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

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**U.S. Citizenship
and Immigration
Services**



FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JAN 07 2011

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a university. It seeks classification of the beneficiary 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 beneficiary's requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence for the alien under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, the petitioner contends that the director erred by failing to request further evidence before denying the petition. The regulation at 8 C.F.R. § 103.2(b)(8)(ii) provides:

If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS [U.S. Citizenship and Immigration Services] in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the record lacks initial evidence or does not demonstrate eligibility, the cited regulation does not require solicitation of further documentation. With regard to counsel's concern, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

The petitioner also argues that the beneficiary meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, we uphold the director's decision.

I. Law

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.

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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten categories of evidence:

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (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;
- (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;
- (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 specialization for which classification is sought;

- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

Id. at 1119-1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

This petition, filed on June 18, 2008, seeks to classify the beneficiary as an alien with extraordinary ability as a biology researcher. At the time of filing, the beneficiary was working as an [REDACTED]

[REDACTED] The petitioner has submitted evidence pertaining to the following categories of evidence at 8 C.F.R. § 204.5(h)(3).²

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 asserts that the beneficiary is a member of the [REDACTED] and submits a copy of the Society's bylaws. The petitioner, however, did not submit evidence documenting the beneficiary's membership in the SGP. 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

² The petitioner does not claim to meet or submit evidence relating to the categories of evidence not discussed in this decision.

evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). Article II of the SGP bylaws submitted by the petitioner states, in part: "Regular membership in the Society shall be open to any individual actively interested in the field of general physiology and who has made significant contributions to knowledge in that field." The bylaws do not specifically define what constitutes "significant contributions." In this instance, the submitted documentation does not establish that the beneficiary holds membership in the SGP or that the Society requires outstanding achievements of its members, as judged by recognized national or international experts in his field or an allied one.

The petitioner submitted an identification card indicating that the beneficiary is a member of the Biophysical Society and a copy of the Society's constitution and bylaws. Article iii of the Biophysical Society's constitution states: "Membership in the Biophysical Society shall be open to scientists who share the stated purpose of the Society and who have educational, research, or practical experience in biophysics or in an allied scientific field." We cannot conclude that possessing the required "educational, research, or practical experience in biophysics" equates to outstanding achievements. In this instance, the submitted documentation does not establish that the Biophysical Society requires outstanding achievements of its members, as judged by recognized national or international experts in the beneficiary's field or an allied one.

In light of the above, the petitioner has not established that the beneficiary 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 beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³

The petitioner initially submitted internet search results from Google Scholar showing dozens of cites to the beneficiary's published articles. On appeal, the petitioner submits a citation index from ISI Web of Knowledge documenting an aggregate of 120 independent cites to the beneficiary's body of work. Regarding the scientific articles that merely reference the beneficiary'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 to the beneficiary's work are primarily about the authors' work, not the footnoted material identifying the beneficiary. With regard to this criterion, a footnoted reference to the alien's work without evaluation is of minimal probative value. Further, we note that

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

the scientific articles citing to the beneficiary's work similarly referenced numerous other authors. The submitted search results from Google Scholar and ISI Web of Knowledge 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 beneficiary as required by this criterion. Instead, these citations are more relevant to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) and will be addressed there.

In January 2003, the beneficiary and [REDACTED] published an article in *Proceedings of the National Academy of Sciences (PNAS)* entitled "Na⁺/K⁺-pump ligands modulate gating of palytoxin-induced ion channels." On appeal, the petitioner submits evidence showing that the same issue of *PNAS* also included a review article by [REDACTED] entitled "From a pump to a pore: How palytoxin opens the gates" mentioning the beneficiary and [REDACTED]'s article along with numerous others. Less than ten sentences in the three-page review article are specifically about the beneficiary's work. Nevertheless, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien" relating to his work rather than simply about his work. Compare 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act. It cannot be credibly asserted that the review article by [REDACTED] citing to more than fifty other articles is "about" the beneficiary relating to his work. Instead, the article includes only a few brief passages about the beneficiary's work. Moreover, the January 2003 review in *PNAS* is more akin to a promotional introduction of the beneficiary's article by the publisher rather than independent journalistic coverage about the beneficiary relating to his work.

The petitioner's appellate submission also included three additional review articles in [REDACTED], but none of these articles are about the beneficiary. The twenty-page article in [REDACTED] cites to 111 articles, two of which were coauthored by the beneficiary and [REDACTED]. With regard to the ten-page article in [REDACTED], it cites to 41 articles, two of which were coauthored by the beneficiary and [REDACTED]. Regarding the nine-page article in [REDACTED] it cites to 46 articles, two of which were coauthored by the beneficiary and [REDACTED]. The preceding articles devote less than ten sentences to the beneficiary's findings and are about recent developments and advancements in the research field rather than the beneficiary.

In light of the above, while the evidence discussed above is relevant as to the significance of the beneficiary's scholarly articles and original contributions, it does not meet the plain language requirements for qualifying evidence under 8 C.F.R. § 204.5(h)(3)(iii). Accordingly, the petitioner has not established that the beneficiary 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.

On appeal, the petitioner submits a January 21, 2009 e-mail asking the beneficiary to review a manuscript for *Journal of General Physiology*. The petitioner also submits a May 19, 2009 letter requesting the beneficiary's assistance in reviewing a candidate for "an appointment as a

[REDACTED] and Behavior at the [REDACTED]. The preceding requests for review from a [REDACTED] and the [REDACTED] post-date the petitioner's June 18, 2008 filing date. A petitioner, however, 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 (Regl. Commr. 1971). Accordingly, the AAO will not consider the January 2009 and May 2009 review requests from *Journal of General Physiology* and UCD in this proceeding.

The petitioner's appellate submission also includes a July 2006 e-mail asking the beneficiary to review a manuscript for [REDACTED], an August 2006 e-mail asking him to review a manuscript for [REDACTED], an October 2006 e-mail asking him to review a manuscript for [REDACTED] and a May 2008 e-mail asking him to review an article for [REDACTED]. There is no documentary evidence demonstrating that the beneficiary actually completed the preceding manuscript reviews. The plain language of this criterion, however, requires "[e]vidence of the alien's participation . . . as a judge of the work of others." Evidence of having been asked to review a manuscript is not tantamount to evidence of one's actual "participation" as a reviewer. Accordingly, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation set forth at 8 C.F.R. § 204.5(h)(3)(iv). Additional deficiencies pertaining to the preceding evidence will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor.

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

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

The petitioner submitted letters of support from independent experts discussing the significance of the beneficiary's original research contributions. The experts' statements do not merely reiterate the regulatory language of this criterion, they clearly describe how the beneficiary's scientific contributions are both original and of major significance in the field. Moreover, in support of the experts' statements, the petitioner submitted review articles mentioning the beneficiary's work and documentation of numerous independent cites to his published findings. The review articles and citation history are solid evidence that other researchers have been influenced by his work and are familiar with it. This evidence corroborates the independent experts' statements that the beneficiary has made original contributions of major significance in his field. The record reflects that the beneficiary's contributions are important not only to the institutions where he has worked, but throughout the greater field as well. Leading scientists from throughout the biophysics field have acknowledged the value of the beneficiary's work and its major significance in the research field. Accordingly, the petitioner has established that the beneficiary 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 has documented the beneficiary's authorship of scholarly articles in professional journals and, thus, has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the petitioner has established that the beneficiary meets this criterion.

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

The petitioner submitted evidence of the beneficiary's participation in scientific conferences and seminars as evidence for this criterion. In addressing this criterion, the director's decision stated: "This element applies to aliens in the visual arts. It does not apply to the instant petition." On appeal, the petitioner does not challenge the director's finding and we affirm that finding. The beneficiary's field is not in the arts. The plain language of this regulatory criterion indicates that it applies to visual artists (such as sculptors and painters) rather than biology researchers. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The beneficiary's conference presentations are more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi), a criterion that the beneficiary has already met.

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

Summary

In this case, we concur with the director's determination that the petitioner has failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-1120. In the present matter, several of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(ii), (iii), (iv), and (vii).

With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(iv), even if the petitioner were to have submitted evidence of beneficiary's actual participation as a manuscript reviewer as of the petition's filing date, we cannot conclude that the beneficiary's occasional participation in the peer review process (an aggregate of four requests in the decade preceding the petition's filing date) demonstrates his sustained national or international acclaim or a level of expertise indicating that he

is among that small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. §§ 204.5(h)(2) and (3). We note that peer review is a routine element of the process by which articles are selected for publication in scientific journals or for presentation at professional conferences. Reviewing manuscripts is recognized as a professional obligation of researchers who publish themselves in scientific journals. Normally a journal's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask multiple reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Without evidence pre-dating the filing of the petition that sets the beneficiary apart from others in his field, such as evidence that he served in an editorial position for a distinguished journal or completed numerous manuscript reviews for a substantial number of journals, we cannot conclude that his level of peer review is commensurate with sustained national or international acclaim at the very top of the field of endeavor.

Regarding the documentation submitted for 8 C.F.R. § 204.5(h)(vii), in the fields of science and medicine, acclaim is generally not established by the mere act of presenting one's work at a conference or symposium along with dozens of other participants. Nothing in the record indicates that the presentation of one's work is unusual in the beneficiary's field or that invitation to present at venues where the beneficiary's work appeared was a privilege extended to only a few top researchers. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the beneficiary above almost all others in his field at the national or international level.

Ultimately, the evidence in the aggregate does not distinguish the beneficiary as one of the small percentage who have risen to the very top of the field of endeavor. The petitioner relies primarily upon the beneficiary's undocumented membership in the SGP and his membership in the Biophysical Society (neither of which have been shown to require outstanding achievements of their members), documentation of only four requests for manuscript review as of the petition's filing date, less than a dozen journal articles published with his research supervisors (██████████) as of the date of filing, citation evidence showing that those articles have been well cited, his participation in scientific conferences and seminars, and the praise of members of his field.

We note that many of the beneficiary's references' credentials are impressive. For example, ██████████

Recently I served for 8 years as director of the graduate program. I have also served on many grant review panels at the national, regional, and university level, so overall I have a great deal of experience in evaluating the performance of young investigators. I have received the Gottschalk Award of the Renal Division of the American Physiological Society, and authored over 50 peer-reviewed publications. I chaired numerous scientific meetings and symposia

[REDACTED] further comments that the beneficiary “has a masterful command of the field that is quite exceptional for a *junior investigator*.” [Emphasis added.]

[REDACTED]

At the present time I am [REDACTED] and of [REDACTED]

[REDACTED] as well as [REDACTED]

[REDACTED] In addition, I serve on the Council of the Biophysical Society and on committees of the National Board of Medical Examiners. . . . I have served on various grant review panels within [REDACTED]

[REDACTED] I have served as [REDACTED]

Programs and I was the founding [REDACTED] section in the [REDACTED]

I have been awarded the [REDACTED] for my contributions to membrane biophysics.

[REDACTED]

I am . . . [REDACTED] University of Chicago I have received several honors, I have been made Fellow of the [REDACTED] and I was elected to the National Academy of Sciences. I am serving and have served in the Editorial Board of several scientific publications. . . . My research includes more than 150 original papers and it has been published in leading scientific journals.

Finally, [REDACTED]

I have been on the faculty here at [REDACTED] where I was promoted to [REDACTED] in 2001. My research . . . has resulted in over fifty original articles in scientific journals. I have been a [REDACTED], and I am on the [REDACTED]. I have served on numerous committees responsible for review of scientific projects, including various study sections of the American Heart Association and the National Institutes of Health.

While the petitioner need not demonstrate that there is no one more accomplished than the beneficiary to qualify for the classification sought, it appears that the very top of his field of endeavor is above the level he has attained. In this case, the petitioner has not established that the beneficiary’s achievements at the time of filing were commensurate with sustained national or international acclaim as a biology researcher, or being among that small percentage at the very top of the field of endeavor.

III. Conclusion

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

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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

ORDER: The appeal is dismissed.