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U.S. Citizenship and Immigration Services

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[redacted]

FEB 10 2004

FILE: LIN 02 271 50744 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

Mari Johnson

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 Administrative Appeals Office 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 field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on August 26, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a scientific researcher in the field of protein chemistry. At the time of filing, the petitioner was working as a postdoctoral research associate in the Chemistry Department at Purdue University.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, counsel claims, meets the following criteria.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. In addition, it is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Therefore, membership in an association that evaluates its membership applications at the local chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of his membership in the American Chemical Society (ACS) and the Federation of American Societies for Experimental Biology (FASEB).

The petitioner holds regular or "full" membership in the ACS. Information provided by the petitioner describes full membership as follows:

> [I]ndividuals must have a bachelor's degree in a chemical science from an ACS approved program, a bachelor's degree in a chemical science from a non-approved ACS program and three years work experience, an earned doctor's or master's degree in chemical science, or less formal training than indicated above but having significant achievement in a chemical science.

Information submitted from FASEB's website indicates that "[f]ull membership applicants should have an academic degree."

Simply possessing the requisite educational degree and paying a nominal fee is all that is required for admission into the above societies. Based on the evidence presented, the petitioner has not shown that his membership in either association required outstanding scientific achievement or that he was evaluated by national or international experts in consideration of his membership.

> *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 petitioner submitted evidence showing that he completed a total of two peer manuscript reviews for *Analytical Biochemistry* (manuscript ABIO2002-038) and *Biochimica et Biophysica Acta* (article reference number BBA RPP 507598) in June and July of 2002. Also provided were two e-mails, dated May 2002, from Spencer Anthony-Cahill requesting that the petitioner select abstracts for oral presentation at an upcoming "YPS session." No further details about this event were provided. We note here that peer review of manuscripts is a routine element of the process by which articles are selected for scientific conferences and publication in scholarly journals. Occasional participation in peer review of this kind does not automatically demonstrate that the petitioner has earned sustained national or international acclaim at the very top of his field.

Also submitted was an e-mail, dated January 2002, from an [redacted] of Nanjing University (where the petitioner received his Ph.D. in 2000) requesting that the petitioner "please modify" a draft of a research paper. Modifying a paper at the request of a former colleague does not constitute qualifying evidence under this criterion.

On appeal, counsel protests the director's observation that "[m]any journals struggle to find knowledgeable people willing to review." We agree with counsel that the director has offered no source for this comment and it is hereby withdrawn. Nevertheless, we agree with the director's observation that the petitioner's two manuscript reviews for *Analytical Biochemistry* and *Biochimica et Biophysica Acta* fall short of fulfilling this criterion. The director observed that, rather than providing the objective criteria used by these journals to select reviewers, the petitioner instead submitted evidence pertaining to *Biochemistry*, a journal for which he has not performed peer reviews. The director further stated: "The evidence from *Biochemistry* which the petitioner submitted reports that its 'reviewers are selected for competence in specialized areas of biochemistry from a computer file of qualified specialists.'" On appeal, no explanation was offered by counsel as to how being "selected for competence" or being considered "a qualified specialist" equates to "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."

The petitioner's two manuscript reviews for *Analytical Biochemistry* and *Biochimica et Biophysica Acta* and the YPS session abstract review all occurred less than four months prior to the petition's filing date. The statute and regulations, however, require the petitioner's acclaim to be *sustained*. We note here that the petitioner has been working in the biochemistry field since the mid-1990's. It is not apparent how documentation limited to May, June, and July of 2002 demonstrates that the petitioner has earned *sustained* national or international acclaim in his field. Moreover, without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for distinguished journals, we cannot conclude that he meets this criterion.

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

The petitioner provided evidence demonstrating his acquisition of a single Chinese patent. Counsel contends that the approved patent represents a major contribution, but he offers no documentary evidence to support that claim. The granting of a patent documents only that an innovation is original. It does not necessarily follow that an approved patent represents a contribution of major significance in the petitioner's field. The director's decision indicated that "there is no documentation available that identifies [the patent's] production and implementation." We concur with the director's observation. Far more important than the existence of an approved patent is the significance to the greater scientific community of the petitioner's patented invention. Here, there is no evidence to support the conclusion that the petitioner's patent for a "water-proof ventile bandage" is nationally or internationally recognized as a major contribution. A few of the petitioner's witnesses briefly mention the patent, but none of them elaborate on its significance to the greater field. The petitioner has provided no evidence showing that, for example, his patented invention has been successfully marketed on a national or international scale or that it has attracted widespread interest from medical manufacturers in China, the U.S., or any other country.

The petitioner also provided several witness letters in support of the petition.

Dr[redacted] Professor of Chemistry, Purdue University, is the petitioner's research supervisor. Dr.[redacted]tates: "In 1999, I recruited [the petitioner] from the Department of Chemistry of Nanjing University. At that time, he was one of the top students from what I consider to be one of the top two universities in China." University study, however, is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The petitioner's scholastic achievement may place him among the top

students at a particular educational institution, but it offers no meaningful comparison between the petitioner and experienced professionals in the research field who have long since completed their educational training.

Dr. [redacted] further states:

> [The petitioner] had a strong publication record, as he was an expert in quantitative measurement of reactivity. He came to my laboratory in July 2000, and has already made important contributions to our group. He was the first author of two important posters at Protein Society: one in Philadelphia and an upcoming one in San Diego in 2002. He is a co-author of two manuscripts of papers, which are not as yet submitted...but will be submitted soon.

A significant portion of Dr. [redacted] letter is devoted to events that have yet to occur. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the in which the Immigration and Naturalization Service (legacy INS) held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

M. [redacted] Associate Research Scientist, Department of Chemistry Purdue University, states: "[The petitioner] is working with a top-notch team of dedicated scientists at Purdue and it is certain that there will be important results forthcoming."

Dr. [redacted] Staff Scientist of the Molecular Interactions Resource, and graduate of Purdue University, states:

> I met [the petitioner] in the 15th Symposia of the Protein Society last year. I was introduced to Dr. [redacted] by my former Ph.D. mentor, Professor [redacted]
>
> * * *
>
> [The petitioner] is a key member of his research group in the Department of Chemistry of Purdue University, which has an excellent reputation in chemistry research. The group leader, Professor [redacted] is a distinguished world authority on enzyme inhibitors.
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> * * *
>
> [The petitioner] and his group are doing research to develop the sequence to reactivity algorithms, SRA, which quantitatively predict the reactivity of members of the protein family from their sequence alone.
>
> * * *
>
> The finalization of this algorithm will be a monumental event in the history of pharmaceutical medicine. This algorithm will enable a pharmaceutical company to know that they have the best of all possible drugs for a specific reactivity before putting a drug on the market.

Dr. [redacted] now a Professor of Biochemistry at the University of Wisconsin-Madison, served as a professor in the Department of Chemistry at Purdue University along with Dr [redacted] during the 1970's and 1980's. Dr [redacted] tates:

> Since July 2000, [the petitioner] has been working in one of the top chemistry laboratories in the world under the guidance of Professor [redacted] In that group, he has made important discoveries, which he has reported at major scientific meetings in the USA. His work on projects funded by the U.S. National Institutes of Health is being readied for publication in first-rate journals.

Dr [redacted] letter does not specifically identify any "important discoveries" attributable to the petitioner as of the filing date of the petition. Moreover, the record contains no evidence that the presentation or publication of one's work is a rarity in petitioner's field, nor does the record demonstrate that independent researchers have heavily cited or relied upon the petitioner's work in their research. Several witnesses claim that the petitioner's work has often been cited, but the petitioner's own evidence from citation indices fails to support these claims. For example, according to the citation indices presented by the petitioner, the maximum number of times one of his published articles was cited has been eight times. Such a limited number of citations falls short in demonstrating that the petitioner's work is widely acclaimed by the larger research community as a major contribution.

Dr. [redacted] Director of Biochemistry for Alfacell Corporation, met the petitioner at scientific conference. He states that the petitioner's current work "may be of substantial clinical importance. The algorithm may be extremely useful for the design of protein as drugs, especially those inhibiting certain clinically important enzymes."

Dr [redacted] Professor of Biochemistry, University of Wroclaw, Poland, states:

> [The petitioner] is doing research to develop a method of prediction that allows one to predict the relativity of all possible inhibitors of a given type so that the strongest possible, most specific possible, and least specific possible sequences for the selected enzymes can be obtained. This will allow pharmaceutical companies to produce a drug knowing that they have the strongest possible drug and not merely a good candidate for a specific market.

With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the petitioner's ongoing work, rather than how the petitioner's past efforts have already had a major impact beyond the original contributions that are normally expected of scientific researchers and professors at a respected university.

The director issued a notice to the petitioner requesting further evidence under this criterion. The director noted: "You and your affiants indicated that your major contribution will be your part in the development of [sequence to reactivity algorithms] but that project does not appear to have been completed yet."

In a letter responding to the director's request for evidence, counsel argues that the petitioner's published articles and abstracts satisfy this criterion. Published work falls under another criterion; to satisfy this criterion, the petitioner must show not only that his work was published, but that it has major significance in the field. Several witnesses mention the petitioner's authorship of "ten peer-reviewed articles" and abstracts, but their letters do not single out any specific article or explain how it would qualify as a major contribution

in the field of biochemistry. The petitioner's authorship of published materials may demonstrate that his research efforts yielded some useful and valid results; however, it is apparent that any article, in order to be accepted in for publication, must offer new and useful information to the pool of knowledge. It does not follow that every researcher whose work is accepted for publication has made a major contribution to his field. We will further address the petitioner's published works under a separate criterion.

Also submitted in response to the director's request for evidence were additional witness letters.

[redacted] Research Investigator, [redacted] discusses the petitioner's current research activities and describes him as "intelligent, creative, versatile and prolific."

Several individuals, including [redacted] Dr. [redacted] Dr. [redacted] Dr. [redacted] Dr. [redacted] and Dr [redacted] offer a second letter reaffirming their support for the petitioner. Their second letters emphasize the petitioner's unique experimental skills, theoretical background, and programming knowledge. They also describe the petitioner as crucial to the success of Dr [redacted] ongoing research project, entitled "Predicting protein reactivity from the amino acid sequence alone." None of their letters discuss any specific finding or theory previously put forward by the petitioner, that, as of the petition's filing date, would constitute a contribution of major significance. Rather, they express their opinion that the petitioner qualifies for a national interest waiver and that the labor certification process would be a waste of time. The national interest waiver provision applies to a separate visa classification and is irrelevant to the matter at hand. Although no such determination will be made here, even if the petitioner were found to be eligible for a national interest waiver, the threshold for such a waiver is below that for extraordinary ability.

On appeal, counsel repeatedly argues that the director's decision failed to consider the witness' letters and that CIS must defer to the opinions of experts. In this case, the petitioner has provided several letters from distinguished experts whose opinions are important in the field of biochemistry. These letters of support were adequately addressed in the notice of denial and have been discussed above. We note here that Section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition, such as heavy independent citation, 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.

We concur with the director's analysis of the evidence presented under this criterion. As stated by the director, the witness' predictions regarding the petitioner's future research contributions would not satisfy this criterion. *See Matter of Katigbak, supra.* The denial notice cited specific witness' statements as a basis for the director's conclusions. As further support for the director's conclusions, we refer to the original letter from Dr [redacted] stating: "I think [the petitioner] will be one of the top researchers in the field." In addition, Professor [redacted] Professor [redacted] of Chemistry at Xavier University of Louisiana, expresses his belief that "the accomplishments to date of [the petitioner] show the promise of his future scientific potential." The visa classification sought by the petitioner, however, is intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. Although the petitioner has attracted the favorable attention of some distinguished 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. For example, Dr[redacted] letter states:

> Over my...research career I received considerable recognition. I won the McCoy Research Award, for best research by a Purdue University Faculty Member and the Jurzykowski Foundation Award for the largest contribution in research by a person of Polish descent. I was twice elected chair of the prestigious Gordon Research Conferences. I served, often for multiple terms, on the editorial boards of the following journals: *Biochemistry*, the *Journal of Biological Chemistry*, *Archives of Biochemistry* and *Biophysics*, and the *Journal of Protein Chemistry*. I was a member of study sections for both National Institutes of Health and the National Sciences Foundation. I serve or served on the Scientific Advisory Boards of three biotech companies...

M[redacted] asserts that "Professor[redacted] is undoubtedly a world authority on inhibitors." Other witnesses such as Dr.[redacted] offer similar observations. Clearly, Dr[redacted] has earned sustained acclaim at the very top of his field. In contrast, the petitioner has presented no awards, chaired no conferences, served on no editorial boards, nor held any comparable positions of authority.

As yet another example, D[redacted] states:

> I have been a Professor of Biochemistry at the University of Wisconsin-Madison since 1984. I am the Head and Principal Investigator of both the National Nuclear Magnetic Resonance Laboratory at Madison, the premier facility of its kind in the USA, and the BioMagResBank, a federally funded international repository for data from biomolecular nuclear magnetic resonance data. In addition, I am Principal Investigator and Director of the Center for Eukaryotic Structural Genomics.... I am a fellow of the American Association for Advancement of Science and the Biophysical Society. I have been elected Chair of the International Council on Magnetic Resonance in Biological Systems (1996-1998) and the Chair of the Division of Biology and Medicine of the International Society of Magnetic Resonance (1990-1993). I am on the editorial boards of four scientific publications in my field, and I have organized more than a dozen scientific conferences. I am a joint-editor of two books and have authored more than 300 journal articles in my field. I have made presentations at hundreds of scientific conferences.

It has not been shown, nor does the overall tone of the witness letters presented in this case suggest, that the petitioner's accomplishments are comparable to those of Drs[redacted] o[redacted] That these individuals have in some cases demonstrated achievements that 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 already at the top of their field, not for those who are expected eventually to reach that level.

On appeal, counsel, in an attempt to account for a lack of extensive documentation of the petitioner's sustained national or international acclaim, states:

> Truly, a researcher with one paper could have a massive effect on his science. Albert Einstein, for example, was an unknown bureaucrat in a Swiss Patent office when he published his first paper, entitled "The Special Theory of Relativity." That was only one paper, but it set the world on its head. Most lay

people, and most BCIS employees, would not have had the expertise to recognize that paper for the significant milestone that it was. This is why when deciding the impact of the petitioner on his field, the Service MUST defer to the opinions of experts.

Here, the experts have stated in general terms that the petitioner is a respected and highly skilled researcher who is doing important work in the "national interest." However, there is no consensus among the witnesses in identifying a specific contribution attributable to the petitioner that is widely acknowledged throughout the greater biochemistry field as a "contribution of major significance" or as stated by counsel, "a significant milestone." After reviewing the evidence presented in this case, it is apparent that the petitioner has not provided sufficient evidence showing that his prior research findings, to date, have consistently attracted widespread acclaim from independent researchers throughout the greater scientific community. Rather, the petitioner's reputation, unlike that of, for example, Drs. [redacted] or [redacted] appears mostly limited to Dr. [redacted] colleagues and various professional acquaintances of the petitioner. In sum, the evidence presented here does not show that the petitioner's prior research findings have earned him sustained acclaim at the national or international level.

Clearly, the petitioner's immediate colleagues and associates of Dr [redacted] have a high opinion of the petitioner and his work, as do individuals who know the petitioner from encounters at scientific conferences. The petitioner's findings, however, do not appear to have yet had a major influence in the larger field. While numerous witnesses discuss the potential applications of these 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 or might someday earn widespread recognition would not elevate him to a level above almost all others in his field at the national or international level.

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

Documentation contained in the record and a letter from counsel accompanying the petition indicate that the petitioner has authored a total of ten articles in journals such as *Journal of the Chemical Society, Perkin Transactions 2, Physical Chemistry and Chemical Physics*, and *Chemistry Letters*. However, the publication of scholarly articles is not automatic evidence of sustained national or international acclaim; we must also consider the greater research community's reaction to those articles. The Association of American Universities' 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." This report reinforces CIS' position that the publication of scholarly articles is not automatic evidence of sustained acclaim. 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 findings. Frequent citation by independent researchers would

demonstrate more widespread interest in, and reliance on, the petitioner's work. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the greater research community, then it is reasonable to question how widely that alien's work is viewed as being nationally or internationally acclaimed. The limited number of independent citations presented here (less than fifteen over a research career spanning almost a decade) would not elevate the petitioner to a level above almost all other researchers in the biochemistry field. The petitioner, in his capacity as a student and postdoctoral researcher, has clearly authored some published articles and abstracts during his advanced scientific training, but the weight of this evidence is diminished by the lack of substantial evidence that these articles have influenced his field.

> *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 he performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the national or international reputation of the organization or establishment. Where an alien has a leading or critical role for a department of a distinguished organization or establishment, the petitioner must establish the reputation of that department independent of the organization as a whole.

The record adequately establishes that the Chemistry Department at Purdue University and the College of Chemistry and Chemical Engineering at Nanjing University have distinguished reputations. We cannot ignore, however, that the petitioner's role at these institutions was either that of a student or a postdoctoral researcher. Such roles represent temporary training for a future professional career in a field of endeavor.

Documentation in the record indicates that until his departure from Nanjing University in 2000, the petitioner attended the university working first as an undergraduate research assistant and then later as graduate research assistant. Aside from a few vague statements from various witnesses, there is no supporting evidence showing that the petitioner, during the time of his studies and educational training, fulfilled a leading or critical role at the College of Chemistry and Chemical Engineering at Nanjing. Without contemporaneous evidence or specific information detailing the exact nature of his duties and responsibilities within his department, it is not immediately apparent how working as graduate research assistant constitutes a leading or critical role.

In addressing the petitioner's role in the Chemistry Department at Purdue University, the director stated:

> The evidence does not establish that the petitioner, who joined [Dr [redacted] lab two years prior to the filing date of the petition as a postdoctoral research associate, performs such a role as contemplated by the eighth criterion. The evidence gives no support to counsel's statement that the petitioner "is considered the leading member of this team."

Clearly, Dr. [redacted] plays a leading role in Purdue's Chemistry Department, but the record does not show that the petitioner, who occupies a position as a postdoctoral research associate (an advanced training position widely "viewed as preparatory for a full-time academic and/or research career"), serves in a leading or critical role.

In this case, the record does not show the extent to which the petitioner has exercised substantial control over personnel or research decisions executed on behalf of his departments at Purdue and Nanjing. Nor is there

evidence indicating, for example, that the petitioner has served on the faculty at either university or that he has directly secured significant amounts of research funding as a principal investigator (in the same manner as many of his witnesses). We note here that the majority of witnesses in this case hold higher positions of authority as research directors and heads in their respective divisions or departments. This criterion, like all of the criteria, is intended to separate the petitioner from the majority of his colleagues in the biochemistry research field. Therefore, when determining the petitioner's eligibility, it is entirely appropriate to compare the petitioner's role and responsibilities to those of his colleagues. As we have already observed, the importance of their roles far exceeds that of the petitioner.

For the above stated reasons, we find that the petitioner's evidence falls short of establishing that the petitioner has performed in a leading or critical role for a distinguished organization, or that his involvement earned him sustained national or international acclaim.

On appeal, counsel challenges the director's finding under this criterion, stating: "Clearly what the examiner is saying here is that interpreting the regulation properly would mean that too many people qualify under this category. Therefore, he will in effect rewrite the regulation in way that is more suitable for him in his desire to deny this...and other petitions." Aside from misstating the director's observation, counsel seems to have overlooked that the controlling purpose of the regulation at 8 C.F.R. § 204.5(h)(3) is to establish sustained national or international acclaim, and any evidence submitted to meet the criteria must therefore be to some extent indicative of such acclaim. Evidence must be evaluated and properly weighed in terms of the governing statute and regulations; it is not simply a matter of accepting that any piece of evidence presented under a particular criterion automatically satisfies that criterion.

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in the field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every scientific researcher who has published the results of his work, reviewed a small number of manuscripts for journal publication, or earned the respect of a handful of his 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 experts 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 in this case 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.

Review of the record does not establish that the petitioner has distinguished himself as a 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.