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U.S. Citizenship
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Services

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FILE: [REDACTED]
SRC 06 190 50615

Office: TEXAS SERVICE CENTER Date:

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IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

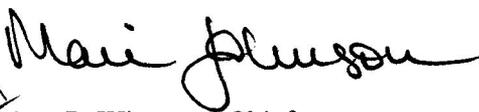
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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

The petitioner 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.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Counsel further states that the petitioner “has sustained national and international acclaim and his achievements have been recognized in the field of expertise.”

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

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien’s entry into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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, filed on June 5, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a General and Vascular Surgeon, specializing in Phlebology. In a May 31, 2006 letter accompanying the petition, counsel states:

[The petitioner's] current medical activities encompass an academic position as Assistant Professor of Surgery, and also Directorship of the Phlebology Unit at . . . the "Central University of Venezuela." He is also the Chairman of the Surgical Department of the Hospital de Clinicas, the main private hospital of Venezuela, and privately practices General and Vascular Surgery for Policlínica Santiago de Leon, a small community privately-owned hospital in Caracas.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). 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.

The petitioner submitted evidence that he and four others received a [REDACTED] Award for best "amateur" video during the Surgical Congress organized by the Venezuelan Society of Surgery in 1993.¹ In response to the director's request for evidence, the petitioner submitted an August 29, 2006 letter from the President and the General Secretary of the Venezuelan Surgical Society stating: "By this document, we state that the '[REDACTED] Award' is granted by the Venezuelan Surgical Society to the best amateur clinical video." The petitioner's response also included a document entitled "Award [REDACTED]" stating that the award was established to recognize the best clinical film or video "produced by amateurs." Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The English language translations of the August 29, 2006 letter from the officials of the Venezuelan Surgical Society and the document entitled "Prize [REDACTED]" were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Nevertheless, receipt of a prize limited to amateurs is not an indication that an individual "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2).

On appeal, counsel argues that the term "amateur" refers to the camera work rather than "the physicians involved in the investigation." Counsel further states: "It is unreasonable to think a group of physicians would direct or produce a video of their study/procedure/investigation as if they were professional video

¹ The Venezuelan Society of Surgery also bestows a [REDACTED] Award for best "professional" video during its Surgical Congress. See <http://www.sociedadvenezolanadecirugia.org/descarga/FormatoPresentacionTrabajosReglamento.doc>, accessed on January 31, 2008.

directors or producers.” Even if we were to accept counsel’s assertion,² we cannot assign weight to the aforementioned documents submitted in response to the director’s request for evidence as the English language translations accompanying them were not in compliance with the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence that the Dr. Ricardo Baquero Gonzalez Award is recognized in the field beyond the confines of the conference where it was presented.

The petitioner submitted a certificate from the Las Mercedes Rotary Club (District 4370) recognizing him for being a guest speaker at a club event in 2000. This certificate reflects local or institutional recognition by a social organization rather than national or international recognition for excellence in the field.

The petitioner also submitted a certificate stating that he and four others received an “Honorable Mention in Phlebology” for a paper they submitted to the “10th Pan American Congress and the 4th Venezuelan Congress of Phlebology and Lymphology in 2002.” The plain language of this regulatory criterion requires the petitioner’s “receipt of lesser nationally or internationally recognized *prizes* or *awards* for excellence in the field of endeavor.” There is no evidence that the petitioner’s “Honorable Mention” constitutes a nationally or internationally recognized prize or award. In response to the director’s request for evidence, the petitioner submitted a September 4, 2006 letter from the President of the Venezuelan Phlebology and Lymphology Society, but the English language translation accompanying this letter was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence that the petitioner’s honorable mention was recognized in the field beyond the confines of the conference where his paper was presented.

With regard to the petitioner’s [REDACTED] Award, certificate of recognition from the Las Mercedes Rotary Club, and Honorable Mention in Phlebology, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that they be nationally or internationally *recognized* awards in the field of endeavor and it is the petitioner’s burden to establish every element of this criterion. In this case, the petitioner has not submitted evidence establishing that the preceding honors commanded national or international recognition consistent with sustained national or international acclaim at the very top of his field.

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.

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, proficiency certifications, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not

² According to the non-certified English language translation submitted by the petitioner, article 3 of the document entitled “Award [REDACTED]” states: “The videos will have a maximum of one author and four co-authors. . . . The author(s) could be a surgical resident, other specialty physician or surgeon non[-]VSS [Venezuelan Surgical Society] affiliate but as long as one of the co-authors is a[n] affiliate in good standing of the VSS.”

constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of his membership in the Medical Society of the Hospital de Clinicas Caracas, the Venezuelan Surgical Society, the Latin American Association of Endoscopic Surgery, the Medical Society of the Caracas University Hospital, the International Society for Endovascular Surgery, and the American College of Phlebology. In response to the director's request for evidence and on appeal, the petitioner provides general information about some of the preceding organizations, but there is no evidence (such as membership bylaws or official admission requirements) showing these organizations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one. As such, the petitioner has not established that he meets this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In general, in order for published material to meet this criterion, it must be primarily about the 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. An alien would not earn acclaim at the national or international level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³

The petitioner initially submitted Spanish language articles published in *El Nacional* (1987 and 1992), *Pandora*, and *Las Mercedes in Action*, the Bulletin of the Las Mercedes Rotary Club (2001). None of the articles submitted for this regulatory criterion were accompanied by English language translations as required by this regulatory criterion and the regulation at 8 C.F.R. § 103.2(b)(3). Further, the plain language of this regulatory criterion requires "published material about the alien." The articles submitted by the petitioner, however, do not appear to be primarily about him. Finally, the petitioner's initial submission included no evidence (such as circulation statistics) showing that the preceding publications qualify as professional or major trade publications or some other form of major media.

On August 4, 2006, the director issued a notice requesting the petitioner to submit further evidence for this regulatory criterion. The director's request for evidence stated: "Several un-translated articles . . . were submitted. Submit translations, date of material, and evidence that they were printed in major media." The petitioner, however, failed to submit the requested documentation. In an October 20, 2006 letter responding to the director's request for evidence, counsel asserts that *El Nacional* is "the second-largest newspaper in Venezuela with more than 170,000 copies distributed daily." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of*

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

Laureano, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record includes no evidence that *El Nacional* is a major publication with substantial national readership.

In light of the above, the petitioner has not established that he meets this criterion. The petitioner does not address this criterion on appeal.

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 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. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). 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 the work of local students.

The petitioner submitted a letter from the General Manager of Vivax Pharmaceuticals, Caracas, Venezuela, stating: “[The petitioner] has been a guest lecturer in training our sales staff in areas relative to our medical products, as well as in different conferences to the Venezuelan Medical Community. [The petitioner] has been a member of our Medical Advisory Board in different clinical areas.” The record, however, includes no evidence that these activities were tantamount to the petitioner’s “participation, either individually or on a panel, as a judge of the work of others” in his field or an allied one.

The petitioner submitted a February 24, 1999 certification from the Manager of the Advancement of Research and Development for the National Counsel of Scientific and Technological Research stating that the petitioner “acts as a Health Science Project Judge and . . . as a[n] external evaluator in the application for different grant programs that we sponsor.” The English language translation accompanying this document was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the document lacks substantive information about the nature of the petitioner’s participation.

The petitioner submitted an April 21, 1994 letter from [REDACTED], Central University of Venezuela, Faculty of Medicine, Postgraduate Studies Commission, appointing the petitioner “as principal member of the examining jury . . . to consider the special research work (T.E.I.) titled ‘Post-Operatory Pain Use of Local Anesthesia’ . . . presented by the physicians [REDACTED] and [REDACTED] . . . for the purpose of opting for the University Degree of Specialist in General Surgery.” We note here that the Central University of Venezuela was the petitioner’s employer and alma mater. A March 1, 2006 letter from the Chief of Surgical Service for the Central University of Venezuela states that the petitioner has worked for the university’s medical school since February 1981. Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international

acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. As such, we cannot conclude that the beneficiary's assignment by his employer to evaluate the work of candidates seeking a University Degree of Specialist in General Surgery meets this criterion. Further, there is no evidence that the petitioner's activities involved judging experienced, licensed surgeons rather than those seeking to complete of their surgical training and education.

The petitioner also submitted a November 14, 1995 letter from [REDACTED] Head of the Professorship of Surgical Therapeutic Service, Central University of Venezuela, appointing the petitioner as his section's "representative before the Curriculum Commission which is working on the Curricular Reform of the School." The record, however, includes no evidence that the petitioner's activities for this commission involved his "participation, either individually or on a panel, as a judge of the work of others" in his field or an allied one.

The petitioner submitted letters dated November 21, 1990 and July 26, 1996 from the Secretary and the President of the Venezuelan Chapter of the American College of Surgeons. The first letter thanks the petitioner for his "participation as a panelist of the round table 'What's New in Surgery?'" The second thanks the petitioner for serving as a "Panelist-Coordinator" for a "Cinema-Forum." The petitioner also submitted a program from the 2005 Annual Congress of the Venezuelan Society of Interventionist Cardiology identifying him as an expert panelist for a "Live Case" discussion. There is no evidence that the petitioner's work for these panels involved judging the work of others in his field rather than relaying information about new surgical advances or coordinating a video presentation.

The petitioner also submitted a promotional flyer for a 2005 seminar sponsored by Johnson & Johnson listing him as one of several presenters on the subject of updates in the "treatment of chronic injuries," but there is no evidence that his participation involved judging the work of others in his field.

In response to the director's request for evidence, the petitioner submitted a letter from [REDACTED] [REDACTED] Editor-Director and Publications Committee President, *Medical Journal of the Medical Faculty of the Central University of Venezuela*, stating: "[The petitioner] is a collaborator of this journal, acting as an evaluator and judge. He offers his credited opinion in reference of the quality and originality of the papers submitted for its publication." We note that the plain language of this regulatory criterion requires "[e]vidence of the alien's participation . . . as a judge." The record, however, includes no documentary evidence showing that the petitioner actually participated in the review process for any specific papers. Nevertheless, even if the petitioner were to submit substantive evidence of his participation in the peer review process for this journal published by the university that employs him, we note that peer review is a routine element of the process by which articles are selected for publication in scientific journals. Occasional participation in peer review of this kind does not automatically demonstrate that the petitioner has sustained national or international acclaim at the very top of his field. A journal's editorial staff will normally 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's editorial staff 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 received independent requests for review from a substantial number of medical journals (as opposed to requests

delegated to him by his university) or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion. The petitioner does not address this criterion on appeal.

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

The petitioner submitted several recommendation letters in support of his petition. These letters describe the petitioner as a successful surgeon and discuss his activities and responsibilities, but they fail to establish that the specific work attributable to him represents original contributions of major significance in vascular or general surgery.

[REDACTED], President, Medical Society, Hospital de Clinicas Caracas, states:

[The petitioner], who is an active and very successful surgeon, has been involved in numerous activities in this hospital (Scientific, teaching and social activities).

* * *

Amongst [the petitioner's] activities, are the organization of scientific meetings, residents teaching and training activities and he has organized educational activities to the community.

[REDACTED] President of the World Federation of Societies of Intensive and Critical Care Medicine, and Chairman of the Division of Critical Care Medicine, Hospital Centro Medico de Caracas, states that he has known the petitioner "professionally at least for the last 25 years." [REDACTED] further states: "[The petitioner] has excelled in the fields of clinical general and vascular surgery in the field of clinical education. . . . Without any doubt I consider [the petitioner] an asset to any university teaching program for his background, experience, teaching capacities, and dedication at the bedside of the patients."

[REDACTED] Chairman of the Surgical Department of the University Hospital of Caracas, the main teaching hospital of the Central University of Venezuela, states:

I would like to commend [the petitioner] who is member of surgical service and cathedra II, since 1981 and holds an academic position as an assistant professor of surgery. [The petitioner], a pioneer in the field of phlebology (venous diseases) which is a common ailment in an important segment of society. [The petitioner] was the founder of the Phlebology and Lymphology Unit (He created and initiated medical and educational activities in this medical field, July 1998).

[REDACTED] a, Medical Director, Policlínica Santiago de Leon, states:

[Policlínica Santiago de Leon] is a community hospital, located in the capital city of Caracas, Venezuela. It has 120 hospitalization beds, with a very active emergency room and also it has almost all the medical specialties of a big hospital.

I would like to recommend [the petitioner], who ha[s] been associated to our institution since 1989, practicing general and vascular surgery. I must say that [the petitioner], has been an asset to our institution as he has changed in a positive way the outcome of complicated vascular emergencies. We were able to establish a team to manage complex medical problems such as ruptured aortic aneurysms, decreasing mortality to a 16% (Average mortality for ruptured aortic aneurysms as you encounter in all published papers on this subject is around 44%). The results of this experience were presented in a combined National and International meeting and also [the petitioner], presented this results as part of his academic work at the Universidad Central de Venezuela, where he is a professor of surgery.

[The petitioner], distinguished himself as a leading specialist in the field of peripheral vascular surgery, being requested by other colleagues to help in the resolution of complex and critical problems. He is very active in teaching and training our house staff and has maintained his research activities in addition to his demanding clinical responsibilities.

We acknowledge that the petitioner has been an asset to the institutions where he has worked, but the evidence does not establish that he has made original contributions of major significance in the field. While the petitioner's presented research and clinical studies are no doubt of value, it can be argued that any research study must be shown to be original and present some benefit if it is to receive funding and attention from the medical community. Any published or presented research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every physician or surgeon who performs original clinical research that adds to the general pool of knowledge has inherently made a contribution of major significance 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. While the petitioner helped form "a team to manage complex medical problems such as ruptured aortic aneurysms," the fact that the results of this work were presented is not sufficient to show that his work constitutes an original contribution of major significance in his field consistent with sustained national or international acclaim. For example, the record does not indicate the extent of the influence of this work on other surgeons nationally or internationally, nor does it show that the field in general has somehow changed as a result of this work.

On appeal, counsel argues that the petitioner's "years of research publications" and "lectures at Universities and Conferences" represent additional contributions to his field. The petitioner's published and presented work, however, is far more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, 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 and presented work under the next criterion.

In this case, the letters of support submitted by the petitioner's professional contacts and their discussion of his work are not sufficient to meet this criterion. The opinions of experts in the field, while not without

weight, cannot form the cornerstone of a successful extraordinary ability claim. 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 (Commr. 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. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a surgeon who has sustained national or international acclaim. Without evidence showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of contributions of major significance, we cannot conclude 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 of his authorship of papers and case studies for presentation at various conferences and publication in scientific journals. In addressing this criterion, the director's decision stated: "Copies of the self-petitioner's authored papers and case studies were submitted. There was no evidence to establish that the published articles have garnered national or international attention, for example, by being widely cited by independent researchers." We concur with the director's observation and take administrative notice of the fact that authoring scholarly articles is inherent to medical research. For this reason, we will evaluate a citation history or other evidence of the impact of the petitioner's articles when determining their significance to the field. For example, numerous independent citations would provide solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. On the other hand, few or no citations of an alien's work may indicate that his work has gone largely unnoticed by his field. In this case, there is no evidence showing that the petitioner's articles were frequently cited, or that they appeared in major publications or other major media in a manner consistent with sustained national or international acclaim. As such, 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.

On appeal, counsel argues that presentation of the petitioner's work at scientific conferences, symposia, and seminars meet this criterion as "other comparable evidence."⁴ The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence," but only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply

⁴ The petitioner's field, however, is not in the arts. The plain language of this criterion indicates that it applies to artists rather than to surgeons such as the petitioner. The petitioner's presented work has already been addressed under the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi). The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

unable to meet three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

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

The petitioner submitted evidence of various positions he has held during his medical career. The letter from [REDACTED] states that the petitioner is an Assistant Professor of Surgery at the Central University of Venezuela. [REDACTED]'s letter indicates that the petitioner practices General and Vascular Surgery for Policlínica Santiago de León. The letter from [REDACTED] states that the petitioner has served as Chairman of the Surgical Department for Hospital de Clínicas Caracas since 2003. With regard to these positions, there is no evidence demonstrating how the petitioner's role differentiated him from others holding similar appointments (such as other professors and department chairs), let alone more senior management and faculty in these institutions. The evidence is not adequate to demonstrate that the petitioner was responsible for the institutions' success or standing to a degree consistent with the meaning of "leading or critical role." Nor is there evidence showing that the preceding institutions have a distinguished reputation.

The petitioner also submitted correspondence from the Venezuelan Chapter of the American College of Surgeons indicating that he served as its secretary, vice-president, and president. While these positions appear to be leading roles for the Venezuelan Chapter, there is no evidence that this chapter had a distinguished reputation.

The director's decision discussed other positions held by the petitioner, none of which were found to meet this regulatory criterion. We concur with the director's findings regarding the petitioner's other roles.

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

In this case, the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or 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)(i) of the Act and the petition may not be approved.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The petitioner submitted a May 22, 2006 letter stating:

I intend to continue working as a General and Vascular Surgeon. . . . My primary area of focus within the General and Vascular Surgery medical field is Phlebology. My employment plans are to continue to use my scientific knowledge and expertise in the field of General and Vascular Surgery in the U.S. I have extensive experience as a practitioner physician, and also in the academic field as a Researcher and University Professor. I am convinced that as a General and Vascular Surgeon I will continue adding significant value to the scientific needs of educational and medical institutions.

The petitioner's letter lacks sufficient details of his plans for working in this country and does not represent "clear evidence" of his work intentions in the United States. For example, the petitioner fails to specify the names of any educational or medical institutions for which he intends to work as a General and Vascular Surgeon. As such, there is no clear evidence that the petitioner will continue work in his area of expertise in the United States.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). *See also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

ORDER: The appeal is dismissed.