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U.S. Department of Justice
Immigration and Naturalization Service

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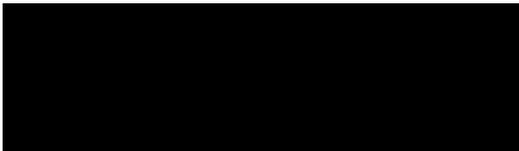


File: EAC 00 70 51155 Office: Vermont Service Center Date: JUN 18 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional 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:



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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, Vermont 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 the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on August 29, 2000, seeks to classify the petitioner as an alien with extraordinary ability as a medical researcher. The petitioner served as a research fellow under Professors John Povlishock and Anthony Marmarou at the Medical College of Virginia ("MCV"), Virginia Commonwealth University ("VCU"). The petitioner completed his Ph.D. training at MCV in 2000.

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 which, he 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 response to the director's request for evidence, counsel asserts that the petitioner has won a J. [REDACTED] (2000) and a National Neurotrauma Society Travel Award (1999). "The national significance of these awards is not self-evident. Counsel states: "...some of the most coveted prizes and awards are travel grants to attend important conferences that are held all over the world." 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).

[REDACTED] Principal Investigator, [REDACTED] Center, MCV, merely states that the petitioner "has won national and international prizes for his work, including the National Neurotrauma Society Travel Award [REDACTED] Traveling Scholarship." Bruce Lyeth, Associate Professor of Neurosurgery at the University of California at Davis refers to the National Neurotrauma Society award as "a competitive travel bursary." No additional information showing the national or international significance of these awards has been provided.

The record contains no first-hand documentation from the awarding entities confirming that the petitioner received these awards. Even if the petitioner were to provide first-hand evidence, the awards would still fail to satisfy this criterion. Travel reimbursements based on academic achievement do not constitute nationally recognized "awards for excellence in the field of endeavor." Scholarships limit comparison of the petitioner to other Ph.D. students applying for the travel funding, thus excluding the most eminent, established and experienced researchers and professors in the field from consideration. The petitioner has not shown that these travel reimbursements were awarded for excellent achievement in neurological research, rather than simply providing financial support for the petitioner to present his findings at a medical conference. Further, the reputations of the awarding bodies do not establish that travel grants from those institutions are a significant national honor. The petitioner submits no evidence from the awarding bodies indicating the selection criteria for scholarship recipients. Thus, the petitioner has failed to demonstrate that he earned national or international acclaim as a result of receiving the two travel scholarships listed above.

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.

In response to the director's request for evidence, counsel states: "The Wall Street Journal and Business Wire ran a story about a pharmaceutical company, Neurobiological Technologies, Inc., that was developing a drug, Xerecept, for the reduction of cerebral edema associated with brain cancer and traumatic brain injury." The petitioner submits an internet press release stating that on December 18, 2000 the *Wall Street Transcript* published an in-depth interview with [REDACTED] CEO of Neurological Technologies, in which he talks at length about the company's future. The press release does not mention the petitioner and indicates that the entire 3,700 word interview is available free online at the *Wall Street Transcript's* website. The petitioner offers no evidence of the actual published interview to demonstrate that he was mentioned in the article.

On appeal and throughout this proceeding, counsel mistakenly refers to the *Wall Street Transcript* as the *Wall Street Journal*. The *Wall Street Journal* is published by [REDACTED] and is a leading global newspaper of business. The *Wall Street Transcript*, on the other hand, is published by Andrew Pickup and no evidence has been submitted to demonstrate that it qualifies as "major media." For example, counsel offers no information regarding the extent of the *Wall Street Transcript's* circulation.

Counsel for the petitioner also refers to a story ran by the BBC News about physiological injury from bypass surgery and its evaluation. The information provided from BBC News does not reflect that the petitioner was even mentioned in their story. The plain wording of the regulation requires the petitioner to submit "published materials about the alien," and articles or news stories that never even mention the alien cannot satisfy the criterion.

Counsel states that on February 14, 2001, Voice of America Radio broadcast an interview with the petitioner regarding brain injuries. The *Wall Street Transcript* interview and Voice of America Broadcast 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 beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Because the statute demands national or international acclaim, the petitioner cannot satisfy this criterion unless he has been the subject of coverage in major national or international publications. The evidence submitted fails to satisfy this criterion.

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

To demonstrate eligibility under this criterion, the judging must be on a national or international level and involve other accomplished professionals in the research field. For example, judging tenured research professors carries greater weight than judging doctoral candidates.

The petitioner submits a letter from the Medical Textbook Publisher at Blackwell Science Limited stating: “[The petitioner] acted as a reviewer on more than fifteen different projects and he continues to participate in this capacity.” The petitioner also submits a letter from PasTest Medical Publishing Company confirming that the petitioner “acted as an external reviewer” of books written by other doctors. Professor John Povlishock, Editor-in-Chief for the Journal of Neurotrauma, states that the petitioner “has participated as reviewer and referee” for the journal. Statements from additional witnesses offer further evidence of the petitioner’s participation as a judge of the work others. The evidence submitted 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.

On appeal, the petitioner provides a second letter from [REDACTED] Professor and Vice-Chairman, MCV Neurosciences Center. [REDACTED] indicates that the petitioner is seeking employment as a resident Neurosurgeon in order to fulfill the requirements for certification by the American Board of Neurological Surgeons. [REDACTED] notes that this certification is necessary for the petitioner to be able to continue his research related to the treatment of brain injury. [REDACTED] describes four areas of research where the petitioner has applied his expertise:

(i) Treatment of Brain Injury:

[The petitioner] has worked on several new and exciting treatments for brain injury. The treatments have included a hormone (hCRF), several new drugs and body cooling (hypothermia). [The petitioner] has been the lead author on several papers showing successful treatment of experimental injuries and improvement in functioning of the nervous system using these treatments. He was recently interviewed for a radio show because of the significance of this work. This research is groundbreaking because there is no effective treatment for brain injury available at the present time and [the petitioner] has discovered that these treatments work experimentally. It is now absolutely critical that these treatments can be tested on patients.

(ii) Causes of Brain Swelling:

After brain injury the brain can swell. The brain is enclosed in the skull, and when it swells pressure in the head can increase — this is often fatal. The reasons why the brain swells are not known despite over 200 years of research. [The petitioner] has made an enormous contribution to the understanding of this problem. He has published numerous papers that have shown the very early events in the brain that occur immediately before brain swelling. These findings are novel because they have ruled out one of two possible causes that had previously been indistinguishable. As a result of these findings, he has also demonstrated that a commonly used treatment for brain swelling may not be safe in all patients. This is clearly a critically important finding for improving survival after severe brain injury.

(iii) MRI of Brain Injury:

Magnetic resonance imaging is a highly technologically advanced method of looking at the living brain. It can also be used to look at the injured brain. [The petitioner] has become recognized for his work in the application of MRJ technology to the study of brain injury. He has developed new and innovative methods for obtaining data with MRI, and as a direct result of these findings he has been able to fundamentally change our concept of what happens to the brain after injury. There are very few academic centers in the world where MRI is applied to the study of brain injury and [the petitioner] distinguishes himself as having extraordinary ability with his knowledge and technical skill in this field. His skills have played a key role in the progress of several NIH funded research projects in brain injury.

(iv) Injury to the Brain Caused by Brain Tumor:

Brain tumors injure the brain in a unique way. One of the problems caused by the growth of a brain tumor is brain swelling and seizures. [The petitioner] has published extensively on this topic providing new and important information about the possible mechanisms of how these problems arise. There are no specific treatments for this problem and [the petitioner's] research has opened several new and vitally important avenues by which it may become possible to develop specific treatments for brain swelling and seizures with brain tumors.

[REDACTED] neurosciences Center, states:

[The petitioner] joined our program in 1998 with impeccable academic credentials, and his progress, to date, has more than justified the high enthusiasm that we had at the time of his admission. [The petitioner], during the course of his Ph.D. training, has pursued innovative and state-of-the-art work, focusing on issues of direct clinical and basic science relevance to our understanding of the pathobiology and treatment of traumatic brain injury, which is a significant health care problem with staggering societal costs of \$38 billion per annum.

In his studies of traumatic brain injury and its associated treatment, I believe that [the petitioner] has made significant contributions that are even more impressive given the fact that he is a relatively young investigator. Specifically, he has worked on identifying some of the factors involved in the reduction of traumatic brain edema, which has long been linked to an attendant rise of intracranial pressure which is a major contributor to morbidity in traumatic brain injury. In his work, he has examined in animal models the pathobiology and modulation of edema formation, while also considering some of its damaging consequences related to the brain parenchyma. In addition to these important and innovative studies, [the petitioner] has also participated in exceptionally important studies using MR-based spectroscopy to examine markers for mitochondrial and neuronal injury following traumatic brain injury. These *in vivo* MR-based quantitative studies are

important in that they provide an *in vivo* window to the brain that allows us to assess damage in the brain and the potential efficacy of various clinical therapeutic interventions. This is important in that such an approach will provide us with powerful surrogate endpoints which will allow the conduct of expedited state-of-the-art clinical trials not compromised by the need to examine long-term patient morbidity and outcome.

In my estimation, [the petitioner's] work is already having significant impact on the field. Based upon his laboratory studies, we have to rethink some of our concepts regarding brain edema and its potential therapeutic modulation. Additionally, his work, in concert with [redacted] and [redacted] further shows us the strength and utility of magnetic resonance spectroscopy, focusing on specific cellular markers of injury. Importantly, [the petitioner] has published his work in high-quality peer reviewed journals and, also, he has participated as a reviewer and referee for the *Journal of Neurotrauma*. What is particularly noteworthy in the case of [the petitioner] is that at a time when most young investigators are merely starting their academic careers, he is participating in the generation of groundbreaking discoveries.

In sum, you can trust that I am quite enthusiastic about [the petitioner] and his work and its potential for improving our understanding of the pathobiology of traumatic brain injury and its rational treatment. In my opinion, the citizens of the United States would clearly benefit from [the petitioner's] work and expertise. Based upon my more than twenty-eight years of experience in academic medicine, I believe that [the petitioner] is one of the most promising and competent individuals with whom I have interacted. I am confident that his research will lead to significant advances in the care and management of traumatically brain injured patients and, accordingly, I respectfully request that he be given the opportunity to continue in his efforts on behalf of our citizens and be granted permanent residency in the United States.

[redacted] Department of Radiology, VCU, and a named Principal Investigator in the MCV Head Injury research program, states: "In the laboratory [the petitioner] has engaged in a series of experiments designed to understand the pathophysiology of brain injury... This work is critically important to furthering a clear understanding of the role that the blood-brain barrier plays in post-traumatic cerebral pathophysiology." Professor Fatouros repeats information provided by the previous witnesses and describes the petitioner's specialized skills and unique knowledge.

[redacted] University of California at [redacted] states that the petitioner's research studies "may ultimately lead to new management strategies." He discusses the overall importance of brain injury research and credits the petitioner with making "contributions to the understanding of the pathology of brain injury." [redacted] further states that the petitioner "...has a unique, specialized body of knowledge, which is of critical importance for the advancement of knowledge in brain injury." [redacted] and [redacted] Tenedieva of the Burdenko Neurosurgical Institute in Moscow, offer similar letters of support. [redacted] states: "I have known the petitioner for several years." She indicates that the

petitioner “has played an important role in the development, trial and evaluation of several new therapies in brain injury.” [REDACTED] discusses the overall importance of brain injury research and credits the petitioner with “advancing knowledge” and “contributing significantly to the understanding of brain injury.”

[REDACTED] Associate Professor at [REDACTED] states: “I have known the petitioner since 1995 when he joined our department during his research at the Division of Neurosurgery at MCV.” Like many of above witnesses, he credits the petitioner with “contributing significantly to the understanding of ways in which the brain can be injured.”

The majority of the individuals offering letters of support mention the petitioner’s authorship of articles published in scientific journals. However, publication of one’s findings is an inherent duty of doctoral candidates and post-doctoral researchers. Thus, the mere publication of scholarly articles cannot demonstrate national or international acclaim. While the petitioner’s neurological 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. The petitioner must demonstrate that the articles have garnered national or international attention from throughout the scientific research community. We will further address the petitioner’s published works under a separate criterion.

The classification sought by the petitioner requires him to establish that he has attained national or international acclaim for his contributions of major significance to the field. The majority of the petitioner’s witnesses consist of his supervisors at MCV, individuals he met at professional conferences, publishers to whom he submitted articles or provided peer reviews, and his former research collaborators. If the petitioner’s work is not widely praised outside of his professional 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.

Section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. General statements from witnesses crediting the petitioner with “advancing knowledge” in a given area are insufficient to demonstrate a contribution of major significance. Furthermore, the construction of the regulations demonstrates the Service’s preference for verifiable documentary evidence, rather than subjective opinions of witnesses selected by the petitioner. It should be noted that the Service is not questioning the credibility of the petitioner’s witnesses, but looking for evidence that the petitioner’s research has impacted the scientific community beyond his immediate acquaintances. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

While the petitioner is credited with “working on new and exciting treatments” and “contributing to the understanding” of brain injury, the mere fact that the petitioner conducted novel studies carries little weight. Of far greater importance in this proceeding is the importance to the field of the petitioner’s discoveries. The petitioner has not provided sufficient evidence that his research, to date, has consistently attracted significant attention from prominent medical researchers. The petitioner must show not only that his discoveries are important to his own research institutions, but throughout the neurological research field.

While the petitioner has clearly contributed to the pool of knowledge in the neurology field, his witnesses offer minimal information regarding his specific contributions of major significance to the field. For a comparative example, we note that a researcher at [REDACTED] recently developed an entirely new system of implantable brain tumor treatments using radiation therapy. This FDA-approved system of treatments is being utilized nationally. The specific technique, Gliasite Catheter Radiation Therapy, is an alternative to more invasive methods of treating brain tumors. The technique uses biodegradable polymers, or plastic balloons, to deliver radiosensitizing agents directly to the brain tumor. The development of such a technique, which delivers radiation directly into a brain tumor while protecting the surrounding area, is demonstrative of national acclaim in the neurology field. The petitioner’s witnesses, however, offer no comparable evidence of a specific contribution of major significance made by the petitioner in the neurology field. The petitioner’s contributions to neurology research appear to be incremental rather than fundamental.

Several of the testimonial letters, such as the letter from [REDACTED] speculate on the future promise of petitioner’s research. [REDACTED] discusses the petitioner’s work and its “potential for improving the understanding of the pathobiology of traumatic brain injury.” In closing his letter, Professor Povlishock describes the petitioner as “promising and competent” and expresses confidence that the petitioner’s research “will lead to significant advances in the care and management of traumatically injured brain patients.” Rather than focusing on the petitioner’s specific past accomplishments of major significance to the neurology field, the petitioner’s witnesses describe how his research has advanced general knowledge and “will improve the treatment of [brain] injury.” Furthermore, the petitioner’s research supervisors at [REDACTED] refer to the petitioner’s “Ph.D. training” and pursuit of a neurosurgeon residency at the Medical College of Wisconsin. These descriptions regarding the petitioner support the director’s conclusion that the petitioner has not yet risen to the top of the neurological research field. The overall tone of the witness letters suggest that the petitioner, while a highly competent and promising researcher, has not yet significantly impacted the neurological research field.

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 [REDACTED] and the petitioner’s research supervisors at VCU, appear to have earned considerably more prestige and authority than the petitioner in the scientific community; they hold tenured positions and have published more articles. While the witness letters from the petitioner’s supervisors and acquaintances are useful in describing his neurological studies, they

offer insufficient evidence to demonstrate his lasting or wide-ranging impact as a neurological researcher which is critical to a demonstration of sustained national or international acclaim. In sum, the record does not show that the petitioner's research findings are widely recognized as being a significant contribution to his 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 authored or co-authored several neurological research articles and three medical textbook chapters. The publisher of two of the medical textbook chapters [REDACTED] states that the editions containing the petitioner's chapters are "due for release" and "promise to be well received." Furthermore, according to the petitioner's C.V. submitted on appeal, the textbook chapters remain "in press" and the petitioner has offered no evidence of their publication prior to the petition's filing. See Matter of Katigbak, supra.

The Association of [REDACTED] Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment."

Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's conclusions. Frequent citation by independent researchers, on the other hand, demonstrates more widespread interest in, and reliance on, the petitioner's work.

On appeal, counsel states: "Both the C.V. and the publications themselves detail that the petitioner has published thirty-five articles, seventeen of which he was the lead author." Counsel indicates that the petitioner "originally submitted evidence that his papers have been cited fifteen times by world renowned-scientists." However, a review of the citations provided by the petitioner reflect that some of these were self-citations by the petitioner's research collaborators. For example, one citation appears in a letter to the editor published in the *British Journal of Neurosurgery*. In the letter, I.R. Whittle of the University of Edinburgh (where the petitioner received his M.D.) cites an article written by himself and the petitioner. As a second example, [REDACTED] co-authors an article that cites the work of the petitioner and [REDACTED]. While self-citation and citation by one's fellow collaborators is a normal, expected practice, it fails to distinguish the petitioner from other competent researchers and cannot demonstrate the response of independent researchers.

The record contains evidence of less than thirteen independent citations of petitioner's thirty-five published articles. Counsel notes that since the initial filing, the petitioner's research has been cited three additional times. See Matter of Katigbak, supra. Thirteen citations are an extremely small number of citations when considering the number of articles the petitioner is alleged to have published. The number of independent citations, even if they were all for the same article, simply does not rise to a level that would demonstrate sustained national or international recognition in the scientific community. In sum, the petitioner has failed to demonstrate that his published works have earned him, individually, national or international acclaim.

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

In order to establish that the alien performed a leading or critical role for an organization or establishment with a distinguished reputation, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization as a whole.

Counsel states: "The petitioner has only worked at premier facilities in the field and has presented undisputed evidence that his research played a critical role in enhancing and maintaining the reputation of these institutions as distinguished in the field of traumatic brain injury." We cannot ignore that the petitioner's role at his educational institutions was that of a "student." University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor.

Counsel specifically mentions only the petitioner's work at MCV. The only evidence cited by counsel is a testimonial letter from [REDACTED] which briefly mentions the petitioner's participation in NIH funded programs that evaluate severe head injuries. This single witness letter fails to offer sufficient detail regarding the petitioner's role in relation to others involved in the project. According to the petitioner's C.V., the petitioner received his Ph.D. from MCV in 2000 and is not a member of its faculty. It has not been shown that the petitioner's Ph.D. studies and training reflect "a leading or critical role" at MCV. A review of the documentation provided reveals no evidence to establish that the petitioner has ever supervised or overseen other researchers at MCV. The record does not indicate the extent to which the petitioner has exercised substantial control over research units or organizational decisions at MCV. We note that all three of the petitioner's witnesses from MCV hold higher positions as research directors and chairmen in their respective divisions or departments. For example, [REDACTED] chairs a division and describes himself a "named Principal Investigator in the MCV Head Injury research program." The petitioner, a doctoral trainee during his time at MCV, offers no evidence that he ever served as a "named Principal Investigator" or initiated government funded research projects. This criterion, like all of the criteria, is intended to separate the petitioner from the majority of his colleagues in the neurological research field. Therefore, when determining the petitioner's

eligibility, it is entirely appropriate to compare the petitioner to his three colleagues from MCV. The importance of their roles and responsibilities at MCV dwarf those of the petitioner. The petitioner thus fails to satisfy this criterion.

Comparable Evidence under 8 C.F.R. 204.5(h)(4).

The regulation at 8 C.F.R. 204.5(h)(4) allows for the submission of comparable evidence, but only if the ten criteria “do not readily apply to the beneficiary’s occupation.” Therefore, the petitioner must demonstrate that the regulatory criteria are not applicable to the alien’s field. Of the ten criteria, at least eight readily apply to the petitioner’s occupation. Where an alien is simply unable to meet three of the regulatory criteria, the wording of the regulation does not allow for the submission of comparable evidence.

Counsel argues that a letter from [REDACTED] a medical device manufacturer, confirming that the petitioner evaluated a device for measuring pupil reactivity following head trauma is further evidence of the petitioner’s extraordinary ability. Even if were to accept this as comparable evidence under 8 C.F.R. 204.5(h)(4), the petitioner has not established that Neuroptics specifically sought out his services as opposed to MCV’s research group. Additionally, the petitioner’s mere participation in the evaluation of a medical device is hardly sufficient to demonstrate achievement at the very top of the neurological research field.

We agree with counsel’s assertion that a petitioner can establish eligibility under this classification without submitting “evidence of a major award or significant remuneration.” The director cannot impose a more stringent standard by requiring the petitioner to present evidence addressing specific criteria; the petitioner may submit evidence related to at least three of the ten criteria of his choosing. However, we find that the director’s mere mention of a lack of such evidence did not “impose an incorrect standard” as counsel claims. The director was simply offering a thorough discussion of the regulatory criteria. We note that while the director focused some attention on the petitioner’s lack of awards and significant remuneration, the wording of the decision was not limited solely to those two regulatory criteria. Therefore, while the wording of director’s decision could be slightly improved, it is by no means so flawed as to undermine the grounds for denial.

Clearly, the petitioner’s collaborators have a high opinion of the petitioner and his work, as do other researchers who know the petitioner from encounters at professional conferences. The petitioner’s findings, however, do not appear to have yet had a measurable influence in the larger field. While numerous witnesses discuss the potential applications of his findings, there is no indication that these applications have yet been realized. The petitioner’s work has added to the overall body of knowledge in his field, but this is the goal of all such research; the assertion that the petitioner’s findings may eventually have practical applications does not persuasively distinguish the petitioner from other competent researchers.

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 demonstrated an impressive career as a neurological researcher. Review of the record, however, does not establish that the petitioner has distinguished himself as a medical 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 indicates that the petitioner shows talent as neurological researcher, but the petitioner has not shown that his achievements set him significantly above others in his field. 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.