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U.S. Citizenship
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Services

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FILE:

[REDACTED]
LIN 06 232 53232

Office: NEBRASKA SERVICE CENTER

Date: NOV 20 2008

IN RE:

Petitioner: [REDACTED]
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)

ON BEHALF OF PETITIONER:

[REDACTED]
INSTRUCTIONS:

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

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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. Specifically, the director concluded that the petitioner had established that he meets only one of the ten regulatory criteria, of which an alien must meet at least three.

On appeal, counsel submitted a brief challenging the director’s adverse conclusions for three of the regulatory criteria. Counsel also submitted Internet confirmation of the previously submitted citations. The AAO withdrew the director’s finding that the petitioner’s publication record does not meet the scholarly articles criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi) but concluded that the petitioner had still not established that he meets at least three of the regulatory criteria. Finally, the AAO considered the evidence in the aggregate, concluding such an analysis was consistent with a review of the evidence under each criterion.

On motion, counsel challenges two of the AAO’s findings. Specifically, counsel asserts that the AAO erred in concluding that the petitioner had not demonstrated contributions of major significance and that the petitioner had not played a leading or critical role for an organization with a distinguished reputation. *See* 8 C.F.R. §§ 204.5(h)(3)(v); (viii). For the reasons discussed below, counsel mischaracterizes the AAO’s findings and the pertinent regulations and has failed to overcome our concerns, set forth in our detailed, 11-page decision which carefully considered and addressed all of the evidence of record. While we will consider the new evidence submitted on motion, we reiterate that the petitioner must establish his eligibility as of the date the petition was filed. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

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.

As stated in our previous decision, 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 he has sustained national or international acclaim at the very top level.

We reemphasize that this petition seeks to classify the petitioner as an alien with extraordinary ability as a "postdoctoral scholar-employee." The petitioner's supervisor confirmed the petitioner's position at the time of filing was as a "postdoctoral fellow." While the pertinent statute and regulation do not preclude a postdoctoral researcher from establishing eligibility as an alien of extraordinary ability, the petitioner must demonstrate that his accomplishments compare with those at the very top of the field, including those who have long since completed their postdoctoral training. *See* 8 C.F.R. § 204.5(h)(2).

Significantly, after considering all of the evidence under the criteria for which it was submitted, we provided the following analysis of the evidence in the aggregate that counsel does not address on motion:

The conclusion we reached above by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner, a postdoctoral fellow as of the date of filing, relies on his publication record, service as an editor, electronic-mail correspondence that appears commensurate with his level of experience and letters from his colleagues in San Francisco and elsewhere, some of which do not even profess research experience in his field of urology. While this may distinguish him from other postdoctoral researchers, we will not narrow his field to others with his level of training and experience. [One of the petitioner's references] is a past president of the Society of Fetal Urology and founded the Center for the Treatment and Study of Hypospadias at UCSF. [Another reference] is the Medical Director of the Knappe Molecular Urology Laboratory at UCSF and has authored or coauthored more than 380 publications and 12 books. [A third reference] led the team that discovered

and developed the antibody Herceptin, now widely used in the treatment of breast cancer. [A fourth reference] is the Chair of the Department of Urology at UCSF. [A fifth reference] is a member of the National Academy of Sciences. Thus, it appears that the highest level of the petitioner's field is far above the level he has attained.

We reaffirm our conclusion that the record does not distinguish the petitioner from his peers at a comparable level with some of his references.

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. In our previous decision, we accepted that the petitioner had demonstrated that he meets the criteria relating to judging the work of others and scholarly articles set forth at 8 C.F.R. § 204.5(h)(3)(iii) and (vi). This decision will only consider the two criteria counsel discusses on motion. We reaffirm, however, our previous decision in its entirety.

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

On motion, counsel asserts that the AAO's analysis of the evidence relating to this criterion was procedurally problematic because the AAO, according to counsel, requested evidence that was not previously requested. Counsel's examples include the AAO's observance that two of the petitioner's references attest to the application of the petitioner's work without identifying where the work has been applied and that the record lacks letters from practitioners who have applied the petitioner's treatment strategies. Counsel's assertion is not supported by his examples or any other language in the AAO's initial decision. The AAO did not request any evidence in this matter; rather it evaluated the evidence submitted and noted the deficiencies in that evidence. While the AAO's analysis was perhaps in more depth than the director's, the petitioner was already on notice of the deficiencies in the record to some degree. Significantly, the director advised the petitioner in his request for additional evidence that the witness letters must be corroborated. 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). The AAO's careful and detailed reflections on the deficiencies in the evidence do not constitute new requests for evidence. Thus, we find no procedural errors in the AAO's analysis.

The AAO's initial decision included the following basis for evaluating evidence under this criterion:

The petitioner's field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume

that the phrase “major significance” is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner’s work.

On motion, counsel asserts that the above statements demonstrate “a lack of understanding of science.” Counsel further asserts that top journals only print articles where the data has been reproduced and confirmed. While we acknowledge that journal articles are peer-reviewed, the record contains no evidence that these peer reviewers attempt to reproduce and confirm the results of every manuscript submitted to a top journal.¹ The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel concludes: “The mere fact of publishing in a top journal is proof that the data is accurate, AND that the finding is of major significance.” This statement is contradicted by evidence submitted on appeal. Specifically, [REDACTED], Director of the Editorial Board of the *Chinese Journal of Andrology*, asserts that 50 percent of journal articles “are never read by anyone other than their authors, referees and journal editors.” It cannot be credibly argued that an article that has not been widely read can be considered a contribution of “major significance” as required by the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Moreover, the regulation at 8 C.F.R. § 204.5(h)(3)(vi) provides an entirely separate criterion for the authorship of scholarly articles. As stated above and in our previous decision, we do not contest that the petitioner meets the scholarly articles criterion. The regulations, however, provide ten separate and discreet criteria, of which an alien must meet at least three. The only one-time achievement that can serve to establish eligibility by itself is a major internationally recognized award. 8 C.F.R. § 204.5(h)(3). Publishing in a top journal is not a major internationally recognized award; it falls under one of the ten alternative criteria. 8 C.F.R. § 204.5(h)(3)(vi). Therefore, publication cannot take the place of meeting at least three of regulatory criteria. While some of the criteria may be related, an alien could publish or receive an award for a major contribution, we will not presume that meeting one criterion is necessarily evidence sufficient to meet a related criterion. To hold otherwise would render meaningless the requirement that an alien who does not have a major internationally recognized award must meet at least three criteria.

We reaffirm that in order to meet the contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), it is the petitioner’s burden to demonstrate that his work has profoundly impacted the field. Anything less can

¹ As one well-known example, reports of cold fusion were published in 1989, Fleischmann, Martin; Pons, Stanley (1989), “Electrochemically induced nuclear fusion of deuterium,” *Journal of Electroanalytical Chemistry* 261 (2A): 301–308, but other scientists were unable to reproduce those results. See Cold Fusion Research: Report of the Energy Research Advisory Board to the United States Department of Energy, November 1989 (Online edition prepared by National Area Skeptics 1999) available at <http://www.ncas.org/erab/intro.htm> (accessed on November 19, 2008 and incorporated into the record of proceedings).

hardly be considered a contribution of “major” significance as mandated by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

The petitioner did not submit his curriculum vitae chronicling his education and employment. While counsel notes on motion that his initial cover letter included much of the information that would be contained in a curriculum vitae, it remains that the AAO correctly concluded that the record lacked letters from the petitioner’s employers and colleagues in China explaining his position, job duties and the significance of his work. As acknowledged in our previous decision, the petitioner has submitted numerous articles published in China between 1998 and 2005 as well as evidence that these articles have been cited. In 2004, the petitioner joined the laboratory of [REDACTED], Chief of Pediatric Urology and Director of the Center for the Treatment and Study of Hypospadias at the University of California, San Francisco (UCSF).

Most of the petitioner’s career prior to filing the petition was in China. The AAO acknowledged that the petitioner authored 58 articles published in China. The AAO concluded, however, that the record only contains evidence that two of the petitioner’s articles had been cited by seven independent research teams and several other articles had been cited by no more than three independent research teams. As noted by the AAO, while the petitioner provided translations of the citations, the translation of the sentence for which the petitioner’s work is cited does not appear to be an exact translation but a simple summary such as: “In this article, the author gave [the petitioner] a very high evaluation on the previous study that renal artery embolism before radical nephrectomy is an essential technique for a successful operation to achieve a long term survival for patients with renal cell carcinoma.” The results from a search on the Internet site Google.Scholar, submitted on appeal, which searched for the last two characters of the petitioner’s name in Chinese, did not suggest that there are significantly more citations of the petitioner’s work than those submitted previously. Finally, as noted in the AAO’s previous decision, the petitioner’s work in China was recognized with two excellent paper awards.

The record before the AAO contained only two letters from references in China, [REDACTED] and [REDACTED]. In general, CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The AAO acknowledged letters from U.S. physicians outside of the field of urology and cancer advocates but noted that these individuals did not have first hand knowledge of the petitioner’s impact in urology. [REDACTED] Founder and Director of the Institute of Urology at Shanghai Medical College, merely confirmed that the petitioner was one of his cooperative fellows from 1999 through 2004 and

played “a significant role and made remarkably [sic] contributions” on an award winning project. The AAO noted, however, that the petitioner is not a named recipient of this award.

On motion, the petitioner submits a new letter from [REDACTED]. Dr. [REDACTED] reiterates that the petitioner contributed to the award winning project and asserts that he was “glad to share this honor” with the petitioner. It remains, however, that the petitioner was not a named recipient of the award. Dr. [REDACTED] further asserts that the petitioner was co-principal investigator on a project demonstrating that one dose of Epirubicin was equal to multiple treatments for bladder cancer, which has had a major impact on the field of urology.

[REDACTED], Past Director of the Institute of Urology at Peking University, was the only urologist in China to previously support the petition with a detailed letter. Dr. [REDACTED] asserted that the petitioner’s reputation in China could be inferred from the number of published articles in China, the funding the petitioner received which is “more difficult to get” than funding from the U.S. National Institutes of Health, his work on an award winning project and his invitation to be a visiting professor at the Andrology Center of Peking University. While [REDACTED] asserted that the petitioner’s work on bladder cancer “is leading peers to design their own studies,” he did not identify any of these “peers” or affirm his own application of the petitioner’s work.

On motion, the petitioner submits a new letter from [REDACTED]. Dr. [REDACTED] asserts that the Chinese Urological Association has identified Epirubicin as a r[REDACTED] emotherapy agent for bladder cancer and that the petitioner’s treatment protocols are in wide use in China.

The record before the AAO also contains a letter from [REDACTED], Assistant Director and Head of Biostatistics at the European Organization for Research and Treatment of Cancer (EORTC) in Brussels, Belgium, explained that the organization “conducts, develops, coordinates and stimulates research in Europe on cancer through the conduct of multi-center cancer clinical trials.” Dr. [REDACTED] asserted that he requested the petitioner’s 2006 article on the use of epirubicin for superficial bladder carcinoma and its long-term outcomes. The AAO noted that [REDACTED] did not assert that this article has prompted the European Organization for Research and Treatment of Cancer to conduct, develop, coordinate or stimulate clinical trials on epirubicin or that the organization is promoting the petitioner’s research as sufficiently definitive such that oncologists should adopt the use of Epirubicin.

The petitioner submits a new letter from [REDACTED] on motion. Dr. [REDACTED] notes that the petitioner published articles on the use of Epirubicin for bladder cancer from 2002 through 2006, during which period a German team and two Japanese teams were pursuing the same research. Dr. [REDACTED] characterizes the petitioner as a “pioneer” in this area and asserts: “Tracking records shows that [the petitioner’s] treatment regime has been and still is in wide use.” Dr. [REDACTED] then notes that the EORTC conducts clinical research projects with Epirubicin and attaches a list of protocols with links to each project. The list provided by [REDACTED] does not include any dates for these protocols,

only six of which appear to involve bladder cancer. Thus, it is not clear that EORTC initiated any of these protocols in response to the petitioner's research.²

In response to our concern that the record lacks evidence from independent urologists in China or elsewhere using the petitioner's treatment regimen for bladder cancer, the petitioner submits new letters on motion. [REDACTED], Chair of the Department of Urology at Tongji Hospital in Shanghai, asserts that the petitioner's use of a single dose intravesical instillation of Epirubicin has been successfully applied at that institution and that other teams "are also adopting it." Dr. [REDACTED] provides two examples.

[REDACTED], Vice Chairman of the Andrology Center at Peking University First Hospital, asserts that, based on the petitioner's study and a recommendation from the Chinese Medical Association, his institution has used the petitioner's treatment regimen "as one of [their] routine protocols for bladder cancer patients." The record does not contain the Chinese Medical Association recommendation citing to the petitioner's work as the basis for the recommendation.

Both of the letters are dated in December 2007. The petition was filed in 2006. Neither [REDACTED] nor [REDACTED] asserts that his institution was already using the petitioner's regimen in 2006.

On motion, counsel also asserts that the AAO gave too much weight to the small number of citations. The petitioner submits the letter from [REDACTED] asserting that the number of citations "is not always a reliable instrument for measuring the quality of articles." Dr. [REDACTED] suggests evaluating the impact of the petitioner's articles in China through the China National Knowledge Infrastructure (CNKI) database. [REDACTED] notes that the CNKI database reflects that one of the petitioner's papers was cited by six journal articles, two Master's dissertations and one doctoral dissertation. Dr. [REDACTED] further asserts that "there were 225 click download times through the website totally." This sentence is confusing, but [REDACTED] seems to be suggesting that an unknown number of the petitioner's papers were downloaded 225 times. Finally, [REDACTED] asserts that two of the petitioner's articles were ranked fourth and fifth by peers.

The petitioner submits materials downloaded from the CNKI database with a certified partial translation. It appears that these materials represent a search for results relating to the petitioner's 2000 article. The search seems to have recovered two "serial articles," both by the petitioner. The search also produced a "citation report" listing six articles, one of which is a self-citation by the petitioner, two Master's dissertations and a doctoral dissertation that postdates the filing of the petition. The translation for page three of six states: "[Click download] 225 totally." Below that, the materials list 10 articles from the China Academic Journals Full-text Database, one of which was published in 1995,

² The list of protocols is, according to the heading, the result from a search of the keyword "Epirubicin" in the protocol title. The list includes links for each protocol. Dr. [REDACTED] provides EORTC's website address in his letter. We have accessed the links provided by [REDACTED] at <http://www.eortc.be/protoc/default.htm> (accessed on November 14, 2008 and incorporated into the record of proceedings). The protocols involving Epirubicin and bladder cancer, 30906, 30911, 30901, 16881, 30869 and 30863, all predate the petitioner's work in the field. Specifically, the most recent protocol, 30906, was activated in 1993 and closed in 1999. Thus, it is not clear how this list of protocols establishes the petitioner as a "pioneer" in this field.

and 10 articles labeled as “English literatures,” one of which dates from 1996. Finally, page five of six includes a list of 10 “Readers recommended articles.” As the materials all seem to have been generated from a search of the petitioner’s article, it would appear that the recommended articles are recommended for those interested in the article that is the subject of the search. Thus, it can be expected that two of the ten articles would be other articles by the petitioner. The record in no way suggests that the list of recommended articles represents the top ten articles for the field of bladder cancer treatment. Ultimately, the materials on appeal do not overcome the concerns expressed in our initial decision that the petitioner’s articles are not widely and frequently cited.

The petitioner did submit letters from researchers regarding the petitioner’s work in the United States, including those from references who affirm their independence of the petitioner (the record does not contain their curriculum vitae). The AAO concluded, however, that the letters provided insufficient specifics and examples of the petitioner’s work being utilized in the field.

As of the date of filing, the petitioner was working in the laboratory of [REDACTED] Chief of Pediatric Urology and Director of the Center for the Treatment and Study of Hypospadias at the University of California, San Francisco (UCSF). Dr. [REDACTED] asserts that the petitioner is currently studying the molecular mechanisms of one of the most common congenital anomalies, hypospadias. [REDACTED] explains the importance of preventing this condition and, thus, determining its etiology. [REDACTED] states:

[The petitioner] checked gene status in tissue from patients and found over-expression of Activating Transcription Factor 3 (ATF3) gene is related to hypospadias. This interesting result had not been reported ever before. Also, he tried serial experimental methods to confirm this new discovery. In the two years he has been working in the lab, [the petitioner] has had three first-author papers, with two more submitted. In the course of completing these major studies, he has mastered several cutting-edge molecular techniques and mined a huge expression array database for genes that are candidate actors in the mechanism of hypospadias. His investigations have led us to genes that no one had even considered before in relation to the causes of this penile malformation, and his results are novel and make fruitful contributions to the field.

[REDACTED] concludes that his laboratory would not be making the progress they are making without the petitioner’s contributions. The petitioner submitted other letters from researchers in California, some of whom worked in a different field, who speculate as to the future benefit of the petitioner’s current research. Those letters were discussed in detail in our previous decision and that discussion need not be repeated here.

The AAO acknowledged that the petitioner was respected by his colleagues and had made useful contributions in his field of endeavor, but concluded that the evidence fell short of establishing that the petitioner had already made contributions of major significance.

On appeal, the petitioner submits a letter from [REDACTED], a professor at UCSF. Although a colleague at UCSF, [REDACTED] asserts that he became familiar with the petitioner's work through his conference presentations and publications. Dr. [REDACTED] asserts that the Karolinska Institutet in Sweden has adopted the petitioner's protocol for their Ph.D. training program. In support of this assertion, the petitioner submitted a doctoral thesis from the Karolinska Institutet that cites the petitioner's work with hypospadias. The dissertation postdates the filing of the petition and is not evidence of the petitioner's acclaim as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

[REDACTED], a Staff Scientist and Instructor at the Urological Diseases Research Center at Children's Hospital in Boston, Harvard Medical School, asserts that the petitioner has "utilized several cutting-edge molecular techniques" and that his investigations have led to genes no one had previously considered. Dr. [REDACTED] praises the petitioner's contributions and asserts that the petitioner has been invited to collaborate with other experts. Dr. [REDACTED] does not specifically explain how the petitioner had impacted the field prior to the filing of the petition.

While the new evidence submitted on motion is stronger than the evidence of record before the AAO previously, the petitioner has not sufficiently established that he meet this criterion, especially as of the date of filing.

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

The AAO acknowledged the claims by [REDACTED] and other references that the petitioner is "playing a leading or critical role" in [REDACTED]'s lab. The AAO further acknowledged that after the date of filing, the petitioner became a principal investigator of a government-funded study. The AAO concluded, however, that selection for an entry-level position such as a postdoctoral fellow, cannot serve to meet this criterion.

On motion, counsel asserts that the number of publications authored by the petitioner and the affirmations of his supervisors as to the importance of his role with them demonstrates that the petitioner, despite working in an entry-level position, was able to play a leading or critical role for his employer. Counsel concludes that the AAO's conclusion suggests [REDACTED] lacks credibility.

We do not question [REDACTED] sincere evaluation that the petitioner has performed at a high level in his position. Counsel, however, appears to confuse this criterion with the contributions criterion and the scholarly research criterion. At no point did the AAO imply that a postdoctoral fellow cannot make significant contributions to his laboratory or even the greater scientific community. The regulations, however, provide a different criterion for contributions by the alien, set forth at 8 C.F.R. § 204.5(h)(3)(v) and discussed above. The regulations also provide a different criterion, set forth at 8 C.F.R. § 204.5(h)(3)(vi), for consideration of scholarly articles authored by the alien. Thus, clearly, if we are to ascribe any meaning to the regulatory mandate that an alien meet at least three criteria, we

cannot presume that either contributions or the authorship of scholarly articles is sufficient to meet this separate criterion.

As stated in our previous decision, at issue for this criterion are the reputation of the entity that employs the petitioner and the nature of the role that he was hired to fill. While the alien need not be so indispensable to the employer that the employer could not continue at all without the petitioner in that role, the nature of the role must be so leading and critical that the very selection for the role, in and of itself, is indicative of or consistent with national or international acclaim.

As also stated in our previous decision, the petitioner must establish his eligibility as of the date of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. As of that date, the petitioner was working as a postdoctoral fellow, a typically entry-level position in the sciences. While we do not question the national or international distinguished reputation of UCSF and, to a lesser extent, Dr. [REDACTED] laboratory, the petitioner has not demonstrated that the role of postdoctoral fellow is, in and of itself, a leading or critical role for UCSF or [REDACTED]'s laboratory beyond the obvious need for research institutions to employ competent postdoctoral fellows. Counsel characterizes this statement as “utterly incredible” on motion. While we acknowledge that many postdoctoral fellows may be more than competent, we reiterate that the nature of a postdoctoral fellow position, without consideration of how the alien performed in that role, is not a leading or critical one for the laboratory. Thus, the petitioner has not established that he meets this criterion by holding this inherently entry-level position.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

As discussed above, review of the record does not establish that the petitioner has distinguished himself as a urology researcher to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a postdoctoral fellow, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of November 29, 2007 is affirmed. The petition is denied.