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PUBLIC COPY

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 16 2005
EAC 03 220 52360

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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 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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

> (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.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend 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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences as a physicist working in the areas of optical physics, nanonmaterials and materials science. At the time of filing, the petitioner was a research associate in the Department of Electrical Engineering at Princeton University. The petitioner submitted supporting documents including his academic credentials, copies of his published scholarly articles, evidence of the citation of some of these articles, evidence of his judgment of the work of other researchers in his field, four media articles about work to which the petitioner contributed, evidence of the presentation of his work at conferences and seminars, and nine letters of recommendation.

The director determined the record did not establish that the petitioner had achieved the requisite sustained acclaim. On appeal, the petitioner submits a brief and additional evidence including updated lists of citations to his work, evidence of his service as a reviewer for scientific journals, invitations for the petitioner to present his work at various forums in 2005, and a copy of his article that was recently published in the *Proceedings of the National Academy of Sciences*. This article and many other documents submitted on appeal arose after the petition was filed and consequently cannot be considered. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner's claims and the remaining evidence submitted on appeal do not overcome the deficiencies of the petition and the appeal will be dismissed. We address the evidence submitted and the petitioner's claims in the following discussion of the regulatory criteria relevant to the petitioner's case.

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

The petitioner claims to meet this criterion because he received his Bachelor of Science degree with honors and was "a winner of the National Ukrainian Olympiad in Physics in 1993." The record contains a copy of the petitioner's bachelor of science degree in applied mathematics and physics from the Moscow Institute of Physics and Technology, which was awarded "with highest honors" in 1998. A letter from Andrey K. Sarychev, Senior Research Scientist at the School of Electrical and Computer Engineering at Purdue University and a collaborator of the petitioner, affirms that the petitioner was in the top two percent of his class. The petitioner also submitted a copy of his award as a "Winner of Ukrainian National Olympiad of Young Physicists" granted by the Ministry of Education in the Ukraine in 1993. The petitioner explains that less then two percent of the competitors in this national competition for high-school students win such an award. While this evidence documents the petitioner's academic excellence as a high school and undergraduate student, the honors do not meet this criterion because they are scholastic awards for which only other students – not established scientists – compete. In addition, the petitioner's undergraduate honors were internal to one academic institution and not national in scope. Finally, the petitioner's honors and award were granted in 1993 and 1998, ten and five years before his petition was filed, and do not reflect sustained acclaim. Accordingly, the petitioner does not meet this criterion.

(iii) 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.

The director stated that the record contained no evidence of published material about the petitioner's work. However, the petitioner submitted four media articles about research to which he contributed. The first article is entitled "'Nanoantennas' Could Bring Sensitive Detectors, Optical Circuits" and was published on September 3, 2002 on *Photonics.com* and reprinted later that month on *SpaceDaily.com*. The article discusses research on left-handed materials and repeatedly quotes the petitioner's doctoral advisor, Vladimir Shalaev, Professor of Electrical and Computer Engineering at Purdue University. The article states that the reported research was published in the *Journal of Nonlinear Optical Physics and Materials* in a paper written by Professor Shalaev, the petitioner and Mr. Sarychev. The submitted printout of the first article states that *Photonics.com* is "A Laurin Web site." The petitioner includes a quote attributed to www.photonics.com that states that Laurin Publishing's web site is "the most comprehensive, respected Internet site in the photonics industry," but the

record contains no copy of the source of this quotation or other evidence that *Photonics.com* or *SpaceDaily.com* are professional or major trade publications.

The second article is entitled "Unnatural Optics Create Precise Photonic Lens" and was published on August 27, 2002 in *EETimes*. This article states, "Optical experiments using arrays of nanowires are demonstrating that the concept of a negative refractive index could be realized in practical systems." The article repeatedly quotes Professor Shalaev and notes that he "is assisted by Viktor Podolskiy, a postdoctoral fellow at Princeton University, and Andrey Sarychev, a senior researcher at Purdue." The record indicates that *EETimes* is a professional or major trade publication with international circulation.

The third article is entitled "Topsy-Turvy World of Materials" and was published in the January 2003 edition of *Materials Today*. The article briefly discusses the collaborative work of the petitioner, Professor Shalaev and Mr. Sarychev on nanowire composites as a basis for thin-film negative index materials and cites their paper published in 2002 in the *Journal of Nonlinear Optical Physics and Materials*. The article quotes Professor Shalaev, but the petitioner is the lead author of the cited manuscript. The record contains a printout from the website of *Materials Today*, which indicates that the magazine is a scholarly publication with international circulation.

The fourth article was published in the January 2003 edition of *Popular Science* and is entitled "Nanotechnology Teeny Antennas." The article discusses research on nanoantennas done by "Vladimir Shalaev and colleagues" and quotes Professor Shalaev, but does not name the petitioner. However, the record contains a letter from the article's author, Greg Mone, who affirms that his piece was "based on the article 'Plasmon modes in metal nanowires and left-handed materials,' which appears in the Journal of Nonlinear Optical Physics and Materials, Vol. 11, No. 1, 2002. The authors of this paper are V.A. Podolskiy, A.K. Sarychev, and V.M. Shalaev."

On appeal, the petitioner submits a letter from Professor Shalaev attesting to his collaboration with the petitioner on research concerning the optical response of nanostructured materials. In particular, Professor Shalaev states that their research "show[ed] that it is possible to construct these unique materials in visible light" and was published in two articles of which the petitioner is the lead author. Professor Shalaev explains that this work "enjoyed not only professional, but also major press attention. During 2002-2003 I was frequently interviewed by professional journalists regarding this piece of our work (performed under Viktor's leadership). The articles describing our ground-breaking findings appeared on the pages of EE Times magazine, Popular Science magazine, Materials Today magazine, and other online and in press publications."

The petitioner's work has been discussed in four media articles, three of which appeared in professional or major trade publications with national and international circulation between 2002 and 2003. Three of these reports cite or were based on a published scholarly article of which the petitioner is the lead author. This evidence reflects sustained acclaim and is sufficient to meet this criterion.

(iv) 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 petitioner submitted a letter from Stanley G. Brown, Editorial Director of the *American Physical Society*, affirming that the petitioner had reviewed three manuscripts for the Society's journal, *Physical Review Letters*, between March 2001 and May 2003. In addition, the petitioner submitted electronic mail correspondence

regarding his invitation and agreement to review a manuscript for the *Journal of the Optical Society of America B*, but no evidence that he actually reviewed the manuscript. Similarly, the petitioner submitted documentation of his invitation to review two grant proposals for the Petroleum Research Fund, but the record contains no evidence that he completed the requested reviews.

On appeal, the petitioner submits a second letter from Mr. Brown of the American Physical Society that is dated January 27, 2005. Mr. Brown confirms that the petitioner serves as a referee for three journals of the Society: *Physical Review B, Physical Review E, and Physical Review Letters*. Mr. Brown notes that since March 2001, the petitioner completed 21 reviews, a number which "is significantly more than the average referee." Yet Mr. Brown does not indicate how many reviews the petitioner completed from March 2001 through July 5, 2003, the date he signed the Form I-140.

On appeal, the petitioner submits 28 electronic mail messages requesting his review of manuscripts for various scientific journals, but submits evidence that he actually completed only one of these requested reviews prior to filing his petition. The record contains documents showing that he reviewed three additional manuscripts and one grant proposal after his petition was filed, but we cannot consider this evidence. In addition, 21 of the review requests submitted on appeal were made after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49.

Although the petitioner has received numerous requests to review manuscripts and grant proposals of other researchers in his field, the record shows that the petitioner had actually reviewed only three manuscripts for *Physical Review Letters* prior to filing this petition. This limited service as a referee for one journal is not consistent with sustained national acclaim as a scientist. Consequently, the petitioner does not meet this criterion.

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

The petitioner cites nine recommendation letters from scientists in his field as evidence under this criterion. Five of the letters' authors have supervised or collaborated with the petitioner. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

Professor Shalaev, in his first letter submitted with the petition, states that the petitioner's "contribution to the prediction of construction of the first in the world left-handed optical media, optical properties of nanocomposites and nanophotonics are internationally recognized." Professor Shalaev discusses the petitioner's contributions in six specific areas: "studies of the optical response of the fractal aggregates [that] revealed giant local optical activity of such media," "studies of the percolation composites show[ing] the unique optical properties of such media," "a way to use a percolation composite as a source of extremely – short [sic]

attasecond energy pulses," "extraordinary transmittance of light through the extremely – small [sic] apertures," optical left-hand media, and deformed microcavities.

Professor Shalaev states that the petitioner's "inventions in the area of nano-photonics are patented in the U.S." The record is devoid of any evidence to support this claim. Simply going on record without supporting documentary evidence is not sufficient to meet 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)). The petitioner submitted a copy of a U.S. Patent Application entitled "Plasmonic Nanophotonics Methods, Materials, and Apparatuses" that was published on March 6, 2003. The petitioner is listed as a co-inventor, but the record contains no evidence that this application has been approved.

Evgenii E. Narimanov, Assistant Professor in the Electrical Engineering Department of Princeton University and the petitioner's collaborator and co-author, states that the petitioner is an "internationally recognized Physicist for his contribution to the optical physics of nano-materials. His main results are the discovery of the giant field excitations in the random metal-dielectric films, generation of ultra-fast (attosecond) response by the percolation composites, and discovery of the local optical activity in fractal aggregates and percolation films are recognized to have an extreme importance for the science [sic]. He also made a major contribution to the field of the Left-Handed materials, pioneering the field of optical left-handed media." Professor Narimanov explains that he has collaborated with the petitioner on researching "the physics of partially chaotic systems, and its application to the deformed microresonators," the results of which have been submitted for publication in scientific journals.

Gennady Shvets, Associate Professor of Physics at Illinois Institute of Technology and Associate Scientist at the Fermi National Accelerator Laboratory, explains that "[d]espite the significance of the left-handed media in the visible (optical) frequency range, there is only one system which supposed [sic] to have these properties. This system has been originally suggested by [the petitioner] and his collaborators." Professor Shvets notes that this work was reported in several scientific publications, some of which were submitted by the petitioner and are discussed above under the third criterion. Dr. Sarychev, of Purdue University, notes that the petitioner's "recent work on the Left-Handed media could lead to a new era in the optical imaging, building the 'perfect lens' with the resolution above 'used-to-be-theoretically unreachable.'" Dr. Sarychev explains that "our group was the first in the world to propose unique 'left-handed' media in the optical frequency range, and [the petitioner] was the 'driving force' of this project. Our results are published in the prestigious scientific journals and are also covered in the major-trade media." Francesco Stellacci, Assistant Professor of Materials Science at the Massachusetts Institute of Technology, explains that he has "read numerous seminal papers of [the petitioner]. His understanding of metallic surface plasmon is unique and has helped me develop my own lines of research." Professor Stellacci further states that to the best of his knowledge, the petitioner's "idea on how to realize an optical left-handed material is THE ONLY ONE around. In modern science with hundreds of people working on any given problem this is the only example I know of such a case."

As discussed above under the third criterion, the petitioner's work on left-handed media was reported in *Photonics.com, EETimes, Materials Today,* and *Popular Science* between 2002 and 2003. These articles report research that was published in an article of which the petitioner is the lead author that is entitled "Plasmon Modes in Metal Nanowires and Left-Handed Materials" and appeared in the *Journal of Nonlinear Optical Physics and Materials* in 2002. The record indicates that at the time of filing this article had been cited once in the scholarly publication of one other research team. The petitioner is the lead author of another article in this area, "Plamon Modes and Negative Refraction in Metal Nanowire Composites," which

was published in 2003 in *Optics Express*. The record contains no evidence that this article had been cited by other researchers at the time of filing.

Vladimir P. Safonov, Head of the Laser Physics Laboratory at the Institute of Automation and Electrometry of the Siberian Branch of the Russian Academy of Sciences who has worked with the petitioner, states that their collaboration "has led to the discovery of the photomodification effect in the semicontinious [sic] metal-dielectric films, and local optical activity in the fractal composites. The photomodification effect proved the existence of the huge local fields in the metal-dielectric composites." Dr. Safonov explains that their research also discovered "local optical activity (or chirality) in fractal composites." He notes that their collaborative work was published in four articles and one invited book chapter.

The record contains copies of four articles co-authored by the petitioner and Dr. Safonov and their collaborators. The first article, "Percolation and Fractal Composites: Optical Studies," was published in 2000 in the *Journal of Nonlinear Optical Physics and Materials*. The record indicates that this article had been cited six times by other researchers at the time of filing. The second article is entitled "Near-Field Optical Studies of Semicontinuous Metal Films," was published in 2001 in *Physical Review B*, and had been cited four times at the time this petition was filed. The third article, "Large Local Optical Activity in Fractal Aggregates of Nanoparticles," appeared in 2001 in the *Journal of the Optical Society of America* and had been cited twice at the time of filing. The fourth article is entitled "Low-Threshold Lasing and Broad-Band Multiphoton-Excited Light Emission from Ag Aggregate-Adsorbate Complexes in Microcavity," was published in 2002 in the *Journal of Modern Optics* and had not been cited at the time of filing. Finally, the petitioner submitted a copy of the book chapter, "Fractal-Microcavity Composites: Giant Optical Responses," from "Optical Properties of Nanostructured Random Media" edited by Professor Shalaev and published in 2002 by Springer-Verlag. The record contains no evidence that this book chapter had been cited by other researchers at the time of filing.

P.Scott Carney, Assistant Professor in the Department of Electrical and Computer Engineering at the University of Illinois at Urbana-Champaign, states that he has met the petitioner at scientific conferences in their field and has followed his scholarly publications. Professor Carney discusses the petitioner's research in four areas. First, he explains that the petitioner's work on the percolation effects in the optical response of composite materials "has led to a deeper understanding of the information content of the data in optical studies of material near the percolation threshold as well as the prediction of interesting new phenomena." Second, Professor Carney states that the petitioner's discovered "highly localized, extremely large fields" in fractal materials "even when the illuminating field is relatively weak. Thus nonlinear spectroscopy may be carried out without the usual need for ultra-fast, high-intensity lasers." Third, Professor Carney notes that the petitioner and his collaborators explained why "periodically structured metal films exhibit anomalously large transmission of light," an effect that had been inadequately explained for several years. Fourth, Professor Carney states that the petitioner has recently "made a significant break-through in the burgeoning field of negative index materials," which will be "useful in creating a new generation of super-lenses."

Patrice Gadenne, Professor of Physics and Head of the Optics Group at the University of Versailles Saint Quentin in France and a co-author of the petitioner, explains that the petitioner contributed "to the theoretical calculations instigating the very recent developments of the enhanced field physics, allowing studies in linear and nonlinear regimes. The [petitioner's] calculations for giant near-field fluctuations and localization did very well account for our recent experiments (see e.g. Europhysics Letters, 53, pp. 364-370 (2001)), instigated by the first experimental observation of giant optical fields (See e.g. Phys. Rev. Lett. Vol. 82, 4520, (1999)). This work was recognized as opening new fields of research as winning [sic] the 1999 'Langlois Prize' in France.

[The petitioner's] participation was very important for planning and interpreting of these experiments as well as for reproducing the experimental results in numerical simulations." The record contains a copy of the first article cited by Professor Gadenne, of which the petitioner is a co-author, and documentation of one citation to this article by another research team.

Professor Shvets states that he first became familiar with the petitioner by reading his articles and later met him at Princeton University. Professor Shvets explains that the petitioner is "widely known for his work in the area of the optics of random media, where he made a major contribution to the development of the theory of localized plasmon modes, predicted the local chirality of the metal nano-composites and explained the interaction between the optical phonons and plasmons – the problem which puzzled experimentalists for years." The record includes a copy of the petitioner's co-authored article on this topic, "Plasmon-Enhanced Absorption by Optical Phonons in Metal-Dielectric Composites," that was published in 2001 in *Europhysics Letters* and evidence that the article had been cited once at the time of filing.

On appeal, the petitioner submits a letter from Igor Kaganovich, Research Staff Physicist at the Plasma Physics Laboratory (PPPL) at Princeton University. Dr. Kaganovich states that he was responsible for the 2003 PPPL Theoretical Physics Seminar series. Dr. Kaganovich explains that the purpose of this series is "to enhance the research potential of our laboratory through interaction with world-known experts in the fields related to propagation of electromagnetic radiation in complex media. We continuously screen the candidates for our speakers and invite the ones whose scholar [sic] findings have drastically affected the research in our international scientific community." Dr. Kaganovich invited the petitioner "and 21 other researchers from US, Japan, Germany, and Switzerland . . . . [The petitioner's] work on plasmon mode localization, strong local field enhancement, and surface-enhanced nonlinear scattering in percolation films . . . represent [sic] a counter-stone [sic] of modern theory of these incredible structures, and has significantly shaped our understanding of the field."

The record indicates that the petitioner has made valuable contributions to his field. The submitted evidence shows that his work has been published in scientific journals, that one project to which he contributed was reported in four scientific periodicals, and that he gave one invited talk at Princeton University. Yet apart from the recommendation letters' attestations to the importance of the petitioner's work, the minimal citation of the petitioner's published articles by other researchers indicates that his work was not recognized as making major contributions to his field at the time of filing. Accordingly, he does not meet this criterion.

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

Frequent publication of research findings is inherent to success as an established scientist and does not necessarily indicate the sustained acclaim requisite to classification as an alien with extraordinary ability. Evidence of publications must be accompanied by documentation of consistent citation by independent experts or other proof that the alien's publications have had a significant impact in his field.

In this case, the petitioner's curriculum vitae lists 15 "refereed journal articles" and 15 "conference proceedings and other publications" co-authored by the petitioner, but the record documents only 12 of these articles and one conference manuscript. The petitioner submitted copies of ten journal articles and one book chapter that he has co-authored and the record contains citations to an additional three manuscripts co-authored by the petitioner, but of which he did not submit copies. The petitioner is the lead author of three of his journal articles. The

record also contains evidence that the majority of the petitioner's articles have been published in reputable, refereed journals in his field.

The petitioner initially submitted evidence that nine of his articles and one of his conference papers had been cited a combined total of 25 times by other researchers. Seven of the petitioner's papers have been cited between one and two times each and his most-frequently referenced article has been cited just six times. Of the three articles of which the petitioner is the first author, only one has been cited once. On appeal, the petitioner submits printouts from two sources showing 72 and 76 citations to his work, excluding self-citations. We cannot consider this evidence because the lists contain citations made after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49.

The record shows that the petitioner has co-authored 14 articles that were published in refereed journals in his field and has also co-authored one book chapter. Yet only nine of these articles have been minimally cited in the publications of other researchers. At the time of filing, the petitioner was the lead author of only three articles, only one of which had been cited once. This minimal citation record does not demonstrate the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

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

The petitioner did not initially claim to meet this criterion. On appeal, the petitioner claims to satisfy this category because he "has held a leading role in several important projects, as illustrated by his leading authorship of several scholar publications [sic]." We do not dispute that the petitioner has played an important role on several research projects as described in the recommendation letters discussed under the fifth criterion. Yet to meet this criterion, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization itself. The record does not show that the petitioner held a leading or critical role for Princeton University as a research associate or for New Mexico State University as a graduate student. Moreover, the record does not corroborate the petitioner's alleged "leading authorship" of several scholarly publications. To the contrary, the record shows that at the time of filing the petitioner had published only three articles as a lead author, only one of which had been cited by one other research team.

On appeal, the petitioner also claims to satisfy this criterion through his current position as an Assistant Professor at Oregon State University (OSU). We cannot consider evidence regarding the petitioner's current position because the record indicates that OSU offered the petitioner this position on May 25, 2004, nearly a year after the petition was filed. Again, the petitioner must establish eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. Accordingly, the petitioner does not meet this criterion.

On appeal, the petitioner requests that we consider additional accomplishments as comparable evidence of his eligibility pursuant to 8 C.F.R. § 204.5(h)(4). However, all of the evidence cited by the petitioner arose after his petition was filed and consequently cannot be considered. The petitioner must establish eligibility at the time of filing. *Id.*

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the petitioner is an accomplished physicist, some of whose work has been reported by professional scientific publications. However, the record does not establish that the petitioner had achieved sustained national or international acclaim as a scientist placing him at the very top of his field at the time of filing. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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. This decision is rendered without prejudice to the filing of a new petition under section 203(b) of the Act, 8 U.S.C. § 1153(b), with the requisite supporting documents.

ORDER: The appeal is dismissed.