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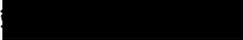
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FILE: EAC 04 250 52063 Office: VERMONT SERVICE CENTER Date: **AUG 31 2005**

IN RE: Petitioner:   
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:



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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has earned sustained national or international acclaim at the very top level.

This petition, filed on September 2, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. At the time of filing, the petitioner was working as a Postdoctoral Researcher in the Molecular Cardiology Research Center (MCRC) at the University of Pennsylvania School of Medicine.

The statute and regulations require the petitioner's acclaim to be *sustained*. The record reflects that the petitioner has been residing in the United States since March 2000. Given the length of time between the petitioner's arrival in the United States and the petition's filing date, it is reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation in this country.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence pertaining to the following criteria.

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

We note here that the plain wording of this criterion requires "nationally or internationally recognized" prizes or awards for excellence in the field. The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his awards.

The petitioner submitted a "Certificate of the Best Paper Award" issued in 2000 which states: "Your paper entitled 'Uncv (Uncovered): a new mutation causing hairloss on mouse' has been awarded the Second Prize of Best Research Paper by Beijing Association for Science and Technology." There is no evidence showing that this award is national in scope rather than local in scope.

The petitioner submitted another "Certificate of the Best Paper Award" issued in 1992 which states: "Your paper entitled 'Effects of different treatment of boar semen on PMS, PNA, sperm DNA content and enzyme activity of semen plasma' has been awarded the Best Research Paper Award by the 6<sup>th</sup> Commission of Chinese Association of Refrigeration."

The significance and importance of the petitioner's Best Paper Awards are not self-evident. The petitioner offers no supporting evidence showing that these certificates constitute top honors in his field at the national or international level. We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence to establish that the certificates presented under this criterion enjoy significant national or international stature. Simply alleging that an award is nationally recognized cannot suffice to satisfy this criterion. There is evidence showing the total number of Best Paper Awards annually presented by the preceding associations, the official criteria used in determining recipients, or the level of national attention or media coverage associated with the award presentations. Without further supporting evidence, we cannot conclude that the petitioner's Best Paper Awards constitute top scientific honors at the national or international level.

The petitioner also submitted evidence showing that he received National Natural Scientific Foundation of China Grant Awards in 1995 and 1999. In regard to the research grants for which the petitioner applied and received funding, it is noted that research grants simply fund a scientist's work. The past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future scientific research, and is not a national or international award to honor or recognize past achievement. Furthermore, we note that the funding for the petitioner's projects was awarded not by outside nomination, demonstrating the field's regard for his ability, but upon his application to the foundation providing the grant. Finally, we note that it is common for scientific research to be funded by grants from a

variety of public and private sources. Therefore, we do not accept the assertion that the receipt of a research grant automatically elevates a scientist to the very top of his field.

*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, the 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. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted a certificate from 1999 stating that he is a member of the "Young Scientist Committee Affiliated with Chinese Association for Laboratory Animal Science." The record, however, contains no evidence of the bylaws or official admission requirements for this association showing that it requires outstanding achievements of its members.

On appeal, counsel asserts that the petitioner's postdoctoral training position at the Monell Chemical Senses Center (MCSC) in Philadelphia constitutes qualifying evidence under this criterion. The petitioner's temporary scientific training position at the MCSC from 2000 to 2001, however, does not constitute "membership in association" in the petitioner's field.

Counsel also claims that the petitioner is a member of the Chinese Association for Transgenic Animal Science, the Beijing Association for Laboratory Animal Science, the Chinese Association for Animal Reproduction, the Chinese Association for Animal Science and Veterinary Medicine, the Chinese Association for Genetics, and the American Institute of Biological Research, but the record contains no evidence of the petitioner's individual membership status in these associations. Without documentary evidence of the preceding association memberships, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has provided no evidence showing that membership in the above associations required outstanding achievement in his field or that he was evaluated by national or international experts in consideration of his admission to membership. The record contains no evidence to establish that these associations require outstanding achievement of their members in the same manner as highly exclusive associations such as the U.S. National Academy of Sciences.

*Published materials 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 order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution.

Counsel argues that citation of the petitioner's work by others in the field represents qualifying evidence under this criterion. We note, however, that the petitioner and his work were not the primary subject of the articles that cited his findings. If the petitioner is not the main subject of the articles or is not often named in the articles, then such articles fail to demonstrate his individual acclaim. Scientific articles which cite the petitioner's work are primarily about the author's own work, not the petitioner's work. As such, they cannot be considered qualifying published material about the petitioner's work. We cannot ignore that the articles citing the petitioner's work similarly referenced scores of other authors. In the petitioner's field, it is the nature of research work to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In other instances, prior work is superseded by the findings in current research work. In either case, the current researcher normally cites the work of the prior researchers. Clearly this is not the same thing as published material written about an individual's work in the field. This type of material does not discuss the merits of an individual's work, the individual's standing in the field, or any significant impact that his or her work has had on work in the field. Citations of the petitioner's work will be addressed under a separate 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.*

As previously noted, the regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. For example, evaluating the work of accomplished professors as a member on a national panel of experts is of far greater probative value than evaluating graduate students in one's research laboratory.

On appeal, counsel states: "From 1992 to 2000, [the petitioner] was the Principal Investigator of 'Breeding and Investigation on Characteristics of Ams: (Wistar) Closed Rat Colony,' which placed him in an appointed position to judge the work of those scientists and technicians who also worked on the project." We do not find that supervising others involved in one's research project is tantamount to judging the work of others in one's field for purposes of this criterion. There is no evidence showing that petitioner was the final authority on issues relating to the other scientists and technicians at the Institute of Jingfeng Medical Laboratory Animals where the project was undertaken. Nor is there any evidence of the petitioner's "participation" as a judge of the work of other scientists involved in this project (i.e., personnel records).<sup>1</sup> While a principal investigator may oversee

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<sup>1</sup> There is no evidence showing that the petitioner has formally reviewed the work of researchers in the form of official employee reviews or personnel assessments.

the work of subordinates on a particular research project in his laboratory, such a role is routine and inherent to working in a scientific laboratory. It does not, however, elevate the petitioner above almost all others in his field at the national or international level. The petitioner's oversight of the preceding research project is not indicative of national or international acclaim and does not fulfill this criterion.

The petitioner submitted a confirmation letter from the Beijing Association for Laboratory Animal Science indicating that he was the reviewer of a single paper published in *Laboratory Animal Science and Administration* in 1997. We note that peer review of manuscripts is a routine element of the process by which articles are selected for publication in scholarly journals. Occasional participation in peer review of this kind does not automatically demonstrate that the petitioner has earned sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of scientists 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 several reviewers to review a manuscript and to offer comments. The publication may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has peer-reviewed an unusually large number of manuscripts for publication in various scientific journals or received multiple independent requests for his services from a substantial number of journals, we cannot conclude that the petitioner meets this criterion.

The petitioner submitted documentation from a 1999 issue of *Laboratory Animal Science and Administration* indicating that he was one of numerous individuals who served on its editorial board. However, there is no evidence showing that serving on the editorial board of this journal is indicative of national or international acclaim. For example, the petitioner's appellate submission includes a comprehensive list of hundreds of internationally published journals and their corresponding "Journal Impact Factor." Interestingly, although this voluminous list includes a large number of distinguished Chinese journals, *Laboratory Animal Science and Administration* appears nowhere on the list. Participation on the editorial board of journal with limited distribution or minimal impact (as shown by its impact factor) would not satisfy this criterion. Without evidence showing that serving on the editorial board of *Laboratory Animal Science and Administration* is equivalent in stature to serving on the editorial boards of journals such as *Molecular and Cell Biology* or *Genome Research*, we cannot conclude that the petitioner's evidence fulfills this criterion.

The petitioner submitted a letter indicating that in 1999 he was one of seven members of an appraisal committee for the project "Cryopreservation by vitrification of mammalian embryos." The record, however, contains no evidence showing that participation on such a committee is unusual or that it elevates him above almost others in his field.

We cannot ignore the statute's demand for *sustained* national or international acclaim. Subsequent to his arrival in the United States in March 2000, there is no indication that the petitioner has evaluated the work of established researchers or performed peer review for journals with a significant impact factor. The petitioner's limited review activity in the late 1990's and his lack of review activity in the three year period preceding this petition's filing date is not indicative of *sustained* national or international acclaim.

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

The petitioner submitted six letters of support.

Dr. Danielle Reed, Associate Member, MCSC, was the petitioner's research supervisor at MCSC. Dr. Reed states:

[The petitioner] has made three important original scientific and research contributions . . . . The problem of dissecting the genetic basis of obesity is that genes have simple effects by they also have complex effects, and two genes may interact. To study this problem in a model system, [the petitioner] to his main area of expertise, positional cloning methods in mice. [The petitioner] completed the genotyping of mouse DNA samples from a cross between strains that differ in their susceptibility to obesity, and recently published a paper on this topic in *Mammalian Genome* . . . .

\* \* \*

[The petitioner] has also made an important contribution to the discovery of a locus on mouse chromosome 4 (*Sac* locus) that contributes to the intake of sweeteners. This discovery was made through the use of positional cloning methods, and [the petitioner] played a critical role in the development of genetic markers near the *Sac* locus. The resulting paper is published in the journal *Chemical Senses*.

\* \* \*

One of the most intractable and interesting issues in positional cloning research for complex traits is the identification of the exact nucleotide changes that influence the phenotype. To try to understand the molecular basis of the effect of the *Sac* locus, [the petitioner] analyzed the DNA sequence from 30 strains of mice, comparing genotype and phenotype. Based upon thee results, we prioritized the 89 sequence variants most likely to affect phenotype. This work was well received by reviewers and is in press in the *Journal of Neuroscience*.

The petitioner submitted a copy of the article from the *Journal of Neuroscience* indicating that it was published in January 2004. We accept that petitioner's published work has yielded some useful and valid results; however, it is apparent that any scientific manuscript, in order to be accepted in for publication, must offer new and useful information to the pool of knowledge. It does not follow that every individual whose scholarly research is accepted for publication has made a major contribution in his field. Without extensive documentation showing that the petitioner's findings have been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that he meets this criterion.

[REDACTED] Associate Member and [REDACTED] Fellow at the MCSC, states that he supervised the petitioner for 1.5 years [REDACTED] further states: "[The petitioner's] work in my laboratory is reflected in six peer-reviewed articles that have been published or are in press where he is a co-author [REDACTED] does not indicate that the petitioner was the first author or lead researcher on any studies published by researchers at the MCSC. Nevertheless, published work falls under the next criterion, a criterion that we find the evidence in this case adequately satisfies. Here it should be emphasized that the

regulatory criteria are separate and distinct from one another. Because separate criteria exist for published work and contributions of major significance, Citizenship and Immigration Services (CIS) clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will fully address the petitioner's published works and citations under the next criterion.

Dr. Bachmanov further states:

[The petitioner] is also a co-author on a U.S. patent 60/247,443 (Gene and sequence variation associated with sensing carbohydrate compounds and other sweeteners). After working in my laboratory for one and half years, [the petitioner] moved to his current laboratory at the University of Pennsylvania to obtain training in the area of developmental biology, and in transgenic and gene targeting techniques. . . . The success of [the petitioner] in completion of his studies was accompanied by a success in his development as an independent scientist . . . .

██████████ mentions the petitioner's pursuit of "training" at both the MCSC and the University of Pennsylvania. The visa classification sought by the petitioner, however, is intended for aliens already at the top of their respective fields, rather than for those individuals progressing toward the top at some unspecified future time. In regard to the petitioner's co-authorship of a patent application, there is no evidence showing that this patent filing represents a contribution of major significance in the petitioner's field. We note here that anyone may file a patent application, regardless of whether the invention constitutes a significant contribution. According to statistics released by the U.S. Patent and Trademark Office (USPTO), which are available on its website at [www.uspto.gov](http://www.uspto.gov), the USPTO has approved over one hundred thousand patents per year since 1991. In 2001, for example, the USPTO received 345,732 applications and granted 183,975 patents. Therefore, given the amount of patent applications that the USPTO receives on an annual basis, we find it implausible that simply filing a patent application automatically qualifies as a contribution of major significance in the field of genetic research. In this case, there is no evidence showing that the patent application related to the petitioner's findings was approved by the USPTO or that these findings were widely implemented by pharmaceutical manufacturers.

██████████ professor of Medical Genetics, Chinese Academy of Sciences, states that he and the petitioner have had "a collaborative relationship since 1998." He further states: "[The petitioner] has well-trained [sic] in animal genetics, breeding and reproduction. Because of his talent and motivation he discovered a spontaneous mutation, *Uncv*, which results in disturbances of skin, and immune and reproductive functions." ██████████ does not explain how the petitioner's discovery has had a significant national or international impact.

Dr. Edward Morrisey, Assistant Professor of Medicine and Cell and Development Biology at the University of Pennsylvania, states that he is the petitioner's direct supervisor. Dr. Morrisey further states:

I have known [the petitioner] since 2001, when he joined my lab as a postdoctoral fellow.

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[The petitioner] has shown that *Foxp4* regulates both heart and lung development and has performed crucial functional studies indicating that *Foxp4* dimerizes with other *Foxp* proteins. Furthermore, through gene knock-out technology in mice, he has demonstrated that *Foxp4* results in the formation of two hearts. Thus, his studies have revealed a critical new understanding of early heart development, which will likely result in a paradigm shift in how the field perceives events leading to the formation of a single heart tube.

We accept that the petitioner's studies have contributed to the pool of knowledge in his field, but Dr. [REDACTED] assertion that the petitioner's findings "will likely result in a paradigm shift" is not adequate to establish that such findings are already nationally or internationally recognized as a major contribution. A petitioner must establish eligibility at the time of filing. See *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971).

[REDACTED] Associate Professor of Medicine, University of Southern California, states that she has a "close research collaboration" with [REDACTED]. Her resume indicates that she co-authored a paper with Dr. [REDACTED] as recently as 2003. [REDACTED] letter repeats many of [REDACTED] preceding observations. She states that the petitioner's studies "identify novel pathways critical for early heart development" and "have enormous potential to revolutionize the understanding of cardiac development."

[REDACTED] Director, Oncology Research Institute, and Distinguished Professor of Molecular Medicine, Clemson University, states that he is "aware of [the petitioner] and his work on the *Uncv* mutation as well as the identification of the *Bwq5*, *Bwq6*, *Bdln3* – *Bdln6*, *Adip2*, *Adip5*, *Adip9*, *Foxp4*, and *GATA7* genes," but he does not explain how this work represents a "contribution of major significance" in the field. [REDACTED] refers to the petitioner as "a fully trained animal/genetic scientist," but he offers no statements indicating that the petitioner's research achievements elevate him above almost all other scientists in the molecular genetic research community (such as tenured professors who have long since completed their postdoctoral training).

Aside from [REDACTED] the preceding witnesses consist of three of the petitioner's supervisors, a researcher with whom the petitioner collaborates, and a researcher who closely collaborates with the petitioner's current supervisor. In regard to the individuals offering letters of support, we note that all but one appears to have no known ties to the petitioner. This fact indicates that while the petitioner's work is valued by those close to him, others outside his immediate circle are largely unaware of his research and do not attribute the same level of importance to his work. With regard to the personal recommendation of individuals who have worked at or in collaboration with the petitioner's laboratories, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim outside of his affiliated institutions. If the petitioner's reputation is mostly limited to those institutions, then he has not achieved national or international acclaim regardless of the expertise of his witnesses. An individual with sustained national or international acclaim should be able to provide ample unsolicited materials reflecting that acclaim.

Counsel argues that the petitioner's conference presentations satisfy this criterion. In the fields of science and medicine, however, acclaim is generally not established by the mere act of presenting one's work at a scientific conference. The record contains no documentation demonstrating that the presentation of one's

work is unusual in the petitioner's field or that the invitation to present at conferences where the petitioner spoke was a privilege extended to only a few top researchers. Participation in scientific conferences and symposia of the petitioner's kind is routine and expected in the medical research community. Many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to 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 petitioner above almost all others in his field at the national or international level. The record contains no evidence showing that the petitioner's conference presentations commanded an unusual level of attention in comparison to those of other conference participants or that he has served as a keynote speaker at a national or international scientific conference.

In this case, there is no indication that the petitioner's past contributions far exceed those of other experienced genetic scientists. The evidence is not adequate to support a finding that petitioner's work is nationally or internationally recognized throughout his field as contribution of major significance.

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

The petitioner provided evidence of his co-authorship of articles appearing in publications such as *Chemical Senses*, *Mammalian Genome*, *Genetical Research*, *Journal of Neuroscience*, and *Genome Research*. The petitioner was also the first author of an article published in *Science* on September 10, 2004. This article was published subsequent to the petition's filing date. See *Matter of Katigbak* at 45.

We do not find that publication of scholarly articles is presumptive evidence of sustained national or international acclaim; we must also consider the greater scientific community's reaction to those articles. When judging the influence and impact that the petitioner's published work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. In this case, the petitioner submitted citation indices showing that his articles have been cited by other researchers. The number of cites to the petitioner's articles demonstrates an acceptable degree of interest in, and reliance on, his work. Based on the citation indices, we find that the petitioner meets this criterion.

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

The petitioner's role at the MCSC and the MCRC was that of a "post-doctoral researcher." Such a role represents temporary training for a future professional career in a field of endeavor. Furthermore, we cannot ignore that the petitioner's role, when compared to that of his witnesses from the MCSC and the MCRC, was that of a subordinate. The record contains no evidence showing the extent to which the petitioner has exercised substantial control over personnel or research decisions executed on behalf of the MCSC or the MCRC. While we accept that the MCSC and the MCRC have distinguished reputations, there is no evidence showing that the petitioner's role was of significantly greater importance than that of the other researchers employed by these organizations (including tenured faculty). The petitioner's evidence fails to

demonstrate that he has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

In this case, we find that the evidence satisfies only one of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

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

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.