U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 31 2009

LIN 07 194 52857

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[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 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.

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

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences, specifically as a researcher. The petitioner initially submitted supporting documents including news articles, four letters of recommendation, and journal articles co-authored by the petitioner. In response to a Request for Evidence (RFE) dated July 2, 2007, the petitioner submitted two letters of recommendation, confirmation of publication in "Who's Who of America," and background information for evidence previously submitted.

On appeal, counsel also notes on appeal that the petitioner is the beneficiary of a nonimmigrant visa in a similar classification. While U.S. Citizenship and Immigration Services (USCIS) has approved at least one O-1

nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does 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 CIS from denying an extension of the original visa based on a reassessment of petitioner'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. at 597. 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 at 1090.

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 had approved the nonimmigrant petitions on behalf of the beneficiary, 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). We address the evidence submitted and the petitioner's contentions in the following discussion of the regulatory criteria relevant to his case. The petitioner does not claim eligibility under any criteria not addressed below.

(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 states that he establishes eligibility under this criterion by virtue of distinguishing himself in his PhD research, through his receipt of the 2007 UCLA Chancellor's Award for Postdoctoral Research, and by the invitation issued by "Who's Who in America" to appear in the 2008 edition. An educational degree does not amount to a prize or award, but is instead recognition that the student has met the prerequisites for attaining such a degree. Study is not a field of endeavor, but rather training for future employment in a field of endeavor. Even if an educational degree amounted to a prize or award, the petitioner presented no evidence that a PhD from the University of Michigan is nationally or internationally recognized as an award for excellence in the field. Distinguishing oneself as a student also does not amount to an award or a prize as nothing is awarded to the student outside of the degree and the recognition of the exceptional student is not national or international in scope. Pallab Bhattacharya, professor at the University of Michigan, states that the petitioner was awarded the International Student Fellowship Award, however, the petitioner did not present evidence that he won this award or any information about the criteria used in deciding the winner of the award or information about the awarding organization. Even if this information had been provided, it does not appear that this award was open to professionals but was instead restricted to students. The petitioner presented no evidence to show either who was eligible for the competition or how, if the competition was restricted to students, the award constitutes an award for excellence in the field if it did not allow those working in the field, i.e. professional scientists, to participate.

The 2007 UCLA Chancellor's Award for Postdoctoral Research, by the terms of its title, would only be available to postdoctoral researchers employed by UCLA. As with the International Student Fellowship Award, the competition is restricted in the eligible participants, i.e. to postdoctoral researchers who have been with the school a minimum of nine months. The petitioner also failed to provide evidence to show how the award would constitute an award for excellence in the field if it did not allow those working in the field, i.e. professional scientists or researchers, to participate. In addition, the letter from [redacted] vice chancellor of graduate studies, indicates that the award was presented to five of the 22 researchers nominated.

The fact that the petitioner was solicited for inclusion for publication in "Who's Who of America" does not constitute an award as it would more properly be considered as either an invitation to participate in an organization under 8 C.F.R. § 204.5(h)(3)(ii) or media about a person under 8 C.F.R. § 204.5(h)(3)(iii). In addition, appearing as one of thousands, or even hundreds of other successful individuals in a frequently published directory does not evidence national acclaim. Regardless, the petitioner submitted no evidence of any publication at the time of filing and the letter indicates that the publication would be completed in October 2007, more than three months after the filing of the petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1),(12); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Comm. 1971).

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 indicating that he is a member of the Institute of Electrical and Electronics Engineers ("IEEE") and the Optical Society of America ("OSA"). However, he submitted no membership card or other direct evidence of his membership in either of these organizations. 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 background information submitted about the IEEE and the OSA do not indicate that membership is predicated on outstanding achievement in the field. Instead, the bylaws for the OSA indicate that membership is granted for "[a]ny individual with appropriate training or experience in optics or related fields." Similarly, the membership requirements for the IEEE state that membership will be granted to those persons who receive an education degree in an appropriate field of study or who has an equivalent level of experience in an appropriate field of work. Neither organization's bylaws indicate that outstanding achievement is necessary for membership. We note that the organizations have 365,000 and 14,000 members respectively, which is not indicative of organizations that limit their membership only to those who have made an outstanding achievement in the field. In addition, the IEEE membership information indicates that more than one category of membership exists. We presume that the petitioner is a "member" and not a "fellow" or "senior member." Senior membership is "the highest [grade of membership]" available to IEEE

members and that classification is only available to those with "professional maturity." "Fellow" membership "recognizes unusual distinction in the profession" and must be voted on and approved by the Board of Directors. We make no determination as to whether "fellows" or "senior members" would qualify under this criterion, but only state that the lesser category of "member" does not qualify under this criterion.

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 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] The petitioner submitted 17 articles in support of his claim that he meets this criterion, however, these articles are not primarily about the petitioner as required by the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii). Four of the articles focus on the contribution of [redacted] as the head of the team responsible for the silicon light amplification achievement. Another thirteen articles credit a team of "researchers at the University of California at Los Angeles" for the achievement and where any names are mentioned, state that the team is made up of [redacted] the petitioner, and another graduate student. In general, these articles cannot be construed as being about the petitioner, and if about any one individual, could be considered to be about [redacted] even though the petitioner is credited with assisting in the work.

The petitioner presented evidence regarding the publishers of four articles including The Technology Review, Laser Focus World, Photonics Spectra, and the EE Times. The Photonics Spectra article, "Raman Amplifier in Silicon Generates Electrical Power," discussed the findings of "several laboratories" including the UCLA group. The EE Times article, "Silicon laser harnessed," quoted [redacted] as the spokesperson for the "UCLA group" and never mentions the petitioner's name. The Technology Review article, "Self-Powered Silicon Laser Chips," states that "[A] computer scientist at UCLA has transformed one power-hungry component of a silicon laser into a generator of energy" and names [redacted] as the scientist in focus without mentioning either that [redacted] worked as the head of a team or that the petitioner was a part of that team. The Laser Focus World article, "UCLA Engineering announces another silicon photonics breakthrough," quotes [redacted] "who led [the petitioner] and [a] graduate student" in making recent discoveries.

The other articles in the record are not only not primarily about the petitioner, but the petitioner failed to introduce information about the publishers of the articles; those publishers include Planet Analog, Science News, Physorg.com, photonics.com, optics.org, Science Daily, azom.com, zpenergy.com, The Engineer Online, The All I Need, UCLA News, and the Post Chronicle. The petitioner failed to present evidence to demonstrate,

[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.

for instance, the national or international circulation of the organizations that printed the submitted articles, or to otherwise show that these news sources are professional, major trade publications, or other major media publications as required by 8 C.F.R. § 204.5(h)(3)(iii). Many of these organizations appear to be primarily web based. In today's world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. We are not persuaded that international accessibility via the Internet by itself is a realistic indicator of whether a given publication is "major media." The petitioner must still provide evidence, such as, a widespread distribution, readership, or overall interest in the publication in order to demonstrate that the publication is a professional or major trade publication or major media in order for us to credit these articles.

For all of the above state 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 petitioner claims to meet this criterion due to his experience as a teacher at UCLA and the University of Michigan. 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 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). Working as a professor at a university inherently involves judging the work of students. Duties or activities which nominally fall within a given criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent to the occupation itself such as a professor or teacher judging the work of his students.

In addition, 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 submitted evidence that he was asked to review two articles for the publication "Applied Physics Letters." The request to review such a small number of articles does not indicate national or international acclaim.

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.

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. The petitioner's field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v),

an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. 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.

The petitioner claimed that he made an original contribution of major significance to the field by virtue of the commercial value of his discoveries. The commercial value of research does not automatically indicate that the research was original or made a significant contribution to the field. In the appellate brief, counsel states that the petitioner made "groundbreaking research discoveries of nonlinear photovoltaic effect [that] have been recognized by national and international experts . . . [in] the relatively new, highly specialized field of Silicon Photonics." In support of his assertion, counsel refers to an article appearing in *Science News* entitled "Power Play: Shift from loss to gain may boost silicon devices." This article, however, again credits the UCLA team, with [redacted] as the leader, with the discovery and states that the discovery could yield future commercial success. In addition, counsel argues in the appellate brief that the petitioner's research led to the use of silicon components in electronic devices, however the *Science News* article states that [redacted] found a way to make silicon act as a laser in 2004, a year prior to the petitioner joining UCLA, and that he and other researchers in other institutions have been improving upon that design since that time.

The petitioner submitted six 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 (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 a researcher who has sustained national or international acclaim.

A May 8, 2007 letter from the petitioner's PhD thesis advisor, [redacted] states that the petitioner "demonstrated temperature-invariant operation for the first time in the long history of semi conductor laser [which was] considered a breakthrough in high-performance light sources" and that the petitioner "measured the fastest quantum dot lasers to date by using an advanced technique called tunneling injection, pioneered in [Dr. research group." A May 8, 2007 letter from [redacted] states that the petitioner "conducts research under [redacted] supervision at UCLA" and that the petitioner "brings . . . unique abilities in terms of knowledge in four disciplines: Silicon photonics and energy harvesting, quantum dot lasers, spintronic devices and materials, and microelectronic devices." [redacted] further stated that the petitioner's "energy harvesting technique addresses the fundamental energy efficiency issue of the [silicon photonic device] technology." A letter from [redacted] for Innolume GmbH, who met the petitioner when his company partnered with [redacted] and the University of Michigan, reiterates the importance of the petitioner's energy harvesting techniques in the use of silicon based optoelectronics. [redacted], the petitioner's professor at the University of British Columbia, stated that when comparing the petitioner to other

scientists with whom he has worked, he would place the petitioner "in the top ten percent with respect to pure intellect [and] the importance of his work within the top five percent."

The above letters are all from the petitioner's collaborators 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. 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.

[redacted] September 18, 2007 letter states that the value of the petitioner's research is demonstrated by the caliber of journal that accepted his work for publication, the high number of citations to the petitioner's articles by other scientists, and the invitation by conferences to display his work and papers. The caliber of journals publishing the petitioner's work and the number of citations to the petitioner's work show that the petitioner has contributed to the field, but does not demonstrate that the contribution is of major significance. A letter from [redacted], Chair of the OPTO Symposium at Photonics West and an associate professor at the School of Electrical and Computer Engineering at the Georgia Institute of Technology, confirmed that the petitioner was invited to present papers at the 2006 and 2007 conferences. [redacted] stated:

> Only a few hand selected individuals who have achieved the most extraordinary and exceptional advancements and achievements in the field are selected for Invited Papers. Those individuals who are selected for Invited Papers have accomplishments, achievements and works that have placed them among the very few who are the top of their field. Selection for the Invited Papers is a very rare honor and is in itself considered a significant achievement. As such, these Invited Papers have a very stringent selection process and a very high standard applies to them so that only the most extraordinary and exceptional body of work is selected. The speakers must be authorities of their subfield and their research must have been strongly acknowledged by the rest of the community as significant breakthroughs.
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> * * *
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> With three invited talks and two conference papers within the last four years, [the petitioner] has not only been a very valuable and productive contributor to our conference, but more importantly he has made a significant impact on our field.

[redacted]s letter states that Photonics West "is one of the world's leading and most celebrated conferences in the broad field of optical sciences and technologies," however the petitioner presented no independent information to support [redacted]s assertions about the organization he represents or to demonstrate the caliber of attendees at such a conference to show that the field as a whole would be impacted by a presentation at the conference. In the original submission, counsel lists 22 conferences to which the petitioner was purportedly invited and presented, however, no evidence was submitted to show that an invitation was issued or that the petitioner presented at any of these conferences. 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)).

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 a copy of only one of the 21 articles that he claims to have published, however, he did submit secondary evidence including copies of other scientists' articles with citations to the petitioner's work and a citation list generated by ISI Web of Science. From the other authors' articles, we find evidence of thirteen articles co-authored by the petitioner (six as the lead author) with the petitioner's work being cited a total of 76 times. From the ISI Web of Science list, we note that the petitioner co-authored 12 articles, six as lead author, that have been cited 111 times. The number of citations on the ISI Web of Science list includes self citation by the petitioner and his collaborators, however, which would not indicate acclaim; the ISI Web of Science list indicates a minimum of 85 independent citations. The record also documents the standing within the discipline of two journals that published the petitioner's articles. We agree with the director's decision that the petitioner's citation history is "healthy," but disagree with the director's ultimate conclusion regarding this criterion that the number of articles co-authored by the petitioner and high number of citation to those articles authored between 2000 and 2005 do not demonstrate sustained acclaim.

We, therefore, withdraw the director's determination and find that the petitioner has demonstrated eligibility under this criterion.

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

The petitioner claims that he meets this criterion by virtue of the display of his work at conferences, however, this criterion generally applies to the visual arts. Regardless, as discussed under criterion (v), the petitioner failed to introduce any evidence that he participated in these conferences outside of his assertion in his initial submission. 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. at 165. In addition, the petitioner submitted no evidence, such as the size of the conferences, the attendees, or the selection criteria for presentations to demonstrate how participating in these conferences conveyed the necessary national or international acclaim required by this highly restrictive classification.

Accordingly, the petitioner failed to establish that he meets 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 the UCLA Department of Electrical Engineering, specifically with the Optoelectronic Circuits and Systems Laboratory. Although the petitioner submitted news articles about work done by the Laboratory, he submitted no evidence that either entity has a distinguished reputation such as, for example, by submitting rankings of electrical engineering departments from a physics or engineering based magazine or other major media. In addition, the petitioner's evidence of the Laboratory's role within the larger Department rests upon [redacted]s May 8, 2007 letter which states that the Laboratory is "an important part of the elite UCLA engineering research program." As [redacted] is a part of the Laboratory, his statements are not those of an independent source. The petitioner states that the Defense Advanced Research Projects Agency ("DARPA") of the U.S. Department of Defense's funding of the Laboratory indicates its reputation. However, even if a funding source could evidence reputation, the December 13, 2006 letter from [redacted] indicates that he, instead of the Laboratory, attracted funding from both DARPA and Intel Corporation.

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 "postdoctoral fellow" was leading or critical for the Laboratory or Department. This subordinate role 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, let alone more senior faculty (including tenured professors). Although [redacted] May 8, 2007 letter describes the petitioner as a "valuable" member of the Laboratory, [redacted] is actually the one recognized as being the leader of the lab and credited with its breakthroughs. A comparison of the petitioner's position with that of [redacted] indicates that the very top of his field is a level above the petitioner's present level of achievement. As counsel points out in his brief on appeal, [redacted] selection as one of Scientific American Magazine's 50 Leaders Shaping the Future of Technology shows that he has risen to the top of his field. The petitioner has not shown the same level of national or international acclaim.

The petitioner also claims eligibility under this criterion through his work with the University of Michigan's Solid-State Electronics Laboratory. As with the UCLA Department and Laboratory, the petitioner presented no evidence regarding the University of Michigan's Laboratory to establish that it has a distinguished reputation. [redacted]s letter states that the University of Michigan's Department of Electrical Engineering and Computer Science is "consistently ranked one of the top ten departments in the nation according to U.S. News & World Report," but the petitioner presented no evidence to support [redacted]s assertion. 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. at 158. In addition, [redacted] letter does not state that the petitioner, a PhD candidate at the time, performed in a leading or critical role for the Department. The petitioner presented no further evidence of his role at the University of Michigan.

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

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his 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.