

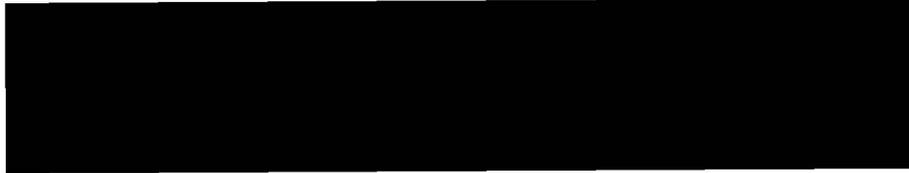
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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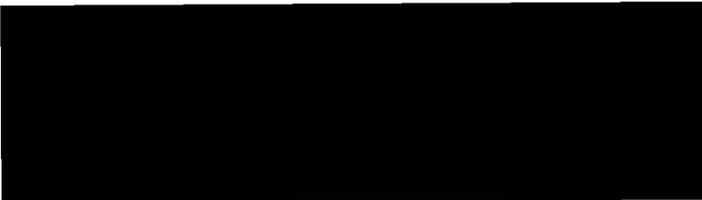
Petitioner:



Beneficiary:

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, an engineering consulting firm, seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel argues that the beneficiary meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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, 60898-99 (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 the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on August 3, 2007, seeks to classify the beneficiary as an alien with extraordinary ability as a geoscientist specializing in micropaleontology, stratigraphy, and biostratigraphy. 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 the beneficiary's 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 beneficiary 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.<sup>1</sup>

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

On appeal, counsel states:

[The beneficiary] has received several esteemed honors. In April 2005, he was the recipient of the Outstanding Teaching Assistant Award from the UTD [University of Texas at Dallas] School of Natural Sciences and Mathematics. He was the recipient of the Dallas Geological Society Scholarship in 2004, the Dallas Gem and Mineral Scholarship in 2001, and scholarships by the Society of Iranian American Women for Education (SIAWE) in 2002 and 2004. In 2003, the SIAWE nominated [the beneficiary] as "The Best Teaching Assistant, College of Natural Sciences and Math."

Without documentary evidence to support these claims, 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 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In this instance, there is no evidence from the presenting organizations showing that the beneficiary actually received the preceding honors. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, there is no evidence demonstrating that the beneficiary's scholarships and other university honors are tantamount to nationally or internationally recognized prizes or awards for excellence in the field. The beneficiary's receipt of an award limited to teaching assistants at his university reflects institutional recognition rather than national or international recognition. Further, university study is not a field of endeavor, but rather training for future employment in a field of endeavor. Honors and scholarships limited by their

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

terms to graduate students are not an indication that the recipient “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 beneficiary’s receipt of such honors offers no meaningful comparison between him and experienced professionals in the field who have long since completed their educational training.

In light of the above, the petitioner has not established that the beneficiary 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, a 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, 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. 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 a portion of the minutes from an August 2, 2007 Board Meeting of the Georgia State Board of Registration for Professional Geologists listing the beneficiary’s name. This incomplete listing does not indicate the nature of the beneficiary’s position or his status with the Board. For example, the documentation submitted by the petitioner does not indicate whether the beneficiary was a licensed board member or whether he was petitioning to fulfill examination requirements. On appeal, counsel provides general information regarding the American Association of Petroleum Geologists, the Geological Society of America, the North American Micropaleontology Section of the Society for Sedimentary Geology, and the American Geophysical Union. The record, however, does not include evidence showing that the beneficiary is a member of the preceding organizations. As stated previously, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 533, 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 1, 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503, 506. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, there is no evidence (such as membership bylaws or official admission requirements) showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in beneficiary’s field or an allied one. Accordingly, the petitioner has not established that the beneficiary 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 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 beneficiary’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).

On appeal, the petitioner submits a July 2, 2008 letter from the Editor in Chief of *Micropaleontology* Press stating that the beneficiary has served as a reviewer of manuscripts for *Micropaleontology* since September 2006. This letter does not specify the names and dates of the manuscripts reviewed by the beneficiary. Even if the petitioner were to submit more substantive evidence of beneficiary’s participation in the peer review process for *Micropaleontology*, 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 the peer review process does not automatically demonstrate that the beneficiary has sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of scientists who publish themselves in scientific journals. Normally a journal’s editorial staff will 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 beneficiary apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal in the same manner as [REDACTED] and [REDACTED] we cannot conclude 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 petitioner submitted three letters of recommendation.

[REDACTED], Professor, Department of Geosciences, University of Texas at Dallas, states:

I first met [the beneficiary] in August 2001, as a Ph.D. Candidate, and we have remained colleagues since that time. [The beneficiary] received his Ph.D. degree in Geosciences from the University of Texas at Dallas in December 2006. [The beneficiary’s] dissertation submitted in support of his candidature for the Ph.D. degree, was entitled “Upper Jurassic and Lower Cretaceous Radiolaria Biostratigraphy of California Coast Ranges.” [The beneficiary] served as a Teaching and Research Assistant in the Geosciences Department. Here he taught Invertebrate Paleontology, Introduction of Fossils, and Age of Dinosaurs. In his Research Assistant role, [the beneficiary’s] research included Plankton foraminifera of

pelagic sediments within Khoy Ophiolites, Northwestern Iran, and Radiolarians of pelagic sediments within Khoy Ophiolites, Northwestern Iran. [The beneficiary] possesses 14 years experience in geological mapping projects, stratigraphic studies (the study of rock layers and layering), and biostratigraphic studies (the study of fossil evidence in the rock layers), micropaleontology (the study of microfossils, which are generally not larger than four millimeters, and commonly smaller than one millimeter), related field/lab work, industry and academia.

[The beneficiary] is a widely published author with articles appearing in professional publications, such as *Micropaleontology*, *Stratigraphy*, *Paleogeography-Paleoclimatology-Paleoecology*, *Geology*, and *The Geological Society of America*, and has been a presenter at national conferences. His research in the highly specialized field of Ophiolites is internationally renowned. Ophiolites are sections of the oceanic crust and the subject upper mantle that have been uplifted or emplaced to be exposed within continental crustal rocks.... [The beneficiary's] research in this specialized field extends around the world, from Iran to the Central Georgia area of Twiggs County, where the largest deposits of kaolin in the world are found.

█ letter states that the beneficiary's research "is internationally renowned," but there is no supporting evidence (such as a numerous independent citations) showing that his published findings were of major significance in his field. █ letter also states that the beneficiary is a "widely published author." The beneficiary's published 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, USCIS 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 beneficiary's published work under the next criterion.

█ Associate Professor and Chair, Department of Geosciences, Georgia State University, states:

I first met [the beneficiary] in 1999 when he was a visiting scientist invited to work in our department by █ (Dr. █ final semester was Spring, 2004.). During his first year of work, I encouraged [the beneficiary] to enroll into our Masters degree program in geology. He was accepted into our program and completed the requirements for a non-thesis Masters degree in approximately one year and he later applied to graduate after matriculating for doctoral studies at University of Texas-Dallas. At GSU, [the beneficiary] served the department well as a Teaching and Research Assistant for introductory geology courses at GSU. [The beneficiary's] research included: the study of the biostratigraphy of planktonic foraminifera in Late Cretaceous pelagic sediments associated with Khoy Ophiolite, Northwestern Iran; the biostratigraphy of Late Cretaceous Planktonic Foraminifera and pelagic sediments within Sabzevar Ophiolites, North-Central Iran; and, the

biostratigraphic and paleoenvironmental study of the Twiggs Clay Formation in the Georgia Kaolin district, central Georgia, USA. Following completion of his M.S. degree studies, he was accepted into the Ph.D. program at University of Texas-Dallas. There, he matured tremendously as a scientist and it is gratifying to see that maturation. He is a widely published author with articles appearing in professional publications, such as *Micropaleontology*, *Stratigraphy*, *Paleogeography-Paleoclimatology-Paleoecology* which is good level of productivity from a dissertation.

\* \* \*

[The beneficiary's] significant contributions to the scientific field of geology have been the result of his work in the specialized areas of stratigraphy (the study of rock layers and layering), biostratigraphy (the study of fossil evidence in the rock layers) and micropaleontology (the study of microfossils, which are generally not larger than four millimeters, and commonly smaller than one millimeter). In addition to his research interests, his work in the middle East, Iran in particular prior to his Masters degree work at Georgia State, conceivably makes [the beneficiary] a highly sought after individual here in the U.S. for the furtherance of our knowledge of petroleum energy in the Middle East. [The beneficiary] provides such knowledge for us from his many years of working for the Iranian Geological Survey and as a field instructor at Shahood Azad University prior to his work here at Georgia State University. That pragmatic experience is directly applicable to petroleum resources and this experience provided a solid basis for earning two graduate degrees (M.S. and Ph.D.) in geology in the U.S. Thus, I believe that his personal presence, his extensive knowledge of Iranian geologic resources (relatable to petroleum resources), and his current work in environmental geology, and very strong research record provide many important contributions to the United States.

While the beneficiary's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or scientific research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every scientist who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance in the field.

[REDACTED], Associate Professor – Structural Geology and Geoinformatics, Department of Geosciences, Georgia State University, states:

I have known [the beneficiary] for several years and am very familiar with his qualifications, especially his research on ophiolites. While undertaking his graduate studies at GSU, [the beneficiary] was selected to serve as a Teaching and Research Assistant based on his exemplary record. His research included upper cretaceous planktonic foraminifera biostratigraphy of pelagic sediments in different areas of Iran, and a biostratigraphic and paleoenvironmental study of the Twiggs County Clay Formation in the Kaolin district of Central Georgia. I have been privileged to co-author a publication with [the beneficiary] that

appeared in the prestigious, peer-reviewed *Paleogeography-Paleoclimatology-Paleoecology* journal (April 2003 volume 193, no 2, pp-311-323 edition) entitled, "Biostratigraphic zonation and <sup>40</sup>Ar-<sup>39</sup>Ar ages for the Neo-Tethyan Khoy ophiolite of NW Iran." . . . [The beneficiary's] method of separating and sampling the foraminifera, radiolarian, and other microfossils in the pelagic rocks of ophiolites has been of great help for geologist in dating the sedimentary rocks of Khoy and other ophiolites. [The beneficiary's] method of fossil separation simplifies the determination of age of these rocks, and makes it possible to refine the understanding of the complex geology of ophiolites.

[The beneficiary's] significant contributions to the scientific field of geology have been the result of his work in the specialized areas of stratigraphy, biostratigraphy and micropaleontology, with a significant sub-specialization in ophiolites. All of these special areas have significant applications in the field of petroleum geology, and are used in the exploration of oil and gas. He is a renowned international leader in this research area, which has had a tremendous influence in this highly specialized field. I believe that [the beneficiary's] personal presence and very strong research record make him an important contribution to the United States. His detailed paleontologic work on the Khoy ophiolite led to the discovery of at least two sequences of ophiolites which were unknown before his work.

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 beneficiary has performed admirably on his research projects and discovered previously unknown sequences of ophiolites, the evidence of record does not establish that his work constitutes original scientific contributions of major significance in the field. For example, the petitioner's evidence does not establish that the beneficiary's work has had a substantial national or international impact, nor does it show that the field has significantly changed as a result of his work.

In this case, the letters of recommendation are all from professors who worked at the beneficiary's educational institutions. While such letters are important in providing details about the beneficiary's role in various projects, they cannot by themselves establish the beneficiary's acclaim beyond his former superiors and collaborators. Further, 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 795-796. Thus, the content of the experts' statements and how they became aware of the beneficiary'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 geoscientist who has sustained national or international acclaim. Without evidence showing that the beneficiary'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 showing that the beneficiary authored articles in publications such as *Stratigraphy* and *Micropaleontology*. The petitioner also submitted evidence showing that the beneficiary coauthored papers for presentation at scientific meetings of the American Geophysical Union and the Geological Society of America. We take administrative notice of the fact that authoring scholarly articles is inherent to scientific research. For this reason, we will evaluate a citation history or other evidence of the impact of the beneficiary'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 beneficiary'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 citation evidence showing that articles published by the beneficiary have attracted a level of interest in his field consistent with sustained national or international acclaim. Accordingly, the petitioner has not established that the beneficiary meets this criterion

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

At issue for this criterion are the position the beneficiary was selected to fill and the reputation of the entity that selected him. 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 letters from [REDACTED], and [REDACTED] indicate that the beneficiary was a graduate student, teaching assistant, and research assistant at the University of Texas at Dallas and at Georgia State University. While the beneficiary performed admirably on his research projects and fulfilled his academic requirements, there is no evidence showing that his roles were leading or critical to his universities. The beneficiary's subordinate roles were designed to provide research and academic training for a future professional career in his field of endeavor. The evidence of record does not demonstrate how the beneficiary's role differentiated him from the other researchers at his universities, let alone their tenured faculty members.<sup>2</sup> The documentation submitted by the petitioner does not establish that the beneficiary was responsible for his universities' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. Accordingly, the petitioner has not established that the beneficiary meets this criterion.

In this case, the petitioner has failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R.

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<sup>2</sup> A comparison of the beneficiary's position with that of his professors indicates that the very top of his field is a level above his present level of achievement.

§ 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the beneficiary as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

On appeal, the petitioner submits two unpublished decisions in which the AAO held that scientific researchers had met three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and thus qualified for extraordinary ability classification. Counsel argues that the evidence submitted by the petitioner in the present matter is “strikingly similar to that presented in numerous non-precedent decisions issued by the Administrative Appeals Office approving cases involving petitions for aliens of extraordinary ability in the sciences.” We find that the facts of the instant petition are easily distinguishable from those in the unpublished decisions. In the unpublished decisions, the AAO determined that the aliens satisfied three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), whereas in the present case the petitioner’s evidence does not satisfy any of the regulatory criteria. More specifically, with regard to the AAO’s discussion of the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(v) and (vi) in the unpublished cases cited by counsel, we note that those scientists’ published findings were widely cited by independent researchers in their respective fields. In the present matter, however, there is no evidence showing that the beneficiary’s research findings have attracted similar a level of interest in his field consistent with sustained national or international acclaim. Nevertheless, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

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 record does not include such evidence.

Review of the record does not establish that the beneficiary 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 beneficiary’s achievements set him significantly above almost all others in his field at a national or international level. Nor is there clear evidence showing that the beneficiary will continue to work in his area of expertise in the United States. Therefore, the petitioner has not established the beneficiary’s eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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.