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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **OCT 02 2009**
SRC 08 231 52041

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
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas 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. The petitioner resubmits previously submitted evidence and submits evidence that purports to address the regulatory criteria set forth in a previous request for additional evidence issued by the director on January 22, 2007. For the reasons discussed below, we uphold the director's decision. Moreover, we further note that the record suggests the petitioner may not be coming to the United States to continue in her alleged area of expertise as such an intent would render her inadmissible pursuant to section 212(a)(5)(B) of the Act.

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).

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 she has sustained national or international acclaim at the very top level.

This petition, according to Part 6, seeks to classify the petitioner as an alien with extraordinary ability as a "doctor." The petitioner's personal statements indicate that she intends to practice both traditional Chinese medicine as well as conventional medicine. On appeal, the petitioner submits a job offer to work as a "Chief Physician" for Premium Medical Care, P.C. The petitioner is a graduate of a foreign medical school, Changchun Medical College. The petitioner has not documented that she has passed Parts I and II of the National Board of Medical Examiners and is competent in oral and written English. Thus, it appears that she is inadmissible to enter the United States to work as a "doctor" as claimed on her Form I-140 petition. Section 212(a)(5)(B). As such, the petitioner has not demonstrated that she will continue to work in her area of alleged extraordinary ability or that she will substantially benefit prospectively the United States pursuant to sections 203(b)(2)(A)(ii) and (iii) of the Act.

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 criteria under 8 C.F.R. § 204.5(h)(3) are as follows.

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

The petitioner has submitted no evidence pertaining to this criterion and has never claimed to meet it.

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.

Initially, the petitioner claimed to be a member of the Chinese Association of Science Technology (CAST) and the Red Cross. She submitted no evidence to substantiate that she is a member of either association or their membership requirements. The petitioner's response to the director's request for evidence relating to this criterion did not include any evidence of her memberships or their membership requirements. On appeal, the petitioner submitted evidence of her membership in CAST and her

membership in the Traditional Chinese Medicine Association and Alumni dated April 10, 2008, well after the petition was filed. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner's response to the request for additional evidence was not responsive and now purports to submit more responsive evidence. The AAO, however, will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533, 537 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. Moreover, the petitioner must establish 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). Thus, the petitioner's 2008 membership can not be considered.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). The record before the director did not establish the petitioner's membership in CAST. Moreover, the petitioner did not establish that CAST requires outstanding achievements of its members. On appeal, counsel asserts that CAST "is the largest national non-governmental organization of scientific and technological workers in China" and "has made significant contributions to the prosperity and development of science and technology [and] to the popularization of science and technology among the public." Counsel provides additional information about the organization of CAST. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. at 534 n.2; *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). Regardless, the large size of CAST is not indicative of an exclusive association that limits membership to those with outstanding achievements. We will not presume exclusive membership criteria from the distinguished reputation of the association itself, which may earn such a reputation irrespective of exclusive membership criteria. It is the petitioner's burden to establish the actual membership criteria in order to meet the plain language requirements of 8 C.F.R. § 204.5(h)(3)(ii). The petitioner has not done so.

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

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.

The petitioner submitted foreign-language articles purportedly about the petitioner in [REDACTED] dated September 23, 1992 and in [REDACTED] dated December 29, 1996. While the petitioner captioned this evidence, she did not submit the necessary complete certified translation pursuant to 8 C.F.R. § 204.5(h)(3)(iii) and 8 C.F.R. § 103.2(b)(3). The petitioner also submitted photographs of her appearing in an unidentified newspaper from 2003 and in *Newsday* in 2000. The director's request for additional evidence quoted the regulation at 8 C.F.R. § 204.5(h)(3)(iii) and advised that "any document in a language other than English must be submitted in its native language accompanied by an

English translation." The petitioner's response did not include any translations. The director concluded that the petitioner had not established that she has been covered in professional or major trade journals or other major media.

On appeal, the petitioner submits another foreign language article from 1992 without a complete certified translation. This evidence does not comply with the translation requirements at 8 C.F.R. § 204.5(h)(3)(iii) and 8 C.F.R. § 103.2(b)(3). Counsel asserts that *Jilin Daily* is a provincial newspaper with a circulation of 417,000 and that *Chengshi Wanbao* is the evening newspaper of the city of Changchun. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The petitioner did not submit the initial required evidence to meet this criterion, the complete certified translations of the foreign language articles. The record also lacks evidence that the newspapers that purportedly covered the petitioner are professional or major trade journals or other major media. Rather, even if we accepted counsel's assertions, the newspapers appear purely local. Finally, news coverage in 1992 and 1996, over 10 years before the petition was filed, cannot demonstrate the necessary *sustained* national or international acclaim.

In light of the above, the record falls far short of establishing that the petitioner 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.

The record contains no evidence relating to this criterion and the petitioner has never claimed to meet this criterion.

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

The petitioner has never claimed to meet this criterion. We note that the petitioner initially submitted a letter from one of the petitioner's patients attesting to her healing talent. In addition initially and in response to the director's request for additional evidence, the petitioner submitted a self-serving statement discussing her successful treatments, including the use of a "secret recipes passed down from [her] ancestors." The petitioner seeks to enter the United States as a doctor applying both traditional Chinese medicine and conventional medicine. We do not distinguish between medical treatments of different origins. At issue is whether the petitioner has made an original contribution of major significance to the field of medicine. We will not accept anecdotal statements from the petitioner regarding a "secret recipe" or from even a patient in lieu of controlled medical studies published in prestigious peer reviewed journals. The petitioner has not explained how a remedy that she keeps "secret" to use on her own patients rather than subjecting it to rigorous clinical testing and peer review

such that, if effective, it could be widely available is a contribution of major significance to the field of medicine. Thus, the petitioner has not established that she 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 did not submit any scholarly articles initially or in response to the director's request for additional evidence which quoted 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the petitioner submitted two foreign language articles from 1987 published in *Tuina* without a certified translation of the title and author and without evidence that *Tuina* is a professional or major trade publication or other major media such as a prestigious peer-reviewed medical journal and without an explanation as to how these articles from 1987 demonstrate sustained acclaim in 2006 when the petition was filed. As stated above, evidence relating to this criterion was previously requested and will not be considered when submitted for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. at 766; *Matter of Obaigbena*, 19 I&N Dec. at 537.

The record before the director contained no evidence relating to this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner has never claimed to meet this criterion and the record contains no evidence relating to it.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The petitioner has never claimed to meet this criterion and the record contains no evidence relating to it.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner has never claimed to meet this criterion and the record contains no evidence relating to it.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner has never claimed to meet this criterion and the record contains no evidence relating to it.

Comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4).

On appeal, counsel asserts that the recommendation letters from the petitioner's patients, her invitations to attend various events and photographs of her with prominent individuals constitute comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4).

The regulation at 8 C.F.R. § 204.5(h)(4) permits the submission of "comparable evidence" where the regulatory criteria do not readily apply. Counsel has not explained why the above regulatory criteria do not readily apply to the petitioner's field. We note that an inability to meet a given criterion does not suggest that the criterion is not applicable to the petitioner's field.

Initially, the petitioner submitted a letter from one patient, the former Prime Minister of Trinidad, asserting that she is a "generous person and a very good doctor." We are not persuaded that the anecdotal testimonials from one of the petitioner's patients selected by the petitioner, which may not be representative of all of her patients, is "comparable" to the ten objective criteria set forth at 8 C.F.R. § 204.5(h)(3). While 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 (Comm'r. 1988), the reference letter submitted initially is not from a recognized medical expert.

On appeal, the petitioner submits a letter from another patient, Nigeria's High Commissioner to Trinidad advising that he cherishes the petitioner's massage "and other treatment" but does address the petitioner's notoriety as a physician. The petitioner also submits letters from [REDACTED] another practitioner of traditional Chinese medicine, [REDACTED] a Clinical Assistant Professor at the Well Medical College of Cornell University, and [REDACTED] President of the Chinese Medicine Treatment Centre in Trinidad. We are not persuaded that the general praise of the petitioner from a Chinese medicine practitioner and two doctors is remotely comparable to the ten objective criteria discussed above. Letters from three individuals selected by the petitioner cannot be considered indicative of her national or international acclaim in the field of medicine.

The petitioner was invited to attend a reception at the Chinese Embassy in Trinidad, where she was residing at the time. The petitioner submitted no evidence regarding the number of invitees or how the invitees were selected. An invitation to attend a reception for all of the Chinese expatriats residing in Trinidad at the time is not indicative of the petitioner's recognition in the field of medicine.

The photographs, even if they do show the petitioner with distinguished individuals, cannot serve as comparable evidence to demonstrate national or international acclaim as we will not presume such acclaim from association. Rather, the petitioner must demonstrate her individual acclaim.

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 herself as a doctor to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner has experience as a practitioner of traditional Chinese medicine, but is not persuasive that the petitioner's achievements set her significantly above almost all others in the 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.

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.