U.S. Department of Homeland Security

Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

*ADMINISTRATIVE APPEALS OFFICE*
*CIS, AAO, 20 Mass., 3/F*
*425 I Street, N.W.*
*Washington, D.C. 20536*

[redacted]

B2

JAN 13 2004

File: WAC 02 255 50677 Office: California Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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

IN BEHALF OF PETITIONER:

[redacted]

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 Citizenship and Immigration Services (CIS) 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 Mari Johnson
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 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 12, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist in molecular and cell biology. At the time of filing, the petitioner was employed as an Associate Specialist in the Department of Molecular and Cellular Biology at the University of California-Berkeley. 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 receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner submitted evidence of his receipt of an award, signed by the Vice-Prime Minister of Poland, for outstanding college graduates (1989). Counsel states: "This award is given to 120 top graduates annually from all colleges and universities in Poland.... The recipients are selected based upon the recommendations of their schools." A translation of the award states:

> Please accept my congratulations on completing your university degree with outstanding grades. I hope that the knowledge acquired at the university and your experience in science and community work will bring you satisfaction and will keep you growing as you continue to work for the common good.
>
> Let me express my confidence that your high qualifications and your professional enthusiasm will help you achieve a fitting social status and a speedy career.... I wish you all the best in your personal life as well as success in your professional field.

Also submitted was evidence of the petitioner's receipt of a fellowship from the State Committee for Youth and Sport (1989). This fellowship, which counsel states is "presented annually to the top 120 graduates from all Polish universities," appears to have been presented in conjunction with the petitioner's academic award from the Polish Vice-Prime Minister. Counsel notes that "[a] biographical sketch of each recipient was published in a nationally circulated newspaper."

The director concluded that an annual award for academics granted to 120 university graduates does not constitute a special form of national recognition limited to an elite few in the petitioner's field.

On appeal, counsel argues that witness testimonials (from various individuals who have never resided in Poland) and the half-page biographical sketch of the petitioner (appearing in a publication of unknown circulation) demonstrate that the above awards are nationally recognized in Poland. University study, however, is not a field of endeavor, but, rather, training for future employment in a field of endeavor. Awards based on educational achievement at a given university do not constitute nationally or internationally recognized "awards for excellence in the field of endeavor." The petitioner's fellowship and outstanding college graduate award from the Polish Government demonstrate that the petitioner excelled in completing the academic requirements at his university, but neither offers a meaningful comparison between the petitioner and more experienced scientists who had long since completed their educational training. Instead, competition for these awards was limited to students who graduated at the same time as the petitioner.

The petitioner also submitted a certificate from the International Center for Genetic Engineering and Biotechnology in Trieste, Italy (1992). The certificate states that the petitioner "attended the

theoretical training course 'Basic Biotechnology Applied to Development' held from 23 March to 10 April, 1992." The certificate further states that the course "consisted of 90 hours of lectures" on such topics as "basic techniques applicable to biotechnology." This certificate does not constitute receipt of a nationally or internationally recognized award for excellence in the field of endeavor; it simply acknowledges the petitioner's participation in a training course.

The record also contains evidence showing that the petitioner was awarded fellowships from the University of Minnesota and the British Council of Poland. In respect to the awards from universities and other institutions, we concur with the director's observation that this criterion is intended to be restrictive and cannot be open to every scholar or scientist who has ever received a nominal grant or stipend from a national institution or university. The awards submitted under this criterion were not presented to the petitioner for excellence in his field, but, rather, for general scholastic achievements and other traits deemed praiseworthy by the university or awarding institution. It is apparent that the various fellowships bestowed upon the petitioner in Poland and the United States amount to financial support for the petitioner's then ongoing studies and scientific training rather than recognition for his past contributions to the field of endeavor.

Also submitted under this criterion was a letter from the University of Minnesota Chapter of Gamma Sigma Delta, the National Honor Society of Agriculture, reflecting the petitioner's nomination for membership in the Society. The letter indicates that the petitioner was nominated for membership by faculty in his department and that membership is open to graduate students (the petitioner was pursuing his doctorate at University of Minnesota at that time) who have completed 40% of their coursework for the degree being sought. The letter also requests the petitioner to submit a membership fee and attend a local initiation banquet at the St. Paul Campus. Recognition from the local chapter of an academic honor society does not constitute a nationally recognized award in one's field. The petitioner's association memberships will be further addressed under the next criterion.

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

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, a membership in an association that evaluates its membership applications at the local chapter level would not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. 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 a certificate from Sigma Xi, the Scientific Research Society, stating that the petitioner "was duly elected a member by the University of Minnesota Chapter of the Society in 1996." As was noted under the previous criterion, the letter provided from the University of Minnesota Chapter of Gamma Sigma Delta, the National Honor Society of Agriculture, indicates that its memberships are evaluated at the local level. The record does not show that the petitioner's admission to membership in either of these associations was evaluated by experts at the national or international level.

The record also includes evidence of the petitioner's "Postdoctoral Associate" membership status in the American Society of Plant Biologists and the American Society for Cell Biology. The record contains no copy of the membership bylaws for either Society.

According to the American Society of Plant Biologists' website at *www.aspb.org*:

> Membership in the American Society of Plant Biologists is open to anyone from any nation who is concerned with the physiology, molecular biology, environmental biology, cell biology, and biophysics of plants, and other related matters. "Postdoctoral Associate" membership is open to persons who have received their graduate degree, may hold a postdoctoral job or fellowship.

The American Society for Cell Biology's website at *www.ascb.org* states: "Qualifications for Regular or Postdoctoral Membership: The applicants must be sponsored by a regular or postdoctoral member in good standing and must hold a Ph.D., M.D., or an equivalent degree, or must have equivalent experience." According to the information on their websites, it is apparent that neither organization requires outstanding achievement as an essential condition for admission to membership.

We find the documentation presented does not establish that the above organizations require outstanding achievements of their members, as judged by recognized experts at the national or international level.

> *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 general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.

The record contains a translation of an article entitled "Outstanding graduates from higher learning institutions, academic year 1987 to 1988: Talents up for grabs." Counsel states that this half-page biographical sketch of the petitioner appeared in the magazine *Top*. The circulation of this magazine, however, has not been provided. Without evidence of its significant national distribution, the petitioner has failed to show that *Top* would qualify as major media. The brief entry in *Top* describes the petitioner's qualifications and educational experience and provides a contact address and phone number. The article quotes the petitioner as stating: "I would take into consideration moving to another city, but would need help in finding accommodation. I am not opposed to working overtime." The article concludes: "[The petitioner] would be most suited for a science-related job at a university or a research institute or at a plant breeding station." Inclusion in a comprehensive directory of students for the purpose of attracting prospective employers does not constitute qualifying published material. Furthermore, because the statute requires *sustained* national or international acclaim, a single article from 1988 would not fulfill this criterion.

In responding to the director's request for evidence, counsel asserts that citation of the petitioner's publications by others in the field would satisfy this criterion. The petitioner submits evidence showing that his work has been referenced by others. However, review of the record shows this evidence to consist solely of published research papers that list the petitioner's co-authored papers as one of a number of cited references. It is the nature of research work to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In other instances, prior work is superseded by the findings in current research work. In either case, the current researcher normally cites the work of the prior researchers. Clearly this is not the same thing as published material written about an individual's work in the field. This type of material does not discuss the merits of an individual's work, the individual's standing in the field, or any significant impact that his or her work has had on work in the field. Citations of the petitioner's work will be addressed under a separate criterion.

On appeal, counsel argues: "The letter from Dr. [redacted] confirms that [the petitioner] was featured in the article and that *Top* Magazine is one of the biggest national magazines." Counsel does not explain how Dr. [redacted] who has spent his entire career in Russia, is qualified to provide information about the circulation of a Polish magazine. Vague third-party letters attesting to the extent of a magazine's distribution carry far less weight than would evidence from the magazine itself or from a Polish media guide. Such attestations, from witnesses selected by the petitioner, fail to satisfy the "extensive documentation" requirement set forth in section 203(b)(1)(A)(i) of the Act. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

We find the evidence presented does not show that the petitioner has been the subject of sustained major media coverage.

> *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.*

In an occupation where "judging" the work of others is an inherent duty of the occupation, such as an instructor, teacher, teaching assistant or professor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim.[1] Instead, a petitioner must demonstrate that his sustained national or international acclaim resulted in his selection to serve as a judge of the work of others in her field. Similarly, the judging must be on a national or international level and involve other accomplished professionals in the research field.

The petitioner provided evidence showing that the petitioner served as a "teaching assistant" for a class taught by Professo[redacted]t the University of Minnesota (where the petitioner received his doctorate). Also provided was a syllabus from a course taught by Professo[redacted]scheduling the petitioner for a class lecture on March 4, 1997. The petitioner was among fifteen course lecturers that were scheduled for Professor[redacted]lass during the spring semester. The extent to which the petitioner was responsible for evaluating students in these classes has not been established. Regardless, the petitioner's evaluation of students (rather than accomplished professionals in his research field) would not fulfill this criterion.

The petitioner also submitted evidence showing that he was "asked to review" manuscripts for the *Journal of Plant Physiology*. Also provided was a letter from[redacted]asking the petitioner to review a manuscript for the University of California-Berkeley's *Undergraduate Journal*. The record, however, contains no evidence showing that the petitioner actually completed any specific manuscript reviews. Moreover, peer review of manuscripts is a routine element of the process by which articles are selected for 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.

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 submitted several witness letters in support of the petition.

Dr.[redacted]Professor of Cell and Developmental Biology, and Plant Biology, University of California-Berkeley, is the petitioner's current research supervisor. Dr.[redacted]states:

[The petitioner] was hired 3.5 years ago to work in my research group at the Department of

[1] This is true with all duties inherent to an occupation. For example, publication is inherent to researchers. Thus, the mere publication of scholarly articles would not demonstrate national acclaim. The petitioner must demonstrate that the articles have garnered national attention, for example, by being widely cited.

Molecular and Cell Biology of the University of California. During this time, [the petitioner] exhibited unique and impressive research abilities that lead to the discoveries of two major meiotic genes and their characterization.

* * *

[The petitioner] has identified the fragment of the maize DNA that encodes the *phs1* gene, and has made major breakthrough discoveries concerning the way the *phs1* gene acts during meiosis. The second key gene that [the petitioner] has isolated is called *am1*, and is the 'master switch' of meiosis. The action of this gene initiates the meiotic division, and controls all processes that occur during meiosis. These recent impressive research accomplishments have been widely recognized by the international research community.

Dr. [redacted] Assistant Professor of Biology, Boston College, completed her postdoctoral training under the direction of Dr [redacted] at University of California-Berkeley from 1996 to 2001. Dr. [redacted] states that the petitioner's identification of a novel gene "is thrilling since it represents a new class of genes that have not previously been described."

Dr. [redacted] Professor of Biology, Pennsylvania State University, states:

[The petitioner] has cloned two genes that are the key components of genetic regulation of the meiotic division in plants. One of these genes, *am1*, had been identified more than 50 years ago, but its nature and sequence had not been known until [the petitioner's] discovery. Cloning two genes in such an unusually short time in an organism as difficult to work with as maize is very impressive and attests to the petitioner's research talents.

Dr. [redacted] Associate Professor [redacted] University, indicates that he "met and interacted with the petitioner at several scientific meetings." Dr. [redacted] states that the petitioner's work with the *am1* and *phs1* genes "adds vital elements to the understanding of the genetic control of meiosis." We do not dispute that the petitioner's work in cloning two maize genes resulted in useful, novel scientific findings; however, the record falls short in demonstrating that such work represents a scientific contribution of major significance.

Dr. [redacted] Professor of Molecular Biology, Institute of Cytology, Russian Academy of Sciences, repeats the assertions of the previous witnesses in regard to the petitioner's successful cloning of two genes that regulate meiosis in maize. Dr. [redacted] also credits the petitioner with performing "innovative and interesting research on clonal propagation of horticultural plants." Dr. [redacted] states that the petitioner "developed a new method for 'in vitro' clonal propagation of breeding lines of several species of cabbages. This method... was successfully applied on a large scale in several plant breeding stations in Poland." The record, however, contains no evidence to support Dr [redacted] claim. The burden is on the petitioner to provide extensive documentation showing that his clonal propagation method is viewed throughout the horticultural industry as a major contribution.

Dr [redacted] Professor, Department of Agronomy and Plant Genetics, University of Minnesota, states that the petitioner conducted research in his laboratory first as a graduate student and later as a postdoctoral researcher. Dr [redacted] further states:

> While in my laboratory, [the petitioner] was one of the pioneering researchers of the challenging problem of how transgenes integrate into the chromosomes of genetically engineered plants.... The vectors used in the genetic engineering process frequently contain bacterial and other genes that are needed for the successful introduction of the desired transgenes but become unwanted baggage after the transformation process is completed. What happens to those genes is important in regards to field performance of genetically engineered crops as well as their public acceptance and biosafety in the environment. [The petitioner] found that the sites in the plant chromosomes where foreign genes eventually land are much more complicated than previously thought. His important research has also identified that several different cellular mechanisms are involved in the integration of transgenes into the genomes of their host plants. These important discoveries were published as a series of important, peer-reviewed articles in prominent journals...

Dr. [redacted] Professor, Department of Agronomy and Plant Genetics, University of Minnesota, states that the petitioner's work "will likely lead to improvement in the methods for producing and testing genetically engineered plants."

Dr [redacted] Assistant Professor, North Dakota State University, worked as a postdoctoral scientist at the University of Minnesota from 1990 to 1997 and co-authored publications with Drs. [redacted] and [redacted] Dr. [redacted] states that the petitioner "is making important strides toward the understanding of the process of cell division."

Many of the individuals offering letters of support for the petitioner mention his authorship of articles published in distinguished scientific journals. The publication of one's findings, however, is an inherent duty of a research scientist. The petitioner's co-authorship of published articles 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 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. We will further address the petitioner's published works under a separate criterion.

Clearly, the petitioner's research supervisors and professional contacts have a high opinion of the petitioner and his work, as does Dr. [redacted] who knows the petitioner from encounters at scientific meetings. 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 resulting from his discovery of two meiotic genes in maize, there is no indication that these applications have yet been realized or generated widespread acclaim throughout the scientific community. 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 would not elevate him to a level above almost all others in his field at the national or

international level.

For the above stated reasons, we find that the petitioner has not demonstrated any specific scientific contributions that have been so unusually influential or acclaimed as to rise to the level of a contribution of major significance in the horticultural industry or in the field of molecular and cell biology.

In this case, the petitioner's witnesses consist almost entirely of individuals having direct ties to the petitioner or the institutions where he has worked. If the petitioner's work is not widely praised throughout the greater scientific community, then it cannot be concluded that he has earned sustained national or international acclaim for contributions of major significance in his field. In regard to the petitioner's witnesses, we cannot ignore that many of them, such as Drs. [redacted] and [redacted] appear to have earned considerably more prestige and authority in the scientific community. 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, their publication records far exceed that of the petitioner's and they hold positions of much greater responsibility. That these individuals have in some cases demonstrated achievements which far exceed those of the petitioner demonstrates that, however esteemed he may be and whatever future promise his career may hold, the petitioner has not yet reached the top of his field. Even if it were unanimously agreed that the petitioner would one day reach such a level, this visa classification is reserved for those already at the top of their field, not for those who are expected eventually to reach that level.

*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 of his co-authorship of articles appearing in distinguished scientific journals such as *Plant Journal*, *Theoretical and Applied Genetics*, *Proceedings of the National Academy of Sciences of the U.S.A.*, *Molecular Biotechnology*, *Plant Molecular Biology*, and the *European Journal of Plant Pathology*. Also submitted was evidence from a scientific citation database showing that five of the petitioner's published articles have garnered a combined total of 123 citations. In this case, the large number of citations of the petitioner's published articles demonstrates interest in, and reliance on, the petitioner's work. While some of these citations are self-citations by the petitioner or his collaborators, the overwhelming majority of the citations demonstrates the favorable response of independent researchers. These citations show that other scientists have acknowledged interest in the petitioner's publications at the national and international level. We hereby withdraw the director's finding that the petitioner's evidence does not satisfy this criterion. Our determination on this issue does not affect the ultimate decision of the director, as the petitioner was not able to establish eligibility under at least three of the criteria as required by regulation.

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

We have consistently found that this particular criterion is more appropriate for the visual arts rather than for scientific research. In the field of science, acclaim is generally not established by the mere act of presenting one's work at a scientific conference.

On appeal, counsel argues that the petitioner's presentations at scientific conferences constitute comparable evidence under 8 C.F.R. § 204.5(h)(4). That regulation allows for the submission of comparable evidence, but only if the ten criteria "do not readily apply to the petitioner'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.

Participation in scientific conferences and symposia is routine and expected in the scientific community. It has not been shown, for example, that the petitioner has served as the keynote speaker at a conference or that his individual presentations regularly commanded an unusually large number of attendees. The record contains no documentation demonstrating that the presentation of one's work is a rarity in the petitioner's field or that the invitation to present at conferences where the petitioner spoke was a privilege extended to only a few top scientists. Vague witness' assertions to that effect, from individuals selected by the petitioner, cannot overcome the absence of objective documentation.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

On appeal, counsel states:

> [The petitioner] submitted a Labor Condition Application for H-1B non-immigrants submitted to the Department of Labor for the fiscal year 2000. This form indicates the prevailing wage for postgraduate researchers was $23,941 and lists the remuneration given to [the petitioner] as $34,368. This report indicates that [the petitioner] earned a wage 45% higher than the average postgraduate researcher.

The petitioner, however, must demonstrate that his salary is high when compared to all research scientists in his field, including established research professors who have long since completed their postdoctoral training. In comparing the petitioner's compensation to others in the field, counsel cannot simply limit comparison to recent university graduates. Moreover, counsel's use of local prevailing wage figures is also seriously flawed. The petitioner must offer evidence that his salary places him at the very top of his field, not simply in the top half. The evidence presented by the petitioner is of little if any use in showing that the petitioner is among the highest-paid research scientists in his field.

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 researcher who has published the results of his work, or who has earned the respect of a number 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 well-known figures in the field, without reaching the top of that field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner 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 research scientist 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.