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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: APR 06 2009

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

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:

[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom

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 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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

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

(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
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

Specific supporting evidence must accompany the petition to document the “sustained national or international acclaim” that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a “one-time achievement (that is, a major, international recognized award).” *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences, specifically as an inventor. With his initial petition dated October 31, 2006, the petitioner submitted supporting documents including documents verifying his education and work experience, information about his patents, a membership certificate for the World Chinese Merchant Union Patent Committee, an invitation to speak as an honored guest at the Forum of Chinese Famous Doctors, information about some of his inventions, and three letters of recommendation. In response to a Request for Evidence (RFE) dated November 16, 2007, the petitioner submitted evidence of the Gold Prize awarded to an invention, information about a stipend sponsored by the State Council of China, information about and membership in the China Association of Inventions (“CAI”), and

additional information about his inventions. We address the evidence submitted in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not addressed below.

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

The petitioner submitted evidence that his invention "Dovit vegetable spirit" won the Gold Prize at the Wuyang Food Industry Corporation Group's International Food and Processing Technology Expo (Expo) in 1996 and the 1997 National New Product award. The information submitted about the Expo indicates that 1996 was only the second year that the Expo was held and that exhibits of food related products were the main focus. The petitioner submitted no evidence that the awards given at this Expo, in only its second year of existence, are nationally or internationally recognized prizes for excellence in the field. Similarly, the petitioner failed to present any evidence to demonstrate the national or international recognition of the National New Product Award. While we acknowledge that the word "national" appears in the title, the name of the title alone is not sufficient to establish the recognition accorded to the award. The documents provided give no information such as how the winner of the award is chosen, the standing or number of other contestants, or by whom the contestants are judged. Although the petitioner submitted evidence of the success of the winning product including press releases about the product, the subsequent success of the product does not equate to national or international recognition for the award previously received. In response to the RFE, counsel stated that the Expo's location in Beijing "indicat[es] [its] significance in China" and that the Expo "is indeed China's only authoritative exhibition of food and food processing technology at the State or national level." About the prize itself, counsel states that "only one Gold Prize [is awarded] at each Expo." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I. & N. Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I. & N. Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980). Although counsel states that two news articles "revealed the two important reasons why Dovit was awarded the only Gold Prize at the Expo," neither article mentions the award as opposed to being about the product alone. In addition, the awards were given in 1996 and 1997, nearly a decade prior to the filing of this petition. Accordingly, even if the petitioner were able to establish that these awards were nationally or internationally recognized, the length of time that has passed since his receipt of the awards is not indicative of the sustained acclaim required by this highly restrictive classification.

Counsel additionally argued that the "use" of the "Dovit" as the "designated liquor" for the 1996 sessions of the National People's Congress and the Chinese People's Political Consultative Conference and as the Chinese "State present" to Romania and the King of Thailand was evidence of the petitioner's receipt of "[a]wards and [h]onors" under this criterion. We are not persuaded by this argument. First, the petitioner has submitted no documentary evidence to support counsel's assertions regarding the use of the "Dovit." As previously indicated, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I. & N. Dec. at 534 n.2; *Matter of Laureano*, 19 I. & N. Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. at 506. Second, even if documentary evidence was submitted, the "use" of the petitioner's product or that he may have felt honored to have his product used in such a way, is not considered to be a prize or an award.

The petitioner also claims eligibility under this criterion by virtue of his receipt of a State Council Special Subsidy ("Subsidy"). The certificate submitted from the Department of Civil Affairs of Henan Province indicates that the petitioner has been receiving the Subsidy for an indefinite period of time based on his

“invention of vegetable spirit and in putting it into commercial production.” First, we note that the Subsidy was awarded by Henan Province and is only available to those persons living within that geographic area so, without more, cannot evidence national or international recognition as opposed to regional recognition. Second, the information submitted about the Subsidy indicates that “[t]hose who have been chosen receive a one-time lump-sum financial subsidy from the State Council and a periodic allowance from their local governments.” In light of this information, it seems as if the Subsidy was awarded at or in close temporal proximity to the time that the petitioner’s invention won the Gold Prize, i.e. ten years prior to this petition’s filing. As such, it cannot evidence sustained acclaim in the field. In addition, an article entitled “State Council’s Special allowance breaks the ownership limits,” states that “about 900 people” have been awarded the Subsidy between 1990 and 2004. With the Subsidy only being awarded every two years, over one hundred people on average were awarded the Subsidy in any given cycle. Such a number does not indicate that this is an award given only to that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Initially, the petitioner also claimed eligibility under this criterion by virtue of being appointed as a special researcher with the China Academy of Management Science, being appointed senior engineer by the Beijing Municipal Scientific and Technological Personnel Bureau, being invited to be a part of the Chinese Inventors Dictionary, and being invited to speak at various conferences. The letter appointing the petitioner as a special researcher with the Academy of Management Science does not indicate that the appointment was anything other than a job offer with the Academy. The petitioner submitted no evidence that such an appointment constitutes an award or prize or that it conveys national or international recognition. Similarly, the Qualification Certificate granting the petitioner with the position of senior engineer by the Beijing Scientific and Technological Personnel Bureau appears to be recognition that the petitioner has met the qualifications for a particular degree or professional certification. In any case, the petitioner submitted no evidence that these appointments are nationally or internationally recognized. The invitations to join the Chinese Inventors Dictionary and the various conferences do not amount to awards or prizes as no criteria for any contest or competition were set forth nor were any judges identified. In addition, again, the petitioner submitted no evidence that these invitations are nationally or internationally recognized.

For all of the above reasons, the petitioner failed to establish that he meets this criterion.

(ii) Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, proficiency certifications, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

The petitioner submitted evidence of his membership in the CAI (we presume that this is the same association referenced in the original submission as “the World Chinese Inventors Association” as no separate membership certificate was included in the record). The information submitted about the CAI indicates that membership is

awarded to those who “ha[ve] considerable influence in and important impact on activities of invention and innovation” and that:

[I]ndividual members include inventors of patented inventions and professionals of science and technology who have been awarded with governmental and/or [the CAI’s] reward(s) and prize(s), and/or who have acquired outstanding achievement(s) in technological innovation and in boosting agriculture through science-technology and education; inventors who have played key science/technology roles in the establishment of state-owned or non state-owned enterprises; and individuals who have enthusiastically devoted to inventive and innovative activities with outstanding achievements and to the activities of [the CAI].”

Although someone with outstanding achievements in the field may qualify as a member of the CAI, the charter does not require that the applicant have an outstanding achievement to qualify as a member. Instead, for example, an applicant would qualify for membership if he or she served in a key science or technological role in a business. The charter of the CAI further states that membership applications are “examin[ed] and verifi[ed] by the department designated by the Executive Council and approv[ed] by the legal representative of [the CAI].” The petitioner submitted no evidence to show that “the department” is composed of recognized national or international experts in their field as required by the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

Initially, the petitioner also claimed eligibility under this criterion by virtue of his membership in the World Chinese Merchants Union Patent Committee (“CMUPC”), however, no membership certificate or other evidence of membership was submitted into the record. Nor did the petitioner submit any information about the membership criteria for the CMUPC to show that membership is predicated upon outstanding achievement in the field. The record is also devoid of any evidence that membership applications to the CMUPC are judged by recognized national or international experts in the field.

The petitioner also claimed eligibility by virtue of his inclusion in the Dictionary of Modern Inventors of China (“Dictionary”), evidence of which appears in the record. The record contains no evidence, however, which demonstrates that the Dictionary constitutes an association, whether only those inventors who have made an outstanding achievement are included in the Dictionary, and whether entries in the Dictionary are determined by recognized national or international experts in the field.

For all of the above listed reasons, the petitioner has failed to establish that he meets this criterion.

(iii) Published material 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.

In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulation, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national

distribution, unlike small local community papers.¹ The petitioner claimed to meet this criterion through his inclusion in the Dictionary, discussed above, the award of multiple patents, and several news articles.

The petitioner submitted no information about the Dictionary to indicate that it constitutes a professional or major trade publication or other major media. In addition, he submitted only one page of what we presume to be a book or other large scale publication pursuant to the label “dictionary.” One page of a multiple page publication does not indicate that the publication is about the petitioner as required by the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii).

Although the petitioner also submitted evidence of his receipt of several patents, he submitted no evidence that these patents were published in professional or major trade publications or other major media or were otherwise published or would constitute major media on their own. To the extent that the petitioner claims that the patents were published by virtue of their inclusion on the State Intellectual Property Office website of China, evidence of inclusion on a website does not by itself signify that the material appeared in major media. We are not persuaded that international accessibility by itself is a realistic indicator of whether a given publication is “major media.” The petitioner must still demonstrate a widespread distribution, readership, or overall interest in the website in order to demonstrate that it is some sort of professional or major trade publication or major media. Similarly, the petitioner provided a printout of the “Official Chem” website, which lists his vegetable liquor patent, but submitted no information about this website to indicate that it amounts to major media.

The petitioner submitted news articles about his vegetable liquor entitled “Dovit Vegetable Spirit a New Member in the Family of Alcoholic Drinks,” which appeared in *Science & Technology*; “Dovit VegeSpirit Selected as the Designated Alcoholic Drink for National Congress” and “Employ Resources of Mountains & Rivers for Economic Development” published in *People’s Daily*; and “Making Corporation Thrive by Relying on Talents,” published in *Chinese Food Journal*. These articles were primarily about the vegetable liquor invented by the petitioner; however, the articles credited the purchaser of the petitioner’s idea instead of the petitioner. In addition, the petitioner submitted no evidence that any of these publications amounts to professional or major trade publications or other major media as required by this criterion such as by submitting evidence to verify the national or international circulation of the organizations that printed the submitted articles.

The petitioner also submitted two articles unrelated to the vegetable liquor: “An 8 years old girl who was sick without money to get retreat caused 2 overseas Chinese Concern,” which appeared in *Jiangmen Daily* and “A Male AIDS Patient’s Miracle Recovery,” which appeared in *Singtao Daily’s* NorthEast News section. These articles are not primarily about the petitioner as required by the regulation as they focus upon two sick individuals (one with cancer, one with AIDS) and only mention that the petitioner’s altruism helped these individuals as a part of the individuals’ struggle with the diseases. In addition, the petitioner submitted no evidence to show that either of these publications amounts to major media. We also note that the second article appeared in a regional section of the publication, so that even if the publication amounted to major media, any acclaim would be regional in scope instead of national or international. As previously indicated, we are not

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

persuaded that international accessibility via the internet is a realistic indicator of whether a given publication is “major media.” The petitioner presented no information regarding the general online readership of *Jiangmen Daily* or any other indication that this website constitutes major media as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The petitioner also submitted three photographs that were taken at a press conference about Dovit vegetable spirit, however, no evidence was submitted that these photographs were published in any media. Finally, photographs would not qualify as publications under this criterion as the plain language requires the *author’s* name indicating that written text is required.

For all of the above state reasons, the petitioner has failed to show that he meets this criterion.

(v) Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Regarding the petitioner’s patents, this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep’t. of Transp.*, 22 I. & N. Dec. 215, 221 n. 7, (Commr. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* The petitioner’s patent is assigned to [REDACTED] Food Industry Corporation Ltd of Henan Province, which has begun production on VegeSpirit. Although the record indicates that press conferences were held regarding the launch of VegeSpirit and that it was presented to the National Congress, no evidence was presented that the beverage has been mass marketed or widely produced and distributed. The Expert Evaluation submitted by the petitioner recognizes the originality of the idea, but it does not state that the petitioner made a contribution of major significance in the field through his development of this idea.

The petitioner presented no evidence that any of his other patents have led to products, medicine, or goods marketed or produced so as to make a significant impact upon his field. Counsel stated in his response to the RFE that the cancer clinic at Henan TCM College has been prescribing the petitioner’s herbal blend to ease cancer sufferer’s discomfort and alleviate their symptoms, however, no evidence appears in the record to support counsel’s statements. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena* at 534 n.2; *Matter of Laureano*, 19 I. & N. Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. at 506. Counsel also cites evidence of the medicine’s effectiveness at curing the disease it was intended for such as through the news articles discussed above. The effectiveness of the invention is not the issue as an invention will, by its nature, be unique. Without evidence which demonstrates a mass application of the medicine, for example, the petitioner is unable to show that he or his invention significantly impacted the field.

The petitioner submitted five letters of recommendation on appeal supporting his claim of eligibility under this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I. & N. Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796. Thus, the content of the experts’ statements and how they became aware of the petitioner’s reputation are important

considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a researcher who has sustained national or international acclaim.

The January 6, 2006 letter from [REDACTED], deputy general manager of Healthstar Medical Development Company, stated that medicine invented by the petitioner was given to 70 HIV-positive people and that they typically saw their HIV status reverse itself. The July 20, 2006 letter from [REDACTED] director and professor at the No. 1 Military Medical University, states that the Anti-AIDS medicine developed by the petitioner has been “tested and clinically tried . . . with remarkable therapeutic results” and that the medicine “is the best and most effective Chinese phytopharmaceutical medicine.” The July 20, 2006 letter from [REDACTED] member of the National Intellectual Property Bureau, states that the petitioner’s patents have a “good reputation and created good economic value.” The letter from [REDACTED] researcher at the University of Chicago, states that the petitioner’s inventions “have extraordinary potential for commercialization” and that many of the inventions can increase the standard of living in rural areas, “protect the environment and reduce reliance on foreign oil.” Overall, [REDACTED] stated that the petitioner “is clearly an outstanding inventor with extraordinary ability and dedication to his career.” [REDACTED] Director of the Department of Clinical Pharmacology and Project Office of National Center for AIDS Prevention & Control of China’s Ministry of Health, wrote in an August 8, 2006 letter that the petitioner “has made remarkable inventions and contributions in many fields and areas.” [REDACTED] cited the positive results in studies involving the use of Chinese medicines as developed by the petitioner in treating cancer and HIV. None of these letters indicate that the petitioner has made a contribution of major significance to the field although some of the letters indicate promise for future development or usage of the petitioner’s patented ideas. However, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1),(12); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Comm. 1971).

While such letters are important in providing details about the petitioner’s role in various projects, they cannot by themselves establish the petitioner’s acclaim beyond his immediate circle of colleagues. The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for “extensive documentation” in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

Accordingly, the petitioner has failed to establish his eligibility under this criterion.

On appeal, as it relates to the director’s finding that the petitioner failed to establish that he seeks to enter the United States to continue work in his area of extraordinary ability, the petitioner submitted a letter from a prospective employer, [REDACTED] which detailed its intent to employ the petitioner and indicated that it had filed a nonimmigrant petition on behalf of the petitioner. Counsel argues that this additional evidence should be considered on appeal as the director’s RFE did not request such additional information. While the AAO generally does not accept documents submitted for the first time on appeal, in this instance, as the petitioner was not notified of this particular deficiency prior to the denial, we have reviewed the evidence and find it sufficient to overcome the director’s finding. We, therefore, withdraw the finding of the director on this issue.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his field. The record in this case does not establish that the petitioner had achieved sustained national or international acclaim as an inventor placing him at the very top of his field at the time of filing. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.