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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 16 2009
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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:

[REDACTED]

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 Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) 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 additional evidence. For the reasons discussed below, we uphold the director’s ultimate finding that the petitioner has not demonstrated eligibility for the exclusive classification sought.

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.

U.S. Citizenship and Immigration Services (USCIS) 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, 60898-9 (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). Thus, while counsel asserts that the director erred in comparing the petitioner’s achievements with those of his references, the director’s concerns are valid. The gap between the petitioner’s achievements and those of his references demonstrates that the top of the beneficiary’s field is considerably higher than the level he has achieved and, at the very least, is consistent with the director’s ultimate finding based on an analysis of the evidence under the regulatory criteria.

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 gastroenterologist. 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.

On appeal, counsel asserts that the only district court decision to address the proper standard for this classification is *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994), which found that a petitioner need only demonstrate that he meets at least three criteria; no additional evidence of the alien's caliber is required. First, this decision is not the only district court to review legacy Immigration and Naturalization Service (INS) or USCIS decisions pursuant to section 203(b)(1)(A) of the Act. For example, the following district court decisions deal with this classification: *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008); *Braga v. USCIS*, 2009 WL 604888 (C.D. Cal. July 6, 2007); *Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005); *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002) and *Russell v. INS*, 2001 WL 11055 (N.D. Ill. Jan. 4, 2001).

Even if *Buletini* were the only district court decision addressing the classification sought, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Regardless, the court in *Buletini* acknowledged that "the examiner must evaluate the quality, including the credibility, of the evidence presented to determine if it, in fact, satisfies the criteria." *Buletini*, 860 F. Supp. at 1234. Thus, the director did not err in considering whether the evidence submitted to meet a given criterion was sufficiently indicative of or consistent with national or international acclaim, the statutory standard in this matter. *Accord Yasar v. DHS*, 2006 WL 778623 at *9; *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 at *11.

Counsel also cites a September 23, 2005 memorandum from William R. Yates, Associate Director of Operations, USCIS, asserting that the classification sought in this matter is "comparable" to Schedule A, Group II designation, whose requirements are set forth at 20 C.F.R. § 656.15(d). Counsel notes that

the petitioner is the beneficiary of an approved petition filed seeking Schedule A, Group II designation, receipt number SRC-07-042-51668.¹ While some of the regulatory criteria for that designation are similar to those set forth at 8 C.F.R. § 204.5(h)(3), an alien need only meet two criteria for such designation whereas an alien must meet at least three criteria for classification pursuant to section 203(b)(1)(A) of the Act. Thus, the standards are not identical. As such, the approval of the petition in behalf of the petitioner seeking Schedule A, Group II designation does not mandate approval of the instant petition.

Regardless, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Given the above considerations, we will now consider the evidence submitted. The petitioner has submitted evidence that, he claims, meets the following criteria.²

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

The petitioner has submitted several academic awards, scholarships and evidence that his video case study was one of 23 six-minute or less programs selected for the "Best Cases of 2005" Video Forum, part of the Digestive Disease Week conference sponsored by the American Society for Gastrointestinal Endoscopy (ASGE). According to the materials submitted by the petitioner, programs "can demonstrate accepted techniques or show difficult, interesting cases, complications or innovations within the field of endoscopy." In addition, all submissions "are judged according to content, appropriateness as teaching and instructional material, current interest and audio visual quality." Notably, beyond this selection, ASGE awards an Audiovisual Award covering longer pieces designed for teaching purposes. A single awardee and two runner ups are presented with awards during the forum.

¹ Schedule A, Group II designation was requested in conjunction with a petition seeking a lesser classification pursuant to section 203(b)(2) of the Act. We note that the petitioner already had a petition in his behalf, supported by a labor certification, under the same classification approved with an earlier priority date, LIN-04-240-51275.

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

In response to the director's request for additional evidence, the petitioner submitted a letter from Dr. [REDACTED] Chief of the Division of Gastroenterology and Hepatology at the Denver Health Medical Center where the petitioner works, asserting that the petitioner was the first endoscopist to present a video of the placement of a surgical stent to relieve bile duct pressure, that the petitioner's presentation was one of 17³ selected for presentation and that selection "is a significant honor that is reserved for the top physicians in our field."

Director of the Center for Inflammatory Bowel Diseases at the Stanford University School of Medicine, asserts that Digestive Disease Week is the preeminent conference for doctors focusing on gastrointestinal issues and that the video forum is one of the highlights of the conference. [REDACTED] further asserts that only "the most creative and accomplished physicians are selected for this honor and selection is clearly indicative of a recognized respected physician."

The director concluded that student awards and fellowships could not serve to meet this criterion. The director further concluded that ASGE "prize" could not serve to meet this criterion. On appeal, counsel asserts generally that the director erred in failing to consider the petitioner's accomplishments while a student. Regarding this criterion in particular, counsel asserts that the director erred in failing to consider the statements of [REDACTED] and [REDACTED]. The petitioner submits a page from a Digestive Disease Week newsletter with a statement from the conference's Annual Scientific Program Committee Chair, [REDACTED]. Dr. [REDACTED] asserts that the Video Forum "*is similar to the research or abstract sessions* in that these cases are submitted and selected based on the quality and importance of each presentation." (Emphasis added.)

While we do not question the sincerity or credibility of [REDACTED] and [REDACTED], the official materials from Digestive Disease Week, including those submitted on appeal, clearly demonstrate that, while physicians may aspire to have their videos selected, selection for the video forum is far more comparable to selection for publication or presentation than an award or prize. Specifically, unlike the Audio Visual Award, which includes a single awardee, 23 of 70 video programs were selected for presentation at the forum. While these video programs are peer reviewed, peer review does not distinguish this video forum from journal publication or conference presentations in general, which are also peer reviewed.

Finally, while we concur with counsel that achievements while a student are not precluded from consideration, they must still demonstrate that the alien is one of the small percentage that has risen to the top of his field. At issue is not that the petitioner was a student when he won these awards, but that the awards themselves were limited to students. Such awards, for which the most experienced and renowned members of the field do not compete, cannot serve to meet this criterion.

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

³ While not a significant discrepancy, the official materials reveal 23 videos were selected for the forum.

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.

On appeal, counsel does not contest the director's finding that the petitioner's professional memberships and membership in Sigma Xi do not serve to meet this criterion and we concur with the director. Sigma Xi, while requiring a "noteworthy achievement" defines such an achievement as including first authorship on two published articles. We will not narrow the petitioner's field to medical students. **Significantly, publication is expected of college and university faculty.** See www.bls.gov/oco/ocos066.htm. Thus, we are not persuaded that authorship of an article alone is an outstanding achievement. Thus, we affirm the director's conclusion that 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.

On appeal, counsel does not contest the director's conclusion that an appearance on a local television program where the petitioner commented on the health of Fidel Castro did not constitute published material about the petitioner. We concur with the director and note that a local television station is not major media. Thus, we affirm the director's conclusion that 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 electronic mail messages from [REDACTED] one of the petitioner's conference presentation collaborators, requesting that the petitioner review manuscripts for *Gastrointestinal Endoscopy* and expressing appreciation for prior manuscript reviews. In response to the director's request for additional evidence, [REDACTED] asserts that the petitioner was selected to review manuscripts based on his expertise in the field and that *Gastrointestinal Endoscopy* is a top journal in the petitioner's field.

The director concluded that the petitioner's participation in the widespread peer-review process did not reflect sustained acclaim. On appeal, counsel cites *Buletini*, 860 F. Supp. at 1231, for the proposition that the director applied too strict a burden in requiring evidence that the petitioner's judging responsibilities set him apart from other members of the field. Specifically, the court stated that the regulation at 8 C.F.R. § 204.5(h)(3)(iv) only requires evidence of participation as a judge, not evidence that such participation was the result of having extraordinary ability. As stated above, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. at 719. The reasoning underlying a district judge's

decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.*

Regardless, we do not find it violates the reasoning in *Buletini*, 860 F. Supp. at 1231, to examine the evidence submitted as to whether it is indicative of or consistent with national or international acclaim. The court in *Buletini* was concerned that an alien would need to first demonstrate “extraordinary ability” in order to meet this criterion. We are not following this “circular exercise” that troubled the court. Rather, we are looking at the type of review responsibilities inherent to the field and what review responsibilities might be indicative of or at least consistent with sustained national or international acclaim. *Accord Yasar v. DHS*, 2006 WL 778623 at *9; *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 at *11 (finding that the reasoning in *Buletini* does not preclude any analysis of the significance of an alien’s judging responsibilities).

First, the petitioner was requested to review manuscripts by his own collaborator. While we do not question [REDACTED] own expertise in selecting the petitioner, it remains that being selected by a collaborator to perform anonymous peer reviews is not indicative of any recognition beyond the petitioner’s immediate circle of colleagues. Further, we cannot ignore that medical journals are peer reviewed and rely on many research physicians to review submitted manuscripts. Thus, peer review is not necessarily indicative of or consistent with sustained national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of manuscripts, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion.

On appeal, the petitioner submits a letter from [REDACTED] President-elect of ASGE and the petitioner’s former collaborator at the University of Michigan, inviting the petitioner to join the Membership Committee of the ASGE. The letter, dated April 6, 2007, postdates the filing of the petition and cannot be considered evidence of the petitioner’s eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l. Comm’r. 1971).

In light of the above, 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.

The director acknowledged the submission of letters attesting to the petitioner’s work in the field, but concluded that contributions of major significance should be verifiable by objective documentary evidence in existence irrespective of whether a petition is contemplated. On appeal, counsel asserts that the petitioner submitted a large amount of documentary evidence and quotes from several reference letters.

The petitioner's field, like most science, is research-driven, and there would be little point in publishing research or presenting case studies 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 opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. 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 (Comm'r. 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 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 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 the most persuasive. Ultimately, we concur with the director that 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.

first discusses the petitioner's 1992 published article while an undergraduate student at Knox College. acknowledges that this work is outside the petitioner's current area of expertise. Moreover, the record lacks a letter from the petitioner's faculty coauthors at Knox College discussing the petitioner's role in this research. Given the petitioner's undergraduate status, an explanation of the petitioner's role on this project would be necessary to bolster the claim that we should consider this research as a contribution of major significance by the petitioner.

further asserts that while pursuing his medical degree as part of a prestigious joint M.D./Ph.D. program, the petitioner focused on therapeutic endoscopy. According to , the petitioner, by specializing in ultrasound tip endoscopes to visualize structures outside of the intestinal tract walls, "developed novel diagnostic and surgical methods that have revolutionized

gastroenterology and the treatment and diagnosis of many gastrointestinal disorders.” Specifically, while a resident and fellow at the University of Michigan, the petitioner developed a method whereby he introduced a safe acid that boosts the effectiveness of the breath test for H. Pylori, a bacterium with the potential to cause ulcers. Previously, the breath test was only effective when patients were able to forego their ulcer medication for two weeks. [REDACTED] asserts that this discovery has had a tremendous impact on the lives of ulcer sufferers throughout the country. This work was published in the *American Journal of Gastroenterology* and, as of the date of filing, had been cited 15 times.

[REDACTED] Director of the Digestive Diseases at the University of Mississippi Medical Center, asserts that his “first exposure” to the petitioner’s work was the petitioner’s novel method for improving the breath test for H. Pylori. [REDACTED] reiterates [REDACTED] assertion that this “discovery had a tremendous impact on the lives of ulcer sufferers.” [REDACTED] does not assert, however, that the University of Mississippi routinely uses the petitioner’s method or that he teaches this method to his own medical students. Similarly, [REDACTED], an associate professor at Tufts University, asserts that he became aware of the petitioner through his work on H. Pylori, praises this work, but does not suggest that he himself has been impacted by this work such that he now uses or teaches this method. [REDACTED], an associate professor at the University of California, San Francisco, provides similar statements. Significantly, the conclusion of the petitioner’s article on H. Pylori states only that his “observations suggest it may be possible to design a UBT protocol that will remain accurate in the face of PPI therapy.” None of the references reconcile their assertions about the impact of this procedure with the tentative conclusion expressed in the article itself.

At Denver Health, according to [REDACTED], the petitioner pioneered an innovative procedure for relieving bile duct pressure using an ultrasound tip endoscope that can image the bile duct through the wall of the small intestine and bypass the blockage through an incision and placement of a stent. Dr. [REDACTED] explains that, to his knowledge, the petitioner was the first endoscopist to present a video of the procedure, which was the video presented at Digestive Disease Week 2005. [REDACTED] also praises this work but once again does not suggest that this procedure has been adopted at the University of Mississippi. Similarly, [REDACTED] asserts that she was present for the petitioner’s presentation at Digestive Diseases Week and praises the petitioner’s procedure without suggesting that her institution now performs this procedure. Other references imply that the very selection of the petitioner’s procedure for presentation at the video forum demonstrates it is a contribution of major significance. While the selection of the video demonstrates a belief in its potential and the presentation itself clearly boosted awareness of the procedure, without evidence that the procedure is actually being adopted by institutions nationwide, we will not presume that it is a contribution of major significance.

Finally, [REDACTED] discusses the petitioner’s current research. As this research has yet to produce results, however, it cannot be considered a contribution of major significance.

We acknowledge that the record contains evidence that the petitioner has presented his work at several conferences, mostly as poster presentations, and has published some of his work in peer-reviewed journals. Without evidence of the impact of these presentations and articles, however, the petitioner

cannot demonstrate that they serve to meet this criterion. Significantly, the publication of scholarly articles is a separate criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi). A presumption that evidence relating to that criterion also serves as conclusive evidence to meet this criterion would undermine the regulatory requirement that an alien meet at least three separate criteria and the statutory requirement for extensive evidence.

The petitioner's most cited article is his 1992 article, published while he was an undergraduate student. As stated above, the record does not contain a letter from faculty at Knox College explaining the petitioner's role with this research. Moreover, it does not relate to his current area of specialty. The petitioner's article on H. Pylori has been cited 15 times. Given the conclusion in this article that it only suggests a possible methodology for improving the breath test and the failure of any of the references to acknowledge using this methodology, we are not persuaded that the citation record alone is sufficient to demonstrate that this work constitutes a contribution of major significance. The record does not demonstrate that the petitioner's remaining publication and presentations have been cited more than once.

We acknowledge that the petitioner has taught a fellow's course for ASGE. The record reveals, however, that the course outline was supplied to him. Thus, it does not appear that he was teaching his own methods. The record does not establish whether the petitioner taught his own methods in his Management of Benign Biliary Disease at the fellow's course at the University of Colorado. Even if he did, this course does not demonstrate the petitioner's impact beyond the institution where he works.

While the petitioner's research is no doubt of value, without evidence that the petitioner's methodology has been widely adopted, we cannot conclude that it constitutes a contribution 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 copies of published articles he authored in 1992, 2001 and 2003. He also submitted evidence that his 1992 article had been cited 37 times, his 2001 article 15 times and his 2003 article one time. Finally, the petitioner submitted evidence that he had presented case studies at eight conferences, in most cases in poster form. The most recent presentation was in November 2005. The director expressed concern that the articles all date from when the petitioner was a student and implied that the petitioner had not documented his citation record.

On appeal, counsel asserts that the director's request for additional evidence did not specify that any evidence was lacking for this criterion, that the petitioner did submit evidence of citations and that the petitioner's status as a student should not preclude consideration of the articles.

The evidence submitted to meet a given criterion must be indicative of or at least consistent with national or international acclaim if that statutory standard is to have any meaning. We concur with

counsel that articles published while a student should not be automatically precluded from consideration and that the director failed to consider the citation evidence submitted. While student work is not precluded from consideration, the petitioner must demonstrate sustained acclaim in his field of expertise, gastroenterology. The petitioner's most cited article was authored before the petitioner was even admitted to medical school and appears to bear no relation to the petitioner's current practice of endoscopy. Nevertheless, given the petitioner's continued presentation of case studies while primarily a practicing physician and his selection to present his video case study for Digestive Disease Week in 2005, we are satisfied that the petitioner meets this criterion.

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

On appeal, counsel does not challenge the director's conclusion that this criterion applies to the arts and, as such, does not apply to the petitioner's field. We concur with the director that Digestive Disease Week's video forum was not an artistic exhibition or showcase and, thus, the "display" of the petitioner's video at this forum cannot serve to meet this criterion. As stated by [REDACTED], the selection for inclusion in the video forum is comparable to the presentation of research abstracts and, thus, is better considered under the scholarly articles criterion. 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.

According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner must establish that the role for which he was selected was leading or critical and that he performed this role for an organization or establishment with a distinguished reputation.

Initially, counsel asserted that the petitioner meets this criterion based on his selection to serve as one of 12 faculty members of ASGE's 2005 West Region First Year Fellow's Endoscopy Course. One of two course directors was [REDACTED], the petitioner's collaborator at the University of Colorado. The petitioner subsequently served as a faculty member of the 2006 Rocky Mountain Biliary Endoscopy Fellow's Program at the University of Colorado.

The director concluded that the petitioner had not demonstrated how the above roles differentiate him "from other fellows holding similar appointments." The director further concluded that the record lacked research grants recognizing the petitioner as a primary investigator. On appeal, counsel asserts that the director mistakenly considered the petitioner as an attendee, and not a faculty member, for the above fellow's courses. Counsel further asserts that the petitioner did submit evidence that he is a primary investigator for a General Clinical Research Center (GCRC) protocol, ultimately evaluated by the National Institutes of Health (NIH). Finally, counsel asserts that the petitioner meets this criterion through his role on the membership committee for ASGE.

We acknowledge that the petitioner served as faculty for the ASGE and Rocky Mountain Biliary Endoscopy courses. That said, the record does not establish that the petitioner's role was more leading or critical than the remaining faculty members. Moreover, a course is not an organization or establishment. The petitioner has not established that every faculty member of the West Region course plays a leading or critical role for ASGE as a whole or that the faculty members of the course at the University of Colorado play a leading or critical role for the university. In addition, we cannot ignore that the petitioner's collaborator was the course director of both courses and that the 2006 course took place at the institution where the petitioner is employed. Thus, these faculty positions are not indicative of or consistent with national or international acclaim. Rather, they demonstrate his recognition among his immediate circle of colleagues.

We acknowledge that the record contains a December 12, 2003 letter from GCRC advising that his protocol was approved. While the director implied that a primary investigator could meet this criterion based solely on being a primary investigator, we disagree. All research is funded, usually by competitive grants from distinguished entities. While the primary investigator may play a leading or critical role for that particular research project, we are not persuaded that every individual research project is an organization or establishment with a distinguished reputation as mandated by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Nor does every primary investigator of a project funded by a distinguished entity play a leading or critical role for that entity, which typically funds numerous research projects. Ultimately, as funding is inherent to research, we are not persuaded that every primary investigator who receives funding can be said to enjoy national or international acclaim.

Finally, as stated above, the petitioner was not invited to join ASGE's membership committee until after the date of filing. Thus, this evidence does not relate to the petitioner's eligibility as of the date of filing and cannot be considered. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. In light of the above, 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 gastroenterologist 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 gastroenterologist, 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.