

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2



FILE: [REDACTED]
SRC 07 015 53056

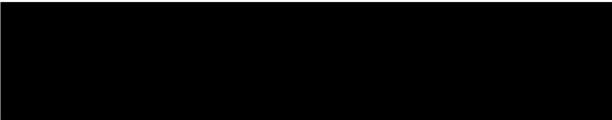
Office: NEBRASKA SERVICE CENTER

Date: **JUN 16 2009**

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)

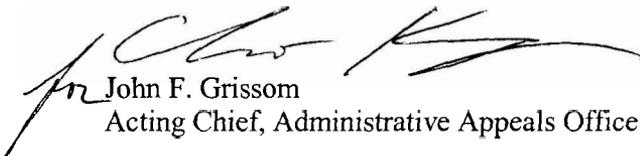
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

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

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

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

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

(A) Aliens with Extraordinary Ability. – An alien is described in this subparagraph if –

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien’s entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who has 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 she 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 post doctoral research scholar. 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.

On appeal, counsel asserts that the director found that the petitioner had met three of the criteria outlined in 8 C.F.R. § 204.5(h)(3). Counsel cites this language from the director's decision:

Upon review of the record, it is readily apparent from the evidence that the petitioner has recognition in her field: in fact, she was used as a resource on the subject of infertility for "Health Reported[,] a national periodical in China with an English version under the heading of "China Health News[.]" As noted in the correspondence the Service sent on October 25, 2007, she meets the criterion of publication, as she has not only had articles published, but has also served as editor for several books that have been published. The record also shows that the petitioner was a committee member of Chinese Association of the Integration of traditional and Western Medicine (CAIM), and evidence indicates that in this function, she served a critical role.

However, the record does not show sufficient evidence of meeting the other criteria for this classification to show further evidence of extraordinary ability.

As noted by counsel, a petitioner is required to only establish that the alien meets three of the regulatory criteria. The director's decision, as quoted above, appears to require the petitioner to establish that she meets all of the criteria listed. However, the director also clarified that "the record does not show evidence of receipt of a major international award or . . . that she has extraordinary ability as evidenced in sustained national or international acclaim in at least three of the regulatory criteria [at] 8 C.F.R. § 204.5(h)(3)." Accordingly, we do not read the director's decision as finding that the petitioner met three of the three criteria at 8 C.F.R. § 204.5(h)(3).

In addition, a petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three of the criteria outlined in 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 did not initially claim to meet any specific criterion. However, she submitted evidence that, arguably, is relevant 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.

In his October 12, 2006 letter forwarding the petition, counsel indicated that the petitioner had received the following "honors and awards:" a 2004 research award for foreign students at the University of Tokyo; a 2003-2005 Rotary Yoneyama Memorial Foundation Fellow Award; a 2002-2003 Honor Scholarship Award of Takaku Foundation; a 2000-2001 Sasakawa Medical Fellowship Award of Sasakawa Memorial Health Foundation; a 1998 Excellent Scientific Paper

Award of Youth from the Health Bureau of Beijing; and a 1996 Excellent Paper Award presented by the China Association of Chinese Medicine.

The petitioner submitted copies of the following:

- a) A copy of a certificate indicating a “2004 Research Award for Foreign Students at the University of Tokyo Graduate School of Medicine.” The certificate indicated that the award was granted based on performance and to encourage further efforts.
- b) A copy of a March 2005 certificate from Rotary Yoneyama Memorial Foundation, Inc., certifying that the petitioner had completed her studies at the University of Tokyo as a Rotary Yoneyama Memorial Foundation Fellow. The petitioner provided a statement indicating that the Rotary Yoneyama Memorial Foundation Fellow Award is authorized by the Ministry of Education, Culture, Sports, Science and Technology in Japan. She also stated that the award “supports scholars who are motivated and excellent in (1) academic performance, (2) understanding culture differences, [and] (3) communication efficiency.” The petitioner submitted no documentation to corroborate her statements regarding the award. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).
- c) A copy of an April 13, 2002 “Certificate of Honor Scholarship Award of Takaku Foundation.” The certificate advises the petitioner that she was “expect[ed] to study diligently for further achievements and contribute to international exchange.”
- d) A copy of an April 3, 2000 “Certificate of Sasakawa Medical Fellowship Award” for the period April 1, 2000 to March 31, 2001. According to the petitioner, “The award was granted by Japan-China Medical Association, and it is top award in China Ministry of Public Health.” The petitioner further stated that “[o]nly 100 medical health professionals were chosen from more than 2 million researcher and clinical doctors in China to attend Japanese medical universities and learn the latest advances in medical technology in Japan.” The petitioner submitted no documentation to corroborate these statements. *See id.*
- e) A copy of a March 1998 “Certificate of Excellent Scientific Paper Award” presented by the Health Bureau of Beijing.
- f) A copy of a July 25, 1996 “Certificate of Excellent Paper Award” presented by the China Association of Chinese Medicine.

In a request for evidence (RFE) dated October 25, 2007, the director advised the petitioner that academic awards are not normally considered nationally or internationally recognized prizes or awards for excellence. In response, counsel concedes that most of these awards are student awards or scholarships but asserts that they are also national awards. The petitioner submitted

additional information about the various awards, apparently culled from various websites, which further outlines the selection process for the various awards. Although she cited to the various websites, the petitioner failed to provide copies of the documentation which she used to summarize her information. *Id.*

The information provided by the petitioner indicates that with the exception of the “excellent paper” awards, all of the petitioner’s recognition is based on her academic record. Academic study is not a field of endeavor but rather 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 scholarships is limited to other students. Experienced experts in the field are not seeking scholarships. Similarly, experienced experts do not compete for fellowships. Thus, they cannot establish that a petitioner is one of the very few at the top of her field.

The information presented by the petitioner indicates that the China Association of Chinese Medicine “is a national, academic and non-profitable body” with over 180,000 members worldwide. The information indicates that the “Excellent Scientific Award” is given “to honor the significant contribution of the recipient to medical science.” However, the petitioner indicates that she received the “Excellent Paper Award,” and the record does not establish a relationship between the “Excellent Scientific Award” and the “Excellent Paper Award.” Further, the petitioner submitted no documentation to establish that the “Excellent Paper Award” is a nationally or internationally recognized award of excellence in the petitioner’s field of endeavor.

The petitioner does not pursue this issue on appeal and has failed to establish that she 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.

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 work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner submitted a copy of a May 4, 2006 certificate indicating that she is an associate of the Endocrine Society. The documentation submitted indicated that one can become a member of the society as either an active member or as an associate. The membership categories and criteria indicate that an individual can become an active member of the society if he or she is a published author, a board certified physician, an educator or has a doctorate degree and an interest in, involvement with or contribution to the field of endocrinology. One can become an associate if

he or she is “committed to the field of endocrinology; hold at least a B.A. or B.S. degree (or demonstrate leadership in the endocrine field as an educator, speaker, advocate or administrator);” and, as a research associate, is either involved in endocrine research, education and practice; as a healthcare associate, hold a license and/or certification; as an affiliate, is a senior level corporate, government or non-profit manager representing research and development, medical affairs, medical education, marketing, professional affairs, regulatory affairs, or quality control and assurance; or as a fellow/student associate, enrolled in an endocrinology-related educational program as a clinical fellow, postdoctoral fellow, medical resident, medical student or graduate student. In response to the RFE, the petitioner stated that she became an “active member” of the society because she was a published author. However, the petitioner has not established that a published article constitutes outstanding achievement. The documentation does not indicate that the Endocrine Society requires outstanding achievements of its members.

The petitioner also submitted a copy of a certificate indicating that she had been elected as a member in Sigma Xi in 2006. The submitted materials about Sigma Xi reveal that the organization invites to full membership “[an] individual who has shown noteworthy achievement as an original investigator in a field of pure or applied science.” This achievement must be evidenced by “publication as a first author on two articles published in a refereed journal, patents, written reports or a thesis or dissertation.” A noteworthy achievement is not necessarily an outstanding achievement. In response to the RFE, the petitioner referenced the website of Sigma Xi, stating that the organization has more than 60,000 members who were elected based on their “research potential or achievements” and that over 200 members of the organization have won Nobel Prizes.

The prestige of the Nobel Prize is not in dispute. It remains, however, that the petitioner is not among those who have been a recipient of the Nobel Prize. Thus, its significance is irrelevant. That Sigma Xi includes members who have won the Nobel Prize does not impart that distinction to the vast majority of its members who have not been so recognized. It remains that a “noteworthy” achievement, as defined by the society, is not an outstanding achievement. An organization that boasts 60,000 members does not represent only that very small percentage at the top of the field. We concur with the director that the petitioner’s membership in Sigma Xi cannot serve to meet this criterion.

The petitioner also submitted a May 10, 2006 “certificate” from the Executive Office of the Japanese Society of Obstetrics and Gynecology, informing the petitioner that the society’s records show that she was a member of the organization from September 30, 2002 to January 31, 2005. The petitioner submitted no documentation regarding the membership requirements for the organization.

The petitioner has failed to establish that she 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 order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner stated that she was “reported in the worldwide newspaper *Health Reported* and invited to answer questions” on various health issues. The petitioner also stated that *Health Reported* “is the most famous and most affected national major newspaper about health in China.” She submitted a copy of a July 26, 2000 newspaper that she stated is a copy of *Health Reported* containing an article by Ping Liu entitled “Today’s Scientist.” The petitioner, however, failed to submit a complete, certified copy of the document. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Further, the petitioner submitted no documentation to establish that *Health Reported* is a professional or major trade publication or other major media, and therefore has not met her burden of proof. *Matter of Soffici*, 22 I&N Dec. at 165.

In response to the RFE, the petitioner provided a statement in which she stated that *Health Reported* is issued worldwide and has a circulation of more than 400,000. The petitioner provided a copy of a webpage, www.jkb.com.cn/jkbjj/jkbjj.htm, apparently in support of her statement. However, the petitioner did not submit a certified translation of the document. In his November 30, 2007 letter accompanying the petitioner’s response to the RFE, counsel asserted:

This newspaper is printed in Chinese, and is also known in English as “China Health News.” We have submitted information about this paper in the original Chinese with a translation. We could submit a certified translation, but that would be expensive, but in the event you do not accept the non-certified translation, we would do this, if you request. This is a big newspaper and in addition to being published in print media, it can be found on-line on the internet at www.jkb.com.cn/.

The regulation at 8 C.F.R. § 103.2(b)(3) clearly requires that documents submitted in a foreign language “shall be accompanied by a full English translation which 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.” Further, the “uncertified translations” submitted, which are, additionally, not full translations, were apparently translated by the petitioner, which lessens their probative value.

The petitioner also submitted a copy of an October 2003 issue of *Tokyo Monthly*, which is apparently a publication of the Rotary Club of Tokyo. The publication includes a feature about the petitioner discussing her studies as the Yoneyama Scholar. The petitioner submitted no documentation to establish that the *Tokyo Monthly* is a professional or major trade publication or other major media.

In his decision, the director stated:

Upon review of the record, it is readily apparent from the evidence that the petitioner has recognition in her field: in fact, she was used as a resource on the subject of infertility for "Health Reported[.]" a national periodical in China with an English version under the heading of "China Health News[.]"

The record does not support this conclusion by the director and we withdraw his statement. Even if the petitioner had established that *Health Reported* is a national periodical in China, a single article about the petitioner, published six years prior to the date the petition was filed on October 19, 2006, is not evidence of the sustained acclaim required by the Act.

The petitioner has failed to establish that she 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 stated that she was a committee member of the 6th Gynecology & Obstetrics Committee of Chinese Association of the Integration of Traditional and Western Medicine (CAIM). The petitioner stated that as a committee member, "One of its most important duties is to judge and reward outstanding achievements in the research and clinical work of integration of traditional and western medical science in national scope."

The petitioner submitted a copy of an October 29, 2002 "Letter of Appointment" from CAIM certifying that the petitioner was "engaged as a committee member of [the] 6th Gynecology & Obstetrics Committee." The petitioner, however, submitted no documentation indicating that she actually judged any work as a member of the committee.

The petitioner has failed to establish that she meets this criterion.

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

The petitioner initially made no specific claims as to any contributions that would meet this criterion. In his RFE, the director noted that the petitioner had submitted several letters of reference and advised the petitioner that "a successful petition is not solely dependent on support letters," and that "further evidence showing" her "original contributions of major significance" was needed.

In response, counsel asserted:

The examiner states that the only evidence . . . submitted were the letters of referees [sic]. This is not true. We have also submitted ample evidence, as well as reprints for [the petitioner's] journal articles. . . . She was Editor in Chief, Associate Editor, or Editor on 5 books where [sic] were commercial successes, having altogether sold 70,000 copies! This plus her journal articles, conference presentations and interviews in the popular press surely constitute original scientific, scholarly and commercially successful contributions to her field.

It is specifically noted, however, that the petitioner failed to specify any contribution of major significance that would establish her eligibility under this criterion. None of the evidence presented by the petitioner in support of any other criterion, either individually or collectively, indicates a contribution of major significance to her field of endeavor. Writing refereed journal articles, editing books that sell, or providing interviews are not evidence of a major contribution to the petitioner's field. Further, the Act requires that the petitioner establish eligibility for this criterion with extensive documentation. The regulations have provided ten separate criteria to aid the petitioner in meeting this burden. The petitioner cannot meet one criterion based on meeting (or allegedly meeting) one or more of the other criteria.

A review of the petitioner's references does not establish that the petitioner has made a contribution of major significance to her field of endeavor. We note that [REDACTED] the [REDACTED] Professor in the Departments of Laboratory Medicine and Medicine at the University of California, San Francisco (UCSF), in a July 26, 2006 letter, stated:

[The petitioner's] first discovery in the world of crosstalk of Fas-Fas ligand and Nitric Oxide in the process of ovary atresia and the investigation of clinical safety of gonadotropin releasing hormone (GnRH) analogs, Cetrorelix, a medication used in vitro fertilization (IVF) had significant impact on these fields.

However, the petitioner submitted no documentation of the "significant impact" of her work. *See Matter of Soffici*, 22 I&N Dec. at 165. Furthermore, while the petitioner's other references describe her as being among the very best researchers who has achieved some "firsts" in her research areas, no one else indicated that any of her work constituted a contribution of major contribution to the field. For example, [REDACTED] a professor in the Division of Reproductive Biology, Department of Gynecology and Obstetrics at Stanford University School of Medicine, stated in an August 16, 2006 letter that he was impressed with the petitioner's achievements and that her work "could have important significance for our understanding of the neuroendocrine mechanisms which control ovulation in mammals, and may eventually lead to the development of more effective therapies and novel preventive methods for many medical conditions." [REDACTED] clearly indicates that the petitioner's work has future potential. Additionally, [REDACTED] stated in an August 2, 2006 letter that the petitioner's "research has important implications for understanding how the GnRH neuron controls the reproductive hypothalamus-pituitary-ovary axis as well as certain reproductive diseases . . . This in turn may lead to the development of new strategies for the diagnosis and treatment of these

diseases.” A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner does not pursue this issue on appeal, and has failed to establish that she 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 claims to meet this criterion based on seven articles on which she served as co-author (five of which were as first author), two articles in preparation for submission for publication, five books on which she has served as editor and five presentations at various meetings and congresses.

The petitioner submitted a copy of an article that was published in *Endocrinology*. Copies of other articles are in Chinese and are not accompanied by English translations as required by 8 C.F.R. § 103.2(b)(3). As such, they are not probative and will not be accorded any weight in this proceeding. The petitioner provides an abstract of the articles but it is not clear who prepared the abstracts and they do not appear to be appended to the articles submitted.

Additionally, duties or activities that 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. As frequent publication of research findings is inherent to success as an established research scientist, publications alone do not necessarily indicate the sustained acclaim requisite to classification as an alien with extraordinary ability. Evidence of publications must be accompanied by documentation of consistent citation by independent research teams or other proof that the alien's publications have had a significant impact in his field. The petitioner submitted no documentation that her published articles have been cited or relied upon by any other researcher in his or her research.

The petitioner also claims to have two articles in preparation for submission to be published. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner submitted copies of presentations that she stated were made at various national and international meetings. The documents, however, are in Chinese or Japanese and not accompanied by English translations as required by 8 C.F.R. § 103.2(b)(3). The petitioner also submitted a copy of a presentation that she stated would be presented subsequent to the date the petition was filed. As previously discussed, such documentation cannot be used to establish current eligibility for the visa petition. *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner submitted documentation indicating that she served as editor or editor-in-chief of several books that achieved a measure of commercial success. The wording of this criterion requires the petitioner to provide evidence of the alien's authorship of scholarly articles in the field. However, the petitioner has not shown that her editing of these books is the equivalent of authoring the given work.

The director determined that the petitioner meets this criterion. However, as the petitioner has failed to submit certified translations of her documents, failed to establish that her published articles were relied upon by others in her field, and failed to establish that she was the author of the books on which she served as editor, we find that her evidence is insufficient to establish that she meets this criterion. Therefore, we withdraw the director's determination. The petitioner has failed to establish that she meets this criterion.

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, the petitioner must show that she performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

As discussed previously, the petitioner submitted documentation reflecting that she had been appointed to the 6th Gynecology & Obstetrics Committee of CAIM. The petitioner alleged that a member of this committee plays a leading and critical role "in this scientific field in China and in this reputed organization, and responsible to organize academic activity in the area of Gynecology and Obstetrics in China." The petitioner submitted a November 8, 2007 "Certificate" from CAIM certifying that the petitioner met the requirements for committee membership and was nominated and approved by CAIM as a committee member. The petitioner also provided a website link that she stated identifies the duties of a committee member. However, she failed to provide any documentation from the website or other documentation from the organization to establish her duties in the organization. *See Matter of Soffici*, 22 I&N Dec. at 165. Additionally, the petitioner provided no documentation to establish that CAIM is an organization with a distinguished reputation.

In a June 23, 2006 letter, [REDACTED] a professor in the Department of Obstetrics, Gynecology & Reproductive Sciences, in the Department of Physiology and Interim Director at the Center for Reproductive Sciences, at UCSF, stated that he recruited the petitioner to join his laboratory in 2005. [REDACTED] stated that the petitioner "has a leading and key role in our neuroendocrine program, and her contributions to date have been significant."

In response to the RFE, the petitioner submitted a November 12, 2007 letter from [REDACTED] [REDACTED] director of the Laboratory of Molecular Cardiology, Assistant Professor of Medicine in the Department of Medicine, Division of Cardiology, UCSF. [REDACTED] stated that the petitioner had been working in his laboratory for four months, that her role "is vital [] because of her extraordinary ability in genetic engineering for cell therapy," and that she "is the only person in my lab who has mastered some of the complex technology vital to our research." Nonetheless,

the petitioner submitted no documentation to establish that either of these laboratories has a distinguished reputation. At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected her. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

The petitioner has failed to establish that she meets this criterion.

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

The petitioner submitted documentation indicating that two of the books on which she served as editor, *Health Care for Women* and *Diagnosis and Treatment Handbook for Common Diseases in Obstetrics and Gynecology*, sold a combined total of 27,000 copies. In response to the RFE, the petitioner alleges that the other three books sold a combined total of 30,000 copies. In his letter accompanying the petitioner's response to the RFE, counsel asserted that the petitioner's books "were commercial successes, having altogether sold 70,000 copies." However, no evidence of record supports counsel's statements. 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 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). Counsel also asserted that the sales of the petitioner's books are evidence that she meets this criterion.

In denying the petition, the director stated that this criterion is inapplicable to the petitioner because it applies to the performing arts. On appeal, counsel asserts that "[t]his is totally absurd," and questions where this is so stated in the regulation or statute. The regulation, however, clearly states that this criterion is applicable to "commercial successes in the performing arts." (Emphasis added.) 8 C.F.R. § 204.5(h)(3)(x). Counsel also asserts that the petitioner submitted evidence that one book sold 70,000 copies. Counsel misstates the evidence, as nothing in the record establishes that the books edited by the petitioner sold 70,000 in total or that one book sold 70,000 copies.

This criterion clearly applies to those in the performing arts. Even if it did not, however, the petitioner's evidence establishes only that 27,000 copies of two books were sold. The evidence does not establish how these numbers compare to sales of other publications in the same field or how the sale of 27,000 copies of two books is evidence of the petitioner's sustained acclaim.

The petitioner has failed to establish that she meets this criterion.

The petitioner submitted several letters of reference from individuals who state that she is an extraordinary researcher and at the top of the field of endeavor. 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. The United States Citizenship and Immigration Services (USCIS) 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, USCIS 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; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 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. 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.

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 her field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a researcher to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her 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.