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U.S. Citizenship  
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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: OCT 07 2005

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

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*

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 is an education and research institution. It seeks to classify the beneficiary as an outstanding professor pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a professor. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

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):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

- (i) the alien is recognized internationally as outstanding in a specific academic area,
- (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
- (iii) the alien seeks to enter the United States --
  - (I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,
  - (II) for a comparable position with a university or institution of higher education to conduct research in the area, or
  - (III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

The regulation at 8 C.F.R. § 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

- (ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s)

and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on March 10, 2003 to classify the beneficiary as an outstanding professor in the field of traditional Chinese medicine. Therefore, the petitioner must establish that the beneficiary had at least three years of teaching experience in the field as of that date, and that the beneficiary's work has been recognized internationally within the field as outstanding.

The regulation at 8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists six criteria, of which the petitioner must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. More specifically, outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (1991). The criteria follow.

*Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field*

Initially, the petitioner submitted evidence that the beneficiary received the following recognition:

1. Two certificates for Outstanding Faculty of Shandong University of Traditional Medicine in 1999, one issued February 2, 2000 and one issued February 28, 2000;
2. A second grade Science and Technology Achievement prize from the Shandong University of Traditional Chinese Medicine on October 1, 1993 for an anti-hypertension plaster;
3. A third grade Science and Technology Achievement prize from the Shandong Provincial Advanced Education Committee on December 1, 1993 for an anti-hypertension plaster;
4. A second grade Science and Technology Achievement prize from the Shandong University of Traditional Chinese Medicine on December 1, 1991 for "computer-Based Application of Herbal Formulas of Traditional Chinese Medicine"; and
5. A citation as an outstanding scientist from the Shandong University of Traditional Chinese Medicine in June 1991.

The director concluded that the awards were all local to Shandong province and the university there where the beneficiary taught. On appeal, counsel asserts that the beneficiary is the only professor at the university to have won all of the above awards in the university's history. Assuming this information is true, it does not change the nature of the awards, which remain purely local. The beneficiary did not compete with specialists in his field nationwide for the awards. As such, we cannot conclude that the awards can serve to meet this criterion.

*Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members*

The petitioner submitted evidence of the beneficiary's membership in the China National Committee of Herbal Formulas of Traditional Chinese Medicine, the Shandong Branch of the China Society of Pharmacology. While the petitioner submitted a list of 38 members (two of whom represent Shandong Province) of the China National Committee of Traditional Chinese Medicine, the petitioner failed to submit evidence of the membership requirements for these associations. The petitioner's response to the director's request for additional evidence did not address this criterion.

The director concluded that the petitioner had not demonstrated that outstanding achievements are required for membership in the above associations. On appeal, counsel asserts:

[The beneficiary] has been appointed as a member of the China National Council of Chinese Herbal Medicine, which is the highest academic organization in China that comprise thirty-five [sic] members nationwide from a pool of nearly 481,900 Traditional Chinese Medicine professionals in the province of Shandong Province, [the beneficiary] was one of only two representatives on the council. His selection as a member of the China National Council of Chinese Herbal Medicine was decided at the "national level rather than by local members."

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). While a large membership may be indicative of an association's lack of exclusive membership requirements, we will not presume that every small association requires outstanding achievements of its members. Moreover, while selection for membership at above the local or provincial level is important, the primary issue remains, according to the plain language of the regulation at 8 C.F.R. § 204.5(i)(3)(i)(B), whether the association requires outstanding achievements of its members. The record does not contain the membership requirements for the National Council of Chinese Herbal Medicine. Thus, the petitioner has not established that the beneficiary meets this criterion.

*Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation*

At no point, including on appeal, has the petitioner asserted that the beneficiary meets this criterion and the record contains no evidence relating to it.

*Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field*

The record reflects that the beneficiary has refereed articles for the *Shanxi Journal of Traditional Chinese Medicine and Herbology*, the *Shanxi Journal of Chinese Medicine and Materia Medica*, the *Shandong Journal of Traditional Chinese Medicine* and the *Journal of Shandong University of Traditional Chinese Medicine*. While the petitioner does not claim that the beneficiary's editor duties for the 1992 "Dictionary of New Knowledge of TCM" relate to this criterion, we acknowledge the submission of this evidence. The beneficiary also served as one of two Vice-Chief Editors for the "series book" "Chinese Materia Medica."

The director determined that the petitioner had not established the nature of the journals listed above, such as whether they were collegiate or local journals. On appeal, counsel asserts that all of the above journals “have been certified by the China National Committee of Science and Technology as leading journals in the field of Traditional Chinese Medicine.” Counsel further asserts that only “recognized experts in their field are selected for this position.”

As stated above, the assertions of counsel are not 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 lacks evidence from the China National Committee of Science affirming their certification of the above journals or evidence establishing the circulation of these journals.

Moreover, we cannot ignore that medical journals are peer reviewed and rely on many members of the field to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary meets this criterion. The record lacks evidence regarding the significance of the editorial duties for the two books listed above or the significance of the books themselves.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

*Evidence of the alien’s original scientific or scholarly research contributions to the academic field.*

Counsel asserts that the beneficiary meets this criterion through his work with the herbal formula WSJZ, alleged to reduce atherosclerosis, and an herbal patch to treat hypertension. The director does not directly address this criterion in his final decision.

Obviously, the petitioner cannot satisfy this criterion simply by listing the beneficiary’s past projects, and demonstrating that the beneficiary’s work was “original” in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master’s degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary’s research contributions have won comparable recognition. To argue that all original research is, by definition, “outstanding” is to weaken that adjective beyond any useful meaning, and to presume that most research is “unoriginal.”

While we are bound by the regulations to accept the body of knowledge taught at the petitioning college as its own “academic field,”<sup>1</sup> the larger field of medicine is international. Regardless of origin, alternative or conventional, effective treatments are adopted into or accepted by mainstream medicine. We cannot conclude that a contribution to traditional Chinese medicine includes treatments that have not been proven effective through studies meeting the most rigorous scientific standards, reported in medical journals that are not limited

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<sup>1</sup> See 8 C.F.R. § 204.5(i)(2). The record satisfactorily establishes that the petitioner is accredited by the Accrediting Commission for Acupuncture and Oriental Medicine (ACAOM).

to alternative medicine and accepted by the wider medical community.<sup>2</sup> Moreover, the usefulness of one "alternative treatment," does not require us to presume that every non-conventional treatment proposed is equally effective. For example, while Dr. Ron Manzanero, a physician practicing near the petitioning college, asserts that the National Institutes of Health has endorsed acupuncture for some conditions, that does not imply that every Chinese herbal supplement is similarly effective any more than it implies the medical value of crystals or aromatherapy. At issue is not acupuncture, but the herbal medical treatments the beneficiary developed.

The beneficiary obtained his Ph.D. from the Beijing University of Traditional Chinese Medicine in 1998. Upon graduating, the beneficiary became an associate professor at the Shandong University of Traditional Chinese Medicine. In 2001, the beneficiary accepted a position with the petitioning college.

Yubin Lu, a former professor at Shandong University of Traditional Chinese Medicine, asserts that the beneficiary was the first to demonstrate that WSJZ "can reduce the total cholesterol, triglycerides and low-density lipoprotein cholesterol in rat's serum." Dr. Lu notes that the results from this work were published in traditional Chinese medicine journals in China and concludes that WSJZ "has been recognized as a more advanced herbal medicine study in China." Dr. Lu further asserts that the beneficiary's herbal patch "is well recognized as a great benefit to the patients with hypertension in China." Finally, Dr. Lu asserts that the beneficiary has contributed to how herbs are classified. Specifically, the beneficiary's paper on the subject, published in a traditional Chinese medical journal, "has been widely accepted as the most influential reference paper in the study of traditional theories of herbal formulas in the treatment of liver disorder." Similarly, Dr. Lu asserts that the beneficiary's book, "Herbs and Formulas," "has been widely accepted as the most influential reference book to the professionals." The letters from the beneficiary's former professors provide similar information. General claims of influence, especially when made by a close colleague, are not persuasive without supporting evidence such as frequent and international citation or letters from independent medical professionals worldwide who are applying the beneficiary's work.

In response to the director's request for additional evidence regarding the beneficiary's herbal patch, the petitioner submitted a letter from Dr. Chenbo Zhang, Dean of the Postgraduate Department at the Shandong University of Traditional Chinese Medicine, asserting that the beneficiary's patch was studied and approved by the Shandong High Education Committee. The beneficiary also submitted the evaluation certificate, which reports a single study involving 100 individuals. The certificate makes no mention of a control group.

<sup>2</sup> While we do not question the recent popularity of so-called complementary or alternative medicine, we will not consider "traditional" or "alternative" medicine as entirely unrelated to conventional medicine.

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. This does not mean that we disfavor petitions based on research of treatments termed "alternative" or "complementary," merely that we require the same standard of evidence indicative of the treatment's effectiveness as we would from a researcher claiming to have developed a new conventional drug at a conventional medical research institution.

The petitioner also submitted a contract for the sale of the patch to the Guilin Fourth Pharmaceutical Company, dated 1993. The petitioner failed to submit any sales data for the 10 years between the sale of the technology and the petition's filing date. We note that major medical innovations typically generate coverage in the general media. Despite the ten years the patch had to attract media attention, the record lacks any press coverage reporting the effectiveness of a hypertension patch marketed by the Guilin Fourth Pharmaceutical Company.

The record is absent any evidence that the beneficiary's herbal formulas or patches have received acceptance in the medical community at large, as can be expected of an effective medical treatment regardless of origin. Thus, we cannot conclude that the petitioner has established that the beneficiary meets this criterion.

*Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.*

The petitioner submitted evidence that the beneficiary has authored published articles in Chinese traditional medicine journals. Regardless of counsel's assertion that recognition in China should be sufficient in the beneficiary's field, the statute requires international recognition. Moreover, as stated above, the petitioner has not established that mainstream medical journals with an international circulation do not investigate and report promising "alternative" treatments. The record lacks evidence of the circulation for the Chinese journals that published the beneficiary's work. Moreover, the record contains no evidence that mainstream medical journals have published the beneficiary's work.

That said, we acknowledge the evidence that the beneficiary authored the book Chinese Herbs and Compatibility. The record satisfactorily demonstrates that the beneficiary's book is a standard text at three traditional Chinese medicine colleges, in China, Canada and the United States. The schools in China and the United States are schools where the beneficiary is teaching or has taught. Moreover, use at conventional medical schools would be more persuasive. Nevertheless, given the record as a whole, we are persuaded that the beneficiary minimally meets this single criterion.

The petitioner has shown that the beneficiary is a prolific researcher, who has won the respect of his collaborators, employers, and mentors, while securing a limited degree of international exposure for his work. The record, however, stops short of elevating the beneficiary to an international reputation as an outstanding researcher or professor. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.