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FILE: EAC 03 142 50882 Office: VERMONT SERVICE CENTER Date: SEP 09 2005

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

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

Man Johnson

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 on appeal. The appeal will be dismissed.

The petitioner 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. The director determined that the record did not establish that the beneficiary had achieved the sustained national or international acclaim requisite to 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.

The applicable regulation defines the statutory term "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). 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 to comparable evidence 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 employs the beneficiary as a management consultant for pharmaceutical and biotechnology industries. The petitioner submitted supporting documents including the beneficiary's academic credentials, evidence of the publication and citation of the beneficiary's scientific articles, background information about the petitioner and two of the beneficiary's previous employers, evidence that the beneficiary had reviewed manuscripts for two scientific journals, documentation of a research grant and fellowship awarded

to the beneficiary, copies of three patent applications and one U.S. patent of which the beneficiary is a co-inventor, and support letters written by scientists and pharmaceutical and biotechnology industry professionals who have worked with the beneficiary. The director noted that much of the record addressed the beneficiary's accomplishments in scientific research, not management consulting, and found the evidence did not establish the requisite sustained acclaim.

Upon denial of the petition, counsel filed a Form I-290B and a three-page brief entitled "Motion to Reopen and Reconsider/Notice of Appeal." The sole issue raised in this brief is whether Citizenship and Immigration Services (CIS) should have issued a Request for Evidence (RFE) before denying the petition. On the Form I-290B and the accompanying cover letter dated December 20, 2004, counsel states, "We will file our Brief in support of the Appeal, with the Administrative Appeals Unit in Washington, D.C., should the instant Motion be denied." Upon notification that our office had received the case and was awaiting counsel's appellate brief, counsel sent a copy of the I-290B and the accompanying "Motion" to our office on August 8, 2005. To date, we have received no additional brief or evidence from counsel addressing any alleged errors of law or fact in the director's decision or reasons for appeal, other than the claim that an RFE should have been issued.

Counsel claims that an RFE must be issued unless evidence of clear ineligibility is present. Counsel cites both the regulation and a CIS policy memorandum in support of this claim, neither of which support his contention. Although 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing," the director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. In this case, the director did not deny the petition based on insufficient evidence of eligibility. The petitioner submitted numerous supporting documents with the petition, which provided ample initial evidence. The director reviewed this evidence and found it did not demonstrate the beneficiary's eligibility under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and appropriately denied the petition.

Counsel's reliance on the CIS policy memorandum is also misplaced. Although the memorandum states that a petition may be denied without issuance of an RFE when there is clear evidence of ineligibility, it does not state that this situation is the only one that will merit a denial of the petition without prior issuance of an RFE. Rather, the memorandum states:

If the record is complete with respect to all of the required initial evidence as specified in the regulations and on the application or petition and accompanying instructions, the CIS adjudicator is not required to issue an RFE to obtain further documentation to support a decision based on that record. Upon review of the record, if the CIS adjudicator determines that the applicant or petitioner has not met his or her burden to establish eligibility for the benefit, the case may be denied (emphasis in original).

Memorandum from William R. Yates, Associate Director, Operations, *Requests for Evidence (RFE) 2* (May 4, 2004). The memorandum further specifies that "[i]n all other instances, such as when the evidence raises underlying questions regarding eligibility or does not fully establish eligibility, issuance of an RFE is discretionary" (emphasis in original). *Id.* at 3.

This memorandum was rescinded shortly after the petitioner's appeal was filed. See Memorandum from William R. Yates, Associate Director, Operations, *Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)* (Feb. 16, 2005). Yet present CIS policy states that issuance of an RFE is still discretionary in cases

such as this one. *Id.* at 3.

Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner was given two opportunities to supplement the record on appeal, but chose not to do so. It would therefore serve no useful purpose to remand the case simply to afford the petitioner yet another opportunity to supplement the record.

Another preliminary issue in this case was noted by the director and requires further discussion. The petitioner submitted evidence that the beneficiary has a doctorate in biological sciences and was previously employed as a research scientist. Much of the record documents the beneficiary's scientific credentials and accomplishments. However, the petitioner seeks to continue its employment of the beneficiary as a management consultant for the pharmaceutical and biotechnology industries. While the beneficiary undoubtedly relies upon some of his scientific skills and experience in his current position, he is employed as a business management consultant, not a research scientist. Hence, evidence of the beneficiary's skills and accomplishments as a scientist cannot form the entire basis for the petition to continue his employment as a business management consultant. Neither counsel nor the petitioner addresses this issue although it was repeatedly raised in the director's decision. The petitioner's initial letter lists the beneficiary's "Qualifications as an Individual of Extraordinary Ability in the Sciences," but does not address how the beneficiary's employment in business satisfies section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii), which requires that the alien seek entry into the United States to continue working in his area of extraordinary ability.

In comparable situations where former athletes seek to enter the United States to work as coaches, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim through coaching at a national or international level. Yet in those situations, both occupations are within the same general field of athletics. In this case, the petitioner seeks classification of the beneficiary as an alien with extraordinary ability in both the sciences and business and the record establishes that some scientific credentials are essential to the beneficiary's business position. Accordingly, we have considered evidence of the beneficiary's past acclaim as a scientist in conjunction with evidence of his recent business accomplishments in our determination of his eligibility under the following regulatory criteria relevant to this case.

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

The record contains documentation that the beneficiary received a fellowship in 1992 from the Human Frontier Science Program (HFSP) to conduct research in the laboratory of Dr. Franz Ulrich Hartl at Rockefeller University and that he was the principal investigator on a research grant later awarded to the beneficiary's former employer, Mojave Therapeutics, Incorporated (Mojave) by the National Cancer Institute of the National Institutes of Health (NIH) from 1998 to 2000. Although this fellowship and grant may be prestigious, they do not satisfy this criterion because they were awarded to fund the beneficiary's proposed research and are not equivalent to nationally or internationally recognized prizes or awards. Moreover, the beneficiary's fellowship and grant only evidence his past scientific – not business – accomplishments. Accordingly, the beneficiary does not meet 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.

The record demonstrates that six of the beneficiary's co-authored articles have been widely cited by other researchers. However, citations of an alien's work by other scientists in their scholarly publications rarely meet this criterion because the citing articles are primarily about the authors' own research, not the work of the alien. The record contains no copies of any citing articles that substantively discuss the beneficiary's work, rather than referencing it to establish a subsidiary point. Other published materials in the record relate to the petitioner and do not mention the beneficiary. Accordingly, the beneficiary does not meet 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 record contains evidence that the beneficiary reviewed manuscripts submitted for publication to the *Journal of Experimental Medicine* and *Molecular Microbiology* in 1997 and 1998, five years before this petition was filed. Even if this evidence demonstrated the beneficiary's past acclaim as a scientist, the record contains no evidence that he has sustained that acclaim as a management consultant. The petitioner submitted documentation of his presentation for a forum entitled "Entrepreneurship: Biotech Startup" on March 26, 2002 for the Research Fellow Advisory Group at the Memorial Sloan Kettering Cancer Center in New York City. The petitioner submitted a printout of an electronic mail message thanking the beneficiary for his presentation and stating that "[e]veryone loved the session." Yet a single presentation on biotechnology startups at a forum for research fellows at one institution is not consistent with sustained acclaim in business. Accordingly, the beneficiary does not meet this criterion.

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

The petitioner cited the support letters as evidence of the beneficiary's eligibility under this criterion. The record contains seven letters written by scientists and industry professionals who have worked with the beneficiary. Although such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

We first note that five of the seven letters included with the petition are dated 2001, two years before the petition was filed. Four of these letters explicitly state that they were written in support of a prior petition to accord the beneficiary O-1 status. The petitioner's initial brief stated that "[b]ased on his achievements and professional standing, [the beneficiary] was granted O-1 nonimmigrant visa status as an alien with extraordinary ability in October 2001." On appeal, counsel further contends that the beneficiary's "current O-1 status is prima facie evidence that he is not *clearly ineligible* for such status under INA 203(b)(1)(A)." Although similar, the statutory and regulatory provisions for an O-1 nonimmigrant visa petition and an employment-based immigrant petition for an alien with extraordinary ability in the sciences or business are not identical. The petitioner was

previously granted O-1 nonimmigrant status under section 101(a)(O)(i) of the Act, 8 U.S.C. § 1101(a)(O)(i), and now seeks entry into the United States as an employment-based immigrant under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A). The previous petition is not before us here and the beneficiary's receipt of O-1 nonimmigrant status does not mandate the approval of this petition. 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 Intl.*, 19 I&N Dec. 593, 597 (Comm. 1988).

In the first letter that was apparently submitted with the previous petition for O-1 status, F. Ulrich Hartl, Director of the Max Planck Institute for Cellular Biochemistry in Munich, Germany, explains that the beneficiary worked in his laboratory at Memorial Sloan-Kettering Cancer Center in New York when he was a professor in the Center's Department of Cellular Biochemistry and Biophysics. Dr. Hartl states that during this time, the beneficiary performed research on protein folding and that his studies were published in *Nature*. Dr. Hartl stresses that the beneficiary "was a co-author on two such articles and was the primary investigator on a third, all three of which have been cited well over 100 times in articles published by other investigators. Indeed, it is fair to say that Dr. Mayhew's primary article is one of the most important articles in the field of cellular biochemistry of protein folding of the late 1990ies." The record documents three articles published in *Nature* between 1993 and 1996, two of which the beneficiary is a co-author and one of which he is the lead author. The record demonstrates that these articles have been cited between 112 and 198 times.

James E. Rothman, Vice Chairman of the Sloan-Kettering Institute and Chairman of the Program in Cellular Biochemistry and Biophysics at the Memorial Sloan-Kettering Cancer Center, states that the beneficiary subsequently joined his research group "in 1997 where he worked on a project that was the basis for the founding of Mojave Therapeutics, a company that develops new approaches to treating cancer and infectious diseases." Dr. Rothman states that he is a founder of Mojave and that the beneficiary "was a natural choice for the position of Senior Scientist, a position that not only required his outstanding scientific ability but also considerable management skills." The record contains evidence that the beneficiary is a co-inventor with Dr. Rothman and one other individual of a U.S. patent entitled "KDEL Receptor Inhibitors" that was granted on December 12, 2000. The petitioner is also a co-author with Dr. Rothman of an article that was published in 2000 in the *Journal of Experimental Medicine* and has been cited 13 times.

The record further demonstrates that the beneficiary is a co-author of 14 additional articles, some of which have been published in *Nature*, *Cell* and *Science* and five of which have been widely cited. The petitioner also submitted evidence that the beneficiary is listed as a co-inventor on three patent applications filed between 1996 and 1998. Combined with the documentation discussed above, this evidence demonstrates the beneficiary's contributions and past acclaim as a research scientist. However, to meet this criterion, the petitioner must demonstrate that the beneficiary sustained his past acclaim as a scientist through his subsequent work in business as a management consultant.

The record indicates that some of the beneficiary's duties at Mojave were managerial. Dr. Hartl states that he is on the advisory board of Mojave and is familiar with the beneficiary's work for that company. Dr. Hartl explains that "[w]hile running the research effort at the company, [the beneficiary] was also in charge of the clinical manufacturing program in which he took lab procedures for production and converted them into protocols suitable for the manufacture of Mojave's therapeutic. . . . The product, which was manufactured successfully, is now being used in a phase I clinical trial in patients with Melanoma." Laurent C. Le Portz, Partner and Portfolio Manager at Omicron Capital, was the former Chief Financial Officer of Mojave and explains that the beneficiary "became a central part of the strategic planning team [His] insight into the

biotechnology business as well as his breadth of knowledge both scientifically and from a management perspective made his contribution to Mojave's development critical. Mojave succeeded in attracting a \$20million [sic] investment in December of 2000 and [the beneficiary's] efforts were critical in leading up to this event." Mr. Le Portz states that the beneficiary's "involvement in managing the clinical manufacturing program . . . amount[ed] to significant contributions to the field and further evidence his extraordinary ability and reputation," but the record contains no evidence that the beneficiary's work was recognized in the biotechnology industry outside of his Mojave colleagues.

Dr. Frank R. Landsberger, Executive Chairman of Mojave who also worked with the beneficiary at the company, states, "Immediately upon joining Mojave, [the beneficiary] was awarded a Small Business Innovation Research grant from the NIH to continue his research effort. [He] quickly became the cornerstone of Mojave's research effort and additionally took charge of the clinical manufacturing program . . . [and] played an important role in business development." As noted above under the first criterion, the record documents the beneficiary's receipt of a research grant from the National Cancer Institute of NIH, but contains no similarly independent evidence of the beneficiary's role in Mojave's business development.

Qais Al-Awqati, Professor of Medicine, Physiology and Cellular Biophysics at Columbia University and Chairman of the Scientific and Medical Advisory Board of Mojave, states that he also worked with the beneficiary at Mojave. Professor Al-Awqati describes the beneficiary as a "key member of the Management team at Mojave acting as the head of most of the companies [sic] R&D projects, as well as being the leader of the team that managed the clinical manufacturing as well as taking part in efforts to attract new investors and potential corporate partners." Professor Al-Awqati also explains that the beneficiary "was one of the driving forces that kept Mojave moving towards its goal of providing hospitals with new and innovative treatments for cancer. [He] accomplished his goal since Mojave's first therapeutic is being used in an early stage clinical trial at Memorial Sloan-Kettering Cancer Center." Dr. Rothman affirms that Mojave's products have "successfully enter[ed] into clinical trials" and the record contains a printout from the company's website stating that two of its products are in clinical trials at Memorial Sloan-Kettering.

The beneficiary left Mojave to accept his current position with the petitioner. Two letters discuss his recent work and appear to be the only letters that were prepared for this petition (and not the previous O-1 petition). Andrew Seamans, Director of Drug Discovery Portfolio Analysis at GlaxoSmithKline (GSK), explains that the beneficiary was a leading member of the petitioner's team engaged to help GSK improve its approach to portfolio management after the company went through a merger. Mr. Seamans states that the beneficiary showed "his expertise by creating a new tool and process for assessing the risk of compounds in development that will be implemented across our company in the coming months." Sophie Hodges, Director of Portfolio Analytics and Planning for late stage development compounds at GSK, affirms that the beneficiary "played an integral role in designing and implementing new approaches to managing the products in the R&D pipeline. Specifically, [he] has developed new ways to evaluate pharmaceutical risk and new enhanced approaches to asset valuation." The record contains no evidence, however, that the beneficiary's work was recognized as a major contribution to the management consulting field in this industry outside of his GSK clients.

The record demonstrates that the beneficiary made major scientific contributions to his former field as a researcher, but the evidence does not indicate that he has sustained his past scientific acclaim through his subsequent work in business as a management consultant. The support letters of the beneficiary's colleagues at Mojave and his clients at GSK indicate that the beneficiary possesses business management skills and made valuable contributions to Mojave and the petitioner's project for GSK. However, the record contains no

evidence that the beneficiary's work at either company made major business-related contributions to the field of management consulting for the pharmaceutical and biotechnology industries in a manner consistent with the requisite sustained acclaim. Accordingly, the beneficiary does not meet 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.

The petitioner submitted copies of 11 articles co-authored by the beneficiary and published in scientific journals between 1990 and 2000. A list of the beneficiary's publications from an unidentified source includes an additional five articles co-authored by the beneficiary. The petitioner also submitted a printout from the Web of Science providing citation information for 19 articles co-authored by the beneficiary. Five of the beneficiary's articles were published in *Nature*, one was published in *Cell*, one was published in *Science*, and one was published in the *Proceedings of the National Academy of Sciences of the USA*. The beneficiary is also a co-author of two book chapters. The Web of Science printout indicates that seven of the beneficiary's co-authored articles have been widely cited by other researchers. An article entitled "The Reaction Cycle of GroEL and GroES in Chaperonin-Assisted Protein-Folding," published in 1993 in *Nature* has been cited 198 times. A second article, "Key Residues Involved in Calcium-Binding Motifs in EGF-Like Domains," published in 1991 in *Nature* has been cited 184 times. A third article of which the beneficiary is the lead author is entitled "Protein Folding in the Central Cavity of the GroEL – GroES Chaperonin Complex," was published in 1996 in *Nature* and has been cited 134 times. A fourth article published in 1995 in *Cell* has been cited 133 times. A fifth article entitled "Conformation of GroEL-Bound Alpha-Lactalbumin Probed by Mass Spectrometry" was published in 1994 in *Nature* and has been cited 112 times. A sixth article published in 1992 in *Protein Science* has been cited 65 times and a seventh article, published in 1992 in *Protein Engineering*, has been cited 36 times.

The petitioner's most recent articles were published in 2000 and his most recent, widely cited article was published in 1995, eight years prior to the filing of this petition. This publication and citation record demonstrates the beneficiary's past acclaim as a scientist, but the record contains no evidence that he has sustained that acclaim through publications in his current field of management consulting for the pharmaceutical and biotechnology industries. Accordingly, the beneficiary does not meet this criterion.

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

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. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization itself. In this case, the petitioner claims the beneficiary meets this criterion through his present role and his former positions at the Memorial Sloan-Kettering Cancer Center (MSKCC) and Mojave. The record does not support this claim.

As discussed above under the fifth criterion, Dr. Hartl, in whose laboratory the beneficiary worked at MSKCC, states that the beneficiary performed important research on protein folding while a postdoctoral fellow at MSKCC and that his work was published in three articles in *Nature* that have been widely cited. Dr. Hartl explains that the beneficiary "was a crucial asset to the running of the laboratory. [He] supported in the teaching of graduate students, gave class lectures, was asked to peer review articles submitted by others for publication and presented his work at many conferences." While this comment reflects the value of the beneficiary to Dr.

Hartl's laboratory, it describes accomplishments common to many successful postdoctoral fellows. Dr. Rothman, Vice Chairman of the Sloan-Kettering Institute at MSKCC, offers even less information about the beneficiary's role at MSKCC. Dr. Rothman simply states that the beneficiary "joined my research group at [MSKCC] in 1997 where he worked on a project that was the basis for the founding of Mojave Therapeutics." Neither of these letters demonstrate that the beneficiary performed a leading or critical role for MSKCC as a whole.

As discussed above under the fifth criterion, the letters of Mr. Landsberger, Mr. Le Portz, Dr. Rothman, Dr. Hartl and Professor Al-Awqati indicate that the beneficiary played a critical role for Mojave as a senior scientist who was also involved in the management of the company and its successful efforts to get its products used in clinical trials. However, the record contains no independent evidence that Mojave has a distinguished reputation. The petitioner submitted printouts from Mojave's website that state that the company has two products in clinical trials at Memorial Sloan-Kettering, has applied for – but apparently not received – patents to secure its proprietary technology and completed its second round of venture capital financing in December 2000. These accomplishments indicate that Mojave is an emerging company that shows promise of future success. They do not demonstrate the company's distinguished reputation as an established biotechnology business, the beneficiary's role in which would reflect the requisite sustained acclaim.

While we do not dispute the petitioner's distinguished reputation as evidenced by the company's materials and the two media reports about the firm submitted with the petition, we find the record does not establish that the beneficiary plays a leading or critical role for the petitioner. The letters of Ms. Hodges and Mr. Seamans show that the beneficiary was a leading member of the petitioner's team hired by GSK, but the letters do not demonstrate that the beneficiary performs a leading or critical role for the petitioner as a whole. In its initial brief, the petitioner summarized five accomplishments of the beneficiary during his tenure at McKinsey and Company, but the record only documents one of these projects, the beneficiary's work for GSK. The petitioner submitted no evidence to corroborate the beneficiary's four other accomplishments or other evidence that he plays a leading or critical role for the company. Although the petitioner claims the beneficiary "is critical to our operations," simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Saffici*, 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 beneficiary does not meet this criterion.

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The Form I-140 states the beneficiary's salary as \$129,000. The record contains no documentation of the beneficiary's income or evidence that his salary is significantly higher than other management consultants in his field or comparable to the salaries of consultants at the very top of his field. Accordingly, the beneficiary does not meet 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 or her field. The evidence in this case indicates that the beneficiary was an acclaimed research scientist who co-authored seven widely cited articles published in prestigious journals, was the co-inventor of one patented invention, and judged the work of other researchers in his former field. However, the record does not establish that the beneficiary has sustained

his past acclaim as a scientist through his subsequent work in business as a management consultant for the pharmaceutical and biotechnology industries. The evidence thus does not demonstrate that the beneficiary seeks entry into the United States to continue work in his area of extraordinary ability. Consequently, he is 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. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.