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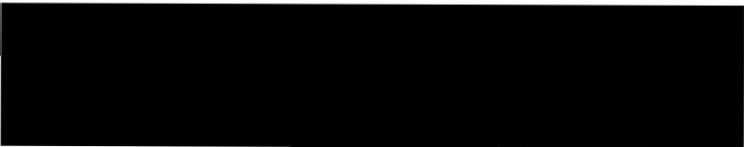
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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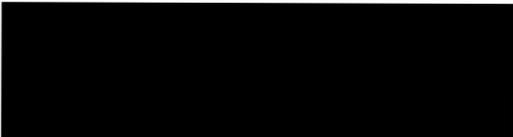


FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 25 2009
LIN 07 177 50368

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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 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 required for classification as an alien of extraordinary ability.

On appeal, counsel claims 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:

(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. 60897-99 (Nov. 29, 1991). 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, specifically as a microbiology and molecular biology researcher. The petitioner initially submitted his resume, educational

diplomas, membership certificates and information about the organizations to which he belongs, articles that he authored, citations to his articles, information about research grants, information about journals in which his articles appeared, letters of recommendation, and requests for the petitioner to review articles submitted to journals. In response to a Request for Evidence (RFE) dated March 6, 2008, the petitioner submitted additional letters of recommendation, additional articles that he authored with accompanying citations, presentations made, a letter awarding him a promotion, and additional requests to review articles. The evidence submitted is relevant to the following regulatory criteria. The petitioner does not claim to meet any other criteria.

(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 claimed eligibility under this criterion by virtue of his receipt of several research grants or fellowships. Specifically, the petitioner presented evidence of his receipt of a postdoctoral fellowship from the Taiwan National Science Council, a research associateship and senior research fellowship from the Indian Department of Biotechnology, and research support from the Pathogen Function Genomic Resource Center. We cannot ignore the fact that research funding through competitive grants is inherent to many fields within the basic and applied sciences. Although prestigious grants may indicate the recognized value of the recipient's research, they are not prizes or awards for documented achievements. Rather, they may recognize that the recipient's prior findings support the viability of the proposed research. Similarly, the positions offered to the petitioner in the form of fellowships are not awards, but instead are a recognition that the investigator is capable of performing the proposed research. Moreover, grants and fellowships are principally designed to fund future research, and not to honor or recognize past achievement. The petitioner submitted no evidence to show that his fellowships or grant conveyed any sort of national or international acclaim or otherwise operate in a way or are recognized as anything other than a typical scientific grant or fellowship.

For all of the above reasons, the petitioner has failed to establish that he meets this criterion.

(ii) 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.

The petitioner submitted evidence of his membership with the American Society for Microbiology. The information submitted states that "Full Membership is open to any person who is interested in microbiology and holds at least a bachelor's degree or equivalent experience in microbiology or related field." 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, proficiency certifications, 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 information submitted does not indicate that the American Society for Microbiology requires outstanding achievement as opposed to a base educational requirement. Similarly, the information submitted about the petitioner's membership with the American Association for the Advancement of Science is not premised upon outstanding achievement as the organization is "open to all."

The petitioner submitted a copy of his membership certificate to Sigma Xi Scientific Research Society. The materials about Sigma Xi submitted reveal that Sigma Xi membership is available to “any individual who has shown noteworthy achievement as an original investigator in a field of pure or applied science or engineering.” We note that “noteworthy achievements” are not equivalent to “outstanding achievements,” but instead are at least one step below the standard iterated in this criterion. The petitioner submitted no additional information defining what constitutes a “noteworthy achievement” or to indicate that a “noteworthy achievement” is equivalent to an outstanding achievement as contemplated by this criterion. The statements made in several letters of recommendation do not impact this analysis as although individuals may believe that a higher standard is imposed, the standard iterated by the organization itself does not indicate that outstanding achievement is required for membership. We also note that Sigma Xi enjoys a membership of 65,000, a large number that does not indicate that membership is reserved only for those at the top of their field.

For all of the above listed reasons, the petitioner failed to establish that he meets 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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulation, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should generally 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.¹ Citations of an alien’s work by other scientists in their scholarly publications rarely meet this criterion because the citing articles are primarily about the authors’ own research, not the work of the alien.

In response to the RFE, counsel stated that the petitioner demonstrated eligibility under this criterion through citations to the petitioner’s work and the discussion of the petitioner’s work in scholarly articles. These articles are not primarily about the petitioner or his work, but instead the articles’ authors use the petitioner’s work to support their own findings. These citations will be considered in greater depth in the discussion below of 8 C.F.R. § 204.5(h)(3)(vi).

For the above stated reasons, the petitioner has failed to show that he meets 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 weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv) depends 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

¹ 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.

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 claims to meet this criterion due to his review of manuscripts and editorial work for scientific journals. Because peer review is a common feature of the publication process for many scientific journals, service as a peer reviewer in and of itself will not satisfy this criterion without evidence that the alien served on the editorial board, completed a substantial number of reviews, or has otherwise conducted peer review of other scientists’ work in a manner consistent with sustained national or international acclaim. The petitioner presented evidence that he reviewed articles for *Research in Microbiology*, *Journal of Applied Microbiology*, *BMC Microbiology* (2), and *Water Resources Research*. The petitioner submitted no evidence showing that a review of five articles is commensurate with a demonstration of national or international acclaim. He also presented evidence that his colleagues at Texas A&M University asked him to review an article that they intended to submit for publication and a request for evaluation of two doctoral theses from Manonmaniam Sundaranar University. Despite counsel’s claims in the response to the RFE, no evidence shows that these requests were made for performance “at a level that was way out of the ordinary for one in [the petitioner’s] position.” Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner also submitted an additional request to review a doctoral thesis made in June 2008, a request from *Foodborne Pathogens and Disease* made in November 2007, a request from *Letters in Applied Microbiology* made June 21, 2007, and a June 16, 2007 request to review an article for *Archives of Environmental Contamination and Toxicology*, all of these requests coming after the date that this petition was filed. A petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Accordingly, the petitioner has failed to establish that he meets 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 submitted letters of recommendation on appeal supporting his claim of eligibility under 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 (Comm. 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 a researcher who has sustained national or international acclaim. The petitioner submitted letters about four aspects of his research.

The April 3, 2007 letter from [REDACTED], professor of microbiology at Texas A&M University and the petitioner’s supervisor, states that he recruited the petitioner as a post-doctoral researcher because of his “skill

set of using sophisticated molecular techniques for addressing a much applied problem.” [REDACTED] continued by extolling the petitioner’s research in on *Salmonella Typhimurium* and stating that his findings “opened up a new avenue of research in our on-going fight against this food-borne pathogen.” The April 4, 2007 letter from [REDACTED], professor emeritus of Integrative Biology at the University of Guelph and the petitioner’s previous supervisor, states that the petitioner “identified gene sequences of key proteases in *Cryptobia salmositica*, a protozoan parasite that causes disease and mortality in salmon on the west coast.” [REDACTED] continued by stating that the petitioner’s work “has contributed to further development of preventive measures against cryptobiosis.”

The April 5, 2007 letter from [REDACTED], editor of Fishmail and former co-worker of the petitioner’s in [REDACTED] laboratory, states that the petitioner “made some remarkable accomplishments [including] identif[ying] and isolate[ing] genomic DNA sequences of cysteine proteinase, metalloproteinase, and S-adenosyl methionine . . . [and he] designed [a protein vaccine] against cryptobiosis.” The March 30, 2007 letter from [REDACTED], assistant professor of microbiology at the University of Texas Southwestern Medical Center and collaborator of the petitioner’s, states that the petitioner’s research “offers novel possibilities for understanding antimicrobial resistance, and developing novel generation of antimicrobials, by understanding the role of quorum sensing in pathogenesis.” The April 4, 2007 letter from [REDACTED] research biologist with the United States Department of Agriculture and frequent collaborator of the petitioner’s, states that the petitioner “has made significant contributions to research on food-borne pathogens and has identified the quorum sensing molecule (AI-2) as a control component for the expression of virulence genes in *Salmonella Typhimurium*, which is responsible each year in the United States for millions of human illnesses and economic losses in billions of dollars.” [REDACTED] continued:

quorum sensing is a field that is still in its infancy and its effects on the food-borne pathogen *S. Typhimurium* are relatively unknown. In spite of decades of research, effective methods to intervene this pathogen have remained unresolved. [The petitioner’s] research has shed light on important molecular mechanisms in the pathogen that have eluded scientists for many decades . . .

In his March 25, 2008 letter, [REDACTED] stated that the petitioner “played a pioneering role in other food safety research projects that have made significant contributions towards uncovering the roles of an array of naturally occurring compounds that inhibit bacteria cell to cell communication” and that these findings may lead to alternate ways of treating disease. The April 17, 2007 letter from [REDACTED], senior research scientist with the United States Department of Agriculture and collaborator of the petitioner’s, states that the petitioner “is the first person to come out with this breakthrough research with respect to the effect of the quorum sensing molecule on the virulence mechanisms of this pathogen.” [REDACTED] further states that the petitioner’s research “has opened up a new possibility of using the quorum sensing signaling molecule as a tool to prevent food borne illnesses.” The March 21, 2007 letter from [REDACTED], CEO of Seralogix and former co-worker of the petitioner’s at Texas A&M University, states that he was “highly impressed by [the petitioner’s] innovative research in the fairly new field of microbial cell signaling.”

The April 17, 2007 letter from [REDACTED], assistant director of the Indian Marine Products Export Development Authority and collaborator of the petitioner’s doctoral advisor and his laboratory, states that the petitioner’s development of “a simple immunological diagnostic kit to identify White spot baculovirus infection in shrimp . . . paved the way for commercial rapid diagnostic kits and innovative shrimp health management methods” and he later “identif[ied] the disease causing agents [in the cobia culture industry] and was instrumental for the development of a bacterial vaccine.” The April 11, 2007 letter from [REDACTED] lecturer at the Queens University Belfast and collaborator of the petitioner’s, states that the petitioner

identified three viruses that affect *Penaeus monodon* and *Penaeus indicus*, the two most economically important varieties of shrimp in India. His work was pioneering and of immense importance to the aquaculture industry as it was done at a time when little was known about viruses that affected the Indian shrimp industry. He was instrumental in developing a polyclonal antibody-based rapid detection kit for the White spot baculovirus.

letter also extolled the petitioner's work in "identif[ying] the disease causing agents in cage cultured cobia." The April 10, 2007 letter from [REDACTED] assistant professor at the National Cheng Kung University and former co-worker of the petitioner's, states that the petitioner "was instrumental in identifying the disease causing agent" in a disease outbreak among the caged cobia industry. [REDACTED] stated that the petitioner's method in rapidly identifying certain pathogens was a break through that saved the industry a great deal of money and his methods are used with increasing frequency by other scientists. The April 16, 2007 letter from [REDACTED] research fellow at Centro de Investigaci3n Marinas and former co-worker of the petitioner's, states that the petitioner "is one of the pioneers who identified pathogens affecting sea farmed cage cultured cobia. He identified both pathogenic bacteria and metazoan parasites. His findings have aided further research and have led to the production of a vaccine against the bacterial infection."

The above letters are all from the petitioner's collaborators, former co-workers, and immediate circle of colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's acclaim beyond his immediate circle of colleagues. The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act.

The petitioner submitted three letters from researchers who have not worked with the petitioner. The April 5, 2007 letter from [REDACTED], senior researcher with the Japanese National Veterinary Assay Laboratory, states that the petitioner's research "on the rapid identification of the bacterial pathogen *Photobacterium damsela* ssp. *piscicida* is very laudable and exceptionally worthy of praise . . . [and is] a significant contribution to both the scientific community and the aquaculture industry as it enables rapid identification of the pathogen." The April 23, 2007 letter from [REDACTED] professor in the Department of Microbiology of the University of Malaga, states that the petitioner's means of rapidly identifying the pathogen "clearly exhibits his originality and creativity [and i]t is an excellent contribution not only to the scientific community but also a boon to the aquaculture industry as it enables rapid identification of the pathogen, and thereby prevents economic loss." [REDACTED] states that the petitioner "was the first to report the ultrastructural and morphological characteristics of *Penaeus monodon* and *Panaeus indicus* infected shrimp in India. His findings were key to ensuring research resulting in several vaccines that prevent viral diseases in shrimp." The letter from [REDACTED] stated that the petitioner's work "improved greatly" the ability to diagnose and prevent disease in cage cultured cobia. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

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. 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 to the field as a whole. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major

significance. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner’s work. Although some of the letters presented state that the authors have used the petitioner’s methods in their own work, the other evidence in the record, such as the citation record of the petitioner’s articles, does not support that his methods are being used in the overall scientific community. Letters from individuals that are co-workers, frequent collaborators, or even independent members of the field cannot usually demonstrate that the field has changed as a result of the petitioner’s work even where the letters are highly complimentary and made claims of the alien’s breakthroughs in a particular field. The petitioner submitted no independent evidence that shows that his research changed the way that cage cultured cobia are treated, that diagnostic kits were developed in great aid of the shrimp industry, or that he made any other contribution of major significance. Without verification of the petitioner’s work’s contribution to the field, we are unable to conclude that he has demonstrated eligibility under this highly restrictive visa classification.

Accordingly, the petitioner failed to establish that he meets 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. The petitioner submitted evidence that he authored the following articles: “A S-adenosylmethionine synthetase gene from the pathogenic piscine hemoflagellate, *Cryptobia salmositica*,” published in the January 17, 2007 *Parasitology Research*; “A metalloproteinase gene from the pathogenic piscine hemoflagellate, *Cryptobia salmositica*,” published in the December 15, 2006 *Parasitology Research*; “A cathepsin L-like cysteine proteinase gene from the protozoan parasite, *Cryptobia salmositica*,” published in the November 17, 2006 *Parasitology Research*; “Quorum Sensing: How Bacteria Communicate,” published in the April 2006 *Food Technology*; “Simple and rapid detection of *Photobacterium damsela* ssp. *piscicida* by a PCR technique and plating method,” published in the 2003 *Journal of Applied Microbiology*; “Disease outbreak in seafarmed Cobia (*Rachycentron canadum*) associated with *Vibrio* Spp., *Photobacterium damsela* ssp. *piscicida*, monogenean and myxosporean parasites,” published in the 2002 *Bulletin of European Association Fish Pathology*; “*Vibrio alginolyticus* infection in cobia (*Rachycentron canadum*) cultured in Taiwan,” published in the 2001 *Bulletin of European Association Fish Pathology*; “White spot baculovirus syndrome in the Indian shrimp *Penaeus monodon* and *P. indicus*” and “Ultrastructure and pathogenesis of *Monodon baculovirus* (Pm SNPV) in cultured larvae and natural brooders of *Penaeus monodon*” published in the 2000 *Aquaculture*; “*Lagenidium callinectes* (Couch, 1942) infection and its control in cultured larval Indian tiger prawn, *Penaeus monodon* Fabricius,” published in the 1996 *Journal of Fish Diseases*. The petitioner presented evidence that seven of these articles were cited 43 times and two of the petitioner’s articles have not been cited at all. This moderate citation record does not demonstrate that his publications have been received in his field in a manner consistent with sustained national or international acclaim. By comparison, has “published more than 100 papers in peer reviewed journals, 6 books, and more than 15

books [sic] chapters” and ██████ “ha[s] published 188 papers in peer-reviewed journals, 15 full conference proceedings, 13 book chapters, and edited 6 books on fish disease.” From this evidence, it seems that the top of the profession is at least a step above the level of the petitioner.

In response to the RFE, the petitioner submitted additional articles and a book chapter published after the date that this petition was filed. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner also claims to meet this criterion by virtue of his presentations at various conferences and workshops. The petitioner submitted no evidence that his abstracts were published in scientific journals as required by this criterion.

As a result, the petitioner has failed to demonstrate eligibility under this criterion.

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

In order 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. The petitioner claimed to meet this criterion through his work with Texas A&M University (“University”). The letter from ██████ states that Texas A&M University “ranks among the top 20 universities in the nation and spends over \$500 million annually on research.” The petitioner submitted no evidence that the University and the department or laboratory within the University where he worked have a distinguished reputation.

Even if the University’s reputation had been established, the evidence presented is insufficient to demonstrate that the petitioner performs in a leading or critical role. ██████ letter states that the petitioner worked for the University first as a post-doctoral research associate and currently works as an assistant research scientist. Although ██████ letter extols the petitioner’s abilities and research skills and states that the petitioner is vital to his laboratory, it does not state nor demonstrate how the petitioner performs in a leading or critical role for the University as a whole especially where the University, by ██████ description, has a large research facility and capabilities. In any event, we note that a postdoctoral research associate is designed to provide temporary research training for a future professional career in the field of endeavor. There is no evidence demonstrating how the petitioner’s role differentiated him from the other researchers in the departments where he worked. ██████ April 2, 2008 letter states that the petitioner’s work “generat[ed] the preliminary data to support” research proposals that resulted in research grants for the University. First, ██████ letter indicates that these grants were received after the petition was filed, so that they cannot be considered, *see* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Even if the grants were received prior to the petition being filed, ██████ does not state that the petitioner’s research was critical to the grants being awarded to the University as opposed to the petitioner supporting the overall research overseen by ██████ the head of the laboratory, or that these grants were critical to the overall function of the University.

The petitioner also claims eligibility under this criterion through his work with various United States government agencies. The petitioner submitted no evidence showing that his role with any of these agencies is leading or critical to the agency as a whole or to discrete divisions within those agencies. The letter from Dr. ██████ research biologist with the U.S. Department of Agriculture, states that he appreciates the petitioner’s

contribution, but does not indicate that the petitioner held a leading or critical role for the Department or Dr. [REDACTED]'s division, the USDA Agricultural Research Service (ARS). We note that [REDACTED] co-authored six of the articles listed on the petitioner's curriculum vitae, but [REDACTED] letter does not contain information about or delineate the petitioner's role in any respect with the Department or ARS. Although [REDACTED] March 25, 2008 letter states that the petitioner "made significant contributions towards uncovering the roles of an array of naturally occurring compounds that inhibit bacteria cell to cell communications," the letter does not state how these contributions defined his role within the Department or ARS.

Accordingly, the petitioner has failed to establish that he meets this criterion.

An immigrant visa classification 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 field. The record in this case does not establish that the petitioner had achieved sustained national or international acclaim as a researcher 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.