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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **FEB 11 2009**  
LIN 06 187 52507

IN RE: Petitioner: [REDACTED]  
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:



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*  
John F. Grissom, Acting Chief  
Administrative Appeals Office

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

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, the petitioner has not established eligibility for the exclusive classification sought. Moreover, as will be discussed below, the petitioner’s apparent intent to work in his area of expertise, medicine, would make him inadmissible and his apparent violation of medical licensing laws in Wisconsin raises serious concerns as to his ability to prospectively benefit the United States.

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

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(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.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below.

It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a traditional Tibetan Medicine practitioner. According to counsel, the petitioner has “treated thousands of patients.” Thus, it is clear that the petitioner’s field is medicine and not sociology or some other scholarly study of culture. We do not recognize any distinction between the origins of medical treatments. Specifically, while we do not question the recent popularity of so-called complementary or alternative medicine, we will not consider “traditional” or “alternative” medicine as a separate field from “conventional” medicine, which includes nutrition.

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.

“Alternative Medicine Meets Science,” *Journal of the American Medical Association* 280: 1618-1619, 1998. This does not mean that we are hostile to treatments termed “traditional,” “alternative” or “complementary,” but it does mean that we will not narrow the petitioner’s field to Tibetan Medicine. Thus, the petitioner must demonstrate his acclaim within the general medical community.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien’s receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria.<sup>1</sup>

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

Initially, the petitioner submitted certificates of participation and appreciation from various entities, characterized by counsel as evidence of the petitioner’s “Receipt of National and International [W]orks and Appreciations.” On June 8, 2007, the director issued a request for additional evidence, noting that the certificates submitted were not prizes or awards. The petitioner’s response does not address this criterion. Thus, the director reiterated his conclusions as expressed in the request for additional evidence. Once again, counsel does not address this criterion on appeal. We concur with the director’s analysis and conclusion that the petitioner has not established that he meets this criterion.

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

*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.*

Initially, the petitioner submitted the following evidence:

1. A foreign language 1997 article in *Tibet* that appears to have been coauthored by the petitioner;
2. A brief 2002 article in *News Tibet* announcing the opening of the first [REDACTED] clinic in the United States, whose resident "physician" is identified as the petitioner;
3. A photo caption in the June 5, 2002 issue of *Home News* identifying the petitioner as an "[REDACTED]" at the [REDACTED];
4. An August 8, 2002 article in *The Tibet Times* announcing the opening of the clinic where the petitioner serves as "[REDACTED]";
5. An undated article in the *Sun Lion Publications News* announcing the opening of the clinic where the petitioner serves as "resident physician";
6. An April 12, 2003 article in *Round River Currents* covering a workshop by the petitioner;
7. A fall 2003 article in *The Kalasha* mentioning the petitioner's visit to the KECK Laboratory for Functional Brain Imaging and Behavior at the University of Wisconsin. The research referenced in the article is that of [REDACTED] [REDACTED] not the petitioner.
8. Another article in the same issue providing the petitioner's notes on his investigation of local Wisconsin plants;
9. Autumn and Winter 2003 articles in *Round River Currents* promoting upcoming lectures by the petitioner referencing him as a "visiting physician" and "resident physician";
10. An advertisement for "clinic appointments" with the petitioner, whose name is preceded by "Dr." in the Autumn 2003 issue of *The Meridian*; and
11. Listings of courses and presentations made by the petitioner.

In his request for additional evidence, the director noted that the materials submitted appeared to have been published in newsletters and regional publications that were not consistent with major media.

In response, the petitioner submitted still photographs from an October 4, 2006 television interview on the program “New Yorkers.” The caption for one of the photographs states that the interview was broadcast in New York, Florida and New Jersey.

The director concluded that the petitioner had not established that the initial materials were published in major media and that the television interview could not establish eligibility as of the date of filing because the record contained no objective evidence regarding the nature of the broadcast and, regardless, the interview postdated the filing of the petition.

On appeal, counsel asserts that the petitioner was invited to appear on the show five months before the petition was filed and that the interview was “distributed to all practitioners of Oriental Medicine in the U.S. and abroad.” The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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). Thus, we will only consider those claims that are documented in the record.

First, we concur with the director that the petitioner has not established that any of the publications that covered the petitioner prior to the date of filing constitute major media. The record contains no evidence that these publications are distributed beyond a single ethnic group in a local community. Without such evidence, we cannot consider these articles. Moreover, some of them appear to be primarily promotional rather than the result of independent journalistic coverage of the petitioner.

Counsel’s assertions on appeal are unsupported and inconsistent with pertinent regulations and precedent decisions. First, the record contains no evidence, such as confirmation from the producers of “New Yorkers,” that the interview was broadcast in three states or even in New York. In addition, the promotional distribution of the video, even assuming the petitioner<sup>2</sup> were able to track down and afford the costs of forwarding a copy to “all practitioners of Oriental Medicine in the U.S. and abroad,” would not constitute “publication” by major media any more than mailing copies of the initially submitted newsletters to practitioners in all 50 states would transform those local newsletters to “major media.”

Moreover, even if counsel is implying that the interview was “distributed” by being made available on the Internet, not every website can be considered major media. Specifically, we cannot ignore that any local media outlet, indeed anyone with a computer, can create a website or upload video material to a site that allows people to share videos. Thus, all Internet material must be considered on a case-by-case

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<sup>2</sup> The record contains no explanation as to why the producers of “New Yorkers” would incur the cost of tracking down and mailing copies of the interview to “all practitioners of Oriental Medicine in the U.S. and abroad,” especially as the record does not establish that “New Yorkers” is devoted to Oriental Medicine.

basis. The record does not contain any evidence of how the petitioner “distributed” the interview via the Internet or otherwise.

Finally, we concur with the director that the petitioner must demonstrate eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l. Comm’r. 1971). Regardless of when the petitioner was invited to be interviewed on the show, and the record contains no confirmation from the producers of the show that the invitation was extended prior to the filing of the petition, the invitation is not what constitutes the “publication” required under 8 C.F.R. § 204.5(h)(3)(iii). Rather, it is the distribution of the media that is relevant. We concur with the director that the interview, which postdates the filing of the petition, cannot be considered evidence of eligibility as of that date.

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

*Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

Initially, counsel asserted that the petitioner’s lectures at workshops and symposiums served to meet this criterion. While not initially submitted as evidence to meet this criterion, the petitioner also submitted evidence that the petitioner served on the review committee and as editor for various publications. In addition, the petitioner submitted a letter from ██████████ President of the Santa Barbra Institute for Consciousness Studies, thanking him for his editorial work on *Healing from the Source*, a book of health-related lectures ██████████ translated. The record contains no evidence that editing this book constituted judging the medical work of the initial author rather than the accuracy of ██████████ translation. The petitioner also submitted evidence that he translated a biography of the ██████████, but this duty would appear to relate more to the petitioner’s knowledge of Tibetan and English than medicine.

In his request for additional evidence, the director noted that lectures cannot serve to meet this criterion and requested evidence of the significance of the publications for which the petitioner served as an editor and the nature of his editing duties. In response, the petitioner submitted a letter from ██████████ ██████████ Director of the Center for Buddhist Studies and a professor at Columbia University. ██████████ affirms that the petitioner served as Editor-in-Chief for *sMan-rTsis Journal*. ██████████ appears to be an expert in Buddhism studies, not medicine. Moreover, we note that his one and a half page letter is nearly identical to a one and a half page letter from ██████████ While the signatures on these letters affirm that the individuals are affirming the information in the letters, it appears that the words are not their own. Finally, the petitioner submitted an unattributed list of an editor’s duties, one of which is to read, analyze and critique other scientific writings and examine the same for future publication.

In his final decision, the director reiterated that lectures cannot serve to meet this criterion and concluded that the unattributed list of duties was not persuasive evidence and that the petitioner had not

established the significance of the journal for which he had served as editor. On appeal, the petitioner submitted Volume II, Number 2 (2000) of *sMan-rTsis Journal* naming the petitioner as the Editor-in-Chief.

We acknowledge that the duties of an Editor-in-Chief typically involve judging the work of others to some degree. The petitioner, however, did not comply with the director's request for confirmation of the duties from the journal itself. More significantly, the petitioner has not provided any evidence as to the significance of the journal, published by the Tibetan Medical and Astrological Institute. The petitioner has also failed to submit evidence of the significance of *Fundamentals of Tibetan Medicine*, for which the petitioner served as a review committee member. As the director specifically requested such evidence on June 8, 2007, we would not be able to consider such evidence even if the petitioner had finally submitted it on appeal. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

The evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim in the field if that statutory standard is to have any meaning. Thus, the reputation and circulation of the publications for which the petitioner has served as editor are highly relevant. The record contains no data for the circulation of these publications or evidence of their use in conventional medical schools or citation in mainstream medical journals. The prestige of *sMan-rTsis Journal* is somewhat questionable given that the table of contents for the issue submitted on appeal contains an error that was corrected with a frayed piece of paper with the correction pasted over the error.

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

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

The petitioner initially submitted several reference letters confirming his employment over the years and other letters from those with expertise in Buddhism rather than medicine (conventional or Tibetan). For example, in his letter thanking the petitioner for his editorial assistance, [REDACTED] concedes he has "little background in Tibetan medicine myself." The petitioner did submit a letter from a staff physician at Kickapoo Valley Medical Clinic in Wisconsin, the director of a graduate program in Oriental Medicine in New York and a Tibetan Medicine Specialist at the Neuroscience Research Institute at the University of California, Santa Barbra. These letters, however, merely praise his knowledge and skill in the area of Tibetan medicine without explaining how he has impacted that field. Finally, the petitioner submitted a letter from Dorrance Publishing offering to review the petitioner's manuscript, *Science of Healing*, and characterizing the company as a "practical alternative" to "commercial publishers."

In response to the director's request for additional evidence, counsel asserts that the petitioner's book, *Science of Healing*, has now been published and serves to meet this criterion. The preface to the book includes the following disclaimer:

This book recounts the experiences of a single individual and is not meant to serve the reader or anyone else as medical advice. Please consult your physician before beginning any program of physical or mental health.

The director, noting that the book was published after the date the petition was filed, concluded that it could not be considered evidence of eligibility as of that date. The director also noted that while the work may be original, the record lacks evidence of any impact on the field.

On appeal, counsel notes that on June 2, 2006, ten days before the petition was filed, Dorrance agreed to publish the petitioner's book under their "subsidy program." A reading of the June 2, 2006 letter submitted on appeal makes clear that the petitioner was responsible for the costs of publishing the books and promotion, with Dorrance financing only the reprint of books to fill bona fide orders that exceed the initial number printed.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of medicine, it can be expected that the petitioner's work would be widely influential. Evidence of such influence might be demonstrated by references to the petitioner's work in major medical journals or similar objective evidence rather than anecdotal attestations from acquaintances.

As noted by the director, the petitioner's book had not yet been published as of the date of filing. The fact that Dorrance had agreed to publish the book prior to that date is not persuasive. In order to be considered a contribution of major significance, the contribution must have already impacted the field as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. It cannot be credibly asserted that a book that has yet to be published could have already impacted the field.

Regardless, the book cannot be considered "scholarly" or "scientific." The disclaimer, quoted above, reveals that the book is more of a memoir than a scholarly or scientific work in the field of medicine. Moreover, the petitioner has not demonstrated that his book has had any impact after it was published. As stated above, the contract with Dorrance reveals that it provides publishing services for self-publishing authors. We do not assert that a self-published book can never make an impact. Moreover, even publication by a commercial publisher does not guarantee the book will impact the field. Nevertheless, the petitioner bears the burden of demonstrating that his book has impacted the field. The record does not contain sales data or evidence that the petitioner's book is widely cited in any conventional or even complementary medical journal.

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

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner provided evidence that he has lectured at Tibet House in Chicago and participated in the World Natural Medicine Foundation's Congress of Medical Acupuncture and Natural Medicine and the East-West Seminar on Tibetan Medicine. He was also a guest lecturer at the University for Humanistic Studies. The record also includes promotions for the petitioner's lectures at the Windemere Institute of Healing Arts, the Spring Green Community Library, the New York College of Traditional Chinese Medicine, a conference sponsored by *Acupuncture and Electro-Therapeutics Research*, the Latse Contemporary Tibetan Cultural Library and the Drepung Loseling Institute in Atlanta, Georgia. The petitioner is listed as a member of the "faculty" at the Tibetan Healing Center in San Diego. The petitioner's paper, "The Diagnostic Techniques of Tibetan Medicine" was included in the Twelfth Central Eurasian Studies Conference at Indiana University. A review of the other articles published in the conference proceedings confirms that this was not a conventional or complementary medical conference. The petitioner also coauthored "Tibetan Medicine and the BDORT" in an unknown journal. The petitioner's name is always preceded by "Dr." or followed by "M.D." in these materials, revealing that the petitioner holds himself out as a medical doctor.

In response to the director's request for additional evidence the petitioner submitted his 2006 article on Asthma in the *American Journal of Traditional Chinese Medicine*. While the article summarizes the traditional Tibetan approach to asthma, no research studies, relevant data samples or citations to previous research are provided as would be expected in a scholarly medical article.<sup>3</sup>

We will consider scholarly lectures at distinguished conferences as comparable evidence to meet this criterion. The petitioner, however, has not established that his lectures, most of which occurred at cultural centers and libraries rather than distinguished medical conferences, are indicative of national or international acclaim. Moreover, the petitioner has not demonstrated the impact of these lectures and publications. For example, the record contains no evidence that the petitioner is widely cited, or even cited at all, in major medical journals or even in complementary medical journals.

In light of the above, the petitioner has not established that his lecture and publication record is consistent with national or international acclaim in the field of medicine or even within the narrow area of complementary medicine.

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<sup>3</sup> While we are not medical experts, the petitioner's claim in this article that asthma is due to "congestion of mucus in the lung's air passages" which will not "go away completely unless the air passages are cleared" is unsupported. Specifically, the petitioner provides no citation for this assertion in his article. According to the National Heart Lung and Blood Institute of the U.S. National Institutes of Health (NIH), asthma is a lung disease that inflames and narrows the airways. See [http://www.nhlbi.nih.gov/health/dci/Diseases/Asthma/Asthma\\_WhatIs.html](http://www.nhlbi.nih.gov/health/dci/Diseases/Asthma/Asthma_WhatIs.html) (accessed February 5, 2009 and incorporated into the record of proceedings).

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a medical practitioner to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner has experience as a practitioner of Tibetan Medicine but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field of medicine. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Beyond the decision of the director, the record does not establish that the petitioner can seek to continue to work in his area of expertise in the United States without rendering himself inadmissible. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

As stated above, while the petitioner currently works as a "medical coordinator," the petitioner claims extraordinary ability as a practitioner of traditional Tibetan medicine. He uses "Dr." or "M.D." as his title. Counsel references the petitioner's patients and the record includes promotional materials for the petitioner's services as a "resident physician." The petitioner is a graduate of the Traditional Tibetan Medical and Astrological College in India, which appears to be a medical school.

Section 212(a)(5)(B) of the Act provides:

Unqualified physicians.-An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien

(i) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and

(ii) is competent in oral and written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall

be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

The petitioner is a graduate of a medical school. The record contains no evidence that school is accredited by a body approved by the U.S. Secretary of Education. In fact, the evaluation in the record reveals the school does not even have any academic status in India where it is located. In addition, the record contains no evidence that the petitioner meets the requirements of section 212(a)(5)(B)(i) or (2) of the Act. While we do not make inadmissibility determinations at the petition stage, this information bears on the petitioner's realistic intent to work in the field in which he claims extraordinary ability.

Moreover, the petitioner resides in New York. New York law, 131 N.Y. Educ. Law § 6522, prohibits anyone without a medical license to practice medicine or use the term "physician." The record reveals that the petitioner has consistently violated similar laws in other states. For example, the petitioner does not appear to be licensed to practice medicine in Wisconsin as verified on the website <https://ice.wi.gov/LicenseLookup/individual.do> (accessed February 5, 2009 and incorporated into the record of proceedings). Wisconsin law further provides that no person may practice medicine and surgery, or attempt to do so *or make a representation as authorized to do so*, without a license to practice medicine and surgery granted by the board. Wis. Stat. § 448.03(1)(a). Yet the promotional materials for the clinic where the petitioner worked in Wisconsin use the title "Dr." and refer to him as their "resident physician."

Section 203(b)(1)(A)(iii) of the Act requires evidence that the alien's entry into the United States will substantially benefit prospectively the United States. While in most cases the extraordinary ability of the alien creates a presumption of substantial prospective benefit, the petitioner's continued misrepresentation of his status as a physician and his misuse of the titles "Dr." and "M.D." raise serious questions as to whether his entry into the United States will be beneficial.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.