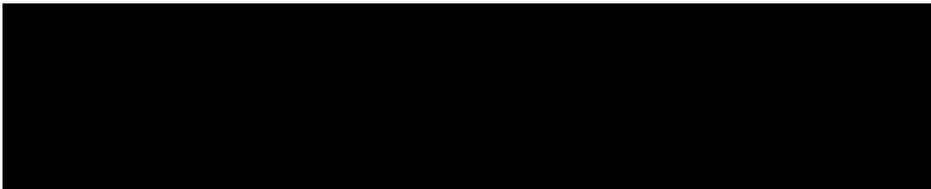




U.S. Citizenship
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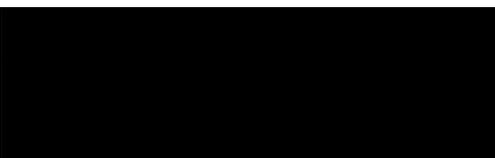
Petitioner:

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:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

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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 to classify the beneficiary 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 that the beneficiary has earned 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 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 April 21, 2003, seeks to classify the beneficiary as an alien with extraordinary ability as a scientific researcher specializing in gene therapy approaches to wound healing. At the time of filing, the beneficiary was working as a Research Associate in the Department of Surgery at Northwestern University. We note that the beneficiary attended the University of Tennessee where he received a Ph.D. in Microbiology in 1996. From 1997 to 2000, the beneficiary worked as a research associate at the Veterans Administration Medical Center in Hampton, Virginia.

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 a "Certificate of Merit" presented to the beneficiary "in recognition of the high standard of work entered in competition for the Pharmacia Biotech and Science Prize for Young Scientists 1997." The petitioner offers no evidence to show that this certificate is a nationally or internationally recognized award, rather than simply an acknowledgment of the beneficiary's participation in the competition. Aside from the petitioner's failure to show that the beneficiary won an actual prize at this 1997 competition, an "Entry Form" included in the record indicates that the competition was limited to "graduate students" and that the prize was "established to provide support to scientists at the beginning of their careers."

Also submitted was evidence showing that the beneficiary was one of fourteen individuals who received a Postdoctoral Research Fellowship Award from the American Association for the Study of Liver Diseases, American Liver Foundation (ALF) in 1999. Correspondence in the record reflects that the award was provided to fund the beneficiary's study entitled "Type I Collagen Gene Regulation by Smad4 Protein Liver Fibrosis." A 1999 press release from ALF states:

The fellowships are intended to encourage promising scientists to continue their work with liver research.... This year ALF will fund six Liver Scholars, 14 Postdoctoral Fellows and nine Student Research fellows in addition to eight ongoing Liver Scholars, three Physician Research Development Awards and four Hepatology Seed Grants.

The petitioner also submitted a 1994 letter from ALF stating: "[The beneficiary's] request for a Student Research Fellowship has been approved by the ALF.... We are pleased to provide this grant for [his] efforts in the area of liver disease research."

In addition, the petitioner submitted a 1991 letter from the American Foundation for Aging Research awarding the beneficiary a "one-semester Graduate Fellowship in Aging Research."

Also submitted was a 1991 letter from the Tennessee Affiliate of the American Heart Association (AHA) informing the beneficiary that his "Summer Student Stipend application was approved for funding."

The preceding fellowships represent financial support for the beneficiary's prior studies and scientific training. Receipt of such funding does not reflect achievement at the very top of the beneficiary's research field. Rather, the beneficiary's awards are limited to "promising scientists" and "graduate students" who seek to further their advanced scientific training. We note here that more experienced scientists (such as associate professors, assistant professors and full professors) who have already completed their graduate studies and postdoctoral training are excluded from consideration to receive the above awards. While the listed scholarship or fellowship awards may be from a national entity (such as the AHA or ALF), they represent funding for ongoing training or research studies rather than recognition for past contributions to the field of

endeavor. We cannot artificially restrict the beneficiary's field to exclude all those researchers who have finished their education and advanced scientific training and therefore do not compete for graduate or postdoctoral fellowships. The visa classification sought by the petitioner 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 (as implied by some of the beneficiary's awards). We are not persuaded that obtaining financial support for one's graduate studies or postdoctoral training is a rare mark of acclaim or extraordinary ability.

Also provided was a copy of a research "Grant Progress Report" from 2003 listing the beneficiary as a "co-principal investigator." It is noted that [REDACTED] the beneficiary's superior at Northwestern University, is the "principal investigator" as listed on the grant progress report. Being named on a research grant with other scientists does not constitute qualifying evidence under this criterion. Research grants, which are principally designed to fund future research, are not awards that honor or recognize past achievement. The argument that contributing to a project which was awarded funding by the National Institutes of Health elevates the beneficiary above other competent researchers is flawed in that it applies equally to all researchers who receive governmental funding for their scientific studies. We note here that the U.S. Government routinely provides billions of dollars in research grants to many thousands of scientists and research institutions on an annual basis. There is no indication that the receipt of grant funding elevates the beneficiary above almost all others in his field at the national or international level.

Counsel also cites the beneficiary's resume, which indicates that he received scholarships at the Indian Institute of Technology and the University of Tennessee. These awards were not presented for excellence in his field, but, rather, for general scholastic achievements and other traits deemed praiseworthy by the university or institution making the awards. In respect to these awards from the beneficiary's educational institutions, Citizenship and Immigration Services (CIS) views academic awards as local honors rather than nationally recognized awards for the reason that they are limited to the individual school or institution presenting the awards.

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, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, and recommendations do not constitute outstanding achievements. 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 the beneficiary's membership in the Wound Healing Society (WHS). According to WHS' bylaws, "[a]ctive members shall consist of individuals in a recognized area of science or medicine who have demonstrated a continued interest and accomplishment in the field of wound healing."

Also submitted was an e-mail, dated December 16, 2002, indicating that the beneficiary's membership in American Society of Gene Therapy (ASGT) was about to expire. The e-mail does not identify the specific membership category held by the beneficiary. Information provided by the petitioner from ASGT's website states:

Any person with a doctoral degree or its equivalent who has manifested an interest in gene therapy, as well as anyone with extensive experience in the practice or management in any discipline important to gene therapy, as evidenced by work in the field and attendance at meetings concerning gene therapy, is eligible for Active or Corresponding Membership. ASGT also offers Associate Membership to those individuals who are Graduate Students or Postdoctoral Fellows in gene therapy research programs.

The ASGT and WHS membership requirements presented by the petitioner are not adequate to demonstrate that the beneficiary's membership in either association required outstanding scientific achievement or that he was evaluated by national or international experts in consideration of his membership.

In response to the director's request for evidence, the petitioner provided background information on the ALF and the American Association for the Study of Liver Diseases, but the record contains no first-hand evidence of the beneficiary's membership in either organization.

In sum, the record contains no evidence to establish that any of the above associations require outstanding achievement of their members in the same manner as highly exclusive associations such as (for example) the U.S. National Academy of Sciences.

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 beneficiary 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.

Counsel argues that the 1999 press release from ALF (cited under the first criterion) and two citations of an article co-authored by the beneficiary in 1994 (the beneficiary was the third of six listed authors) would satisfy this criterion. A press release does not constitute "published material." In regard to the two citations, articles which cite the beneficiary's work are primarily about the author's own work, not the beneficiary's work. As such, they cannot be considered qualifying published material about the beneficiary's work. We cannot ignore that the articles citing the beneficiary's work similarly referenced scores of other authors. In the beneficiary's field, 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 beneficiary's work will be addressed under a separate 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.

The record contains an e-mail from the WHS inviting the beneficiary to serve as a "moderator" during the Oxygen Session of the WHS 13th Annual Educational Symposium scheduled for May 5, 2003. We note here that this petition was filed on April 21, 2003. See *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), 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. A circumstance or event that did not come into existence until after the filing date cannot retroactively establish eligibility as of that date. Aside from the issue of the filing date, it is not apparent that presiding over an educational session constitutes judging the work of others.

Without evidence that sets the beneficiary apart from others in his field, such as (for example) evidence that he has peer-reviewed an unusually large number of manuscripts for publication in scientific journals, received multiple independent requests for his services from a substantial number of journals or conference committees, or served in an editorial position for distinguished journals (in the same manner as some of his witnesses), 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 letters in support of the petition.

Professor of Physiological Sciences and Research Career Scientist, Department of Veterans Affairs Medical Center, Hampton, Virginia, states: "[The beneficiary] was the first to identify a gene, referred to as Smad 7 that can reduce liver scar formation and therefore, the progression of liver cirrhosis. He then began pursuing this line of investigation with hopes of finding, through genetic engineering, a treatment of choice for liver fibrosis."

The fact that the beneficiary was among the first to make a particular genetic discovery carries little weight in this matter. Of far greater relevance in this proceeding is the importance to the greater field of the beneficiary's discovery. In this case, the petitioner has not provided adequate evidence showing that the beneficiary's finding has attracted significant attention beyond his circle of acquaintances. The beneficiary's work has added to the overall body of knowledge in the molecular biology field, but this is the goal of all such research; the assertion that the beneficiary's discovery may eventually have medical applications would not elevate him to a level above almost all others in his field at the national or international level. We find that the evidence in the record is not adequate to support a finding that the beneficiary's identification of the Smad 7 gene is nationally or internationally recognized by the greater scientific community as a major contribution.

[REDACTED] Director and Head (retired), Organic Chemistry II, Indian Institute of Chemical Technology, states: "I believe that [the beneficiary's] continuous research effort will lead to more cutting-edge, high quality reagents and services for biomedical research. His research holds excellent promise to accelerate the pace of diagnostic medicine and drug discovery in the field of wound healing..." A letter from [REDACTED] current Deputy Director and Head, Organic Chemistry II, Indian Institute of Chemical Technology, repeats the preceding assertions almost verbatim.

In the same manner as [REDACTED] Microbiologist (retired), Department of Veterans Affairs Medical Center, Hampton, Virginia, states that "...if successful, [the beneficiary's] work could lead to effective wound healing treatment strategies in aged and young patients." With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the beneficiary's work, rather than how the beneficiary's past efforts have already had a discernable impact beyond the original contributions expected of a capable researcher at a respected institution.

[REDACTED] Professor, Department of Microbiology and Immunology, University of Illinois at Chicago, states: "The significance of [the beneficiary's] research on wound healing and modulation of scarring by gene therapy has led to several major publications over the years." The record, however, lacks documentation to support this statement. For example, in regard to journal "publications" related to wound healing that existed as of the petition's filing date, the record contains only two brief abstracts co-authored by the beneficiary (each consisting of a single paragraph). In regard to publications related to the modulation of scarring by gene therapy, the record contains only a single article published in *Biochem J*. We acknowledge the existence in the record of unpublished manuscripts related to wound healing; however, such evidence is hardly adequate to support Dr. [REDACTED] assertion crediting the beneficiary with "several major publications over the years." We will fully address the beneficiary's published works and citations under the next criterion.

[REDACTED] and Chief, Division of Plastic Surgery, Department of Surgery, Northwestern University, states: "[The beneficiary's] unique skill set combining skill and experience in the field of fibrosis and growth factor regulation of fibrosis makes his skill set virtually unique and irreplaceable." The two letters presented by [REDACTED] detail the beneficiary's research qualifications and the overall importance of his recent projects, but they do not explain how the beneficiary's research contributions have significantly influenced the greater field. The issue here is not the skill level or importance of the beneficiary's ongoing research, but, rather, whether any of his prior research findings constitute a contribution of major significance in the biomedical research field.

The extremely narrow range of witnesses offering letters of support in this case does not demonstrate that the beneficiary's reputation has traveled beyond his employers or the localities where he has worked, let alone nationally or internationally as the statute requires. We agree with counsel that letters from those close to the beneficiary certainly have value, for it is those individuals who have the most direct knowledge of the beneficiary's specific contributions to a given research project. It remains, however, that these individuals became aware of the beneficiary's work because of their personal contact with the beneficiary; their statements do not show, first-hand, that the beneficiary's work is attracting attention on its own merits, as we might expect with research findings that are of major significance to the greater field. The director's observation that the witnesses have close ties to the beneficiary is not intended to cast aspersions on the integrity of the witnesses; the director specifically indicated that the letters accompanying the petition were

from "experts." Nonetheless, a scientific researcher with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim (such as heavy independent citation of his published articles). Here, the evidence presented does not show that the beneficiary's prior research findings have earned him sustained acclaim 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.

The petitioner submitted two single paragraph abstracts and a 1994 article published in *Biochem J.* (the beneficiary was the third of six listed authors). Counsel notes that the beneficiary has authored "five additional recent manuscripts on wound healing." The record, however, contains no evidence showing that these five manuscripts had been published as of the petition's filing date. See *Matter of Katigbak*. It is further noted that that the publication record of many of the petitioner's witnesses far exceeds that of the beneficiary. For example, [REDACTED] biographical sketch indicates that he has authored more than one hundred peer reviewed publications.

Regardless of the amount of articles published by the beneficiary, we do not find that the publication of scholarly articles is presumptive 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." When judging the influence and impact that the beneficiary'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 beneficiary's findings. Frequent citation by independent researchers, however, would demonstrate widespread interest in, and reliance on, the beneficiary'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 conclude that the alien's work is not nationally or internationally acclaimed. In the present case, the record contains two citations of the beneficiary's published articles. We do not find that an aggregate total of two independent citations over a research career spanning more than two decades elevates the beneficiary to a level above almost all others in his field at the national or international level.

To assert that publication itself is indicative of national or international acclaim, one must establish that it is a comparatively rare achievement for a researcher's work to be published at all. The petitioner in this case has made no such showing. By way of analogy, Citizenship and Immigration Services sometimes requires copies of income tax returns to establish that the petitioner has the ability to pay the proffered wage to the beneficiary. The petitioner, however, does not automatically meet this requirement by submitting a copy of

an income tax return. Rather, we must consider the content of that income tax return; if it does not show that the petitioner can afford to pay the beneficiary, then the petitioner cannot credibly argue that it met its obligation merely by supplying the copy of the tax return. Similarly, while an alien's publication record can form part of the body of evidence in this matter, it does not follow that every article out of the hundreds of thousands published every year carries equal weight.

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

The record adequately establishes that the Department of Surgery at Northwestern University has a distinguished reputation. We cannot ignore, however, that the beneficiary's role at this institution is that of research associate (rather than professor, for example). The record contains no evidence showing the extent to which the beneficiary has exercised substantial control over personnel or research decisions executed on behalf of this department. Nor is there substantial evidence showing that the beneficiary has often 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 supervisors, directors and heads in their respective divisions or departments. This criterion, like all of the criteria, is intended to separate the beneficiary from the majority of his colleagues in the biomedical field. Therefore, when determining the beneficiary's eligibility, it is entirely appropriate to compare the beneficiary's role to that of his colleagues. In this case, it is immediately apparent that the importance of the role of individuals such as [REDACTED] far exceeds that of the beneficiary. While we accept that the beneficiary has contributed to research projects overseen by [REDACTED] it has not been shown that the beneficiary's role is any more significant than that of other researchers employed in the Department of Surgery (such as [REDACTED] for example). For the above reasons, we find that the petitioner's evidence falls short of establishing that the beneficiary has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

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

The petitioner submitted a letter from Northwestern University indicating that the beneficiary earns "a salary of \$54,000 annually." Also submitted was a salary chart from *The Chronicle of Higher Education's* website reflecting average yearly salaries at private, independent universities for the following job categories:

Professor	\$118,269
Associate Professor	\$ 77,165
Assistant Professor	\$ 66,926
Instructor	\$ 45,832
Lecturer	\$ 49,815
No rank	\$ 54,347
All	\$ 89,630

Clearly, the beneficiary's salary is not significantly high in relation to others in his field. On appeal, counsel argues that "the relevant comparison should be non-tenured pure research positions." The director's decision addressed this assertion stating:

In regards to the ninth criterion, the petitioner compared the beneficiary's salary to others in non-tenured research positions. Nothing in the ninth criterion suggests that the comparison should be made to limited subsets of others in an alien's field which exclude those at the top of the field. The purpose of the ninth criterion, as well as the other criteria, is to assist in determining whether an alien has reached the very top of his or her field of endeavor, regardless of age or experience. In research, that would presumably include full professors, associate professors, and assistant professors. The petitioner appears to want to exclude those faculty members because its evidence suggests that the beneficiary earns far less than their average salaries. Such an exclusion is no more appropriate than a petition for a minor league baseball player which attempts to exclude consideration of all major league players. As the evidence makes no indication that the beneficiary has commanded a high salary in relation to all others in his field, it cannot be concluded that he meets the ninth criterion.

We concur with the director's finding. The petitioner must demonstrate that the beneficiary's salary is high when compared to all research scientists in his field (rather than limiting comparison to lecturers or instructors). We find that the evidence presented by the petitioner does not support the claim that the beneficiary is among the highest-paid research scientists in his field.

In a letter accompanying Form I-290B, Notice of Appeal, counsel states:

Oral argument is requested in order that [the beneficiary] and/or counsel can articulate the reasons why his work on gene therapy for wound healing is so critically important to our nation today, why he is uniquely positioned to provide keys to such therapy, and why there are sound reasons to consider him and his work truly extraordinary in the sense that Congress intended for that first preference employment-case category. Furthermore, [the beneficiary] would like to present the complications of this denial to his family, who have been residing in this country lawfully...

It is noted that Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this case, the issue to be determined is whether the petitioner has established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability in science. Issues such as the undoubted importance of the beneficiary's research efforts, or the impact of the outcome of this proceeding on the beneficiary's family, are irrelevant to the matter at hand. On appeal, counsel identifies no unique factors or issues of law to be resolved that cannot be adequately addressed in writing. We find that the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

The fundamental nature of this highly restrictive visa classification demands comparison between the beneficiary and others in his 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 or presented original

findings, or who has earned the respect of a handful of his colleagues and mentors, 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 his field, without reaching the top of that field. It has not been shown, nor does the overall tone of the witness letters presented in this case suggest, that the beneficiary's accomplishments are comparable to those of scientific experts such as [REDACTED]. That these individuals have demonstrated achievements that far exceed those of the beneficiary demonstrates that, however respected the beneficiary may be and whatever future promise his career may hold, the beneficiary has not yet reached the top of his field. Even if it were unanimously agreed that the beneficiary 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.

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 the beneficiary's receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the beneficiary has distinguished himself as a scientific researcher to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the beneficiary'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.