



U.S. Department of Justice

Immigration and Naturalization Service

BS

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

Public Copy

File: [Redacted] Office: Nebraska Service Center Date:

JUL 25 2001

IN RE: Petitioner:

Beneficiary:

[Redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:

[Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as an alien of exceptional ability. The petitioner seeks employment as a Qigong therapist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The sole issue raised in the director's decision is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Counsel discusses the practice of Qigong:

The Chinese have practiced Qigong for over 6,000 years promoting health through the channeling of the body's natural energy. Qigong revolves around the "Qi" (pronounced "chee"), which stands for "life force," the energy that keeps everything in the body in its proper place. The Qi is the source of all movement and growth in the body and Qigong practitioners believe that when the Qi is blocked or diverted, pain disease, fatigue and weakness result. The combination of Qigong's exceptionally effective breathing and meditation exercises increases relaxation and maximizes that body's natural healing power. The Chinese practice many different kinds of Qigong either to maintain good health or to cure illnesses ranging from migraines to cancers. . . .

What distinguishes [the petitioner] from other teachers is the fact that he developed an original method of Qigong known as *Spring Forest Qigong*. The *Spring Forest Qigong* method is easier to learn and delivers much faster results than the traditional method. . . . [The petitioner] currently teaches *Spring Forest Qigong* through the Anoka Ramsey Community College.

Students of [the petitioner] insist that the beneficial results from *Spring Forest Qigong* classes range from a better sense of health to recovery from physical disabilities and afflictions which [mainstream] doctors had given up on. Over 50 of these students have written letters . . . [which] tell intensely personal stories of recovery from illnesses ranging from back injuries to HIV and cancer. . . .

[The petitioner's] original *Spring Forest Qigong* method should be deemed as being in the national interest of the United States because it offers an inexpensive, preventive, alternative to traditional medical care.

(Citations omitted.) Counsel notes that the Office of Alternative Medicine provides federal funding for the study of qigong and other medical techniques outside of the mainstream of "Western" medicine. Counsel does not provide information regarding the results of these studies. The mere fact that such studies have been undertaken does not in any way imply positive results from such studies to confirm the effectiveness of Qigong, or indeed the existence of Qi.

Regarding the purported recovery of individuals with HIV, following Qigong lessons from the petitioner, we cannot help but note that, several years after the filing of this petition, the AIDS epidemic continues to kill millions, especially in Africa, and so far there has been no indication that the global medical community agrees that HIV infection, a viral condition which ravages the human immune system, can be reversed through "breathing and meditation exercises." The record contains no documentation from the Centers for Disease Control and Prevention, or any comparable entity, to confirm recovery from HIV infection through Qigong. Given that the disease is almost universally held to be incurable at present, it would not be at all unreasonable to expect massive international publicity of a cure - indeed, it would be almost unthinkable for a cure to escape such publicity. Similarly, a controlled study, with reproducible results, showing that cancer could be put into remission through Qigong exercises would almost certainly come very rapidly to the attention of the National Cancer Institute, the American Cancer Society, and major publications such as the Journal of the American Medical Association.

Along with documentation pertaining to his field of research, the petitioner submits a substantial quantity of witness letters. Some of these witnesses are medical professionals; others, as noted by counsel, are individuals who have learned Qigong from the petitioner.

The witnesses with medical training, many of whom are, themselves, students of the petitioner, assert that Qigong is effective "in patients with depression, high blood pressure, muscle and joint pain" and other ailments. Some of these individuals are researchers at the University of Minnesota, who state that the petitioner's continued presence is vital for a research project involving ten patients with torticollis (a condition of the neck muscles). Professor [redacted] states "[i]f major university medical schools, such as the University of Minnesota, prove Qigong as effective, it will have a major impact on the health of people in the USA." Prof. Patterson's use of the conditional "if" here indicates that Qigong has yet to be proven effective.

Other individuals whom counsel introduces under the blanket label of "medical professionals" are psychologists, dentists, nurses, chiropractors, physical therapists, massage therapists and

acupuncturists. While many of these individuals are indeed professionals involved with medicine or health care in some way, the professional expertise of many of these witnesses is outside of the petitioner's field. Others differ in the extent to which Qigong has directly affected their patients; some limit their comments to their patients' psychological or spiritual well-being, others assert stress reduction and pain relief, whereas still others claim more far-reaching curative results relating to infectious or malignant conditions. None of the medically-trained witnesses identifies his or her specialty as pertaining to cancer, HIV, or diabetes, three of the more serious disorders which the petitioner claims are alleviated by Spring Forest Qigong.

[REDACTED] president and CEO of Infinite Health, Inc., states that his company "is . . . prepared to work with [the petitioner] in training instructors in Spring Forest Qigong, thus expanding its availability nationally." As of the time of filing, judging from the witness letters, the petitioner's influence and reputation were largely limited to the Twin Cities area of Minnesota.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, counsel argues that "labor certification is not an option" for the petitioner because he is self-employed, and that underinsured Americans will benefit from inexpensive Qigong therapy. The degree to which the population will benefit from the therapy is open to question, because the record indicates only that studies of Qigong's effectiveness are underway; not that they have produced positive, reliably reproducible results. Background materials in the record indicate that many mainstream researchers credit much of Qigong's perceived effectiveness to the placebo effect. For this reason, it is important to base conclusions on carefully controlled studies rather than on individual case studies or other anecdotal evidence.

Counsel also observes that another Qigong instructor has, in the past, received a national interest waiver. We do not have the record of proceeding for the approved petition, and therefore we can draw no meaningful comparison between the two petitions, nor can we determine whether the approved petition was approved in error. At any rate, the fact that both individuals work in the same occupation does not establish equal eligibility for the waiver. An alien cannot establish qualification for a national interest waiver based on the importance of his or her occupation. It is the position of the Service to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of endeavor.

The petitioner submits invitation letters to various conferences. These invitations are dated October 1998, well after the petition's

April 1998 filing date. The petitioner also submits letters from two elected officials, [redacted] of Coon Rapids, Minnesota, and U.S. [redacted] notes the petitioner's efforts teaching Qigong at a local community college, whereas Sen. Wellstone observes that the petitioner's "comprehensive skills . . . may be invaluable in helping to determine the validity of complementary treatments" which are not under the jurisdiction of the Food and Drug Administration.

The director denied the petition, stating that much of the testimony in the record "primarily addresses the potential benefits of the alien petitioner's practice of Qigong, which this Service considers questionable." (Emphasis in original.) The director noted "there are . . . many different forms of alternative healing," while "little actual research" supports their efficacy.

In this respect, we note the petitioner's submission of various background documents which discuss Qi (sometimes spelled "Chi") and Qigong. One article states:

There are three sources of Normal Chi:

1. Original Chi is transmitted by parents to children at conception, is partly responsible for inherited constitution, and is stored in the kidneys.
2. Grain Chi is from the digestion of food.
3. Natural Air Chi is extracted by the lungs from the air we breath [sic].

It is not clear what empirical support exists for these assumptions (for example, anatomical studies that would allow researchers to distinguish between a kidney containing large amounts of Qi from a kidney containing little or no Qi). Qi is said to circulate through twelve "meridians" in the human body, but anatomists have yet to describe any organs or vessels which correspond to the traditional meridians. There is no evidence that Qi has been reliably proven to exist, and therefore any treatment modality which presumes the existence of Qi rests on an uncertain foundation. While the breathing and relaxation exercises which constitute Qigong may indeed be effective for some patients, it is important to understand as thoroughly as possible the underlying mechanisms, so that we may improve its efficacy where appropriate, and also avoid its use in areas where it is not likely to be effective.

On appeal, the petitioner submits a brief from counsel and several new letters and background documents, similar to what accompanied the initial filing. Counsel argues "the Service should not determine whether Qigong is more or less effective and/or respected

than other forms of alternative medicine, but rather, whether or not [the petitioner's] practice of Qigong is in the national interest of the U.S." The issue of Qigong's efficacy, however, is inseparable from the question of whether or not the petitioner serves the national interest.

If the Service were to receive a petition from a physician or biomedical researcher who claimed to have developed cures, or effective treatments, for now-incurable cancers and AIDS, it would be irresponsible for the Service to accept those claims without compelling evidence that this scientist or doctor had succeeded where countless others have failed. The petitioner in this proceeding does not entitle himself to a lower threshold of evidence simply because his claims are based on folklore rather than on controlled, clinical research. An alien does not serve the national interest by claiming that his method works; he serves the national interest by demonstrating persuasively that it works. Given that some of the claims in the record might be considered astonishing by the established, "mainstream" scientific community, it is critical that the petitioner offer the strongest possible support for these claims. Individual, anecdotal self-reports by small numbers of satisfied clients cannot suffice in this regard.

As counsel rightly observes, the Service is not a scientific body with the competence to evaluate, directly, the evidence relating to scientific or medical research. We regularly rely on the submission of expert testimony to explain the significance of such evidence. Counsel broadly observes that "medical professionals" have endorsed the petition. Although the petitioner claims that his technique is effective against cancer, the record contains no statement from oncologists (cancer specialists); rather, the medical professionals are chiropractors, psychologists, physical therapists, and others who have not established specialized training pertaining to cancer.

We also note that the claims of the witnesses tend to be proportional to their place in the scientific community. Thus, university professors state that the petitioner ought to be tested to determine if his claims have any validity, whereas practitioners of alternative or "fringe" medicine are less reserved in their assessments of the petitioner's abilities.

Prestigious research institutions throughout the country, and indeed the world, are seeking cures and treatments for cancer, AIDS, diabetes, and other potentially fatal ailments. The record contains claims that the petitioner's Spring Forest Qigong is effective against these ailments. The record does not contain any statement from any top research institution, endorsing the petitioner's results. If the petitioner's work were proven to be effective, one would expect enthusiastic endorsements to be readily forthcoming from top experts in the study of the diseases the

petitioner purports to treat. One would also expect articles discussing the petitioner's methods to appear in top peer-reviewed scientific journals. Solid evidence that breathing and relaxation exercises are effective against cancer and AIDS would represent nothing short of a revolution in health care, and this office would be negligent if it did not subject such claims to the close scrutiny which such claims merit.

Counsel asserts that the benefit arising from the petitioner's work is national in scope because ever-increasing numbers of Americans are embracing alternative medicine. Despite this rise in popularity, and assertions by individual physicians about the petitioner's methods, the medical field as a whole is far from a consensus regarding the effectiveness of alternative medicine. If counsel is correct in asserting that substantial weight attaches to the statements of "medical professionals," then it is relevant to consider "Alternative Medicine Meets Science," an editorial in the Journal of the American Medical Association (November 11, 1998), by Phil B. Fontanarosa, M.D. and [REDACTED]. The authors state:

There is no alternative 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 largely irrelevant except for historical purposes and cultural interest. . . .

Despite the increasing use of alternative medicine (also termed complementary, integrative, or unconventional medicine) in the United States and throughout the world, most alternative therapies have not been evaluated using rigorously conducted scientific tests of efficacy based on accepted rules of evidence. The lack of properly designed and conducted randomized controlled trials is a major deficiency. For some published studies, serious concerns have been raised regarding methodological quality. A National Institutes of Health expert panel concluded that current evidence is inadequate for development of practice guidelines for alternative therapies, largely because of lack of relevant outcomes data from high-quality clinical trials. . . .

While acknowledging that many therapies used in conventional medical practice also have not been as rigorously evaluated as they should be, we agree that most alternative medicine has not been scientifically tested. However, for alternative medicine therapies that are used by millions of patients every day and that generate billions of dollars in health care expenditures each year, the lack of convincing and compelling evidence on efficacy, safety, and outcomes is unacceptable and deeply troubling. We believe that physicians should become more

knowledgeable about alternative medicine and increase their understanding of the possible benefits and limitations of alternative therapies. . . . As with conventional therapies, advice should be based on data and scientific information rather than anecdotal information, misperceptions, or preconceived or unfounded notions about effectiveness or lack thereof.

Clearly, the authors do not dismiss alternative medicine outright as a matter of course, but they assert that firm data regarding its effectiveness is seriously deficient. The authors specifically state that anecdotal reports are not sufficient for medical practitioners to make fully informed decisions about unproven therapies. These words of caution are clearly relevant in this instance, in which the petitioner's therapy rests on the action of a force which has not been reliably proven to exist.

One witness, [REDACTED] states "Western science has long been hostile to different approaches to healing," and urges the Service not to "make the mistake of those who harassed William Harvey for discovering that blood flows in the human body. Do not make the mistake of those who imprisoned Galileo . . . for discovering the basic principles of physics." [REDACTED] fails to recognize that the theories [REDACTED] and Galileo have been borne out by extensive study and experimentation, and that both of these scientists were scorned not so much for discovering new ideas, but for producing evidence that challenged centuries-old beliefs that, in turn, were based on folklore and tradition rather than on rigorous inquiry.

We note that the petitioner's current employer, Anoka Ramsey Community College, Coon Rapids, Minnesota, obtained a labor certification on the alien's behalf and filed another Form I-140 petition seeking a different classification, with receipt number LIN 01 183 54456. Service records further indicate that the second petition was approved on June 28, 2001. The Department of State Visa Bulletin for July 2001 indicates that visa numbers are current for the classification in which the petitioner has an approved petition.

The argument that the petitioner ought to be exempt from the labor certification process in the national interest is, to say the least, somewhat undermined by the documented fact that he has received such a labor certification, and is the beneficiary of an approved visa petition arising therefrom.

The petitioner's stated desire to improve health care, especially preventive health care, and thereby reduce medical costs, is a noble and sincere goal. The record, however, simply does not offer persuasive evidence to support fundamental tenets of Qigong theory (such as the very existence of Qi as an energy or force). We also

cannot ignore that the petitioner has already obtained the labor certification which this petition seeks to waive.

As is clear from a plain reading of the statute, it was not the intent of Congress that every alien of exceptional ability, or every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given occupation, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.