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**U.S. Department of Justice**

Immigration and Naturalization Service

**PUBLIC COPY**

*OFFICE OF ADMINISTRATIVE APPEALS*
*425 Eye Street N.W.*
*ULLB, 3rd Floor*
*Washington, D.C. 20536*

[redacted]

18 DEC 2002

File: [redacted] Office: Nebraska Service Center Date:

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)

IN BEHALF OF PETITIONER:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Hayward

for Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 to the United States will substantially benefit prospectively the United States.

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 Service 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 August 29, 2001, seeks to classify the petitioner as an alien with extraordinary ability as a scientific researcher. At the time of filing, the petitioner was employed as an associate investigator at the Blood Research Institute in Milwaukee, Wisconsin. From February 1996 to September 2000, the petitioner was a postdoctoral research associate at the Burnham Institute in La Jolla, California.

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 sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, counsel claims, meets the following criteria.

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

In a statement accompanying the petition, counsel asserts that the petitioner has won the following awards:

1. 1999 American Association for Cancer Research/Bristol-Myers Squibb Young Investigator Award
2. 2000 American Association for Cancer Research/Intergen Company Young Investigator Scholar Award
3. Kato Memorial Award for Biological Research from the Kato Memorial Foundation (1992)
4. Investigator Award in Veterinary Medical Science from the Japanese Society of Veterinary Science (1994)
5. Postdoctoral fellowship grant from the Department of Defense's Breast Cancer Research Program (1998-1999)
6. Postdoctoral fellowship grant from the American Heart Association (1999-2001)

The petitioner provided a letter dated April 1, 2000 from Dr. Margaret Foti, Chief Executive Officer of the American Association for Cancer Research, Inc. ("AACR"). Dr. Foti states:

> Congratulations once again on your selection as the recipient of an AACR Young Investigator Scholar Award and welcome to the AACR Annual Meeting... You are expected to attend the reception for Young Investigator Awardees... This is an important opportunity to network with your peers and with senior scientists, and we encourage you to dress in business attire for this reception.
>
> When it is time to present your abstract, do not forget your Young Investigator Awardee ribbon. This should be placed prominently on your poster, or if you are presenting in a minisymposium, you should alert the chairperson of the session before the session begins, so that he or she can announce this honor when introducing you.
>
> * * *
>
> Lastly, do not miss the opportunity to attend the opening mixer and the Annual Reception; these are useful opportunities to interact informally with senior scientists as well as your peers...We look forward to hearing about your professional growth.

Dr. Foti's letter indicates that the petitioner was among several "Young Investigator Awardees" to be recognized at the AACR Annual Meeting. The overall tone of her letter demonstrates that the petitioner's AACR Young Investigator Awards do not reflect achievement at the very top of the cancer research field. Dr. Foti's statements support the conclusion that the petitioner is not yet recognized as a "senior scientist" in the cancer research field. Furthermore, we note that more experienced scientists who have completed their postdoctoral training are excluded from the "Young Investigator" award competition.

The record contains no first-hand documentation or verification letter from the awarding entity to confirm that the petitioner received the Kato Memorial Award (1992). The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

The postdoctoral fellowship grants limit comparison of the petitioner to other postdoctoral researchers applying for the same grants, thus excluding the most eminent, established and experienced researchers in the field from consideration. Research fellowship grants are not national awards for excellence in one's field, but, rather financial support for ongoing research. The fellowship funding was awarded not by outside nomination, demonstrating the field's regard for the petitioner's ability, but upon the petitioner's application to the organization providing the grant.

On appeal, the petitioner submits a translation of a 1994 article appearing in the Japanese *Journal of Veterinary Medicine* reflecting that the petitioner was one of four recipients of an Investigator Award in Veterinary Medical Science from the Japanese Veterinary Medical Science Conference. The national significance of this award is not self-evident and the petitioner has provided no information from the awarding entity showing the selection criteria for award recipients. It has not been shown that this award enjoys significant recognition beyond the context of the conference where it was presented.

In sum, the petitioner has failed to demonstrate that he earned national or international acclaim as a result of receiving the awards and postdoctoral fellowship grants listed above.

> *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.*

The petitioner submitted his AACR membership card reflecting his "Associate" status. In order to satisfy this criterion, however, the petitioner must submit evidence showing that the AACR requires outstanding achievements of its members as an essential condition for admission to "Associate" membership. Furthermore, it is clear from the regulatory language that the petitioner must show that he was selected by experts at the national or international level. Finally, the overall prestige of the AACR would not satisfy this criterion, because the key issue is membership requirements rather than the organization's overall reputation.

Information from the AACR's website at www.aacr.org reflects that the AACR is "a scientific

society of over 17,000 laboratory and clinical cancer researchers." The AACR has seven different types of memberships, including:

> **Active membership** is open to investigators worldwide. Individuals who have conducted two years of research resulting in peer-reviewed publications relevant to cancer or in an area of biomedical science related to cancer, or who have made substantial contributions to cancer research in an administrative or educational capacity, are eligible.
>
> **Associate membership** is open to graduate students, medical students and residents, and clinical postdoctoral fellows who are enrolled in educational or training programs that could lead to careers in cancer research. Scientists in training who already have a substantial record of publication may wish to apply for active or corresponding membership.
>
> **Honorary membership** is open to distinguished individuals who have made extraordinary contributions to the advancement of cancer research either through outstanding personal scientific activity or through exceptional leadership in cancer research.

Counsel states: "In order to become a member of this Association, an individual must have made a substantial contribution to cancer research. Because of his significant research and contributions to the Association, [the petitioner] got eligibility to become a member..." Counsel's assertion, while true for Honorary and Active members, would not apply to Associate members such as the petitioner.

The petitioner's Associate membership clearly carries less prestige than "Honorary" and "Active" membership. A simple comparison of the above membership requirements reflects that this organization regards the petitioner as being in "training" rather than having already made substantial contributions in cancer research. Thus, the petitioner's Associate membership status in the AACR fails to place him among the top scientists in the field of cancer research.

In sum, the petitioner has offered no evidence showing that his membership in the AACR required outstanding achievement in cancer research or that he was judged by national or international experts in consideration of his membership.

> *Published materials 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.*

On appeal, the petitioner submits two articles appearing in *Cell* and *Current Biology* in 1998 that mention the petitioner's work. The article in *Cell* profiles two papers that were published in *Molecular Cell* in 1998. The "Minireview" credits the petitioner and the authors of the other paper with "provid[ing] a novel entry to understanding how Bax and Bcl-2 might function to promote apoptosis." The article appearing in *Current Biology* devotes only a few brief sentences to the petitioner's article published in *Molecular Cell* in 1998. In addition to its brief analysis of the

petitioner's article, the *Current Biology* article similarly analyzes and references twenty-one other published articles written by various authors.

The petitioner also submits the translation of a 1994 article appearing in the Japanese *Journal of Veterinary Medicine* reflecting that the petitioner was one of four recipients of an Investigator Award in Veterinary Medical Science from the Japanese Veterinary Medical Science Conference. The article includes a picture of the petitioner among the other recipients and devotes less than two sentences to the petitioner. The article mentions the petitioner's name among thirteen other individuals that were honored at the conference and cites the title of the paper that the petitioner presented.

The plain wording of the regulation requires the petitioner to submit "published materials about the alien," and articles that only briefly mention the petitioner or his work would not satisfy this criterion. We further note that the above articles were published in 1994 and 1998. The petitioner has provided no further evidence showing that he or his published findings were the subject of journal articles or media coverage from 1998 to the petition's filing on August 29, 2001. Because the statute and regulations demand *sustained* national or international acclaim, the petitioner would not satisfy this criterion unless he were the subject of regular coverage in major national or international publications.

*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.*

On appeal, the petitioner submits evidence from the Head of the Division of Cellular Immunology at the La Jolla Institute for Allergy and Immunology, an editor of the *Journal of Biological Chemistry* and the Editor-in-Chief of *Mechanisms of Aging and Development* confirming that the petitioner reviewed scientific manuscripts to determine their suitability for publication. The evidence submitted on appeal is sufficient to minimally satisfy this criterion.

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

In his first letter, Dr. John Adamson, Director, Blood Research Institute, stated:

> In the past two years, we have embarked on an ambitious program for growth of the scientific programs here and, in that process, have recruited four outstanding new investigators to the BRI, including [the petitioner].
>
> [The petitioner] came to us after nearly five years in the laboratory of Dr. John Reed, Director of the Burnham Institute for Cancer Research in La Jolla, California. Dr. Reed's laboratory is one of the most productive and cutting-edge laboratories in the world working on the process of "programmed cell death," the mechanisms by which the body controls the size of various tissues. It is this process, if impaired, that can result in the overgrowth of tissues and contribute to their transformation into cancer. The Reed lab is an absolutely wonderful

environment for the development of young scientists and [the petitioner] was considered the brightest of the bright. We were very fortunate to recruit [the petitioner] to our institute... We feel that he will make outstanding contributions to the field of cancer research...

Reputation by association with Dr. Reed would not suffice to establish that the petitioner himself enjoys national or international acclaim. Furthermore, the assertion that the petitioner has a promising future does not establish eligibility, for the regulations clearly call for evidence that the petitioner already enjoys major success and acclaim.

Dr. John Reed, Scientific Director of the Burnham Institute, states:

[The petitioner] has worked as a post-doctoral research fellow in my laboratory for the past 4 years. His efforts have focused on mitochondna and their role in apoptosis. Upon joining our laboratory, [the petitioner] became interested in the idea of using yeast genetics approaches to study the mechanisms of Bax, a proapoptotic member of the Bcl-2 family. Though having no direct experience in this area, he very quickly introduced the necessary techniques into the lab and gathered or created the required reagents, which allowed him to create mutant strains of yeast that are resistant to Bax induced cell death. Using classical complementation cloning methods, and again entirely teaching himself, he then succeeded in identifying the mitochondrial FoF1-ATPase/proton pump as being necessary for Bax induced cell death in yeast. Shigemi then went on to show that the proton-pump also regulates the function of Bax in mammalian cells, resulting in a publication which appeared in *Molecular Cell* (the best journal in Molecular Biology), and which was the subject of a commentary/Minireview in *Cell* (the most prestigious journal in Biology). [The petitioner] also spearheaded our laboratory's participation in a collaborative effort with Guido Kroemer's group, which resulted in identification of the mitochondrial adenine nucleotide translocator (ANT) as a collaborator of Bax. This work, which was recently published in *Science* (one of the most prestigious journals in science), revealed both a functional and physical interaction between Bax and the ANT. Here again, [the petitioner] used yeast genetics to provide conclusive evidence that ablation of the ANT genes renders cells impervious to Bax. [The petitioner] also was lead-author on a project which used a combination of yeast and mammalian systems to explore structure-function relations in Bcl-2 family proteins, which was published in the journal *Biological Chemistry*.

Most recently, [the petitioner] has been exploiting Green Fluorescence Protein (GFP) technology for studying mitochondria regulation of apoptosis... These investigations have provided some exciting new insights into mechanisms of mitochodria-based apoptosis, which was published in *Nature Cell Biology*.

* * *

[The petitioner] has begun to gain the respect of apoptosis researchers worldwide and is developing a reputation for innovation and thoughtful research... Based on his prior

successes, I am confident that [the petitioner] is on track for an outstanding career as a scientist.

Dr. Minoru Fukuda, Director of the Glycobiology Program at the Burnham Institute, and Dr. Yu Yamaguchi, Associate Professor at the Burnham Institute, repeat the assertions of Dr. Reed and discuss the petitioner's publication record. Dr. Yamaguchi rates the petitioner within the "top ten percent of all young scientists in the [Burnham] Institute."

Dr. Hong-Gang Wang, Assistant Professor in the Department of Pharmacology and Therapeutics at the University of South Florida College of Medicine, collaborated on projects with the petitioner in Dr. Reed's laboratory at the Burnham Institute. Dr. Wang mentions the petitioner's publication record but offers no specific information about the petitioner's major contributions to cancer research. Dr. Juan Llopis, Professor of Physiology at the University of Castilla-La Mancha, Spain, also collaborated with petitioner in Dr. Reed's laboratory. Dr. Llopis states that the petitioner's findings showed how cancer cells survive from drug treatment, and that these findings contributed to the design of new drugs for cancer treatment. Dr. Ryosuke Takahashi, now a researcher at the Riken Brain Science Institute in Japan, was a research fellow in Dr. Reed's laboratory from 1995 to 1997. Dr. Takahashi also states that the petitioner's publications "contributed to laying the basis for the development of anti-cancer drugs." Dr. Mikihiko Naito, Associate Professor, Institute of Molecular and Cellular Biosciences, University of Tokyo, also met the petitioner while working in Dr. Reed's laboratory as a visiting researcher. Dr. Naito offers a letter of support similar to that of previous witnesses. The petitioner, however, has offered no independent evidence from any pharmaceutical companies or other disinterested parties to confirm that his findings actually resulted in a new cancer drug.

The majority of the individuals offering letters of support for the petitioner mention his authorship of articles published in scientific journals. The publication of one's findings, however, is an inherent duty of post-doctoral researchers. The petitioner's participation in the authorship of several published articles may demonstrate that his research efforts yielded some useful and valid results; however, the impact and implications of the petitioner's findings must be weighed. In this case, the record fails to demonstrate that any of the petitioner's published findings would constitute a contribution of major significance in the cancer research field. We will further address the petitioner's published works under a separate criterion.

On appeal, the petitioner provides a second letter from Dr. Adamson dated April 2, 2002. Dr. Adamson states that petitioner is "among the top two to three percent of young investigators" that Dr. Adamson has encountered. Dr. Adamson further states: "[The petitioner] applied and successfully competed for a Junior Faculty Scholar Award of the American Society of Hematology. The Society awards a handful of these scholarships each year..." This evidence came into existence subsequent to the petition's filing. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Even if we were to consider the "Junior Faculty Scholar Award" as evidence in this proceeding, we note that the name of the award does not suggest achievement at the very top of the research field.

Dr. Adamson notes that the petitioner's recent findings "have the potential to lead to cancer-fighting drugs" and resulted in the provisional application for three patents. The petitioner, however, has offered no evidence that these patents were actually granted by the U.S. Patent and Trademark Office. The granting of a U.S. patent documents that an innovation is original, but not every patented invention or innovation constitutes a contribution of major significance. Nothing has been submitted to demonstrate that the petitioner's patent applications are any more significant than the thousands of other patent applications annually submitted by various biomedical research institutions.

This criterion requires the petitioner to establish that he has attained national or international acclaim for his contributions of major significance in the field. All of the individuals offering letters of support for the petition have direct ties to the petitioner. These letters from his colleagues, collaborators, and research supervisors fail to establish the petitioner's national or international notoriety resulting from his contributions of major significance in cancer research. Letters from those close to the petitioner certainly have value, for it is those individuals who have the most direct knowledge of the petitioner's specific contributions to a given research project. It remains, however, that very often, the petitioner's projects are also the projects of the witnesses, and no researcher is likely to view his or her own work as unimportant. The observation that all of the witnesses have close ties to the petitioner is not intended to cast aspersions on the integrity of the witnesses; the director specifically indicated that the letters accompanying the petition were "credible." Still, these individuals became aware of the petitioner's research efforts because of their direct collaborations with the petitioner or their work for the same research institution; their statements do not show, first-hand, that the petitioner's work is attracting widespread attention on its own merits, as we might expect with findings that are a major contribution to cancer research. If the petitioner's work is not widely praised outside of his personal acquaintances and research institutions, then it cannot be concluded that he enjoys sustained national or international acclaim as one who has reached the very top of his field.

While the petitioner is credited with identifying the mitochondrial FoF1-ATPase/proton pump as being necessary for Bax induced cell death in yeast and showing that the proton pump also regulates the function of Bax in mammalian cells, the fact that the petitioner was among the first to make such a discovery carries little weight. Of far greater importance in this proceeding is the importance to the field of the petitioner's discovery. The petitioner has not provided sufficient evidence that his research, to date, has consistently attracted significant attention from independent biomedical researchers. The petitioner must show not only that his discoveries are important to his own research institutions, but throughout the cancer research field.

Several of the testimonial letters, such as the one from Dr. Kaz Imakawa, speculate on the future promise of petitioner's research. Dr. Imakawa states: "I can predict without hesitation that [the petitioner] will be successful in the field of apoptosis-cancer research." Dr. Adamson expresses his belief that the petitioner "will make outstanding contributions to the field of cancer research." In his second letter, Dr. Adamson states that the petitioner "is beginning to shape this field of research." Dr. Peter Newman of the Blood Research Institute describes the petitioner as being "among the top

young scientists" and expresses his confidence that the petitioner "will contribute in meaningful and significant ways" to medical research. Dr. Richard Aster of the Blood Research Institute also refers to the petitioner as among the top percentile of "young investigators," but acknowledges that the petitioner is "at a relatively early stage of his research career." The petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. We cannot ignore that many of the petitioner's witnesses, such as Drs. Reed, Newman, Aster, and Fukuda, appear to have earned considerably more prestige and authority in the scientific community.

While the record amply documents that the petitioner has been an active researcher in the U.S. and Japan, it does not establish that the petitioner's research findings have had a greater or more lasting impact than those of more experienced researchers in the field. Letters from the petitioner's colleagues are useful in detailing the petitioner's cancer research studies, but they offer insufficient evidence to demonstrate his lasting or wide-ranging impact as a biomedical researcher that is critical to a demonstration of sustained national or international acclaim. The overall tone of the witness letters suggests that the petitioner, while a competent young researcher with a notable publication record, is not yet widely recognized for major contributions in the cancer research field.

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

The petitioner submitted evidence that he has co-authored cancer research articles appearing in *Science*, *Biochemistry*, *Journal of Biological Chemistry*, *Proceedings of the National Academy of Sciences*, and *Molecular Cell*. Also submitted were copies of eleven selected articles written by other researchers citing the petitioner's collaborative findings. While the record would have been strengthened by evidence of a complete citation index showing the total amount of independent citations for the petitioner's published works, we concur with the director's finding that the petitioner has satisfied this criterion.

Throughout this proceeding, the petitioner's witnesses have emphasized his record of publication. The publication of scholarly articles alone, however, cannot demonstrate national or international acclaim. While the petitioner's cancer research clearly has practical applications, it can be argued that any article, in order to be accepted in a scientific journal for publication, must offer new and useful information to the pool of knowledge. It does not follow that every scientist whose scholarly research is accepted for publication has made a major contribution to his field.

In this case, the petitioner has provided several letters from impressive experts whose opinions are important in the field of cancer research. Although the petitioner has attracted the favorable attention of these prominent researchers, a simple comparison of their achievements with those of the petitioner shows that the petitioner has not yet amassed a record of accomplishment placing him at or near the top of his field. That these individuals have in some cases demonstrated achievements which far exceed those of the petitioner demonstrates that, however esteemed he may be and whatever future promise his career may hold, the petitioner has not yet reached the top of his field. Even if it were unanimously agreed that the petitioner would one day

reach such a level, this visa classification is reserved for those at the top of their field, not for those who are expected eventually to reach that level.

The fundamental nature of this highly restrictive visa classification demands comparison between the alien and others in the field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every researcher whose work has been published in a reputable scientific journal, or who has earned the respect of his immediate colleagues, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

As noted by the director, the petitioner has demonstrated that he is an accomplished researcher in an important field. Review of the record, however, does not establish that the petitioner has distinguished himself as a scientific researcher 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 the 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 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.