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U.S. Citizenship and Immigration Services
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U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUL 16 2009
LIN 07 050 50034

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:

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.

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.

On appeal, the petitioner argues that he 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 December 6, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a biotechnology researcher. At the time of filing, the petitioner was working

as an Assistant Professor at the Institute of Human Virology, University of Maryland Biotechnology Institute.

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 a November 14, 2006 letter from [REDACTED], Professor and Director, Institute of Human Virology, University of Maryland, stating:

This letter is to certify that [the petitioner] joined my Laboratory, the Laboratory of Tumor Cell Biology at the National Cancer Institute, NIH, on 09/20/1992. He worked from 09/1992 to 09/1994 as a recipient of a fellowship for the fight against AIDS, awarded by the Italian Ministry of Health. This fellowship is an Italian National award that has been given to a limited number of scientists for excellence in their field.

In response to the director's request for evidence, the petitioner submitted a March 4, 2008 letter from [REDACTED] Full Professor of Molecular Biology, Faculty of Medicine, University of Verona, stating that the petitioner worked in his laboratory at the Institute of Molecular Genetics of the Council of National Research in Italy from 1986 to 1992. further states:

In 1992 [the petitioner] won a fellowship from the Italian National Institute of Health . . . funded by the Italian Ministry of Health. . . . [The petitioner] was awarded his fellowship after a very selective process conducted nationwide to allow 50 prominent young Italian scientists to continue their scientific research projects in prestigious national laboratories. After two selection steps, which evaluated both his achievements and his scientific project, [the petitioner] was awarded one of the 50 fellowship [sic].

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

The record does not include evidence from the Italian National Institute of Health or the Italian Ministry of Health documenting or verifying the petitioner's fellowship. Rather than submitting primary evidence of the fellowship from the presenting governmental institution, the petitioner instead submitted a letter from his superiors asserting that he received the fellowship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). In this instance, the petitioner has not overcome the absence of primary and secondary evidence demonstrating that he received this fellowship from the Italian National Institute of Health and the Italian Ministry of Health.

Nevertheless, the petitioner's fellowship represents financial support for his advanced research training rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor. We cannot ignore [REDACTED]'s comment that the petitioner's fellowship was intended for "young Italian scientists." 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). Receipt of such a fellowship offers no meaningful comparison between the petitioner and experienced researchers in the field who had long since completed their postdoctoral training.

The petitioner's response to the director's request for evidence included a certificate issued to him by the Institute of Human Virology stating that he received a "Special Performance Bonus" in September 2001. This performance bonus from the petitioner's immediate employer reflects institutional recognition rather than the national or international recognition required by this criterion.

On appeal, the petitioner submits an October 2, 2006 letter from the American Cancer Society (ACS) announcing that [REDACTED] of the Institute of Human Virology received a Research Scholar Grant from the ACS as Principal Investigator, a letter from the National Cancer Institute (NCI) indicating that [REDACTED] was the Principal Investigator for a grant from the NCI, and a "Collaborative Research Agreement" between the University of Maryland Biotechnology Institute and the "Fondazione Casse [REDACTED]" (FCRP) indicating that [REDACTED] was the Principal Investigator for a grant from the FCRP. We cannot ignore that the petitioner was a co-investigator for the preceding grants rather than the principal investigator. Further, we note that research grants simply fund a scientist's work. A substantial amount of scientific research is funded by research grants from a variety of public and private sources. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement. Thus, we cannot conclude that having one's work funded through research grants constitutes receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

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 submitted a certification indicating that he is a registered member of the Italian Professional Board of Biologists. The record, however, does not include evidence (such as membership bylaws or official admission requirements) showing the admission requirements for this organization.

The petitioner also submitted a letter from the Chair of the University of Maryland Biotechnology Institute (UMBI) Faculty-Staff Senate stating that the petitioner is a senator in that body. In response to the director's request for evidence, the petitioner submitted a document entitled "UMBI Policies and Procedures" stating that "full-time faculty and staff members with UMBI appointments are eligible to participate in Senate elections and to be elected to the Senate." The document further states: "The Representative Senators will consist of two faculty members, one of whom should hold a tenured or tenure-track appointment, and one staff member from each of the UMBI Research Centers, and two staff members from UMBI Central Administration." There is no evidence showing that membership in the UMBI Faculty-Staff Senate requires outstanding achievements rather than simply being a faculty or staff member employed by UMBI.

In this case, there is no evidence showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the 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.²

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

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

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

The petitioner submitted letters from editors and representatives of *Proceedings of the National Academy of Sciences*, *The Journal of Immunology*, *Journal of Cellular Physiology*, *The Journal of Infectious Diseases*, *Journal of Leukocyte Biology*, *Blood*, *Cellular and Molecular Biology*, *Antioxidants & Redox Signaling*, *Journal of Acquired Immune Deficiency Syndromes*, *The American Journal of Pathology*, and *The British Journal of Haematology* stating that he reviewed manuscripts for their journals. The documentation submitted by the petitioner indicates that that he has reviewed a large number of articles for a substantial number of distinguished journals. Accordingly, the petitioner has 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.

On appeal, the petitioner submits documentation relating to two provisional patent applications listing him as an inventor. There is no evidence showing that the petitioner has been granted a patent for these inventions. Even if the petitioner were to submit such evidence, the grant of a patent demonstrates only that an invention is original. This office has previously stated that a patent is not

² 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.

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, (Commr. 1998). **Rather, the significance of the innovation must be determined on a case-by-case basis.** *Id.* The petitioner's provisional patent applications from 1996 and 2001 are assigned to the National Institutes of Health and the University of Maryland Biotechnology Institute. The petitioner's superiors at these institutions do not indicate that they have successfully licensed or marketed his innovations. Thus, the impact of the petitioner's inventions is not documented in the record. There is no evidence demonstrating that the scientific processes developed by the petitioner several years ago constitute original scientific contributions of major significance in his field. For example, in discussing his patent applications, the petitioner states that his innovations "could potentially . . . be developed for the health benefit of the Nation at large" rather than addressing how his inventions have already had a significant impact in the field.

Aside from evidence of his provisional patent applications from 1996 and 2001, the petitioner submitted several letters of recommendation in support of the petition.

states:

I have known [the petitioner] since 1992, when he joined my Laboratory, the Laboratory of Tumor Cell Biology part of the National Cancer Institute at the National Institute of Health in Bethesda, Maryland. [The petitioner] then joined me at the Institute of Human Virology in 1995 and since then his productivity has constantly improved. As demonstrated by his C.V., [the petitioner] is an outstanding scientist with extraordinary ability and extensive expertise in molecular and cell biology and he has the capability of interacting productively with most members of the Institute as well as maintaining international collaborations. To the regards, he is among the founders (with myself and other colleagues) of a Foundation (Research & Progress Foundation) established in Rome, Italy in February 2004 to foster collaborations between Italian and American scientists. He is currently coordinating the work efforts of one research associate and one technician in his Laboratory at the IHV. His main areas of research are: i) IFN-mediated anti-proliferative effects; ii) HIV pathogenesis; HHV-6 and Multiple Sclerosis.

Major accomplishments of [the petitioner]:

- His work demonstrated for the first time that IFN-a (a molecule used in anticancer therapy) affects one of the most important pathway in cell proliferation. This could lead to new treatments for cancer;
- His group developed a serological assay to discriminate between two viral strains (HHV-6A and B). This assay could prove very important to study the link between HHV-6 and Multiple Sclerosis;
- He published several manuscripts where he clearly demonstrated how an HIV protein negatively affects immune system function. This research has increased our understanding of HIV disease process. It has also resulted in new insights in HIV pathogenesis;

- He is also currently involved in the study of a protein important in cancer development and control.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or published research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance in the field.

Associate Director of the Division of Basic Science, Institute of Human Virology, states:

I have known [the petitioner] since he joined the Laboratory of Tumor Cell Biology at the National Cancer Institute at the National Institute of Health in Bethesda, Maryland in 1992. I have had many opportunities to interact with [the petitioner], both professionally and personally and in my opinion he is one of the most committed scientists I have had the pleasure of knowing, with a broad range of technical skills, and he is highly able to critically assess his own work and that of others in the field. He currently heads a Laboratory at the Institute of Human virology, and we collaborate on several lines of research. In particular, we have conducted studies on HIV-induced immunopathogenesis and on the anti-tumor effects of Interferon-alpha. These studies are important because they can lead to new clinical treatments. His presence here is of considerable value to the Institute.

Professor and Director, Laboratory of General Pathology and Experimental Oncology, Università dell'Insubria, Italy, states:

I have known [the petitioner] since 2005, when we met at a scientific meeting the Foundation he is President of, Fondazione Ricerca e Progresso, organized in Catania, Italy. I have had many interactions with [the petitioner] since then, both professionally and personally and in my opinion he has a very broad range of technical skills, and he is highly able to critically assess his own work and that of others in the field. He is currently head of a Laboratory at the Institute of Human virology, and we collaborate in studying the anti-tumor effects of Interferon-alpha. These studies are very important for their clinical implications, since they can help developing new treatments.

former Chairman of the Laboratoire de Physiologie Cellulaire, Université et Marie Curie, and current Chairman of the Sciences and Research Department of Neovacs S.A., states:

I have known [the petitioner] since 1992, when he joined the Laboratory of Tumor Cell Biology at the National Cancer Institute at the National Institute of health in Bethesda, Maryland in 1992. I have interacted with [the petitioner], both professionally and personally and in my opinion he is a very dedicated scientist. He has a very broad range of technical

skills, and he is highly able to critically assess his own work and that of others in the field. He currently heads a Laboratory at the Institute of Human Virology, and we collaborate in studying mechanisms of HIV-induced immunopathogenesis and anti-tumor effects of Interferon-alpha. These studies are very important for their clinical implications, since they can help developing new treatments.

The preceding letters from [REDACTED] and [REDACTED] are similar in content and contain identical language. It is not clear who is the actual author of the duplicative text in their letters of support, but it is highly improbable that these three individuals independently formulated the exact same wording. While it is acknowledged that these individuals have lent their support to this petition, it appears that two of them did not independently prepare significant portions of their letters. As such, we find their duplicative statements to be of limited probative value.

[REDACTED] Director, Division of AIDS, National Institutes of Health, National Institute of Allergy and Infectious Diseases, states:

I have known [the petitioner] since 1995, when he joined the Institute of Human Virology of Medical Biotechnology Center (MBC) of the University of Maryland. At that time, I was the Director of the MBC and had numerous occasions to interact with him. He was among one of the most dedicated and highly skilled scientists I have had the pleasure to work with. In fact, [the petitioner] has published several scientific papers of impact in the field of HIV-related immunopathogenesis, studying the effect of a viral protein on the human immune system. In addition, he has also published papers relevant to the field of tumor cell biology, demonstrating how IFN-alpha can modulate a cellular pathway important for cell proliferation. His work can potentially lay the foundation for new clinical treatments.

Indeed, there is no doubt that [the petitioner] possesses extraordinary scientific ability which will likely have a significant impact on the field of medical research, and ultimately human health.

[REDACTED] states that the petitioner has published several papers focusing on HIV-related immunopathogenesis and tumor cell biology. On appeal, the petitioner argues that his publication record in distinguished scientific journals is sufficient to meet this regulatory criterion. The petitioner's research publications are far more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will fully address the petitioner's published work under the next criterion.

[REDACTED] further states that the petitioner's "work can potentially lay the foundation for new clinical treatments" and "will likely have a significant impact on the field of medical research." With regard to the witnesses of record, many of them they discuss what may, might, or could one

day result from the petitioner's work, rather than how his past research achievements already qualify as original contributions of major significance in the field. For example, ██████████ states that the petitioner's research "could lead to new treatments for cancer" and "could prove very important to study the link between HHV-6 and Multiple Sclerosis." ██████████ and ██████████ all state that the petitioner's studies "can help [in] developing new treatments." A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

The preceding letters do not include a substantive explanation of specific examples in which the petitioner's research contributions were of major significance in his 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. While the petitioner has earned the admiration of his superiors and collaborators, the record lacks evidence showing that his work constitutes original contributions of major significance in his field consistent with sustained national or international acclaim. For example, the letters of support do not indicate the extent to which the petitioner's specific findings have impacted others in his field nationally or internationally beyond his immediate circle of colleagues, nor do they show that the field in general has significantly changed as a result of his work.

In this case, the letters of support limited to the petitioner's superiors and research collaborators are not sufficient to meet this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of an engineering researcher who has sustained national or international acclaim. Without evidence showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of contributions of major significance, we cannot conclude 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 numerous articles appearing in publications such as *Proceedings of the National Academy of Sciences*, *Blood*, *Journal of Immunology*, *Circulation*, *Lancet*, and *Nature Medicine*. The petitioner also submitted evidence of

numerous 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.

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.

On appeal, the petitioner argues that he performed in a critical role as a "peer reviewer for top scientific journals" and in a leading role for the Institute of Human Virology and the "Research and Progress Foundation in Italy." With regard to the petitioner's occasional service as an "ad hoc" reviewer for *Journal of Acquired Immune Deficiency Syndromes*, *The American Journal of Pathology*, and *The British Journal of Haematology*, there is no evidence showing that being among the numerous scientists who were requested to perform this service was tantamount to a leading or critical role for those journals. Nevertheless, the petitioner's service as a manuscript reviewer has already been addressed under the "judge of the work of others" criterion at 8 C.F.R. § 204.5(h)(3)(iv). As previously noted, because separate criteria exist for judging the work of others and performing in a leading or critical role, USCIS clearly does not view the two as being interchangeable.

In regard to the petitioner's role as President of the Research and Progress Foundation in Italy, the petitioner submits a June 22, 2005 letter from [REDACTED] to the Minister of Health and Welfare of India discussing future plans for building an Institute of Human Virology in Madras, India. Dr. [REDACTED] letter identifies the petitioner as the President of the Research and Progress Foundation, but the letter does not provide substantive information regarding the duties and responsibilities of the petitioner's position. Further, there is no evidence showing that the Research and Progress Foundation has a distinguished reputation.

With regard to the petitioner's role as an Assistant Professor at the Institute of Human Virology, the petitioner submitted a November 14, 2006 letter from the Chief of Operating Office, Institute of Human Virology, stating:

This letter is to certify that [the petitioner] participates as a member of the Senior Staff of the Institute of Human Virology. He also coordinates the work of his laboratory and collaborates with several internationally recognized scientists. For all this [sic] reasons he plays a critical role within the Institute of Human Virology, an organization with distinguished part of the University System of Maryland.

There is no supporting evidence showing that the Institute of Human Virology has a distinguished reputation. With regard to the petitioner's role as an Assistant Professor, there is no evidence showing that his role was leading or critical for the Institute or the University System of Maryland. The petitioner's evidence does not demonstrate how his role differentiated him from the other

researchers in the Senior Staff, let alone its top management. For example, the petitioner has not submitted an organizational chart for the Institute of Human Virology or the University System of Maryland showing where his position falls within the organizational hierarchy. The documentation submitted by the petitioner does not establish that he was responsible for the success or standing of the Institute of Human Virology or the University System of Maryland 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).

On appeal, the petitioner additionally argues that prior approvals of O-1 nonimmigrant visa petitions filed on his behalf serve “as proof of his extraordinary ability in the sciences.” While USCIS has approved at least two O-1 nonimmigrant visa petitions filed on behalf of the petitioner by the University of Maryland Biotechnology Institute, these prior approvals do not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien’s qualifications).

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

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

Review of the record does not establish that the petitioner has distinguished 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 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.