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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
and Immigration
Services**

B2



FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **SEP 22 2009**
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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:

SELF-REPRESENTED

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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) 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 necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The director also determined that the petitioner had not submitted clear evidence that he would continue to work in his area of expertise in the United States.

On appeal, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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, 60898-99 (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, filed on January 10, 2008, seeks to classify the petitioner as an alien with extraordinary ability as an inventor, an acupuncturist, and a doctor. 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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).¹

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 a certificate from the 2003 Invention & New Product Exhibition (INPEX) tradeshow in Pittsburgh stating that his medical device was a Silver Medal International Award Winner. In response to the director's request for evidence, the petitioner submitted a July 25, 2008 letter from [REDACTED] INPEX, confirming that he was "awarded a silver medal in the medical category" for his invention at INPEX 2003. [REDACTED] letter further states:

INPEX® is America's Largest Invention Trade Show.

* * *

Every invention and new product idea on display at INPEX® is eligible to be judged as a part of the International Awards Program. Winners are determined on the basis of usefulness, creativity and overall appeal. Winning an INPEX® award may add credibility to an invention and may also increase the possibility of exposure through resulting publicity. While INPEX® makes every effort to generate media coverage, any coverage is at the discretion of the media outlet.

In this instance, there is no evidence showing that the petitioner's receipt of a silver medal at INPEX 2003 garnered any media coverage. Further, [REDACTED] self-serving statement that "INPEX® is

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

America's Largest Invention Trade Show" is not corroborated by any supporting evidence. Moreover, according to the INPEX internet site, the number of awards annually conferred by the trade show is substantial.² Finally, the record does not include any objective evidence regarding the national or international significance of the petitioner's INPEX silver medal within the medical field.

The petitioner submitted an Honor Certificate for "IENA 2002 International Exhibitions 'Ideas-Inventions-Innovations'" in Nuremberg, Germany stating that "[REDACTED]" (rather than the petitioner) "was awarded a silver medal for excellent achievement." The IENA 2002 Honor Certificate initially submitted by the petitioner was not accompanied by a certified English language translation. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. In response to the director's request for evidence, the petitioner submitted an English language translation of the IENA 2002 Honor Certificate, but it was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, we cannot ignore that the Honor Certificate was presented to the petitioner's son, "[REDACTED]," rather than to the petitioner himself. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires evidence of "the alien's receipt" of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. We cannot conclude that an award that was not specifically presented to the petitioner is tantamount to his receipt of a nationally or internationally recognized award.

The petitioner submitted a certificate issued to him "In Recognition of Participation" in the "Yankee Invention Exposition 2007." A participation certificate does not equate to a prize or an award. The petitioner also submitted a certificate from the Judging Chairman of the Yankee Invention Exposition stating that the petitioner received an "International Invention Award." The petitioner's initial submission also included an October 13, 2007 letter from [REDACTED] of Yankee Invention Exposition, Inc., stating that he enjoyed seeing the petitioner's inventions and requesting that the petitioner "return to the United States . . . to have further business discussions" regarding his inventions. The October 13, 2007 letter, however, does not provide any information regarding the significance of the petitioner's award.

With regard to the petitioner's awards from the preceding inventors' exhibitions, we note that the petitioner did not provide information regarding the number or percentage of exhibitors who earned some type of recognition. For example, according to the Yankee Invention Exposition's internet site, the 2007 exhibition in which the petitioner participated had 96 exhibits and conferred 23 awards, including top awards for "Best of Show."³ Thus, almost one quarter of the exposition participants received some form of recognition. The plain language of the regulatory criterion at 8 C.F.R.

² See <http://www.inpex.com/international-invention-awards.aspx>, <http://www.inpex.com/jury-awards.aspx>, <http://www.inpex.com/special-awards.aspx>, and <http://www.inpex.com/merit-awards.aspx>, accessed on September 3, 2009, copies incorporated into the record of proceeding.

³ See http://www.yankeeinventionexpo.org/past_07_exhibit_list.htm and http://www.yankeeinventionexpo.org/past_07_award_winners.htm, accessed on September 3, 2009, copies incorporated into the record of proceeding.

§ 204.5(h)(3)(i) specifically requires that petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no evidence demonstrating that the petitioner's awards had a significant level of recognition beyond the context of the preceding exhibitions.

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

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, 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.

In response to the director's request for evidence, the petitioner submitted a certificate from the Liaoning Acupuncture and Moxibustion Society stating:

China Association for Acupuncture and Moxibustion is the largest and the most authoritative acupuncture and moxibustion academic organization in China and one of members of World Federation of Acupuncture and Moxibustion Societies. Liaoning Acupuncture and Moxibustion Society is directly subordinate to China Association for Acupuncture and Moxibustion as a Grade I academic organization of Liaoning Province.

Articles of the society regulates that senior members of the society may be those who have chief physician, professor, research fellow or corresponding professional title, high academic prestige, or have be engaged in the circle for more than 30 years and have got remarkable achievement and important contribution in acupuncture and moxibustion field, furthermore can keep membership in the society for a long time, love and support work of the society and can implement obligations of senior member.

[The petitioner] is a senior member with 21 years membership at China Association for Acupuncture and Moxibustion.

The preceding certificate does not include an address, telephone number, or any other information through which the Liaoning Acupuncture and Moxibustion Society or the China Association for Acupuncture and Moxibustion may be contacted. Further, we cannot conclude that attaining a particular professional title, academic success, or a certain length of experience are tantamount to outstanding achievements. Moreover, the documentation submitted by the petitioner does not

specify what constitutes "remarkable achievement" or an "important contribution" as indicated in the society's articles. Finally, we note that the preceding certificate was unaccompanied by supporting evidence in the form of the actual articles of the Liaoning Acupuncture and Moxibustion Society.

The petitioner submitted a certificate from the "Apoplexy Recovery Professional Committee of Chinese Medicine Society of Liaoning Province" stating:

Liaoning Apoplexy Recovery Society is the most authoritative academic organization of apoplexy recovery in Liaoning Province. Our society has made great effort on recovery of paralytic and gained many achievements.

[The petitioner] is the member of council of Liaoning Apoplexy Recovery Professional Committee. He has rich clinical experience for many years, obtained lots of achievements and won the respect from other members.

The preceding certificate does not include an address, telephone number, or any other information through which the organization may be contacted. The petitioner also submitted a "Work Certificate" identifying him as a member of the Inventors' Association of the City of Shenyang. The record, however, does not include evidence (such as membership bylaws) showing the admission requirements for the Inventors Association of the City of Shenyang or the Liaoning Apoplexy Recovery Professional Committee.

In this case, there is no evidence showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one. Accordingly, 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 submitted documentation from the United States Patent and Trademark Office indicating that he filed a provisional patent application in 2001. The petitioner also submitted documentation from the German Patent and Trademark Office reflecting that he published patent applications in 2002 and 2004. There is no evidence showing that the petitioner has actually been granted a patent for the preceding inventions. The petitioner also submitted evidence from the State Intellectual Property Office of the People's Republic of China reflecting that he holds a utility model patent for his "Chinese herb fomentation treatment bags." The grant of a patent demonstrates only that an invention is original. 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.* In this case, there is no evidence showing that the petitioner has licensed or successfully marketed his inventions. On appeal, the petitioner acknowledges this fact stating: "I have not granted license to any manufacturer to mass production of my invention yet." Thus, the impact of the petitioner's inventions in his field is not

documented in the record. Rather than submitting evidence demonstrating that his inventions have already had a significant impact in the medical field, the petitioner instead comments on his future aspirations for their commercialization. Accordingly, the petitioner has not established that his inventions equate to original scientific contributions of major significance in the field.

Aside from evidence of his Chinese patent and U.S. and German patent applications, the petitioner submitted two letters of recommendation in support of the petition. Neither of these letters includes an address, telephone number, or any other information through which their authors may be contacted.

The letter co-written by [REDACTED] and [REDACTED] President and Vice President of the Liaoning Institute of Stroke Rehabilitation, states:

[The petitioner] is one of members in the council of our Liaoning Institute of Stroke Rehabilitation. For his experienced and excellent medical skills, he receives respects from other members in our institute.

He has made a huge achievement in his 30 years of clinical work and treated around 50,000 cases. Many of them were with difficult symptoms. The effect of his treatments, especially against the sequela of stroke was rapid and outstanding. An example was a treatment for a male patient with Stroke. In the leg elevation test, the supine patient could generally elevate his illd thigh max. 7cm high. After the 15-minute-treatment with the treatment device that invented by [the petitioner], the patient achieved an elevation height of 37cm. Another example case was a female patient with chronic Migraine of 10 years history. After her new attack of Migraine that lasted one week without any effect of convening possible pain-killers in the maximal dose, she consulted the medical help from [the petitioner]. Through 15 minutes' treatment with the same treatment device, all complaints of her Migraine disappeared. During the routine treatment work, [the petitioner] could often meet similar patients.

In his 30 years of clinical work, [the petitioner] did not concern his earnings and medical rank and set patients in his first place. In his belief, the happiest is to release the complaint of patients. As one of major leaders, in the latest re-election of our Institute, [the petitioner] was supported by the institute members to become the new president. Disappointedly, he refused and insisted on his busy treatment work.

The letter from [REDACTED] Associate President and Chief Secretary of the "Liaoning Association of China Association of Zhenjiu," and a professor at Liaoning Chinese Medicine University, states:

[The petitioner], who served as associate director doctor in No. 6 Hospital of Shenyang, is a 21 years, old member in the China Association of Zhenjiu. He has worked more than 30 years in the clinical treatment and performed gorgeously with acupuncture against Apoplectic Sequelae and Migraine. He has treated personally around 50,000 of such patients during his work. He is one of extreme excellent senior members in our association.

We can freshly recall, in the summer of 2004, a patient named [REDACTED], who has been in the post-traumatic coma for nearly 2 months, came back to his full orientations through [the petitioner's] careful treatment. This case strongly indicates that [the petitioner] grasps high-level treatment skills and experience. The results of many cases in his 30-year-treatment were regarded as marvels. Therefore, he is honorably respected by his working colleagues, patients and their families.

The most valuable achievement in [the petitioner's] clinical work is his inventions of treatment devices. **These treatment devices are worth of high attention.** Although the treatment devices have not yet become popular and widely applied in the clinical treatment, I can assert, they would surely have brilliant prospects. Particularly, "the Device for Treating Stroke and Migraine" has its unique astonishing effect. We are looking forward for the success of [the petitioner's] inventions.

The examples pertaining to the petitioner's treatment methodologies are inherently anecdotal, and are not sufficient to demonstrate that the petitioner has made original scientific contributions that have significantly influenced or impacted his field. [REDACTED] asserts that the petitioner's treatment devices "have brilliant prospects" rather than addressing how his inventions already qualify as original contributions of major significance in the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

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. While the petitioner has earned the admiration of his immediate colleagues, the record does not include evidence showing that his work constitutes original contributions of major significance in his field consistent with sustained national or international acclaim. For example, the record does not indicate the extent of the petitioner's influence on others in the medical field nationally or internationally, nor does it show that the field has significantly changed as a result of his work.

In this case, the letters of support limited to the petitioner's immediate colleagues are not sufficient to demonstrate that he meets this criterion. The opinions of one's professional contacts, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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 of support from the petitioner's professional contacts 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 writers' 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 medical practitioner or an inventor who has sustained national or international acclaim.

On appeal, the petitioner states that he included references from "[REDACTED] and [REDACTED]" but his initial submission included only their e-mail addresses and telephone numbers rather than letters of support from them discussing the medical effectiveness of his inventions. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without evidence showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of contributions of major significance, we cannot conclude that he meets this criterion.

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

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position is indicative of or consistent with national or international acclaim.

With regard to the petitioner's work at the Liaoning Institute of Stroke Rehabilitation and the No. 6 Hospital of Shenyang, there is no evidence showing that they have distinguished reputations. Further, there is no evidence showing that the petitioner's role was leading or critical for the Institute or the hospital. The petitioner's evidence does not demonstrate how his role differentiated him from the other doctors on staff, let alone the organizations' top management. For example, the petitioner has not submitted a personnel chart for the preceding institutions showing where his position fell within their organizational hierarchies. The documentation submitted by the petitioner does not establish that he was responsible for the success or standing of the Liaoning Institute of Stroke Rehabilitation or the No. 6 Hospital of Shenyang to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. Accordingly, the petitioner has not established that he meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

The director also found that the petitioner had not submitted clear evidence that he would continue to work in his area of expertise in the United States. The regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged

commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." In response to the director's request for evidence, the petitioner submitted his "Prospective Working Plan in the U.S." detailing future plans for his career. We find that the petitioner's Prospective Working Plan, along with the aforementioned October 13, 2007 letter from the President of Yankee Invention Exposition, Inc., are adequate to satisfy the regulation at 8 C.F.R. § 204.5(h)(5). Therefore, we withdraw the director's finding regarding this issue.

Nevertheless, review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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 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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.