



U.S. Citizenship
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FILE: [REDACTED]
EAC 03 174 52727

Office: VERMONT SERVICE CENTER

Date: **SEP 07 2005**

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:



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

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 asserts that the director erred by failing to issue a request for additional evidence prior to issuing the denial. Assuming the director erred, the appropriate remedy is to consider any evidence that might have been submitted in response to such a request on appeal. We will consider all of the evidence submitted on appeal below. In addition, counsel extensively cites two federal district court decisions. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719.

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 he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability in engineering.¹ 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.

On appeal, counsel challenges the director's statement that merely "meeting three of the ten categories of evidence suggested by regulation does not automatically establish the beneficiary's eligibility for the classification." Counsel cites several non-precedent decisions by this office purportedly overturning Service Center decisions with such language. Counsel did not provide copies of those decisions and, regardless, non-precedent decisions are not binding upon us.

While we may not agree with the exact wording of the director's statement, we do not read the director's decision as concluding that the petitioner was eligible under the regulations but that the petition was not approvable. Specifically, the remaining discussion does not imply that the petitioner meets three criteria. A more rational interpretation of the director's decision is that the petitioner submitted documentation that related to or addressed three or more criteria, but that the evidence itself was not indicative or consistent with national or international acclaim. A petitioner cannot establish eligibility for this classification merely by submitting evidence that simply *relates* to at least three criteria. This office consistently finds that in determining whether a 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.

The petitioner has submitted evidence that, he claims, meets the following criteria.²

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

In her initial cover letter, counsel asserts that the petitioner's admission to the Massachusetts Institute of Technology (MIT) Ph.D. program, filing of a patent application through MIT, travel grants, GRE scores, selection to collaborate with renowned professors, and invitation to serve as a teaching assistant at MIT all serve to meet this criterion. The petitioner submitted evidence of his finalist status in the MIT \$50K Entrepreneurship Competition, including his invitation to attend a reception in London for the finalists. In addition, the petitioner submits his acceptance as a Ph.D. student at MIT and his inclusion in Strathmore's Who's Who, although counsel initially claimed the latter evidence related to a different criterion relating to memberships set forth at 8 C.F.R. § 204.5(h)(3)(ii).

The director concluded the petitioner's awards were academic and that inclusion in a large directory could not serve to meet this criterion as not every individual included in such a directory enjoys national or international acclaim. On appeal, counsel asserts that the international media follows the MIT \$50K competition and that other prestigious universities have copied its format. Counsel asserts that the director erred in dismissing the petitioner's inclusion in Who's Who. Specifically, counsel cites *Muni v. INS*, 891 F.

¹ As a Ph.D. student at the time of filing, the petitioner did not list a specific job title under the "proposed employment" section of the Form I-140 petition.

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Supp. 440 (N.D. Ill. 1995) and *Buletini v. INS*, 860 F. Supp. 1222 (E. D. Mich. 1994) for the proposition that not every piece of evidence needs to demonstrate national or international acclaim because an alien must meet three criteria. As stated above, while we will consider the reasoning set forth by the district court judge in those cases, the decisions are not binding upon us.

We agree that the evidence relating to each criterion need not separately establish national or international acclaim in order to meet that criterion. Nevertheless, this office consistently finds that the evidence relating to a given criterion must at least be indicative of or consistent with such acclaim if the statutory basis for this classification is to have any meaning. In other words, the petitioner need not establish that his awards or prizes were awarded in recognition of his national or international acclaim and that every winner enjoys such acclaim. Rather, he must demonstrate that his awards or prizes are sufficiently nationally or internationally recognized in the field such that they are indicative of or consistent with national or international acclaim. Such reasoning maintains the integrity of the standard set forth in the statute without resorting to the type of circular reasoning disfavored by the *Buletini* court.³

Some references assert that the MIT \$50K competition is open to faculty and private industry. The materials provided, however, make clear that it is limited to “student entrepreneurs” at MIT’s five schools. This office consistently finds that awards for which only students, especially students at only one university, can compete, regardless of the competitiveness of the school, cannot be considered a nationally or internationally recognized award. Specifically, the petitioner did not compete with the top engineering entrepreneurs nationwide. Moreover, while status as a finalist suggests that the petitioner’s business plan was well received, finalist status is not an award or prize. Further, the petitioner seeks classification as an alien with extraordinary ability in engineering. The petitioner has not established that the entrepreneurship award is an award for excellence in his field of engineering, not business.

Finally, inclusion in a biographic directory is not an award or prize. Nor is such inclusion comparable evidence of awards pursuant to 8 C.F.R. § 204.5(h)(4). First, the petitioner has not demonstrated that this criterion is not readily applicable to his field. Moreover, we concur with the director that inclusion in a biographic directory along with hundreds or even thousands of others is not indicative of or consistent with national acclaim.

In light of the above, the petitioner has not established that he 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.

Counsel relies on the petitioner’s full membership in Sigma Xi, student membership in the Institute for Electrical and Electronics Engineering (IEEE), student membership in the American Society of Mechanical Engineers (ASME), his membership in MENSA and his inclusion in Strathmore’s Who’s Who.

The director reviewed the membership requirements for the above and concluded that the memberships could not serve to meet this criterion. Counsel does not contest this conclusion on appeal.

³ The court in *Buletini* rejected as circular the argument that evidence of judging the work of others, pursuant to 8 C.F.R. § 204.5(h)(3)(iv), must include evidence that selection as a judge was based on the alien’s extraordinary ability.

We concur with the director's reasoning. Further, MENSA may recognize high IQ levels, but it is not an association *in the petitioner's field*. Thus, it does not comply with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Finally, as discussed above, appearing as one of thousands, or even hundreds of other successful individuals in a frequently published directory is not a membership.

In light of the above, we concur with the director that the petitioner has not established that he meets this criterion.

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.

The petitioner did not initially claim to meet this criterion. On appeal, the petitioner submits a commentary on his published article published in the same issue as the article. The commentary was published after the date of filing and cannot be considered evidence of the petitioner's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*; 14 I&N Dec. 45, 49 (Comm. 1971).

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

In her initial cover letter, counsel relied on an anecdote related in a reference letter whereby the petitioner, as a teaching assistant, discovered a flaw in the instructions of a distinguished professor and was correct in his concern. Counsel further asserts that the petitioner has evaluated presentations and taught classes at MIT. The reference letters from the petitioner's colleagues at MIT affirm these assertions.

The director concluded that the above examples were not the type of formal invitations to judge the work of others contemplated by the regulation. Counsel does not challenge this conclusion on appeal and we concur with the director's analysis.

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

The director concluded that the letters were mostly from the petitioner's immediate circle of colleagues and that the independent references failed to explain how they became aware of the petitioner's work. The director further concluded that the record lacked evidence of the petitioner's recognition beyond his colleagues.

On appeal, counsel cites several non-precedent decisions by this office for the proposition that expert testimony must be accorded evidentiary weight. While non-precedent decisions are not binding upon us and counsel failed to provide copies of the decisions cited, we do not contest that expert letters must be accorded some evidentiary weight. What we consistently state, however, is that such letters, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

Other evidence that might support a colleagues' claim that a contribution is generally considered to be of major significance includes evidence that the alien is widely cited, is the subject of notable journalistic coverage, or has patented an innovation that has generated demonstrable interest in licensure and usage. In the absence of such evidence, letters from independent references can, in some circumstances, serve as evidence of a wider influence than the alien's immediate circle of colleagues.

We will evaluate all the letters submitted, both initially and on appeal, below. We emphasize upfront, however, that the letters must be evaluated, not simply counted. Letters from independent experts who were previously aware of the petitioner's reputation are more persuasive evidence of acclaim than letters from experts reviewing the petitioner's credentials for the first time in response to a request for a reference letter. Similarly, experts who identify specific contributions and affirm their own reliance of the petitioner's work, or at least explain the impact of the petitioner's work, are more persuasive than experts who merely provide general praise.

At the time of filing, the petitioner had obtained his Master's degree in engineering at the Massachusetts Institute of Technology (MIT) and was still pursuing his Ph.D. While a Ph.D. candidate is not precluded from establishing eligibility, we will not narrow the petitioner's field to Ph.D. candidates. He must still compare with the most experienced and renowned engineers in the field.

At the outset, we acknowledge the highly distinguished reputation enjoyed by MIT. We will not presume, however, that every successful engineering Ph.D. candidate at MIT enjoys national acclaim. Nor will we infer the acclaim of a particular alien based on the stature of his advisor. Rather, we look to the significance of the contributions made by the individual alien.

At the time of filing, the petitioner had yet to publish any of his work in a nationally circulated peer-reviewed journal and had yet to obtain approval of his pending patent. The lack of published material does not preclude a conclusion that the petitioner enjoys national acclaim. We recognize that designers may not publish their work due to intellectual property concerns. In such cases, however, we look for other objective evidence that the designer's work has had a major impact on the field if the petitioner is to meet this criterion. Counsel and some of the references imply that filing a patent through MIT is rare.⁴ Nevertheless, this office has previously stated, relating to a lesser classification, that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* Thus, a patent is certainly not evidence of a contribution of major significance without a similar evaluation.

The petitioner submitted his business plan for SmartCure, the company that will purportedly commercialize the patent pending innovation. The plan, while placing in the top seven in MIT's 50K Entrepreneur Competition, was not ultimately selected as a winner. As stated above, the petitioner has submitted some evidence of the prestige of the MIT 50K Competition. While the prestige of the competition demonstrates the potential for SmartCure to impact the medical field, the record contains no evidence that it had already done so as of the date of filing. The record contains no evidence that SmartCure has attracted any venture capital or interested customers or clients. Specifically, while [REDACTED] a senior research scientist at MIT, claims to have

⁴ According to MIT's website, <http://web.mit.edu/tlo/www/info.html>, MIT sponsors research that leads to 400 inventions per year and has filed over 100 patent applications per year in each of the past five years, licensing between 60 to 100 of those innovations.

requested information about SmartCure after learning of the petitioner's finalist status in the 50K competition, he fails to indicate that he is considering providing venture capital or becoming a customer. Moreover, this letter does not demonstrate familiarity with SmartCure products beyond MIT and Harvard in Boston.

The plan reflects that cofounders [REDACTED] and [REDACTED] performed the "breakthrough" research relating to micromechanical cures for wound healing published in *Nature*, *Science* and *Scientific American*. The petitioner is listed as one of four engineers for the company and is noted for his marketing and business expertise in addition to his mechanical design skills. While the plan identifies the type of customers SmartCure hopes to attract, it does not identify any potential customers who have already expressed an interest in purchasing SmartCure's product.

The petitioner collaborated on his patent-pending innovation with [REDACTED] a surgeon at Brigham and Women's Hospital and an associate professor at Harvard who also obtained a Ph.D. in mechanical engineering from MIT. In his initial letter, [REDACTED] attests to the petitioner's skill "in numeric modeling and the simulation of biologic tissues, which he uses to predict optimal forces to stimulate wound healing." [REDACTED] continues that the petitioner is the first author of a paper in preparation reporting their results. [REDACTED] does not identify a single hospital, clinic or physician that has expressed any interest in becoming a client of SmartCure or otherwise utilizing the petitioner's innovation.

[REDACTED] an associate professor at MIT, provides general praise of the petitioner and relates an anecdote where the petitioner, serving as a teaching assistant for a visiting professor from Cambridge, correctly predicted a flaw in the professor's approach. The petitioner's success as a teaching assistant does not reflect that his cardiac and wound care innovations, the bases of this petition, were already recognized as a breakthrough in the field.

[REDACTED], the petitioner's Master's thesis supervisor, provides more details regarding the petitioner's research. [REDACTED] discusses the petitioner's thesis, which involved using a theoretical paradigm for examining the role of and motivation for the use of endovascular stenting. [REDACTED] does not explain how this work has influenced the field. In discussing the petitioner's research on wound care products, [REDACTED] states only that the pending publication of this work "may" be an important paper and that the resulting product "has [the] potential to alleviate chronic wounds."

[REDACTED] senior research scientist at MIT, asserts:

[The petitioner] has designed a stent balloon interaction chamber that allows for the implementation of pressures exceeding 20 atmospheres to study the effect of external pressure on the inflating balloon with a stent placed around the balloon. This allows [the petitioner] to independently control the internal pressure inside the balloon and the external pressure in the chamber.

[REDACTED] however, does not identify any cardiology unit applying this work. The record contains no evidence that the petitioner had even presented this work at a cardiology conference where it could be reviewed and evaluated by cardiologists.

[REDACTED] professor at the Virginia Military Institute, discusses the petitioner's work with adhesion related disorders. [REDACTED] explains that endoscopic surgery on the digestive tract "often cause outgrowths

that link the digestive tract to the inner membrane that surrounds the stomach.” The petitioner “has designed a biodegradable polymer scaffold that will block the formation of this adhesive tissue, by using a static-electrical charge device that attaches to the tissue or a Velcro devise that sticks to the scar tissue.” [REDACTED] explains that these scaffolds are superior to current devices that often slip off. [REDACTED] however, does not identify a single hospital or clinic that is using or investigating these scaffolds.

The remaining letters come from beyond the petitioner’s immediate circle of colleagues. These letters, however, mostly discuss the prestige of MIT, recount the petitioner’s academic honors and praise the petitioner’s abilities. They assert that the petitioner has made significant contributions without identifying those contributions and explaining their impact. While they attest to the potential applications of the petitioner’s work and the importance of treating chronic wounds, they fail to identify any hospital, clinic or physician that has expressed an interest in applying the petitioner’s work or becoming a client of SmartCure.

For example, [REDACTED] is Chief of the Cardiovascular Branch of the National Institutes of Health (NIH), but does not indicate that NIH is considering funding research on the petitioner’s wound care products. On appeal, [REDACTED] asserts that he learned of the petitioner’s work when his search of articles on lesions in WorldCat produced the petitioner’s unpublished thesis. While [REDACTED] asserts that he requested a copy of the manuscript, he does not indicate that the petitioner’s work influenced his own. The record contains no evidence that [REDACTED] has cited the petitioner’s work or is investigating the petitioner’s stent, scaffold or wound care device. Even if a request for one’s work carried as much weight as a citation, which it does not, we typically do not conclude that a single citation is evidence of national or international acclaim.

[REDACTED] is Director of Research and Development for Advanced Stent Technologies, Inc., but fails to indicate that this company has expressed any interest in applying the petitioner’s stent research. Rather, [REDACTED] attests to the “strong potential” that the petitioner’s wound care work will “revolutionize the field of wound treatment forever.” [REDACTED] is the Executive Director at the Masonic Medical Research Laboratory of Upstate Medical University, but does not indicate that his laboratory or university is applying the petitioner’s work.

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. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). 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.

While the petitioner’s research clearly has practical applications, it can be argued that any research or innovation, in order to be published or patented, must offer new and useful information to the pool of knowledge. As of the date of filing, the petitioner had yet to publish his work in a peer-reviewed journal. His patent was still pending and his company had yet to attract capital or prospective clients. There is no evidence his devices were in either animal or human clinical trials. As such, the impact of his work on the field cannot be gauged.

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

In her initial cover letter, counsel asserts that the petitioner "has had the following papers published at MIT:

1. *Dynamics of Angioplasty: Effects of lesion bed and vascular morphology (2001): Masters Thesis in Mechanical Engineering available through the MIT libraries.*
2. *Research report for [sic] at the MIT Gas turbine lab on the design of a vertical actively controlled blade test rig system (1997)*
3. *research project report on the diffusivity of Gadolinium in Cartilage (1998)*
4. *Finite element analysis of vacuum assisted closure device (soon to be submitted)*
5. *Methods for application of micro-mechanical forces to tissues (patent)*

Counsel further asserts:

It is important to recognize that unlike in the medical field, leading articles in the field of engineering are often not published in journals. Rather they are published by the institutions at which the research work is performed. Obviously, articles published at MIT are read and respected by leaders in the field to a greater degree than those manuscripts published at any other engineering institution.

Counsel notes that the honor society of which the petitioner is a member equates "internal reports" in the field with journal publications. In support of the petition, the petitioner submitted his thesis. While MIT obtained copyright protection for the thesis, it is not published in a peer-reviewed, nationally circulated journal.

The director concluded that the petitioner had not been published in scientific journals and that the petitioner had not submitted evidence demonstrating the influence of his internal reports. On appeal, counsel notes that [REDACTED] was able to discover the petitioner's thesis while searching "Worldcat." [REDACTED] confirms this information in a separate letter. The petitioner also submits his article published in a peer-reviewed journal after the date of filing. Finally, counsel asserts that the regulation at 8 C.F.R. § 204.5(h)(3)(vi) does not require evidence that the alien's scholarly articles rise above those of other scholars in the field.

First, we will address counsel's initial assertions. We note that one of the petitioner's references, [REDACTED] an engineer, indicates that he has authored 22 articles in refereed journals and presented his work at 24 conferences in addition to his five internal memoranda. [REDACTED] an engineer of stents, lists two journal articles and four conference presentations. [REDACTED] an engineer, lists five of his most significant journal articles on his curriculum vitae. [REDACTED] another engineer, lists 12 journal articles. In his business plan for SmartCure, the petitioner indicates that his cofounders, [REDACTED] and [REDACTED] have published their "breakthrough research" on cellular micromechanics in *Nature*, *Science* and *Scientific American*. Subsequently, the petitioner indicates that [REDACTED] has published 150 articles. Thus, the record does not support counsel's assertion that the most significant articles relating to the petitioner's specialty are not published in peer-reviewed, nationally circulated journals.

The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence only where a given criterion does not readily apply. As discussed in the preceding paragraph, the petitioner has not demonstrated that this criterion is not applicable to his field. As such, we need not consider whether internal reports are comparable evidence to scholarly articles. Regardless, while MIT theses may be searchable beyond MIT, a thesis stored in a searchable database simply does not provide the author with the type of exposure that peer-reviewed, nationally circulated journals provide.

The published article submitted on appeal is not persuasive. While this office will review newly submitted evidence, it must relate to the petitioner's eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*; 14 I&N Dec. at 49. The article submitted on appeal was not even received by the journal as of the date of filing, let alone published. Thus, it is not evidence of the petitioner's eligibility on that date and will not be considered.

While counsel is correct that the regulation at 8 C.F.R. § 204.5(h)(3)(vi) does not specifically require evidence of the scholarly article's significance, we reiterate that the ultimate purpose of the regulatory criteria is to provide evidence indicative of or uniquely consistent with national acclaim. In some fields, the very act of publication may be sufficiently unique that it sets the author apart from others in his field. In fields that are typically advanced by the constant publication of original work, such as engineering and most of the sciences, this office generally requires evidence that the published scholarly article has been influential. Moreover, we do not presume the influence of a particular article merely from the journal in which it appears. The record contains no evidence that the petitioner's thesis has been cited or other evidence of its influence in the field beyond catching the eye of [REDACTED] who does not claim to have applied the petitioner's work.

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

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

The director concluded that the petitioner did not submit evidence relating to this criterion. On appeal, counsel asserts that "display of work at scholarly exhibitions" is comparable evidence to meet this criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). Counsel references the petitioner's presentation of his business plan given in London and the "lectures at scientific conferences" listed on the petitioner's curriculum vitae.

We concede that this criterion is not readily applicable to the petitioner's field. Nonetheless, this office consistently finds that presentations at scientific conferences are far more comparable to scholarly articles than artistic displays. Thus, if the petitioner were to submit evidence of presentations at scientific conferences, we would consider those under the criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi). The petitioner's presentations of his business plan in London and before a venture capital firm, however, are not persuasive. The purpose of the presentation was to advance his company, not to present scholarly work to the scientific community. The remaining "presentations" listed on the petitioner's curriculum vitae appear to be local lectures at MIT and other entities with which the petitioner was affiliated. They are simply not indicative of or consistent with national acclaim.

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

Counsel does not contest the director's conclusion that the petitioner's role as a Ph.D. candidate at MIT is not a leading or critical role for MIT and we concur with the director.

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.

Review of the record, however, does not establish that the petitioner has distinguished himself as an engineer 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 an engineer, 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 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.