

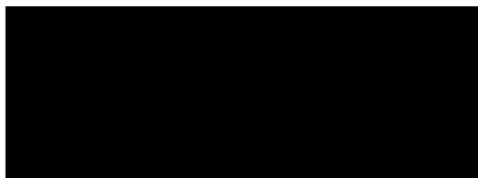
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Office: TEXAS SERVICE CENTER Date: **MAR 03 2008**

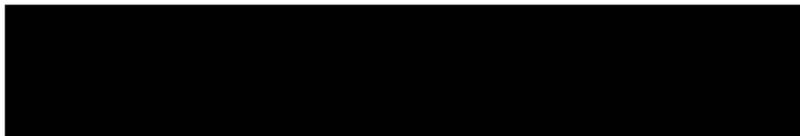
IN RE:

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

R Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner seeks classification as an “alien of extraordinary ability” 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 submits a brief and a certification of previously submitted translations. Counsel asserts that the director erred in raising the lack of certified translations in his final decision because they were not requested in the request for additional evidence. The regulation at 8 C.F.R. § 204.5(h)(3)(iv) provides that evidence of published materials about the alien must be accompanied by full translations. The regulation at 8 C.F.R. § 103.2(b)(3) provides that all foreign language documentation must be accompanied by complete translations certified by the translator. The plain language of the regulations placed the petitioner and counsel on notice of the requirement to provide complete certified translations. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). Thus, while the request for additional evidence would have been more comprehensive if it had raised the lack of certified translations, the petitioner was already on notice of that requirement. Even if the director had erred, the most expedient remedy would be to consider the affidavit from [REDACTED] submitted on appeal.¹ In that affidavit [REDACTED] certifies his fluency in English and Chinese and affirms that he translated all of the documents submitted previously in support of this petition. A certification submitted after the translations are submitted is more persuasive if it lists each document translated. Nevertheless, even if we accepted that the translations are all certified, the evidence still does not establish the petitioner’s eligibility for the classification sought.

For the reasons discussed below, we uphold the director’s decision. Specifically, the evidence submitted, consisting of anecdotal testimonials (most of them bearing no signature on the English or Chinese version), materials originating from a website of unknown significance and certificates from entities of unknown repute, cannot serve to meet any of the ten regulatory criteria, of which an alien must meet at least three. Moreover, it is not clear that the petitioner’s purported abilities fall within the sciences, arts, education, business or athletics, the only fields in which the classification sought may be granted.

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 --

¹ [REDACTED] also submitted a letter in support of the petition previously but did not claim to have provided any translations.

(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 into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). 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.

The petitioner did not complete Part 6 of the petition regarding his proposed employment. According to counsel's cover letter, this petition seeks to classify the petitioner as an alien with extraordinary ability "in the field of **Chinese Somatic Science and Kinesiology**." (Emphasis in original.) The petitioner is said to be the founder of Zhuang Mei Cao (ZMC), "a collective method of treatment and diagnosis of human body anatomy designed to improve human body performance, wellness, and adaptability to varying environments."

As quoted above, section 203(b)(1)(A)(i) of the Act limits this classification to aliens in the fields of science, art, education, business or athletics. We must presume that the phrase "in the sciences, arts, education, business, or athletics" is not superfluous and, thus, that it has some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). If Congress had intended all aliens of extraordinary ability, regardless of their field, to qualify under section 203(b)(1)(A), there would have been no purpose in including the phrase "in the sciences, arts, education, business, or athletics." As Congress *did* use that phrase, it can be presumed that there may be aliens who enjoy some popular notoriety but are nevertheless ineligible for classification under section 203(b)(1)(A) because they cannot demonstrate extraordinary ability or sustained national or international acclaim *within* the sciences, arts, education, business or athletics. To hold otherwise would render the clear language of the statute meaningless and undermine Congressional intent.

Thus, the petitioner must demonstrate that he falls within one of these fields. Much of the evidence purports to affirm the health and medicinal benefits of ZMC. Medicine falls within the sciences and counsel uses the word “science” to describe the petitioner’s field. Science, however, is not based on anecdotal testimonials. For example, a pioneer of new surgical techniques could not establish eligibility for this classification by submitting the testimonials of his patients. Rather, he would need to submit evidence that his surgical techniques are renowned in the medical field, such as through the publication of scholarly articles in peer-reviewed mainstream medical journals and positive reaction to those publications, such as through citations.

Moreover, while we do not question the recent popularity of so-called complimentary or alternative medicine, 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.

While counsel urges that we carefully read all of the materials describing ZMC, we emphasize that we do not determine eligibility based on a subjective evaluation of the alien’s work. We do not have the expertise, for example, to evaluate the validity of scientific theories or the artistic merit of a given piece of art. Moreover, Congress did not intend for us to make subjective evaluations. Rather, the statutory standard is national or international acclaim in the field.

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). Congress’ example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a \$1 million cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien’s field as one of the top awards in that field.

Counsel asserts that the petitioner's one-time achievement is "an internationally recognized award from The Guinness Book of World Records, for his ZMC experiments with collective human cold-temperature resistance." Counsel asserts that the Guinness Book of World Records "is internationally famous and well known among all societies and academic circles of the world."

First, the "award" is not from the "internationally famous" Guinness Book of World Records. Rather, the 1998 certificate was issued by the Shanghai Guinness World Record Headquarters. The record contains no evidence that the Shanghai Guinness World Records is officially sanctioned by the international Guinness Book of World Records. Specifically, the record does not include a letter from the international Guinness Book of World Records, the actual official volume of the Guinness Book of World Records reporting the record of ZMC practitioners or similar evidence confirming a relationship between the Shanghai Guinness World Records and the Guinness Book of World Records.

Second, the petitioner himself did not win this "award." Rather, it was issued in recognition of a purported record set by 33 individuals who withstood cold temperatures for five hours and sixteen minutes. **There is no evidence the petitioner himself was one of these individuals.** While we acknowledge that he appears to be the founder of the exercise program they undertook to prepare for the event, the certificate itself does not recognize ZMC.

Third, setting a record for withstanding cold temperatures is not an award in the petitioner's alleged field of science. There is no evidence that the Shanghai Guinness World Records executed a scientific experiment to confirm the validity of ZMC using accepted scientific standards rather than simply verifying that 33 individuals set a record. For example, there is no evidence Shanghai Guinness World Records or anyone else determined the participants' ability to withstand cold prior to using ZMC or compared ZMC practitioners with those using other exercise programs including other forms of Qigong. In fact, the record lacks evidence that the judges have any scientific expertise such that they can judge the merit of scientific theories.

Finally, the only coverage of the record setting event appears to be on the website www.okzm.net. The record contains no evidence that this website is anything other than a website designed for the sole purpose of promoting ZMC. We note that anyone with an Internet connection can start a website and, thus, the existence of a website devoted to ZMC cannot establish its influence in the field of medicine or science.

For all of the reasons discussed above, the petitioner has not established that he has a one-time achievement.

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 claims to meet nine criteria. We note at the outset, however, that the petitioner makes these claims by attempting to use evidence relating to one criterion as evidence under a far less relevant or wholly unrelated criterion. The statute requires the submission of extensive

evidence. The regulations require that the petitioner submit evidence sufficient to meet at least three criteria. Evidence that directly relates to one criterion need not also be considered under a far less relevant or unrelated criterion.

Finally, we note that the statute requires evidence of *sustained* national or international acclaim. Thus, the petitioner must establish that he continues to enjoy such acclaim as of the date of filing. We note that the vast majority of the evidence is from 1998 and 1999. Such evidence cannot establish sustained acclaim as of the date the petition was filed, seven years later.

The criteria follow.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

As stated above, the Shanghai Guinness World Records issued a certificate in 1998 documenting a cold-temperature record set by 33 individuals who apparently practiced ZMC. For the reasons discussed above, this "award" cannot be considered an award issued to the petitioner for excellence in his alleged field of endeavor, science.

Initially and in response to the director's request for additional evidence, the petitioner submits several documents purporting to relate to this criterion. At the outset, we note that the words "prizes" and "awards" are not open to broad interpretation. They constitute formal recognition for past achievement issued by an entity with the necessary expertise in the field to judge the work. Much of the evidence claimed to relate to this criterion, as discussed below in more detail, cannot be characterized as an award or prize under any credible definition of those words. A nationally or internationally recognized prize or award should be one issued by a nationally recognized and distinguished entity and for which the most renowned and experienced members of the field nationally compete.

Initially, the petitioner submitted photographs of himself shaking hands with unknown individuals wearing nametags in front of a small group of people, of people looking at pennants alleged to be in the petitioner's house, of an alleged visit to the petitioner's house by a professor "to investigate and research," of a large box of letters allegedly thanking the petitioner and of several illegible plaques on a table. In response to the director's request for additional evidence, the petitioner submitted partial translations of some of the pennants and plaques. The translations reveal that they are from individuals or local entities. Some do not appear to be from entities with any specific expertise in medical science, such as an aircraft manufacturer and a post office. Moreover, most of them do not purport to recognize medical or scientific excellence.

None of the above photographs establish that the petitioner received nationally or internationally recognized prizes or awards. More specifically, shaking hands with officials in front of a small crowd is not presumptive evidence of receiving a nationally or internationally recognized award or prize. In

