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FILE: [REDACTED]
WAC 04 064 51500

Office: CALIFORNIA SERVICE CENTER

Date: SEP 28 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

On appeal, counsel submits a brief and a letter regarding the petitioner’s remuneration. Under separate cover, we have received information from the petitioner’s mother, [REDACTED], originally sent to the U.S. Attorney General. While Citizenship and Immigration Services (CIS) is under the Department of Homeland Security, not the Department of Justice, we will consider the information forwarded to us.

Ms. [REDACTED] letter is not persuasive. Contrary to her assertions, the petitioner has not established that he meets even one of the regulatory criteria for the reasons discussed below, let alone the full ten as claimed by Ms. [REDACTED] letter. The letters from “well-respected professors” were not ignored. Rather, those letters merely recommend the petitioner as a dedicated instructor at a community college and make no attempt to imply that the petitioner already enjoys national or international acclaim.

Ms. [REDACTED] also includes a copy of the petitioner’s self-published book, with no ISBN number, which has yet to be adopted as a text at any school, asserting that it is proof that the denial of the petition demonstrates the director’s position that “nobody needs science.” As will be discussed below, the petitioner’s self-published book is not persuasive evidence indicative of his national or international acclaim, the statutory standard in this matter. We do not contest the importance of science. At issue is whether the petitioner enjoys the national or international acclaim required for eligibility for the classification sought. We find that the petitioner, who has not established any paid employment in his field prior to filing the petition, has not established such acclaim, which mandates recognition beyond his family and the local areas where the petitioner has studied and volunteered. For the reasons discussed below, we find that the petitioner has not demonstrated any notoriety beyond Yerevan State University (YSU) where he studied and the State of California where he has volunteered since 2000 and worked after the date of filing.

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 sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a theoretical physicist. The petitioner obtained his Ph.D. in Armenia in 1997 from Yerevan State University (YSU). While the petitioner indicated on his curriculum vitae that he was a research associate at YSU from 1997 through 2000, the petitioner's immigration documentation submitted in support of his Form I-485 Application to Register Permanent Residence or Adjust Status reflects that he entered the United States in October 1998 on a visitor's visa and has remained here since that time. After arriving in the United States, the petitioner volunteered at a community college and collaborated with other institutions in California. After the date of filing in 2004, the petitioner obtained work authorization and secured a paying job at the community college. While a scientist with little *formal* postdoctoral experience and a five-year hiatus from paid employment in the field prior to filing is not precluded from establishing ability, the petitioner bears a heavy burden. The petitioner's accomplishments and acclaim must compare with the most renowned and experienced members of the field.

Moreover, the fact that the petitioner's immigrant status precluded paid employment is not a mitigating factor. Nonimmigrant employment-based visa classifications exist, allowing scientists to work in their field in the United States prior to obtaining permanent resident status. The petitioner has never worked in the United States pursuant to such an employment-based nonimmigrant visa. Nothing in the law or regulations permits us to use a lower standard for those without work authorization than for those scientists working in the United States pursuant to a valid nonimmigrant employment-based visa. The exclusive classification sought requires more than qualification to work in the field and speculation that the alien is capable of contributing to the field in the future. Rather, the petitioner must already be nationally or internationally acclaimed in the field.

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 criteria follow:

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

Initially, counsel asserts:

[The petitioner] has been awarded [a] Medal for high school graduation with honors by the Ministry of Education of Armenian SSR. He also graduated high school in 9 years. [The petitioner] contends that the medal is a lesser nationally recognized award.

The petitioner submitted photocopies of the front and back of the medal with a self-serving caption that the medal was awarded for "success in studies, labor and for the [sic] exemplary behavior." The petitioner also submitted a letter from the Dean of the Physics Department at YSU asserting that the petitioner "was awarded by the Dean's Honor for Excellence in Study during 5 years (1989-1994)." While the petitioner did not initially claim that inclusion in Marquis' "Who's Who" serves to meet this criterion, the petitioner submitted evidence that he has been solicited for inclusion.

The director concluded that the honors listed on the petitioner's resume, "selection for 'Marquis Who's Who,' diploma with honors from YSU, Deans list, also YSU and Diploma with Honors and Medal for High School Graduation," were insufficient. On appeal, counsel asserts that the director failed to explain why the petitioner's honors were insufficient. Counsel asserts that being "selected repeatedly for the [sic] Who's Who and receiving educational horns and medals certainly qualifies as prizes and awards."

It cannot be credibly asserted that a medal for high school achievement is an award for excellence in the petitioner's field of physics. The petitioner had not even begun his higher education in this field when the medal was issued. Moreover, the record lacks evidence regarding the number of medals issued by the Ministry of Education or other evidence about its significance. A medal for which the most experienced and renowned members of the field do not compete is not indicative of the petitioner's national or international acclaim in the field.

Similarly, the petitioner's college graduation with honors and Dean's List achievements are not awards or prizes for excellence in the petitioner's field. Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships and student awards cannot be considered prizes or awards in the petitioner's field of endeavor. Moreover, competition for student awards is limited to other students, in this case other students at YSU. Experienced experts in the

field do not aspire to win student awards. Thus, they cannot establish that the petitioner is one of the very few at the top of his field.

Significantly, this office has held, in a precedent decision involving a lesser classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 219, n.6 (Comm. 1998). Thus, academic performance is certainly not comparable to the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), designed to demonstrate an alien's eligibility for this more exclusive classification.

Finally, appearing as one of thousands of other successful individuals in a frequently published directory such as "Who's Who" is not an award or prize indicative of national or international acclaim.

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

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner submitted evidence relating to membership in associations counsel characterizes as "highly regarded." Specifically, the petitioner was solicited as a member of the American Chemical Society (ACS), the largest scientific society in the world with more than 163,000 chemical professionals. The record contains no evidence that he is actually a member. The petitioner also submitted a solicitation to join the American Association for the Advancement of Science (AAAS) attached to a membership certificate. That the reply form is still attached to the certificate suggests that the petitioner may have never responded. Finally, the petitioner is a member of the New York Academy of Sciences.

The director concluded that the petitioner had not demonstrated that the above associations require outstanding achievements of their members. On appeal, counsel reiterates that the associations are "highly regarded" and asserts that they are "well known groups and their names and titles set forth the qualifications necessary."

Counsel is not persuasive. It is the petitioner's burden to meet every element of a given criterion. We will not presume from the name of a professional association that it is exclusive. Some very prominent associations remain open to most professionals in the field, gaining their prestige from their publications or conferences rather than their exclusive general membership. The fact that ACS has a membership of 163,000 suggests that membership is not limited to those with outstanding achievements in the field. Moreover, the petitioner is a physicist. Thus, ACS is not an association in his own field. Similarly, the inclusion by AAAS of the membership certificate with a reply card to join is not consistent with an exclusive association that has national or international experts judge the

achievements of prospective members. The petitioner submitted no objective evidence of the membership requirements of any of the associations, such as their bylaws or membership criteria as posted on their websites or other published brochures.¹ Thus, the petitioner has not established that any of the associations require outstanding achievements of their members.

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

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.

Initially, counsel asserted:

Enclosed is a lengthy article in the *Louys* Periodical published in the United States. [The petitioner] contends that this is a major media because *Louys* is nation's [sic] largest weekly publication. [The petitioner] also gave a television interview regarding his professional activities to [the] Armenian National Network on September 4, 2002.

The petitioner submitted an English-language article entitled "The Young Talent from Armenia" but the name of the publication does not appear on the copy of the article. The petitioner also submitted an article about his immigration troubles in an unidentified newspaper. The petitioner submitted no evidence of the circulation of *Louys*. The petitioner also failed to submit evidence from the Armenian National Network confirming an interview. 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 director considered only the immigration article and concluded that it did not relate to the petitioner's work in the field. On appeal, counsel asserts that the director failed to consider the *Louys* article or the interview the petitioner allegedly gave.

We concur with the director that the immigration article does not relate to the petitioner's work in the field. Moreover, the record lacks evidence regarding the circulation of the newspaper in which it

¹ Information reviewed on publicly available websites reflects that none of the associations require outstanding achievements of their members. According to the ACS website, www.acs.org, regular members need demonstrate only a degree in a chemical science, a certification as a teacher of a chemical science or relevant work experience. These are not outstanding achievements in the field. The membership application for the New York Academy of Sciences can be downloaded from their website, www.nyas.org. The membership form does not require the prospective member to list any education, experience or outstanding achievements. The website further reflects that the academy has more than 23,000 members. Finally, the website for AAAS, www.aaas.org, indicates that membership "is open to all individuals who support the goals and objectives" of the association. Thus, AAAS membership is clearly not limited to those able to demonstrate outstanding achievements in the field.

appeared. In addition, the copy of "The Young Talent from Armenia" does not include the name of the publication. Assuming the article did appear in *Louys*, the record is absent evidence corroborating counsel's assertion regarding the circulation of this publication. Counsel indicates that the publication is published in the United States and that it is the largest weekly publication for an unidentified nation. Circulation statistics and distribution data are available from publications. The petitioner, however, has failed to provide objective documentation with this information. Thus, the petitioner cannot meet his burden of demonstrating that he has been covered in major media.

Further, the record contains no evidence confirming the petitioner's interview or the location in which the alleged interview was broadcast. Thus, we cannot determine whether the interview took place and, if it did, whether it constitutes major media, media aimed at the general population or general physics community nationally.

Finally, we acknowledge that the petitioner has been solicited for inclusion in "Who's Who." The record lacks evidence that his biography was actually included. Regardless, a frequently published directory that includes thousands of biographies of successful individuals and appears akin to a "vanity press" is not qualifying media coverage.

In light of the above, the petitioner has not established that he 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.

The petitioner submitted a letter from Professor [REDACTED], Head of the Department of Theoretical Physics of YSU confirming the petitioner's graduate work at YSU and asserting:

Parallel to the scientific research in these years, [the petitioner] also was occupied in teaching activities, in work of examination committees and he was also a reviewer of diploma works of the Department's graduates.

The director concluded that the petitioner had not submitted evidence for this criterion. On appeal, counsel asserts that the director failed to consider the letter from Professor Chubarian.

Professor Chubarian implies that the petitioner reviewed "diploma works" for other students in his own department. The evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim if that standard is to have any meaning. Reviewing "diploma works" for fellow students at one's own university is not persuasive evidence of acclaim beyond that university. Far more persuasive would be evidence that the petitioner served as an external dissertation reviewer for a university with which he is not otherwise affiliated. The petitioner submitted no such evidence. Thus, the petitioner has not established that he meets this criterion.

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

Initially, counsel asserted that the petitioner's Bimetric Scalar-Tensor Theory (BSTT) resolves anomalies between the Big Bang and inflation and follows from Albert Einstein's work. Counsel asserts that the petitioner has pursued this work at the California Institute of Technology (Caltech) and Glendale Community College. The petitioner submitted several letters, all from members of the field in California and at YSU, published articles and presentations. The director concluded that the petitioner had not established the significance of his work. On appeal, counsel asserts that the petitioner has been the primary author of some articles.

We will evaluate the letters below. At the outset, however, we note that the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also 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)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

Professor ██████ asserts that the petitioner offered a mechanism that guarantees the accuracy of calculations in many theories of gravitation. While Professor ██████ asserts that this work "was used in numerous works in the this field," the petitioner failed to submit letters from physicists nationwide who have relied on this work or evidence that the petitioner published work in this area has been widely cited. Professor ██████ also asserts that the petitioner's dissertation solved a 20-year-old problem of a theory that satisfies "the cosmogony conception of worldwide acknowledged scientist,

academician V. A. Hambartsumian.” Once again, the record lacks evidence of this accomplishment, such as media coverage in the general or trade media or evidence of frequent citation of the petitioner’s dissertation.

Dr. [REDACTED] of the Institute of Applied Problems in Physics in Yerevan explains that the petitioner presented his work at conferences in Germany, Russia and Italy in 1994 and 1995. At issue, however, is the impact these presentations may have had. The record lacks evidence that the petitioner’s presentations, as published in the proceedings of these conferences, have been widely cited.

Dr. [REDACTED] a physicist at Caltech asserts that the petitioner attends colloquia and seminars at Caltech and engages in discussions with Dr. [REDACTED]. Dr. [REDACTED] notes that the petitioner has been published in peer-reviewed journals. While true, not every paper published in a peer-reviewed publication is a contribution of major significance to the field. Researchers are expected to publish their work in such journals to remain competitive as researchers. Significantly, Dr. [REDACTED] asserts that the petitioner has already been published in *Physical Review*. While the petitioner has submitted a manuscript to that journal, it had not yet been published as of the date of filing. In fact, the manuscript was returned for resubmission after responding to the reviewer’s comments. Significantly, the reviewer concludes that the petitioner’s model “suffers from a serious fine tuning problem” which makes it “a very unattractive alternative to regular inflation.” The reviewer continues that this “drastic fine tuning requirement which invalideates [sic] the viability of this model as an alternative to inflation.” The reviewer ultimately recommends the manuscript for publication only if the need for very serious fine-tuning is emphasized in the abstract, introduction and conclusion.

The petitioner has submitted three letters from Dr. [REDACTED], the Feynman Professor of Theoretical [REDACTED] at Caltech and a member of the National Academy of Sciences. We acknowledge that Dr. [REDACTED] is a member of the National Academy of Sciences, an editor of books and articles and the recipient of several honorary degrees and prestigious science writing awards. Thus, his opinion carries significant weight. That said, Dr. [REDACTED] accomplishments reflect that the top of the petitioner’s field is significantly higher than the level obtained by the petitioner.

While Dr. [REDACTED] opinions carry significant weight, he asserts only that he has read the petitioner’s work and that it is what “one would expect from a young professor at a strong, research-oriented university in the United States.” In subsequent letters, Dr. [REDACTED] recommends the petitioner for a teaching position at Glendale Community College and reiterates his conclusion that the petitioner’s work is of the caliber expected of a young professor at a strong U.S. university. Dr. [REDACTED] does not assert or imply that the petitioner is one of the few at the top of his field or that he enjoys national or international acclaim. Dr. [REDACTED] also fails to provide any example of independent researchers applying the petitioner’s work. While Dr. [REDACTED] asserts that he has formed a “good opinion” of the petitioner’s work, he does not characterize the work as a contribution of major significance in physics.

Similarly, Dr. F [REDACTED] of the Jet Propulsion Laboratory at Caltech asserts that the petitioner has assisted him and is “excellent material for a postdoctoral research position.” Postdoctoral research

positions are typically short-term entry-level positions in the field of research. *See* U.S. Department of Labor, Occupational Outlook Handbook 151 (2006-2007 ed.). Nothing in Dr. Pirjanian's letter implies that the petitioner is one of the very few at the top of his field or that he enjoys national or international acclaim.

The petitioner's colleagues at Glendale Community College praise the petitioner's abilities and assert that he is capable of more than merely tutoring students as a volunteer. They do not, however, provide examples of work that has been recognized nationally or internationally as a contribution of major significance to the field of physics. As stated above, the petitioner's failure to secure nonimmigrant status allowing him to work does not relieve him from demonstrating national or international acclaim. This visa category is for aliens who have already demonstrated achievements indicative of national or international acclaim, not those that, if given permanent resident status, may someday do so.

The above letters are all from individuals at YSU or in California. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's national or international acclaim, which implies acclaim beyond one's local colleagues regardless of whether those colleagues may reside in two countries.

We acknowledge that the petitioner has published his work in Russian journals and has presented his work overseas and in the United States. Not every published study constitutes a contribution of major significance. The record contains no evidence that the petitioner has been frequently and widely cited or comparable evidence that the petitioner's published work has been influential.

Finally, the petitioner submitted a book with no ISBN number that the petitioner appears to have published on his own as no publisher is listed in the book. The "reviews" are both from professors at Glendale Community College. A letter from the college indicates that they are "considering" using his book as a text. Without evidence that this book is already widely adopted as a text, we cannot conclude that it constitutes a contribution of major significance.

The petitioner's field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work. The record includes no letters from independent experts or evidence that the petitioner has been frequently and widely cited. While the evidence demonstrates that the petitioner is a talented researcher with potential, it falls far short of establishing that the petitioner had already made contributions of major significance. Thus, the petitioner has not established that he 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 submitted evidence that he has authored published articles and presented his work at conferences. The petitioner also submitted the aforementioned self-published book. The director concluded that the petitioner had not established that any of the petitioner's articles or presentations were considered significant in the field. On appeal, counsel asserts that the petitioner has been the main author of some articles.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces CIS's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

The record contains no evidence that the petitioner's articles or presentations have been cited. The fact that a single community college where the petitioner has been volunteering and now works is considering adopting the petitioner's self-published book as a text is not evidence of the book's significance.

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

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

The director concluded that this criterion was not applicable to the petitioner's field. On appeal, counsel asserts that the petitioner's self-published book, lectures at a community college and conference presentations serve to meet this criterion. A self-published book is not an artistic exhibition or showcase. Moreover, as stated above, it has not been widely adopted and, as of the date of filing, had yet to be adopted at the community college where the petitioner volunteered and now teaches. Scientific lectures and conference presentations are not artistic exhibitions or showcases. Moreover, class lectures are inherent to the field of community college instructor. Not every instructor enjoys national or international acclaim. Conference presentations are far more comparable to scholarly articles and the petitioner's presentations have been considered above pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

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

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

Counsel does not contest the director's failure to address this criterion and we find that the record lacks evidence that the petitioner, a Ph.D. student and community college volunteer as of the date of filing, has ever performed in a leading or critical role for an organization or establishment with a distinguished reputation as a whole.

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

The director noted that the petitioner's Form 1040 Individual Tax Return for 2004 reflected only \$4,765 in wages. On appeal, counsel asserts that the petitioner now earns a salary of \$5,574.66 plus \$176 for his doctorate per month. The petitioner submits a letter from the President of Glendale Community College confirming this information. The petitioner, however, does not submit any statistics that would allow us to compare this month salary with the top monthly salaries in the field. Thus, the petitioner has not established that this salary is significantly high for a physicist.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The director concluded that this criterion does not apply to the petitioner as he is not a performing artist. On appeal, counsel asserts that 10,000 copies of the petitioner's book were printed and notes that the petitioner initially submitted letters from Glendale Community College indicating that text books at the college range from \$75 to \$150 and confirming that they would consider the petitioner's book as a text. Counsel asserts that 30,000 students attend the college.

The petitioner must establish eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The petitioner submits no evidence that he has actually sold a single copy of his book for any amount. The fact that the petitioner's book may eventually be accepted as a text is not evidence that he already enjoys commercial success. Moreover, as discussed above, the book appears self-published and there is no evidence that the book is being adopted as a text nationwide. Commercial success implies success beyond a single community college. Thus, the petitioner has not established that he meets this criterion.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a physicist 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 indicates that the

petitioner shows talent as a physicist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.