

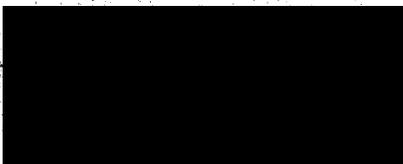


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U.S. Department of Justice
Immigration and Naturalization Service

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...clearly unwarranted
...of personal privacy

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



File: WAC-00-191-53803 Office: California Service Center Date: JUL 11 2002

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)

IN BEHALF OF PETITIONER:



Public Copy

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the Service regulations at 8 C.F.R. 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary 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 biomedical engineer, clinical software designer.

The regulation at 8 C.F.R. 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary criteria. Nevertheless, counsel's arguments regarding the remaining criteria warrant discussion and we will address those criteria first.

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

The petitioner submitted evidence of the following awards: the Silver Medal for excellent accomplishments in studies and for excellent citizenship upon graduation from secondary school in 1968; a certificate of congratulations from the V.V. Kuybishev Military - Engineering Academy upon the issuance of the petitioner's first patent; and lecture awards from the Rector of the Russian Medical Academy of Postgraduate Education (RMAPO). Counsel also notes that the petitioner has been awarded several research grants.

The petitioner also submitted copies of prizes awarded to [REDACTED] Ltd. while he was the General Director. Specifically, in 1996 the Siberian Fair awarded the Small Gold Medal to [REDACTED] and the interregional association Health of Siberia awarded a diploma to [REDACTED] for innovative software designs. The Committee on Health Administration of St. Petersburg Association of Medical Laboratory Diagnostics of the Northwest Region presented [REDACTED] with an "honored award" for a presentation at a 1997 conference.

In response to the director's request for additional documentation which asserted that academic awards are limited to students of one school, counsel noted that the Ukrainian Ministry of Education issued the petitioner's academic award. Counsel also addressed the grants awarded to the petitioner.

In 1977, 1979 and 1981, [the petitioner] was awarded the highly competitive government grants from "Astrophysics." The origination of these grants were the State owned company "Astrophysics" on behalf of the Russian Ministry of Defense Industry. Their purpose was the stimulation of research on the creation of a prototype of a field high power laser set on a motor vehicle. These grants were significant because they created a field of high power and high efficiency laser set on a motor vehicle. The scope of the award was approximately \$150,000 per year from 1973 to 1985. Previous research results and experience in this highly specialized area were the criteria used to nominate and judge the participants.

Finally, in response to the director's request for additional documentation, the petitioner submitted letters of gratitude and the Yuri Gagarin medal from the Federation of Cosmonautics. All of these

were issued to the petitioner after he filed the instant petition. As such, they are not evidence of his eligibility under this criterion at that time. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Nevertheless, the Yury Gagarin medal is in recognition of the petitioner's noninvasive diagnostic tests that are used on Russian cosmonauts. As the petitioner's work on these tests occurred prior to the date of filing, the medal will be considered below as evidence of the significance of the petitioner's contributions.

The director determined that the petitioner had not established that the awards issued to the petitioner had national or international recognition.

On appeal, counsel argues that the petitioner provided sufficient evidence of the significance of the awards and that the petitioner should be credited with the awards presented to Analytica, Inc. because he was single-handedly responsible for the developments and achievements for which the awards were issued. Counsel also criticizes the director for failing to consider the awards issued after the date of filing, which, as stated above, cannot demonstrate the petitioner's eligibility at the time of filing.

First, academic study is not a field of endeavor, but training for a future field of endeavor. As such, awards for academic work, scholarships and fellowships cannot be considered awards in a field of endeavor. Moreover, only students compete for such awards. Even if the students are from more than one school, it remains that the petitioner did not compete with national or international experienced experts in the field. As such, the awards cannot be considered evidence of the petitioner's national or international acclaim.

Further, research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement. Moreover, research grants which ended in 1985, fifteen years before the petitioner filed the instant petition, are not evidence of sustained acclaim. In addition, these grants were not in the petitioner's current area of expertise, biomedical diagnostic research and software design.

Finally, the awards presented to [REDACTED] appear to be regional, not national, awards. Moreover, awards issued to the petitioner's employer cannot meet the plain language of the regulatory criterion that requires evidence of "the *alien's* receipt" of awards and prizes. (Emphasis added.) Contrary to counsel's assertions, the petitioner does not appear to be solely responsible for the software for which the awards were issued or the presentation which was honored. The petitioner is not listed as the sole author on the certificates of software or on the presentation which received the honor. Nevertheless, as the Siberian awards were issued to the company in recognition of software developed by the petitioner with others, the awards will be considered below as evidence of the significance of the petitioner's contributions to his field.

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 evidence that Analytica, Ltd. is a group member of the Russian Association of Medical Laboratory Diagnostics (RAMLD) and the Association of Medical Laboratory Diagnostics. The petitioner further submitted evidence of his personal "honored" membership in the Udmurtia Regional Non-Profit Organization of the RAMLD and his membership in the American Association for Clinical Chemistry (AACC).

The regulation requires documentation of "the alien's" membership. As such, the petitioner cannot rely on the memberships of his employer. Moreover, we cannot consider the memberships of the petitioner's employer as comparable evidence under 8 C.F.R. 204.5(h)(4). That regulation only permits the use of comparable evidence when the criteria do not apply to the petitioner's field. As there are organizations in the field of science which require outstanding achievements of their members, such as the U.S. National Academy of Sciences, the petitioner cannot argue that this criterion does not apply to his field. Regardless, the evidence submitted in support of each criterion must be evaluated as to whether it demonstrates national or international acclaim. The memberships of one's employer is not evidence of an individual's personal acclaim. Prestigious memberships could be evidence of the distinguished reputation of one's employer, but that is a factor under a different criterion to be discussed below.

The certificate from the Udmurtia section of the RAMLD reflects that the Board of Directors of the Udmurtia section admitted the petitioner based on the petitioner's "extraordinary contribution to the development of the laboratory service of the Udmurtia Republic." As such, the petitioner has not established that "recognized national or international experts" evaluated his eligibility for membership as required by the regulation. Rather, his eligibility was determined by regional experts.

In response to the director's request for evidence regarding the membership requirements for the above organizations, counsel asserted that the Udmurtia section of the RAMLD requires at least five years of work in the field of clinical laboratory diagnosis. Counsel further asserts that the organization has approximately 300 members and that the petitioner ranks highest among all the members. Counsel continues that the AACC requires that a member work in the field and that it does not rank its approximately 100,000 members. Counsel notes that AACC is an international organization. Counsel asserts that the European Association for Clinical Chemistry (EACC) also only requires that a member work in the field and does not rank its approximately 30,000 members. Finally, counsel states that the RAMLD requires five years of work in the field and that this national association ranks the petitioner as highest among its approximately 15,000 members.

The director concluded that the petitioner had not established the membership requirements for the above organizations.

On appeal, counsel argues that the petitioner did provide the membership requirements and that the director ignored the petitioner's membership in the EACC and the Russian Association for Clinical Laboratory Diagnostics.

Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, the assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). As such, the director did not err in concluding that the petitioner had not established the membership criteria for the above organizations. Moreover, even if we accepted counsel's statements in response to the director's request for additional documentation, practicing in one's field, even for five years, is not an outstanding achievement. The regulations do not permit consideration of one's ranking within a general membership where outstanding achievements are not required.

Finally, the record contains no evidence of the petitioner's membership in the EACC or the Russian Association for Clinical Laboratory Diagnostics.

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.

The petitioner submitted several articles which purportedly cite his work. Not all of the articles include certified translations of the citation which allegedly cites the petitioner's work and not all of the highlighted citations appear to include the Russian letters for the petitioner's name.

The director noted that the articles cite the work of other scientists as well and concluded that they were not articles about the petitioner.

On appeal, counsel appears to concede that the articles which cite the petitioner's work do not meet this criterion, but asserts that the director erred in failing to consider them as evidence of the petitioner's influence.

Articles which cite the petitioner's work are primarily about the author's own work, not the petitioner's. As such, they cannot be considered published material about the petitioner. In response to the director's request for additional documentation, counsel summarized the articles, asserting that several of them not only cite the petitioner's work but discuss its importance. The record, however, does not contain complete certified translations of the articles as required by 8 C.F.R. 204.5(h)(3)(iii) and 8 C.F.R. 103.2(b)(3). As such, the petitioner has not established that these articles are primarily about him. We concur with counsel, however, that citations can be evidence of a researcher's influence, and we will consider the citations below.

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 director concluded that the petitioner had not established that he had contributed to the field to a significantly greater extent than other researchers. On appeal, counsel asserts that the petitioner has submitted evidence that he supervised students, reviewed articles for publication, edited textbooks, reviewed patent applications, and was frequently invited to speak at conferences. The record does not support all of these claims.

Dr. Boris Leonov, Director of the All-Russian Scientific Research and Testing Institute of Biomedicine of the Ministry of Health of Russia, asserts that the petitioner supervised undergraduate students at the Pirogov Medical Academy in Moscow and that he has reviewed scientific manuscripts for Russian journals, such as *Clinical Laboratory Diagnostics* and *Laboratory*. Dr. Vladimir Dolgov, Chief Editor of *Laboratory*, confirms that the petitioner is a "permanent manuscript reviewer and author" for that publication and asserts that the petitioner "supervises the preparation of professorial textbooks and manuals for postgraduate education. He is a co-author and editor of several textbooks and manuals for intra-laboratory quality control." The record does not contain the cover pages of any books identifying the petitioner as an editor. Moreover, Dr. Dolgov is one of the petitioner's co-authors and collaborators. Reviewing articles for a journal for which one's collaborator is the Chief Editor is not evidence of national acclaim.

In response to the director's request for additional documentation, counsel asserts that since 1996 the petitioner has held the "prestigious role of Expert" for the journal *Laboratory*, which counsel reiterates on appeal. Dr. Dolgov does not support this claim. The record also fails to establish that the petitioner worked evaluating patent applications. Regardless, if the Russian State Patent Institute employed the petitioner to examine patent applications, reviewing applications was inherent to his job. The record does not establish that his expertise was sought as an outside expert. Moreover, the petitioner claims to have done this work from 1985-1987, before the petitioner began working on biomedical engineering, the area of expertise in which he seeks employment in the United States. As such, it is not evidence of his sustained acclaim as a biomedical engineer.

Supervising one's students is inherent to the job of a professor. As such, it is evidence of work experience as a professor - not evidence of national acclaim.

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

Counsel has asserted throughout the proceedings that the petitioner's presentations at scientific conferences constitute evidence to meet this criterion. A scientific conference is not an artistic exhibition or showcase. Therefore, this evidence does not meet the plain language requirements of the regulation. As such, we concur with the director that the petitioner did not submit evidence which directly addresses this criterion.

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 submitted a letter from [REDACTED] Commercial Director of [REDACTED] who states:

[Software programs developed by the petitioner] are highly competitive in the market and were purchased by over 750 laboratories in Russia and abroad. The price of each program copy is about \$1,500.

[The petitioner] also developed the [REDACTED] a non-invasive bilirubin measuring device and methodology for the newborns. These patented inventions have benefitted [sic] our partner, [REDACTED] tremendously and have in turn provided monetary benefits to him personally as well. As far as I know, [REDACTED] were purchased by over 5,000 laboratories in CIS. The price of each [REDACTED] is \$500.

This information provides little insight into the petitioner's personal remuneration. In response to the director's request for additional documentation, counsel asserts:

During 2000, [the petitioner's] average monthly salary as the General Director of [a] research and manufacturing company was about \$5,500 US Dollars including royalties of about \$300-400 US Dollars monthly (so his yearly income was about \$66,000 US Dollars in 2000.)

This information is confirmed in a new letter from Mr. Vlasenko. Counsel continues that, in 2000, leading research scientists for the P.N. Lebedev Physical Institute of the Russian Academy of Sciences had an average monthly salary of between \$300 and \$500. Counsel further asserts that the head of a research department earned, on average, between \$2,000 and \$2,500. In addition, according to counsel, the director of a state research institute had an average monthly salary of \$2,000 and the research director of a private medical diagnostic center had an average salary of \$4,000. Finally, counsel asserts the average salary for Russian citizens in 2000 was \$85. Counsel asserts that all of this information is documented in Exhibit 22j. Exhibit 22j, however, includes an internet printout listing average monthly salaries by broad fields, such as "science and scientific service" and "public health, physical culture and social security" for 1998 and 1999. It remains, counsel's assertions are not supported by the record. Regardless, earning a high salary in comparison with all Russian citizens is insufficient. A petitioner must demonstrate that he earns a high salary in comparison with the top experts in his own field. Even the average salary for a director of a private medical diagnostic center is not adequate comparison. The petitioner must rank with the top salaries in the field, not simply earn more than average.

Despite our concurrence with the director on the above criteria, we conclude that the petitioner has established that he meets the three following criteria for the reasons discussed below.

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

The director concluded that the petitioner had not established that his contributions were more significant than those of others in the field. On appeal, counsel asserts that "the numerous patents . . . unequivocally verify that [the petitioner's] work has been significant." Counsel also notes that the petitioner submitted several letters of support which verify that his inventions are significant, in wide use by hospitals in Russia and gaining popularity in other countries.

The petitioner submitted a letter of support from Dr. George Bekov, President of Spectrum International, Inc., who collaborated with the petitioner when he was working in the field of high-power lasers. Dr. Bekov provides general praise of the petitioner's abilities in that area as well as the petitioner's subsequent accomplishments in the biomedical field.

Dr. Boris Leonov, Director of the All-Russian Scientific Research and Testing Institute of Biomedicine of the Ministry of Health of Russia, asserts that the petitioner "made significant contributions to the fields of creation of reference methods and the research of analytical specifications of clinical laboratory analyzers" while a senior scientist at the institute. Dr. Leonov continues:

One of [the petitioner's] most important scientific achievements is the invention of a method of assessment of total analytical error of clinical laboratory biochemistry analyzers. For his original work he was awarded a patent from the Russian Federation. He was the first scientist in Russia to develop the capability of checking analytical characteristics of practically an unlimited quantity of analyzers at different locations simultaneously aided only by control materials. Before him, nobody could solve this very important problem.

Also credited to [the petitioner] is the significant invention that allows for precise blood cell counting chambers as the principal part of the first (in Russia) red and white blood cell reference counting method for the evaluation of analytical characteristics of clinical laboratory hematology analyzers. Using his extensive research experience[, the petitioner] was able to achieve significant progress in addressing this problem and found simple and very in[n]ovative ways for its' [sic] solution. The biomedical solution to the blood cell counting chamber proposed by [the petitioner] is not only a candidate for a reference method [i]n Russia, but throughout the world. He was additionally awarded a patent for his invention as well.

In addition to the reference methods mentioned above, [the petitioner] furthermore made a valuable contribution to the development of the first (in Russia) precise reference methods and techniques for analyzing glucose, hematocrit, platelets and other parameters of human blood for the assessment of analytic characteristics of clinical laboratory analyzers and to provide accurate testing of samples emitted from the human body.

Dr. Vladimir Dolgov, Head of the Department of Clinical Laboratory Diagnostics, Chief Specialist of Laboratory Service at the Ministry of Health of Russia and the Chief Editor of *Journal*, collaborated with the petitioner at the Research and Testing Institute. Dr. Dolgov reiterates much of Dr. Leonov's information, adding:

During his work at the biomedical research and manufacturing company [REDACTED] [the petitioner] conducted important research on the interaction between light radiation and human tissue. He ingeniously developed a noninvasive (without sampling blood from the patient) method of measuring the bilirubin content in newborn blood, an invention which he termed the bilirubinmeter [REDACTED]. This invention revolutionized the standard biomedical instruments and devices, as it was the first of its kind safe for newborns that gave pediatricians the opportunity to control the level hyperbilirubinemia in newborns and prescribe necessary treatment. The importance of the [REDACTED] cannot be underestimated: it is currently in every maternity hospital throughout the Russian Federation and its use has spread to other countries. For example, Norway purchased a license for the manufacturing of the [REDACTED] analyzer and uses it in their maternity hospitals as well. Using the same [REDACTED] analyzer, [the petitioner] developed a special methodology to assess the efficiency of prescribed photo-therapeutic treatment in newborns with hyperbilirubinemia. [The petitioner's] patented technique permits the reduction of a newborn's exposure time to photo-therapeutic illumination that may turn harmful for him.

[The petitioner] has also focused his research on developing non-invasive transcutaneous measurements of glucose in diabetics. Such an analyzer would make home glucose testing without blood sampling possible.

During his research at the Biomedical research and manufacturing company, [REDACTED] [the petitioner] patented a safe, cyanide-free method of measuring the hemoglobin content in blood samples. He also developed theoretical models of measuring processes and special software for the automation of routine laboratory tests and data processing that facilitate and improve test performance, thus optimizing diagnostics and treatment processes. He is co-author of five pieces of such innovative software, including the "Quality Control" program which is used in more than three hundred clinical laboratories in Russia today. It is the unique combination of expertise in modern biomedical instruments and devices with extraordinary skill in applied physics and biophysics that makes [the petitioner] the only specialist in Russia who is able to develop the necessary reference methods and instrumentation to support and control routine laboratory analytical procedures.

Dr. Elena S. Keshishjan, Director of the Research Center of Neonatology at the Moscow Research Medical Institute of Pediatrics and Pediatric Surgery, former colleague of the petitioner's at Technomedica and first author on all of the petitioner's articles regarding the [REDACTED] reiterates much of the above information regarding the petitioner's work with [REDACTED] and the

mathematical model to determine the efficiency of photo-therapy for newborns with elevated bilirubin levels.

Dr. Igor Fomenkov, a senior scientist at [REDACTED], who worked with the petitioner in 1981, asserts that he is aware of the petitioner's subsequent accomplishments and provides general assertions of the petitioner's notoriety nationally and internationally.

Dr. Vladimir Emanuel, Head of the Department of Clinical Laboratory Diagnostics at Pavlov's State Medical University in St. Petersburg, Vice President of the Russian Association of Clinical Laboratory Diagnostics, and Chief Expert in Clinical Laboratory Diagnostics at Municipal Healthcare Committee in St. Petersburg, asserts that he has collaborated with the petitioner for the past five years. Dr. Emanuel continues:

The goal of these projects is to create new computerization in clinical laboratories and to develop principles of a software for intra-laboratory quality control systems. Our projects have greatly relied upon the works pioneered by the Russian research and manufacturing company [REDACTED] [The petitioner] has been an integral member at [REDACTED] as an R&D manager and is currently a General Manager. [The petitioner] has greatly contributed to the advances in investigating principles of measurement for all the Analytica software. These significant developments are seen in software [REDACTED] the brain of fluorescence measuring system for phenylalanin neonatal screening, and software IFAN, the mechanism for controlling ELISA reader and for processing and interpreting received results.

In addition to his significant work with [REDACTED] and [REDACTED] [the petitioner] is also a co-author of the innovative program BACT, a unique special software that automates routine measuring procedures in clinical microbiology on the basis of specially designed vertical photometer with thermostat. Furthermore, he is a co-author of the software BIAN, a laboratory statistic data processing system, and the software QC, a program for fully automated statistic treatment of intra-laboratory quality control data. [The petitioner's] innovative achievements in computer programs for automation of clinic laboratory routine measuring procedures have revolutionized this area.

Jay Singh, Chief Operating Officer of Biomerica, Inc., asserts that he has personally known the petitioner for the past three years and that the petitioner "has been instrumental in reformatting the quality control procedures for some of our products during the last three years." Mr. Singh further asserts:

I have known about [the petitioner] long before [meeting him] through his special work in the creation of special software (IFAN) designed to control and process raw data measured by Elisa analyzers. Until [the petitioner's] invention the industry has been dependent on individual manufacturers of Elisa instruments for processing this data. Each manufacturer uses their own unique system to arrive at the desired

results which some times [sic] lack specificity. With [the petitioner's] software the customer or laboratory can use any hardware made by any manufacturer world wide and still produce the data in a uniform way which would be understood by everybody without any explanation. . . . [The petitioner] has the rare advantage of having a significant background in biochemistry and physics and has substantial knowledge and experience with the modern methods of computer simulation. . . . I am looking forward to get [the petitioner] as a member of Biomerica's team of scientists permanently.

In a separate letter, Dr. Singh provides general praise of the petitioner's previous work in the field of optics.

The above letters are all from the petitioner's collaborators and immediate colleagues. While such letters can be important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's national or international acclaim. Even as evidence of the petitioner's role in his co-authored project, the letters submitted have somewhat limited value. For example, the petitioner failed to submit letters from his co-authors listed on the [redacted] patent verifying the significance of his role on that project. Moreover, the record does not include a letter from Technomedica, the company that owns the patent for the [redacted]. As such, Technomedica has not confirmed the significance of the petitioner's role on this project or Analytica's assertion that Technomedica has sold [redacted] to 5,000 hospitals in the Commonwealth of Independent States. Nevertheless, as stated above, the petitioner was subsequently issued the Yuri Gagarin medal based on his work on noninvasive diagnostic tests. As such, the record adequately establishes the significance of this contribution.

The petitioner also submitted two letters (dated 1997 and 1999) from two institutes expressing appreciation to the petitioner as General Director of [redacted] for supplying materials regarding [redacted] diagnostic tools. Dr. V.N. Protsenko of the Kharkov Institute of Continuing Medical Education indicates that the materials will be used in the classroom and A.I. Oshchepkov of the Russian Federation Academy of Medical-Engineering Sciences indicates that the materials will be used to train specialists at the Aerospace Department of Perm State Technical University. In response to the director's request for additional documentation, the petitioner submitted a similar letter from the Chief Medical Doctor at the Medical-Sanitary Hospital No. 3 in Ishevsk City dated after the date of filing. These letters have somewhat limited value as the record does not establish what materials were requested or sent.

The petitioner submitted several patents issued to him personally or listing him as a co-author. Several of the patents are for military devices. The petitioner has not established the relevance of these inventions to his current work in biomedical diagnostics and software design. The petitioner, however, has also been issued patents and is listed as a co-author on Technomedica's patents for biomedical inventions. The petitioner's contributions to medical laboratory software development are adequately documented as significant.

The petitioner is also listed as a co-author on several "certificates of software" issued to [REDACTED]. The commercial director of Analytica, Ltd., confirms that the software is in use in over 750 laboratories in Russia and that the petitioner contributed significantly to the development of this software. Analytica, Ltd. received two awards for the development of this software.

In view of the record as whole, the petitioner 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 director acknowledged that the petitioner had authored published articles, but concluded that the record did not establish that this accomplishment was anything more than routine. On appeal, counsel notes that in response to the director's request for additional documentation, counsel stated the circulation and significance of the journals which published the articles.

The petitioner submitted evidence that he has authored or co-authored nine published articles, one section of a handbook, one textbook, one methodological manual, and twelve abstracts. The petitioner submitted articles by independent experts who have allegedly cited the petitioner's work. As stated above, the record reflects that the petitioner's work which is chronicled in these articles constitutes a contribution of major significance to the field. Finally, after the date of filing, the petitioner received the Yury Gagarin medal from the Russian Federation of Cosmonauts based on his work on diagnostic tests. This medal reinforces our conclusion that the petitioner's articles on the development and use of these diagnostic tests, published prior to the date of filing, have been influential. As such, the petitioner meets this criterion.

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

In his initial brief, counsel refers only to the petitioner's position as a "senior research scientist" at the Laboratory of Biomedicine at the All-Russian Research Institute for Medical Engineering as evidence to meet this criterion. In response to the director's request for additional documentation, counsel refers to the petitioner's position as a "leading research scientist" for the V.V. Kuybishev Military-Engineering Academy in Moscow, the petitioner's position as a "scientific Head" at the All-Russian Research and Testing Institute for Medical Engineering, the petitioner's position as "Head of Research and Development Department" at [REDACTED] where he developed the [REDACTED] and finally, his current position as General Director fo [REDACTED]

The record reflects only that the petitioner was a research scientist for the V.V. Kuybishev Military-Engineering Academy. The petitioner has not established how, as one of presumably several such scientists, he played a critical or leading role for the academy as a whole. Dr. Leonov, the director of the All-Russian Research Institute for Medical Engineering, refers to the petitioner's position at that institute as a "senior research scientist." While Dr. Leonov refers to several contributions the petitioner made while working there, it is not clear that every senior research scientist who is

successful in the research endeavors for which he was hired serves a leading or critical role for the entire institute.

While Dr. Dolgov asserts that the petitioner was the Head of the Research and Development Department at Technomedica, the record contains no confirmation of this information from any high level official at Technomedica. The patent issued to Technomedica lists the petitioner only as the third of five co-authors.

Valentin Vlasenko, Commercial Director of [REDACTED] Ltd., asserts that the petitioner holds the positions of General Director and Research and Development Director at that company. Some of the award documents in the record list the petitioner as the General Director for [REDACTED]

In her discussion of this criterion, the director concluded that the record did not adequately establish that the [REDACTED] was widely used. The director did not specifically address the petitioner's role at any of the institutions where he worked.

On appeal, counsel reviews the petitioner's entire employment history. He asserts that [REDACTED] Ltd. is the leading medical laboratory software development company in Russia and that software developed by the petitioner at [REDACTED] is in use throughout Russia.

The only organization for which the petitioner has established that he played a leading or critical role is [REDACTED] for which he is the General Director. Mr. Vlasenko asserts that [REDACTED] Ltd. is "one of the biggest or most recognized biomedical research companies in Russia today."¹ In addition, as stated above, in 1996 [REDACTED] received a medal and a diploma and subsequently received a conference award. [REDACTED] is also a group member of two associations, although the record does not contain any information regarding the requirements for group membership for either association. Considering the record as a whole, the petitioner has established that he meets this criterion.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.

¹ WWW.bisnis.doc.gov/bisnis/country/001204ovmedeq.htm lists Analytica, Ltd. as one of the major distributors of medical equipment in Russia.