

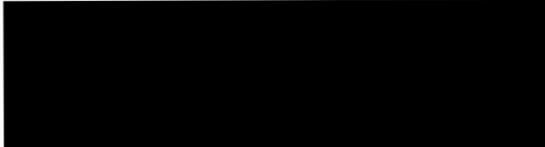
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B2

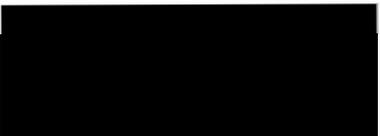


FILE: [Redacted]  
EAC 06 018 51633

Office: NEBRASKA SERVICE CENTER

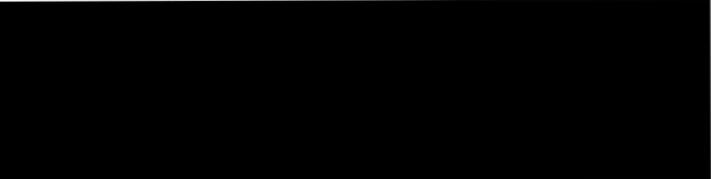
Date: APR 30 2008

IN RE: 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.

*Mai Plussa*  
Robert P. Wiemann, Chief  
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 (AAO) 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.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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 into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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 she has sustained national or international acclaim at the very top level.

This petition, filed on October 5, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist in the field of gene therapy. At the time of filing, the petitioner was working as a Research Associate in Genetic Medicine with the Joan and Sanford I. Weill Medical College of Cornell University in the Department of Genetic Medicine. A September 21, 2006 letter from [REDACTED] Professor and Chairman, Department of Genetic Medicine, Weill Medical College, Cornell University, to the

petitioner states that she assumed “additional administrative responsibilities with respect to the Belfer Gene Therapy Core Facility as Manager, Experimental Animal Core” effective August 28, 2006.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “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 petitioner has submitted evidence pertaining to the following criteria.

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

In a November 9, 2006 letter submitted in response to the director’s request for evidence, counsel argues that the petitioner’s pending patent with the United States Patent and Trademark Office (number [REDACTED] and research grants meet this criterion. Qualifying for a research grant and filing a patent application do not constitute the petitioner’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in her field of endeavor. The petitioner’s pending U.S. patent represents a request for the exclusive right to produce or sell an original invention for a specified time period rather than a prize or award for excellence in the field. With regard to the research grant submitted by the petitioner (number [REDACTED], we cannot ignore that [REDACTED] rather than the petitioner, was identified as the “Principal Investigator” for the grant. In regard to the research grants for which the petitioner’s employer applied and received funding, it is noted that research grants simply fund a scientist’s work. The past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future scientific research, and is not a national or international award to honor or recognize past achievement. Furthermore, we note that a substantial amount of scientific research is funded by research grants from a variety of public and private sources. Therefore, we do not find that the receipt of a research grant automatically places a research scientist at the very top of his or her field.

In light of the above, the petitioner has not established that she meets this 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, minimum education or

experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, 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 document printed from the European Society of Gene Therapy (ESGT) internet site reflecting her registration for membership in 2005. The document indicates that the petitioner authorized a "membership fee" of \$130 to be charged to her credit card. Under the heading "Conditions," the document states: "I wish to apply for membership in the ESGT." The record, however, includes no membership credential from the ESGT showing that the petitioner was actually admitted to membership. Further, while the petitioner submitted general information regarding the ESGT, there is no evidence (such as membership bylaws or official admission requirements) showing that this society requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

The petitioner also submitted information printed from the online membership directory of the American Society of Gene Therapy (ASGT) reflecting that she is a member. The information submitted by the petitioner, however, does not identify her specific class of membership. In response to the director's request for evidence, the petitioner submitted Article IV of the membership bylaws for the ASGT reflecting three classes of members: Active Members, Associate Members, and Emeritus Members (those age 65 and over). According to the ASGT's bylaws, "[i]ndividuals who have manifested an interest in any discipline important to gene therapy as evidenced by work in the field are eligible for Active Membership." Further, "[i]ndividuals who are postdoctoral fellows or graduate students in gene therapy research programs are eligible for Associate Membership." We cannot conclude that "work in the field" in a "discipline important to gene therapy" or participation "in gene therapy research programs" are tantamount to "outstanding achievements" in the field.

In this case, there is no evidence showing that the ASGT or the ESGT require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field. As such, the petitioner has not established that she meets this criterion.

*Published material 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 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 or international distribution. 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.<sup>1</sup>

---

<sup>1</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

The petitioner submitted an article entitled "Avoiding Malignancy with Trans-Splicing Gene Therapy" in the September 2004 issue of *Cancer Biology & Therapy*, but the article is not primarily about her. This article discusses a study lead by [REDACTED] and quotes him extensively. The article only mentions the petitioner's name in passing as one of six researchers working under [REDACTED]

The petitioner also submitted citation indices from Web of Science demonstrating scores of cites to her published articles. Regarding the scientific articles that merely reference the petitioner's published work, we note that the plain language of this regulatory criterion requires that the published material be "about the alien." In this case, the articles citing the petitioner's work are primarily about the authors' work, not the footnoted material identifying the petitioner. With regard to this criterion, a footnoted reference to the alien's work without evaluation is of minimal probative value. Further, we note that the articles citing the petitioner's work similarly referenced numerous other authors. The submitted citations to the petitioner's work do not discuss the merits of her work, her standing in the field, any significant impact that her work has had on the field, or any other aspects of her work consistent with his sustained national or international acclaim. The numerous citations of the petitioner's work are more relevant to the criteria at 8 C.F.R. § 204.5(h)(3)(v) and (vi) and will be further addressed later in this decision.

In light of the above, the petitioner has not established that she meets this criterion.

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

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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). For example, evaluating the work of accomplished professors on a national panel of experts is of far greater probative value than evaluating the work of students or one's coworkers.

The petitioner submitted a July 24, 2005 letter from [REDACTED] Professor of Medicine and Immunology, and Director, Arthritis and Tissue Destruction Project, Hospital for Special Surgery, an affiliate of the New York Presbyterian Hospital and the Weill Medical College of Cornell University, stating:

I requested [the petitioner] review and evaluate manuscripts submitted by research scientists to the *Journal of Immunology* to ensure that the submissions revealed novel concepts, were of interest to the scientific community, and demonstrated a high level of quality. [The petitioner] was meticulous in her appraisals and ensured the high standards of the journal were met.

The petitioner also submitted a July 29, 2005 letter from [REDACTED], Assistant Director of the Belfer Gene Therapy Core Facility and Research Professor of Genetic Medicine at Weill Medical College, Cornell University, stating: “I have repeatedly requested [the petitioner’s] assistance in reviewing articles submitted by research scientists to the esteemed journals *Human Gene Therapy*, *Gene Therapy* and *Molecular Therapy*.”

The record, however, includes no documentary evidence to support [REDACTED] and [REDACTED] assertions regarding the petitioner’s participation as a reviewer. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). For example, there is no correspondence from the editorial staff of the *Journal of Immunology*, *Human Gene Therapy*, *Gene Therapy*, or *Molecular Therapy* acknowledging the petitioner’s participation as a reviewer. Nor is there documentary evidence of the petitioner’s actual manuscript evaluations or information identifying the names and the positions of the individuals whose papers were evaluated. On appeal, counsel acknowledges that the preceding journals “did not directly ask [the petitioner] to evaluate manuscripts.”

Even if the petitioner were to submit substantive evidence of her participation in the peer review process for the aforementioned journals, we note that peer review is a routine element of the process by which articles are selected for publication in scientific journals. Occasional participation in the peer review process does not automatically demonstrate that the petitioner has sustained national or international acclaim at the very top of her field. Reviewing manuscripts is recognized as a professional obligation of researchers who publish themselves in scientific journals. Normally a journal’s editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask several reviewers to review a manuscript and to offer comments. The publication’s editorial staff may accept or reject any reviewer’s comments in determining whether to publish or reject submitted papers. Without evidence that sets the petitioner apart from others in her field, such as evidence that she has reviewed an unusually large number of articles, received independent requests from a substantial number of journals (as opposed to requests delegated to her by her superiors), or served in an editorial position for a distinguished journal in the same manner as Professor Paul Robbins,<sup>2</sup> we cannot conclude that she meets this criterion.

On appeal, counsel states:

[The petitioner] is currently the Manager and Core Director of the experimental Animal Core in the Belfer Gene Therapy Core Facility at Weill Medical College of Cornell University. In this role, she is responsible for – i.e., ‘judges’ – all gene therapy research done at this prestigious institution. Therefore, she judges the work of other scientists on a daily basis.

The September 21, 2006 letter from [REDACTED] to the petitioner states that she assumed “additional administrative responsibilities with respect to the Belfer Gene Therapy Core Facility as Manager, Experimental Animal Core” effective August 28, 2006. Thus, the petitioner’s appointment to manager at this facility occurred subsequent to the petition’s filing date. A petitioner, however, must establish eligibility at

---

<sup>2</sup> For example, Professor Robbins states that he served as an associate editor for *Gene Therapy* and *Cancer Research*.

the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this appointment in this proceeding.

Counsel further states: “Prior to her current position, from 2000 – 2002, [the petitioner] served as Co-Director of the Gene Transfer Facility at the Hospital of Special Surgery. As Co-Director, [the petitioner] supervised other researchers and evaluated research projects in the Gene Transfer Facility.”

We find that the above duties were inherent to the petitioner’s positions as Manager of the Experimental Animal Core in the Belfer Gene Therapy Core Facility and as Co-Director of the Gene Transfer Facility at the Hospital of Special Surgery. There is no evidence that the petitioner judged the work of others in her field in a manner significantly outside the general duties of the aforementioned positions and consistent with sustained national or international acclaim at the very top of her field. Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine to a particular job assignment, or in a substantial proportion of positions within one’s occupation.<sup>3</sup> The petitioner’s performance of supervisory duties as required by her employment is not tantamount to judging the work of others in the field and cannot suffice to meet this regulatory 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 of support discussing her research contributions. We cite representative examples here.

Senior Scientist, Molecular Medicine Program, Ottawa Health Research Institute, Canada, states:

[The petitioner’s] achievements to the field of gene therapy are numerous. There are many examples, but I will discuss one that is most closely related to my field of specialty. Through [the petitioner’s] expertise, she has made great strides in the discovery of a vaccine against *Pseudomonas aeruginosa* in patients with cystic fibrosis, which is the major cause of death for these individuals. Her innovative study evaluated the immunogenic and protective properties of a novel adenovirus vector expressing a small part of the *P. aeruginosa* outer membrane protein. Through [the petitioner’s] immunization process, all those vaccinated animals in the study survived the *Pseudomonas* challenge. Previously, the standard vaccination had failed to induce sufficient protection against pseudomonas infection; therefore, [the petitioner’s] findings are groundbreaking, as well as truly remarkable for the treatment of patients with cystic fibrosis who are affected by acute *P. aeruginosa* infections.

[REDACTED], Professor of Hematology at the University of Genova, Italy, states:

---

<sup>3</sup> This is true with all duties inherent to an occupation. For example, publication is inherent to scientific researchers. Thus, the mere publication of scholarly articles cannot demonstrate national acclaim. The petitioner must demonstrate that the articles have garnered national or international attention, for example, by being widely cited.

There are several indications that the power of the immune system can be harnessed to help in treating neuroblastoma; and [the petitioner] has decided to effectively enhance the potency of cellular immunity by an entirely novel strategy. In fact, [the petitioner] designed an innovative fusion receptor that conserves the antigen-binding site of an antibody and fuses it genetically to the signaling domain of the T cell co-receptor CD28. Introducing this co-receptor into primary human lymphocytes reveals that the advantage of this strategy is a sustained stimulation and expansion of tumor-specific cytotoxic T cells after tumor antigen engagement. The results are original and encouraging: indeed, [the petitioner's] research is the cornerstone for understanding important aspects of immune competent cells in this disease and developing treatments and cures.

[Redacted], Professor of the Departments of Molecular Genetics and Biochemistry and Orthopaedics, University of Pittsburgh, states:

[The petitioner] has made original contributions of major significance to the field, such as her breakthrough research "Activation conditions determine susceptibility of murine primary T lymphocytes to retroviral infections," which were published in the *Journal of Gene Medicine*. [The petitioner] developed the first procedure to establish animal models when an adoptive transfer of transduced T cells is required. A high transduction efficiency rate of T cells is absolutely essential to developing genetic therapies for autoimmune and oncology diseases. [The petitioner's] findings are truly momentous and are widely performed by leading scientists to analyze expansion procedures and gene transfer conditions for primary animal and human cells to achieve sufficient gene transfer in premier institutions and organizations worldwide.

Because of her innovation research and expertise in lymphoid and myeloid cells, [the petitioner's] work has led to a critical breakthrough. She currently has a patent pending for her revolutionary work dealing with fusion proteins of a single chain antibody and CD28. She discovered that the introduction of the receptor CD28 by retroviral gene transfer into human T cells improves tumor and metastasis recognition, their eradication, as well as extending survival of tumor specific cells. Her discovery is a model for the treatment of patients with progressive inoperable neuroblastoma and metastasized tumor loci.

[Redacted], Principal Investigator, Department of Molecular Medicine and Experimental Immunology, University of Bonn, Germany, states:

[The petitioner's] extraordinary work in the field of genetic manipulation of lymphoid and myeloid cells has made groundbreaking contributions to biomedical science. For example, [the petitioner's] detailed study "Activation conditions determine susceptibility of murine primary T lymphocytes to retroviral infections," (*Journal of Gene Medicine*) received extensive worldwide interest, as it was the first successful study of the procedure to achieve sufficient gene transfer into primary T cells. Her scientific work is of major importance and has had an enormous influence on researchers in the field of Gene Therapy because of its dramatic implications to create therapies . . . .

[The petitioner] employed a novel technique “trans-splicing” at the mRNS level to ensure a tissue specific and controlled CD40L expression and exclude the risk of a lymphoma development. The results of [the petitioner’s] study have dramatic implications as the gene therapy strategy successfully corrected the disease without increasing malignancy risk. Besides the importance of [the petitioner’s] study has for the immune disorder, her technique has implications for treating a wide range of genetic illnesses.

Professor and Head of the Laboratory of Molecular Cell Biology at the Rockefeller University, New York, states:

[The petitioner] is responsible for several significant scientific achievements, including the discovery that the transcription factor STAT3 is important in rheumatoid arthritis (RA). During [the petitioner’s] service as Co-Director of the Gene Transfer Facility at the Hospital of Special Surgery, she researched genetically modifying human synoviocytes from patients with RA. RA synoviocytes show the features of uncontrolled growth to pro-inflammatory cytokines present in the inflamed joints of patients. In [the petitioner’s] investigation, she introduced a dominant negative form of the transcription factor STAT3 into these cells and successfully abolished their response to growth factors. The results are highly significant and this novel approach to modify synoviocytes as a potential therapy for RA-patients has wide clinical applications in the treatment of RA and other auto-immundiseases.

\* \* \*

Through [the petitioner’s] expertise, specifically in lymphoid and myeloid cells, she has made scientific advances to our knowledge and our ability to utilize gene therapy strategies. A long-standing goal of cancer research has been to stimulate the immunological rejection of tumors. [The petitioner] has brought scientists significantly closer to this goal through her discovery that T cells encoded in a fusion protein that incorporates a single chain antibody have enhanced survival when reintroduced to an in vivo environment. Because of [the petitioner’s] discovery, she has a patent application pending, which is a model for the treatment of patients with progressive inoperable neuoblastoma and metastasized tumor loci.

[Redacted], Professor and Head of the Division of Rheumatology at the University of Washington School of Medicine, states:

I have never worked with [the petitioner]; however, I am very familiar with her research and accomplishments. I first became aware of her extraordinary research upon reading her publications in the *Journal of Experimental Medicine* and *Nature Biotechnology*. Both of these pieces focus on the ability to efficiently manipulate primary lymphoid and myeloid cells in a genetic fashion, in order to make them more antigen-specific. Manipulating primary cells ex vivo with the purpose of adoptively transferring them back into the host was, until then, a major burden in the development of useful biological treatments for many diseases. [The petitioner’s] findings have made a key contribution to the gene therapy field of research.

\* \* \*

[The petitioner] has shown great expertise and has received international recognition for her contributions to the field of gene transfer in primary immune cells. She successfully developed an exciting new strategy to inhibit the uncontrolled growth of primary RA synoviocytes by introducing a dominant negative form of the transcription factor STAT3 into these cells to abolish the response to pro-inflammatory cytokines secreted by T cells and macrophages. STAT3 is one of the major cellular proteins that promote proliferation and survival of cells from different origins in response to many cytokines (111-6) and growth factors (EGF and PDGF) during acute synovitis. In her groundbreaking article "Gene transfer of dominant-negative STAT3 induces apoptosis of RA Synovial Fibroblasts," published in the prestigious *Journal of Immunology*, [the petitioner] revealed that these transduced synoviocytes from RA patients, normally prone to grow in an uncontrolled manner, are reverted in their phenotype and undergo apoptosis. It is due to [the petitioner's] highly specialized skills and progressive research techniques that she discovered a new strategy to stop the uncontrolled growth of synoviocytes of RA patients in a pro-inflammatory environment.

In support of the preceding experts' statements, the petitioner submitted documentation showing scores of independent cites to her published findings.<sup>4</sup> These citation indices are solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. This unusually large number of citations corroborates the experts' statements that the petitioner has made contributions of major significance in her field. The record reflects that the petitioner's original scientific contributions are important not only to the research institutions where she has worked, but throughout the greater field as well. Leading scientists from around the world have acknowledged the value of the petitioner's work and its major significance to the field of gene therapy.

In light of the above, the petitioner has established that she meets this criterion.

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

The petitioner submitted evidence of her authorship of multiple articles appearing in publications such as *Journal of Experimental Medicine*, *Journal of Biological Chemistry*, *Nature Medicine*, and *The Journal of Immunology*. The petitioner also submitted evidence of scores of articles that cite to her work. These numerous citations demonstrate the significance of the petitioner's articles to the greater field. Therefore, the petitioner has established that she meets this criterion.

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

---

<sup>4</sup> For example, the petitioner's initial submission included citation indices from Web of Science showing that her published research has been cited at least 141 times.

In order to establish that she performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

On appeal, counsel states:

[The petitioner] is currently the Manager and Core Director of the Experimental Animal Core in the Belfer Gene Therapy Core Facility at Weill Medical College of Cornell University. In this position, the [petitioner] manages the crucial Experimental Animal Core with Weill Medical College's gene therapy research facility. *U.S. News & World Report* ranks Weill Medical College as the nation's 15<sup>th</sup> best medical school for research.

The record adequately demonstrates that Weill Medical College is an institution with a distinguished reputation, but there is no evidence as to the reputation of the Experimental Animal Core managed by the petitioner. Nevertheless, according to the September 21, 2006 letter from [redacted] to the petitioner, she assumed "additional administrative responsibilities with respect to the Belfer Gene Therapy Core Facility as Manager, Experimental Animal Core" effective August 28, 2006.<sup>5</sup> As discussed previously, the petitioner's appointment to manager occurred subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's role as manager for the Experimental Animal Core in this proceeding. Further, the petitioner has not established how her role as research associate differentiated her from other researchers at Weill Medical College, let alone its more senior faculty (including tenured professors).<sup>6</sup>

Counsel further states:

[F]rom 2000 – 2002, [the petitioner] served as Co-Director of the Gene Transfer Facility at the Hospital of Special Surgery (HSS). As Co-Director, [the petitioner] held a leadership role, directing the Gene Transfer Facility. HSS is among the top-ranked hospitals in the world. *U.S. News & World Report* ranks HSS #2 hospital in the nation for orthopedics, #3 in the nation for rheumatology, and #23 in the nation for neurology and neurosurgery.

The record adequately demonstrates that the Hospital for Special Surgery is an institution with a distinguished reputation, but there is no evidence as to the reputation of Gene Transfer Facility for which the petitioner served as co-director. Nor is there evidence showing that the petitioner's work as co-director of the Gene Transfer Facility was equivalent to performing in a leading or critical role for the hospital. The record lacks evidence distinguishing the petitioner's role from that of the other managers and researchers at this hospital, including its senior faculty.

---

This letter identifies the petitioner's position at Weill Medical College as a "Research Associate in Genetic Medicine." A comparison of the petitioner's position with that of her superiors at Weill Medical College (such as Professors [redacted] and [redacted]) indicates that the very top of her field is a level above her present level of achievement.

There is no evidence that the petitioner was responsible for the success or standing of Weill Medical College or the Hospital for Special Surgery to a degree consistent with the meaning of “leading or critical role” and indicative of sustained national or international acclaim. As such, the petitioner has not established that she meets this criterion.

In this case, we find that the petitioner meets only two of the regulatory criteria, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). The petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she 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.

While CIS has approved an O-1 nonimmigrant visa petition filed on behalf of the petitioner, that prior approval does not preclude CIS from denying an immigrant visa petition based on a different, if similarly phrased standard. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO’s authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff’d*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner’s achievements set her significantly above almost all others in her field at a 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.