conference as claimed. Moreover, the petitioner has claimed authorship of an article that is publicly available under another author’s name.

Further, the petitioner submitted an article, “175 Cases of Chronic Fatigue Syndrome Treated by Traditional Chinese Medicine.” The heading for the article indicates that it appears in the April 2000 volume of “Traditional Chinese Medicine **Periodedical** Journal.” (Emphasis added.) The article is not paginated. Moreover, while the title and abstract reference 175 cases, beginning on page two with “General Information,” only 10 cases are discussed. Given the discrepancy, we attempted to verify the petitioner’s authorship of this article on the Internet. We located the article “Treatment of Ten Cases of Chronic Fatigue Syndrome with Chinese Herbs, Acupuncture and Diet Precautions” in the March 2000 issue of *World Journal of Acupuncture-Moxibustion*. This article is publicly available on the Internet at www.ontcm.com. Once again, while the title and first sentence of the authentic article does not match the title and first sentence of the submitted article, the remaining six pages of both articles are identical. The authors of the article in the *World Journal of Acupuncture-Moxibustion* are Cedric Cheung, Frederic Cheung and Jane Cheung, none of whom are the petitioner. Thus, the petitioner has claimed authorship of a second article that is publicly available under other authors’ names.

Finally, the petitioner submitted the article, “Heart Disease and Blood Deficiency Under the Treatment of Traditional Chinese Medicine,” that purportedly appeared in the June 2001 issue of *Traditional Chinese Medical Periodical Journal*, although “Periodical” is correctly spelled. The article is paginated, beginning on page 26, consistent with final publication as opposed to a draft manuscript. Given the discrepancies above, we attempted to verify the petitioner’s authorship of this article. We located the article “Acupuncture Treatment for 100 Cases with Insomnia of the Type of the Heart and Spleen Deficiency,” that also appeared in the March 2000 issue of the *World Journal of Acupuncture*. This article is also publicly available at www.ontcm.com. Once again, while the title and abstract of the authentic article do not match the title and preface of the submitted article, the one and a half pages of text appearing after “Therapeutic Methods” in the authentic article is identical to the one and a half pages of text following “Herbal Treatments” in the submitted article. The author of the article in the

World Journal of Acupuncture-Moxibustion is Tian Jianai, who is not the petitioner. Thus, the petitioner has claimed authorship of a third article that is publicly available under another author's name.

Our notice advised that the pattern of errors on what purport to be documents from prestigious entities and the above discrepancies raise serious concerns regarding the credibility of such documentation and the remaining evidence. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). Thus, we advised the petitioner that he cannot overcome the above findings simply by offering a verbal explanation. Moreover, given the questionable nature of the copies of documents discussed above, we stated that we would obviously not accept any photocopied documentation or letters as evidence to overcome the above derogatory information. We noted that pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), we have the discretion to request the originals of any photocopies submitted.

The petitioner did not respond to this notice. As such, the petitioner has not rebutted the above inconsistencies and derogatory evidence. Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

By filing the instant petition and submitting the evidence described above, the petitioner has sought to procure a benefit provided under the Act using fraudulent documents. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that the above evidence was a falsified, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

Regarding the instant petition, the submission of numerous fraudulent documents seriously compromises the credibility of the petitioner and the remaining documentation. In addition, we acknowledge that the petitioner submitted a single "certificate of translation" from Van Goh Lin for all of the translations in the record. The individual translations, however, are not signed by Mr. Lin or anyone else. The regulation at 8 C.F.R. § 103.2(b)(3) requires that "any document containing foreign language submitted to the Service shall be accompanied by a full English language 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." Given the serious inconsistencies and fraudulent documentation submitted in this matter and the lack of Mr. Lin's signature on the individual translations, we will not consider the single "certificate of translation" sufficient to cover each individual translation. Thus, we do not consider the translations

in this matter to meet the certification requirements set forth in the regulation at 8 C.F.R. § 103.2(b)(3).

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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an herbal analyst. 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.¹

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

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 ten prizes, one of which was the alleged TCM Research Prize from the World Health Organization discussed above. As discussed above, the word "Health" is misspelled on the plaque for this award. The petitioner was advised of this misspelling, inconsistent with a nationally or internationally recognized prize from this major international organization. The petitioner did not respond. Thus, we presume the plaque is not authentic. The remaining awards are evidenced by copies of the alleged Chinese award certificates. As stated above, 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. *Matter of Ho*, 19 I&N Dec. at 591. Without the original award certificates for the remaining awards supported by original evidence of their issuance, such as original newspaper articles reporting the petitioner's selection for the awards, we cannot give significant evidentiary weight to the copies of award certificates in the record.

In light of the above, the petitioner has not submitted credible evidence to 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.

The petitioner submitted documents purporting to confirm his membership in the China Association of Acupuncture and Moxibustion (CAAM), with a membership of 14,000; the China TCM Society and the Chinese Medical Academy located in California. The petitioner submitted membership materials for the Academy of Traditional Chinese Medicine, open to any Chinese national who recognizes and accepts to be bound by the chapters of the academy and meets certain experience and licensure requirements, but the record contains no evidence of the petitioner's membership in the academy. On appeal, counsel asserts that the petitioner is an honorary member of the academy, but the record is absent evidence of this honorary membership. While the petitioner is an honorary member of the China TCM Society, the record lacks evidence that the society and the academy are one and the same. 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).

Assuming the membership certificates submitted are authentic, the petitioner has not credibly established that any of the associations of which he is purportedly a member requires outstanding achievements of its members.

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 initially submitted two Chinese-language documents purportedly about him. For the reasons discussed above, the translations of these articles are not certified as required under the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, the petitioner submitted no evidence of the circulation of the publications that purportedly featured these articles. As discussed above, an Internet search has revealed that the petitioner is claiming to have authored three articles known to have been authored by others. This derogatory information seriously reduces the credibility of all of the published articles in the record, whether allegedly by the petitioner or allegedly about him.

In light of the above, the petitioner has not submitted credible evidence that he was featured in nationally circulated publications. Thus, he has not established that he 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 petitioner initially submitted documents purporting to invite him to speak at conferences. For the reasons discussed above, the translations are not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Regardless, speaking engagements do not typically involve judging the work of others. The petitioner also submitted an alleged 2003 invitation from the Beijing Pharmaceutical Board "to preside at the panel to participate in evaluating academic essays and to provide an independent opinion thereto." In addition a 2000 certificate purportedly from Shandong Medical University recognizing the petitioner's service as a panelist to evaluate academic papers at a symposium.

Assuming the above evidence is authentic, without additional evidence documenting the petitioner's relationship with the Beijing Pharmaceutical Board and Shandong Medical University, the number of others who served on the same panel and the petitioner's exact duties for these entities, we cannot determine the significance of this evidence. Thus, 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's contributions claim rest on the work that served as the basis of his alleged awards and his alleged published articles. As discussed above, at least one of the petitioner's alleged awards and three of his alleged articles have been revealed as fraudulent. Thus, the petitioner has not submitted credible evidence relating to 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 discussed above, at least three of the submitted articles allegedly authored by the petitioner have been revealed to have been authored by others. As stated above, 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. *Matter of Ho*, 19 I&N Dec. at 591. Thus, we are not persuaded that the petitioner has submitted credible evidence relating to 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 an employment contract to take effect once the petitioner has employment authorization. The petitioner's salary is dependent on the monthly bank balance of the employer, ranging from \$0 a month if the employer's bank balance falls below \$200,000 and \$10,000 per month if the employer's bank balance exceeds \$1,000,000. This contract, assuming it is even authentic, is not evidence of remuneration the petitioner had already earned as of the date of filing. Under this contract the petitioner could earn nothing. The record contains no Forms W-2 or foreign pay stubs or contracts establishing his past remuneration nor any evidence of the high-end remuneration in the 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 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, through credible evidence, that the petitioner has distinguished himself as an herbal analyst 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. 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.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead CIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States.