

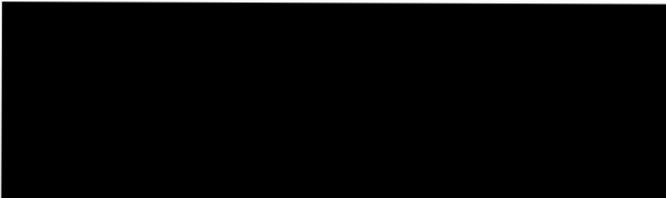


U.S. Citizenship  
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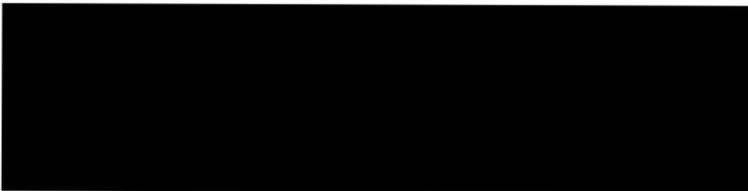
FILE: WAC 04 045 51996 Office: CALIFORNIA SERVICE CENTER Date: **MAR 16 2006**

IN RE: 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.

*Marie Johnson*

*S* Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California 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.

The Form I-140, Immigrant Petition for Alien Worker, was filed on December 2, 2003. Under Part 2 of the Form I-140, the petitioner checked box “a” indicating that her petition was being filed for classification as “an alien of extraordinary ability.” In a letter accompanying the petition, the counsel stated: “We are writing this letter in support of the immigrant visa petition of [the petitioner]. As explained below and as documented in the attached exhibits, petitioner clearly qualifies as an alien of extraordinary ability under INA 203(b)(1)(A), as amended.”

On appeal, counsel states: “Petitioner petitioned simultaneously for EB1 as an alien of extraordinary ability and alternatively for National Interest Waiver. Petitioner’s petition for National Interest Waiver was completely left unaddressed.”<sup>1</sup>

A petitioner, however, is not entitled to multiple adjudications and decisions for a single petition with a single fee. If the petitioner seeks classification as a member of the professions holding an advanced degree or an alien of exceptional ability pursuant to section 203(b)(2)(B) of the Act, then she should file a separate I-140 petition requesting such classification. Counsel has cited no statute, regulation, or standing precedent that permits the petitioner to bundle several adjudications into one petition, or that entitles the petitioner to multiple separate adjudications on the basis of one petition, one record of proceeding, and one fee. Pursuant to 8 C.F.R. § 103.2(a)(1), every petition must be filed in accordance with the instructions on the form. The instructions on Part 2 of the I-140 petition include the instruction to “check one” classification. Consequently, discussion in this matter may relate only to the petitioner’s eligibility pursuant to section 203(b)(1)(A) of the Act.

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

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<sup>1</sup> The requirements for a “National Interest Waiver” fall under the purview of section 203(b)(2)(B) of the Act.

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

This petitioner seeks classification as an alien with extraordinary ability as a medical doctor and 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. The petitioner has submitted evidence pertaining to the following criteria.

*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 articles about herself appearing in [REDACTED] and [REDACTED]. We concur with counsel that these articles are adequate to satisfy 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 letters of support from her immediate colleagues and from patients for whom she has provided treatment. The letters from her patients and their family members are inherently anecdotal, and are not adequate to show that the petitioner has earned national or international acclaim throughout the greater medical community.

Dr. [REDACTED] Professor of Medicine (Emeritus), Tel Aviv University, states:

[The petitioner] began her career in Israel by carrying out research at the Tel Aviv University in order to clarify the impact of Chinese medical techniques on the development of cancer in animals. At the same time she worked with Dr. [REDACTED] the director of the Pulmonary Department of the Chaim Sheba Medical Center, [REDACTED], on a project to determine what effects Chinese medical treatment had on patients with asthma. The results of both of these experiences have been published in highly reputable medical journals and they indicate that there is clearly an impact of this treatment in both areas of interest. By this work, [the petitioner] has made a significant contribution to medicine, not only in Israel but also in the medical world at large.

We do not find that publication of scholarly articles is presumptive evidence of a “significant contribution” to one’s field; we must also consider the greater scientific community’s reaction to those articles. When judging the influence and impact that the petitioner’s published work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone 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 findings. Frequent citation by independent researchers, however, would demonstrate widespread interest in, and reliance on, the petitioner’s work. If, on the other hand, there are few or no citations of an alien’s work, suggesting that that work has gone largely unnoticed by the greater research community, then it is reasonable to conclude that the alien’s work is not nationally or internationally acclaimed as a contribution of major significance. In this case, the petitioner has submitted no citation indices showing that her published studies related to asthma and cancer have had a substantial impact in her field.

Dr. [REDACTED] further states:

A significant contribution of [the petitioner] to the medical community is her invention of two Chinese medicines: Anti-Cancer Number One (“ACNO”) and Ping Chuan Chong Ji. [The petitioner’s] lab experiments showed that ACNO has an effect equivalent to chemo therapy agents in killing Kurkat cells; however, compared to chemo therapy agents, [the petitioner’s] medicine elicits very little toxicity to T-lymphocytes which is an important contributor to a healthy immune system in the human body. Ping Chuan Chong Ji is capable of preventing asthma episodes by affecting a T-cell sub group.

[The petitioner’s] work has the potential to improve the level of preventative medicine. There is currently skepticism in the West concerning Chinese Medicine but [the petitioner’s] research should legitimize this modality resulting in wider use of Chinese Medicine along with conventional medicine for the benefit of patients and physician alike.

Dr. [REDACTED] discusses the “potential” of the petitioner’s work “to improve the level of preventative medicine,” but his personal observations are not adequate to demonstrate that either of the petitioner’s medicines rise to the level of a contribution of major significance in the medical field. Speculation regarding the future impact of the petitioner’s research is not adequate to demonstrate eligibility under this criterion. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The evidence is not adequate to show that the petitioner’s medicinal treatments are widely acknowledged by researchers outside of her circle of collaborators as particularly significant breakthroughs.

On appeal, the petitioner submits evidence showing that she is seeking a patent in the United States for an antineoplastic drug. This evidence cannot be accepted, however, because it came into existence subsequent to the petition’s filing date. *See Matter of Katigbak* at 45, 49. In regard to the petitioner’s U.S. patent application and the patents that she claims to hold in Israel for her Anti-Cancer Number One and Ping Chuan Chong Ji drugs, there is no evidence showing that they represent a contribution of major significance in the medical field. We note here that anyone may file a patent application, regardless of whether the invention constitutes a significant contribution. Further, the granting of a patent demonstrates only that an invention is original. According to statistics released by the United States Patent and Trademark Office (USPTO), which

are available on its website at [www.uspto.gov](http://www.uspto.gov), the USPTO has approved over one hundred thousand patents per year since 1991. In 2001, for example, the USPTO received 345,732 applications and granted 183,975 patents. Therefore, given the amount of patent applications that the USPTO receives on an annual basis, we find it implausible that simply filing a patent automatically qualifies as a contribution of major significance in one's field. In this case, there is no evidence showing that the patent application related to the petitioner's antineoplastic drug was approved by the USPTO at the time of filing, that major pharmaceutical companies have expressed significant interest in marketing her drugs on a national or international scale, or that her drugs have provided a measurable national health benefit (rather than a benefit limited only to the three thousand or so patients who have visited her clinic).

In regard to the letters of support submitted with this petition, we note that the testimonials in this case were limited to immediate colleagues of the petitioner, her patients, and their family members. These letters are not first-hand evidence that the petitioner has earned sustained national or international acclaim for her contributions outside of the medical institutions where she has worked. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that her work rises to the level of a contribution of major significance.

*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 evidence of her authorship of articles in publications such as *International Immunopharmacology*, *The Chinese Journal of Integrated Traditional and Western Medicine*, and *The Chinese Journal of Rural Medicine*. On appeal, counsel describes these publications as "the most prestigious professional journals." The record, however, includes no journal ranking data (such as an ISI Journal Citation Report) comparing the impact factor of these journals to that of other medical journals.

As the publication of one's findings is an inherent duty of researchers in the medical community, the petitioner must distinguish her articles as superior to those of other competent researchers.<sup>2</sup> A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. *See* 8 C.F.R. § 204.5(h)(3). The evidence presented by the petitioner must be evaluated and properly weighed in terms of the governing statute and regulations; it is not simply a matter of accepting that any piece of evidence presented under a particular criterion automatically satisfies that criterion. By way of analogy, Citizenship and Immigration Services (CIS) sometimes requires copies of income tax returns to establish that the petitioner has the ability to pay the proffered wage to the beneficiary. The petitioner, however, does not automatically meet this requirement by submitting a copy of an income tax return. Rather, we must consider the content of that income tax return; if it does not show that the petitioner can afford to pay the beneficiary, then the petitioner cannot credibly argue that it met its obligation merely by supplying the copy of the tax

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<sup>2</sup> For example, if a given article in a medical journal attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner herself has cited sources in her own articles. Numerous independent citations would provide solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. A lack of cites to an article, on the other hand, indicates that that work has gone largely unnoticed by the greater field.

return. The same reasoning applies to evidence presented under the criteria 8 C.F.R. § 204.5(h)(3). Without evidence showing that the petitioner's published work is widely cited by independent researchers, we cannot conclude 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.*

The petitioner submitted evidence of her leading role for International Chinese Medicine Cancer Research Center of Israel (ICMCRCI). The evidence of record, however, is not adequate demonstrate that this organization (which was established within the last decade) has earned a distinguished national or international reputation when compared to other medical institutions or cancer research centers. The articles appearing in the Israeli media (which have been addressed under the "published materials" criterion) only briefly mention the ICMCRCI or mention the Tel Aviv Sourasky Medical Center or Chaim Sheba Medical Center instead. Further, there is no evidence showing that the ICMCRCI receives substantially more private or public funding than that of other cancer research centers. Nor is there evidence showing that published studies released by the ICMCRCI are often cited in medical journals or media reports.

*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 copy of her tax return for 2003 reflecting "business" income of 623,416 NIS. The petitioner also submitted a letter from her accountant stating:

I . . . acknowledge that [the petitioner] is a Chinese doctor who specialized in cancer research and has her own clinic. Her income is approximately 100,000 NIS for a month. 30% goes to the clinic expenses that includes: rent, employees' salaries, materials etc. Another 30% goes to taxes and the rest for living and research founding.

The petitioner also submitted a salary table for Israeli doctors listing "the average salary in the second half of 2000 . . . in government hospitals." As noted by her accountant, however, the petitioner runs her own private practice clinic rather than working in a government hospital. 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 provided salary information that is limited to government doctors rather than doctors in private practice. Another flaw in the petitioner's comparison is that her salary data is for 2000 rather than 2003, the year of her tax return. Finally, as noted by the director, the petitioner's use of average salary statistics is not appropriate. The petitioner's evidence must demonstrate that her compensation places her at the very top of her field rather than above average in her field. *See* 8 C.F.R. § 204.5(h)(2).

In this case, we find that the evidence satisfies only one of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the petitioner has distinguished herself 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 is not persuasive that the petitioner's achievements set her significantly above

almost all others in her field at the 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.

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.