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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
LIN 06 213 52550

Office: NEBRASKA SERVICE CENTER

Date: AUG 25 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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

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

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) 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.

This petition, filed on July 13, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a biomedical researcher. At the time of filing, the petitioner was working as a Visiting Postdoctoral Fellow in the Laboratory of Cell Regulation and Carcinogenesis, National Cancer Institute (NCI), National Institutes of Health (NIH). The petitioner worked under the supervision of the late [REDACTED], Senior Principal Investigator and former Chief of the Laboratory of Cell Regulation and Carcinogenesis, from February 2003 to April 2006.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).¹

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

The petitioner submitted an April 1, 2006 letter from [REDACTED] stating: "I invited [the petitioner] to join my lab here in the NIH. [The petitioner] was selected to join my research group from a highly competitive search and was granted the prestigious Fogarty Foundation Fellowship to support his stay." As evidence that he received a Fogarty Foundation Fellowship to fund his postdoctoral research at NIH, the petitioner submitted a July 26, 2002 letter to him from [REDACTED], Acting Chief, International Services Branch, NIH, stating:

It is a pleasure to send you this official notification of your award as a postdoctoral Visiting Fellow in the NIH Visiting Program. This award will enable you to gain biomedical research experience at the NIH under the sponsorship of [REDACTED]

* * *

The period of this award is two years, effective on or about October 21, 2002, provided you have satisfied the Visiting Program requirement regarding your doctoral degree. . . . When we receive from you all documents requested in relation to your doctoral degree, we shall send you the necessary immigration forms.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

* * *

During the first year of your fellowship you will receive a stipend of \$35,000. Continuation of this fellowship beyond the first year is based on demonstrated progress, and approval by your sponsor and Institute director.

The petitioner's Fogarty Foundation Fellowship represents his receipt of financial support for temporary advanced research training rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor. We cannot ignore [REDACTED] comments that the petitioner's fellowship would allow him "to gain biomedical research experience at the NIH" and that continuation of his fellowship was "based on demonstrated progress." The petitioner has not established that satisfying the Visiting Program requirements with regard to his doctoral degree and that showing "progress" in his research training equates to excellence in the field. Experienced research scientists do not compete for fellowships and competitive postdoctoral appointments. Thus, they cannot establish that a recipient "is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner's receipt of a Fogarty Foundation Fellowship offers no meaningful comparison between him and experienced researchers in the field who had long since completed their postdoctoral training. Further, we note that the petitioner's postdoctoral fellowship program was administered under the guidance of [REDACTED]

The petitioner submitted a certificate from the International Cytokine Society (ICS) indicating that he and two others received a "Postdoctoral Investigator Award" at the Puerto Rico 2004 ICS Meeting. The record, however, does not include specific information about this award from the presenting organization (such as its official selection criteria) in order to establish its national or international recognition. We note that the April 1, 2006 letter from [REDACTED] describes the Postdoctoral Investigator Award from the ICS as a "scientist-in-training" award. The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

In addressing the preceding evidence, the director's decision stated:

The petitioner provided evidence which indicates he received . . . the Postdoctoral Investigator Award from the International Cytokine Society and the Fogarty Foundation Fellowship. The Service advised the petitioner that while meritorious, it has not been established that these constitute lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The Service requested additional evidence which establishes the significance of the awards, their scope, the requirements necessary to compete for the awards, and the criteria utilized to select the recipient. However, it is noted that the petitioner failed to provide evidence or otherwise address this portion of the request.

In the absence of additional evidence, it appears that the petitioner's awards are academic in nature. Academic study is not a field endeavor, but training for a future field of endeavor. As such, awards for academic work, scholarships, and fellowships cannot be considered

awards in a field of endeavor. Further, the Service maintains that such awards are limited in scope and more experienced and established researchers do not compete for these awards. As an illustration, the petitioner's Postdoctoral Investigator Award appears to be an award designed to recognize the achievements of post docs. As such, this award is limited in scope and cannot be considered a prize or award at the highest level in the field. In view of the foregoing, the record fails to establish that the petitioner has received any awards consistent with national or international acclaim and that can otherwise be considered lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

On appeal, counsel challenges the director's finding that the petitioner's awards appear to be "academic in nature." Counsel contends that the awards were based on the "research abilities" of the petitioner. We note, however, the content of the July 26, 2002 from [REDACTED] discussing the petitioner's postdoctoral Visiting Fellow award and its reference to requirements relating to the petitioner's "doctoral degree." With regard to the petitioner's Postdoctoral Investigator Award from the ICS, we agree with counsel that there is nothing in the record to conclude that the award was academic in nature. Nevertheless, there is no information from the ICS demonstrating the national or international significance of its Postdoctoral Investigator Award.

Counsel further argues that the director's comment the petitioner's Postdoctoral Investigator Award "cannot be considered a prize or award at the highest level in the field" is not consistent with the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). We agree with counsel that an award does not have to be a major international award to meet the requirements of this criterion. Nevertheless, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no evidence showing that the petitioner's award had a significant level of recognition beyond the presenting organization. Further, as noted by the director, the petitioner's award was limited by its terms to recognize the achievements of "postdoctoral" investigators. Such an award is presented not to established researchers with active professional careers, but rather to recent Ph.D. graduates participating in advanced scientific training programs. According to the November 2004 newsletter of the ICS submitted by the petitioner, the Society recognized other researchers at the meeting by conferring honors such as Honorary Lifetime Membership, the Ed Leonard Prize for Chemotaxis/Chemokine Research, and the Sheldon Wolff Prize in Cytokine Research. The petitioner has not established that his "Postdoctoral Investigator Award" equates to a level of achievement comparable to the preceding awards or otherwise elevates him to "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 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.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner initially submitted documentation showing that he is an "Associate" member of the American Association for Cancer Research (AACR) and a member of the Federation of American Societies for Experimental Biology (FASEB) and the American Society for Biochemistry and Molecular Biology (ASBMB). The record, however, does not include evidence (such as membership bylaws) showing the admission requirements for the AACR and the FASEB. With regard to the admission requirements for the ASBMB, the petitioner submitted an October 27, 2005 letter from the Executive Officer of the ASBMB stating: "Regular membership is available to individual [sic] who holds a doctorate, has published since the receipt of a doctoral degree at least one paper in a referred [sic] journal devoted to biochemistry and molecular biology. The applicant must also be sponsored by one Regular member of the Society." As publication is inherent to the research field and to doctoral training programs, we cannot conclude that holding a doctorate and publishing a single paper in a refereed journal equate to outstanding achievements.²

The petitioner also submitted evidence of his membership in the ICS. In response to the director's request for evidence, the petitioner submitted a letter from the Executive Director of the ICS stating:

To become a member of the ICS an application must be submitted along with copies of published documentation of scientific research based on cytokine research. A membership committee then reviews the documentation and application. Members are chosen by merit evident by not only the work done, but also the potential for future contribution to the health and research field.

The petitioner has not established that demonstrating "merit" in one's published work and "the potential for future contribution" are tantamount to "outstanding achievements." In this case, there is no evidence showing that the ICS, the AACR, the ASBMB, or the FASEB require outstanding achievements of their members, as judged by recognized national or international experts in the

² The Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at www.bls.gov/oco on August 3, 2009 and incorporated into the record of proceeding), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See <http://data.bls.gov/cgi-bin/print.pl/oco/ocos066.htm>. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

petitioner's field or an allied one. Accordingly, the petitioner has not established that he meets this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³

The petitioner submitted an article about him in the December 2004 issue of *Ha'Machon (The Institute)* magazine. The author of this material was not identified as required by the plain language of this regulatory criterion. In response to the director's request for evidence, the petitioner submitted a letter from [REDACTED] Institute Spokesman, and Head of the Publications and Media Department, Weizmann Institute of Science,⁴ Israel, stating:

Ha'Machon magazine . . . is published by the Publications and Media Department of the Weizmann Institute of Science, Rehovot, Israel. It is a magazine for cultural thinkers, containing an assortment of articles – from the “friendly science” articles describing research that his being conducted at the Weizmann Institute, along with articles on Israeli art and culture as a whole.

Ha'Machon has a circulation of around 6000 – 7000, of which, 2000 are distributed throughout the Weizmann Institute campus, and the rest among elite hi-tech industries, businesses, academic institutes, journalists and political organizations.

We note that the petitioner was profiled in a magazine published by his alma mater and former research institution. Further, the self-serving nature of the statement from the Head of the Publications and Media Department for the Weizmann Institute of Science is not adequate to demonstrate that *Ha'Machon* magazine is a major publication. In this instance, aside from failing to identify the author of the article, the petitioner has not submitted evidence (such as objective circulation information from an independent source) showing the distribution of the preceding publication relative

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

⁴ According to his resume, the petitioner was a Ph.D. student and later a postdoctoral fellow at the Weizmann Institute of Science from 1997 to 2003.

to other national media to demonstrate that the submitted article was published in a professional or major trade publication or some other form of major media.

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

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

The petitioner submitted several letters of support discussing his original research contributions. We cite representative examples here.

states:

[The petitioner] has made significant contribution in biomedical sciences, especially in research on the involvement of cytokine signaling and gene regulation in cancer. In particular, he identified and characterized the role of MITF, Pax3 and Sox10 genes in the progression of melanoma. Also, by using various molecular and biochemical techniques, he dissected the mechanism behind the process of transdifferentiation of melanoma cells into glial lineage. These findings have a significant impact on devising ways for prevention and curing various forms of cancer.

* * *

[The petitioner's] projects in my lab are to study the signaling pathways and genes that are involved in breast carcinogenesis and the role of interactions between Smad-dependent and independent signaling in breast cancer progression. He found that during TGF- β 1 treatment, the function of Smad3-transcription factor is modulated by its phosphorylation on linker region and this in turn will determine its downstream effects. This finding together with growing amount of evidence will help us understand the dual role of TGF- β signaling as both tumor-suppressor as well as tumor-promoter. During his stay in my lab, he also developed a fluorescence-based drug-screen for identifying novel Smad3 inhibitors for therapeutic purposes. We intend to use this system to screen the natural compound library available at the National Cancer Institute.

Senior Investigator and Head of the Tumor Suppression Group in the Laboratory of Cell Regulation and Development at the NCI, states:

Since joining [redacted] in 2003, [the petitioner] has extended his expertise in cancer biology to the highly topical problem of breast cancer. . . . Over the past three years, [the petitioner] has done important work elucidating the molecular pathway used by one of the most important tumor-suppressor molecules, transforming growth factor-beta (TGF-beta), in inhibiting the growth of breast cancer cells. . . . Since then, [the petitioner] has been critically involved in development of a simple and robust method for high throughput

screening of National Cancer Institute's Natural Product library for new chemicals that will target the TGF-beta pathway.

Principal Investigator and Head of the Transgenic Oncogenesis Group at the NCI, states:

One of the projects that [the petitioner] pursued during his postdoctoral training was to show how a single transcription factor that is Smad3, could mediate a wide variety of TGF-beta dependent signals. He showed that Smad3 is phosphorylated not only on its C-terminus, but also at the linker region by MAPkinase and Rho pathways and this phosphorylation event determines the transactivation potential of Smad3. [The petitioner] has been the primary force behind the development of a new drug screen to identify inhibitors of SMAD proteins, which he has shown to be critical in cancer progression. He developed cell lines, which express either destabilized green or red fluorescence proteins, in a SMAD-dependent manner, that is only in the presence of activated SMAD protein. These cell lines are to be used for screening natural compound libraries available at the National Cancer Institute, for Smad3-inhibitory compounds. Importantly, identifying these compounds may lead to an entirely new class of drugs to treat cancer. His scientific contributions from both doctoral and postdoctoral training are widely recognized

[Redacted], Professor, Department of Molecular Genetics, Weizmann Institute of Science, states:

[The petitioner] was engaged in research on the involvement of cytokine signaling and gene regulation in cancer. In particular, he identified and characterized the role of MITF, Pax3 and Sox10 genes in the progression of melanoma. Also, by using various molecular and biochemical techniques, he dissected the mechanism behind the process of transdifferentiation of melanoma cells into glial lineage. He found that during TGF-β1 treatment, the function of Smad3-transcription factor is modulated by its phosphorylation on linker region and this in turn will determine its downstream effects. This finding together with growing amount of evidence will help to understand the dual role of TGF-β signaling as both tumor-suppressor, as well as tumor-promoter. Understanding TGF-β signaling pathways will ultimately affect our understanding of many different disease processes including carcinogenesis, autoimmune disease, fibrotic and even healing of chronic non-healing wounds.

* * *

[The petitioner] also developed a fluorescence-based drug-screen for identifying novel Smad3 inhibitors for therapeutic purposes and this system is extremely useful to screen available libraries of compounds as drug targets. These findings have a significant impact on devising ways for prevention and curing various forms of cancer.

* * *

[The petitioner] has dissected the molecular mechanisms behind the IL6RIL6 chimera-mediated growth inhibition and has identified key genes such as Pax3 and MITF and signaling pathways that are involved in this process. [The petitioner] also did some pioneering work on the process of transdifferentiation, where cells of one lineage change to another. Understanding this process is of utmost importance because it is common among metastatic tumors, where cells alter their phenotypic as well as gene expression patterns in order to evade the immune system. [The petitioner] demonstrated that IL6RIL6 could promote transdifferentiation of the B16/F10.9 melanoma model to a glial cell phenotype, and by using Affymetrix gene arrays, he identified a number of genes that are involved in this process. He then went on to confirm the role of some of these genes by selectively knocking them down by using siRNA technology.

* * *

In a related vein, [the petitioner] played a key role in understanding the regulation of myelin gene expression in the presence of IL6RIL6 in dorsal root ganglia cultures. His collaborative studies in this area have shown that the IL6RIL6 chimera can effectively maintain the cultures in vitro, and can initiate the expression of myelin genes through the transcription factor Sox10. These results suggest that the chimera can also be used for treating neurodegenerative diseases, and might also be used to push the stem cell cultures towards the glial lineage. . . . I understand that a major biotechnology company is currently producing this IL6RIL6 chimeric molecule designed by [the petitioner], and is evaluating its therapeutic effects.

* * *

While at the NCI, [the petitioner] has made several important contributions to the fight against breast cancer, which is an epidemic of an alarming proportion. . . . [The petitioner's] research has led to the finding that the functions of the TGF- β signal transduction component Smad3 can be modulated by its phosphorylation at its middle-linker region by Smad-independent pathways such as p38 MAPkinase and Rho/ROCK. These observations provide a mechanistic basis for the integration of Smad and non-Smad signaling downstream of TGF- β . They will help us understand the dual role of TGF- β /Smad3 signaling as both tumor suppressor as well as tumor promoter. This knowledge in turn should help in designing agonists as well as antagonists of the TGF- β pathway for therapeutic purposes.

Based on his observations of a central role for Smad3 in TGF-p signaling in carcinogenesis, [the petitioner], along with his co-workers, has developed an innovative fluorescence-based cell assay system to identify pharmacologic modulators of the Smad3 pathway.

In support of the preceding experts' statements, the petitioner submitted documentation showing dozens of independent cites to his published findings. These citations are solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. This evidence corroborates the experts' statements that the petitioner has made original contributions of major significance in his field. The record reflects that the petitioner's contributions are important not only to the institutions where he has worked, but throughout the greater field as well. Leading scientists from around the world have acknowledged the value of the petitioner's work and its major significance in his field.

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

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

The petitioner submitted evidence of his co-authorship of several articles appearing in publications such as *The Journal of Biological Chemistry*, *Journal of Neuroscience Research*, and *European Cytokine Network*. The petitioner also submitted evidence of dozens of articles that cite to his work. Accordingly, the petitioner has established that he meets this criterion.

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

The director's decision did not address this regulatory criterion. At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

In response to the director's request for evidence and again on appeal, counsel argues that the petitioner has played a critical role for the NCI. While the petitioner has performed admirably on the research projects to which he was assigned, there is no evidence showing that his role as a Visiting Postdoctoral Fellow was leading or critical for the NCI. This subordinate role is designed to provide temporary research training for a future professional career in the field of endeavor. The petitioner's evidence does not demonstrate how his role differentiated him from the other researchers in his laboratory, let alone the NCI's tenured faculty and principal investigators. Rather, a comparison of the petitioner's position with that of his superiors (such as [REDACTED] and [REDACTED]) and of the other individuals offering letters of support indicates that the very top of his field is a level above his present level of achievement. For example, there is no indication that the petitioner has served as a principal investigator and initiated his own research projects. The documentation submitted by the petitioner does not establish that he was responsible for the NCI's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. Accordingly, the petitioner has not established that he meets this criterion.

In this case, we find that the petitioner meets only two regulatory criteria, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). We concur with the director's finding that the

petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach 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. 8 C.F.R. § 204.5(h)(2).

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

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.