

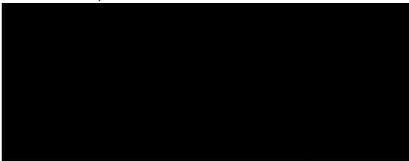


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U.S. Department of Justice
Immigration and Naturalization Service

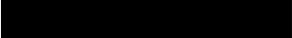
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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



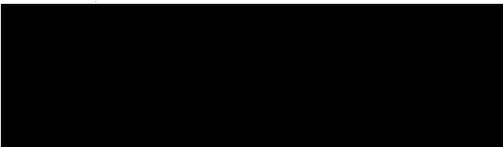
File:  Office: Texas Service Center

Date: **17 SEP 2002**

IN RE: Petitioner: 
Beneficiary: 

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:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 coach of "beauty gymnastics." Witnesses in the record indicate that the petitioner "has opened a training and fitness center in Houston, Texas." 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 classification as a member of the professions holding an advanced degree, but that the petitioner has 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 director found that the petitioner qualifies as a member of the professions with post-baccalaureate experience equivalent to an advanced degree. While we do not concur that the petitioner's occupation meets the regulatory definition of a profession at 8 C.F.R. 204.5(k)(2), i.e. that the occupation requires a bachelor's degree, the petitioner has claimed and established that he qualifies as an alien of exceptional ability. Because the two classifications confer the same benefits under the same section of law, we need not disturb the director's fundamental finding that the petitioner qualifies for the classification sought. The sole issue in contention 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.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel states that the petitioner "is a world-renowned coach and researcher in the field of beauty gymnastics and beauty/fitness dance and is a certified coach in Physical Education and Beauty Gymnastics . . . [who] has been recognized as one of the pioneering researchers in his field." Counsel states:

[The petitioner] has been an outstanding coach and researcher in the field of beauty dance and beauty gymnastics for over 30 years and has published numerous books and articles in his field. He is probably the first person who combines the mysterious Chinese Qi-Gong with dancing technique and gymnastics for the purposes of fitness and health.

Counsel states that a waiver of the labor certification requirement is in order because labor certification is an "onerous" process, and "[i]f he is required to go through the lengthy labor certification process, he will in great probability choose NOT to work in this country." We are not persuaded by the argument that the labor certification requirement should be waived because the petitioner would prefer to leave the U.S. rather than obtain a labor certification. Of greater

concern than the petitioner's personal motivations is the impact that the petitioner has had and is likely to have in the future.

Along with documentation pertaining to his past work and recognition, the petitioner submits several witness letters. A letter from an unnamed official of the [REDACTED] states:

[The petitioner] is the founder of [REDACTED]

[The petitioner] has been able to combine both the traditional Chinese methods of [REDACTED] with Western gymnastics and beauty dance for the purpose of fitness and health, which greatly popularized the sport. His methods and [REDACTED] have shown great curing results for some of the patients with high blood pressure.

The petitioner submits a letter from the founding president of the [REDACTED]. Although the letter is in English, the signature is in Chinese characters with no translation. This official states:

[The petitioner's] knowledge and experience in the research and development of beauty gymnastics and sports dance is extraordinary. He has published many academic articles/books about his research areas and has received widespread praises for his unique and effective coaching method. His greatest contribution, I think, is his ability to combine both the Chinese traditional methods of self-preserving with Western medicine and gymnastics together and turn all those into something for all ordinary people for fitness and health purpose.

[REDACTED] of the Martial Arts Research Institute at Beijing Physical Education University states that the petitioner "is a legend in China in terms of physical education and [REDACTED] development." [REDACTED] head coach of International Chen Style Tai Chi Development Center, Houston, states that the petitioner "turned the mysterious Chinese [REDACTED] into a popular exercise method for ordinary people." Other letters offer similar praise for the petitioner and his methods. The letters do not, however, offer any specific or documented information to establish the extent to which the petitioner's work has improved the health or exercise habits of U.S. residents in the Houston area, let alone nationally.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted copies of previously submitted documents, untranslated lecture notes, and photographs of the petitioner demonstrating his method. Some documents show that the petitioner has provided demonstrations at local schools. The new documents further establish the uncontested fact that the petitioner is an experienced teacher of his art but do not demonstrate that the U.S. benefits from his activities more than it would from the work of other qualified exercise or martial arts instructors.

Counsel asserts that the petitioner's proposed work is national in nature because it pertains to physical fitness, which is an issue of national concern. We disagree with this assertion. The overall importance of fitness addresses the intrinsic merit of the petitioner's work, but it does not establish that the petitioner, by operating a fitness center in Texas, will have a significant impact outside of the Houston area. Evidence of national impact in China, where a much older and larger social infrastructure exists with regard to martial arts and [REDACTED] does not translate to presumptive evidence of prospective national impact in the United States.

The director denied the petition, acknowledging the intrinsic merit of the petitioner's work but finding that the petitioner's own contribution does not appear to be national in scope, and does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek.

On appeal, the petitioner submits a quantity of copies of previously submitted documents. As before, these documents establish the petitioner's exceptional ability and thus his eligibility for the underlying immigrant classification. A plain reading of the statute and regulations shows that aliens of exceptional ability are generally required to present a job offer with a labor certification at the time the petition is filed, and only for due cause is the job offer requirement to be waived. Clearly, exceptional ability in one's field of endeavor does not, by itself, compel the Service to grant a national interest waiver of the job offer requirement.

Counsel repeats the assertion that the petitioner "is probably the first person who combines the mysterious Chinese [REDACTED] with dancing technique and gymnastics for the purposes of fitness and health." [REDACTED] consists in essence of specialized breathing exercises. While the petitioner's specific methods may represent a novel combination of different age-old exercise methods, this degree of originality does not necessarily show that the petitioner's methods are superior to other methods. With regard to counsel's repeated assertion that the petitioner has directed his efforts at "ordinary people . . . not just for elite athletes," exercise programs for the general population have a long history in the United States, from instructional videotapes by the likes of Jane Fonda and Richard Simmons to seemingly ubiquitous aerobics classes. Thus, the fact that the petitioner's program is available to all is not a particular mark of distinction.

Counsel argues that the petitioner "has received extensive media coverage around the world." While the record contains a quantity of untranslated articles from unidentified publications, we cannot discern the extent of such coverage. Some articles appear to be from Chinese-language newspapers published in Texas, indicating that this media coverage has been virtually unnoticed by that significant majority of Texans who do not read Chinese.

Counsel's arguments on appeal are repeated essentially verbatim from counsel's previous statements submitted with the initial filing and the response to the request for additional evidence. Counsel neither addresses nor rebuts the director's findings simply by repeating prior arguments that the director clearly found not to be persuasive. While physical fitness is an important pursuit, the petitioner has not shown that his fitness center in Houston will have a significantly greater national impact on fitness than other centers run by competent staff. The petitioner's former status

as a ranking official of provincial-level martial arts associations in China establishes that he is eminently qualified to work in his field but it does not show that the petitioner has had, and will continue to have, an unusually significant impact on fitness training in the United States.

As is clear from a plain reading of the statute, it was not the intent of Congress that 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 profession, 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.