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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
and Immigration  
Services

08-002-51928

B2

[Redacted]

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: NOV 02 2009  
SRC 08 002 51928

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).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petitioner filed an appeal, which the director deemed to be untimely. The director considered the late appeal as a motion to reopen and affirmed denial of the petition. The matter is now before the Administrative Appeals Office 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 that the petitioner had not established 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 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 petitioner 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 he has sustained national or international acclaim at the very top level.

This petition, filed on October 1, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a cancer researcher. At the time of filing, the petitioner was working as research scientist at the Dana-Farber Cancer Institute (DFCI) under the supervision of [REDACTED], Director of the Familial Gastrointestinal Cancer Program, DFCI.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).<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.*

The petitioner submitted five Certificates of Merit from Bangalore Medical College for academic performance during his medical studies. The certificates state that the petitioner secured first, second, third, and sixth positions among the students taking university examinations in Forensic Medicine, Community Medicine, E.N.T [Ear, Nose, and Throat], and Ophthalmology in 1989 and 1990. These certificates reflect institutional recognition from the petitioner's alma mater rather than nationally or internationally recognized prizes or awards for excellence in the field. Further, academic study is not a field of endeavor, but rather training for a future field of endeavor. Accordingly, student honors cannot be considered prizes or awards in the petitioner's field of endeavor. We cannot ignore that competition for the preceding honors was limited to students at the petitioner's medical school and therefore receiving these Certificates of Merit is 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). Such student honors do not distinguish the petitioner from others in his field who had long since completed their educational studies.

The petitioner submitted a July 23, 1994 letter from the National University of Singapore indicating that he received a "Research Studentship" to pursue a Master of Science in Pharmacology. As discussed, academic study is not a field of endeavor, but rather training for a future field of

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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.

endeavor. Accordingly, an academic scholarship is not a prize or award for excellence in the field of endeavor. Moreover, competition for scholarships is limited to other students. Experienced experts in the field are not seeking scholarships. Thus, they cannot establish that a petitioner is one of the very few at the top of his field.

The petitioner submitted test results for various medical certifications, but successfully fulfilling the entry requirements for one's occupation does not equate to receipt of nationally or internationally recognized prizes or awards for excellence in the field.

The petitioner submitted documentation indicating that his presentation was selected as a "Poster of Distinction" at the American Gastroenterological Association (AGA) Digestive Disease Week (DDW) in 2001. The record does not include information from the AGA indicating the significance of this honor or its evaluation criteria. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this instance, there is no documentary evidence demonstrating that the preceding honor had significant recognition beyond the confines of the event where it was presented and therefore was commensurate with a nationally or internationally recognized prize or award for excellence in the field.

The petitioner submitted a May 5, 2003 letter from [REDACTED], Gastroenterology Research Group, stating:

On behalf of the Gastroenterology Research Group (GRG) and the American Gastroenterological Association (AGA), I am pleased to inform you that you have been selected as a recipient of the 2003 GRG/AGA Fellow Travel Award for your abstract . . . .

\* \* \*

This award consists of a \$500 prize to be used to help defray your travel costs to present your abstract at Digestive Disease Week . . . in Orlando, FL. Please note that you must make you're your own arrangements to attend Digestive Disease Week.

\* \* \*

Congratulations to you and your sponsor on this achievement and for submitting such a fine abstract.

We cannot conclude that an award limited to digestive disease research "trainees" constitutes a nationally or internationally recognized prize or award for excellence in the field.<sup>2</sup> The petitioner's

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<sup>2</sup> The GRG/AGA Fellow Travel Award is annually presented to eight trainees who submit abstracts that are selected by the AGA for presentation at Digestive Disease Week. This award "was created to encourage trainees to become more involved

selection for an award limited by its terms to trainees is not an indication that he is among "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Receipt of this travel funding offers no meaningful comparison between the petitioner and experienced professionals in the field who have long since completed their research training. The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

The petitioner also submitted two certifications from the DDW Meeting Coordinator stating that abstracts coauthored by the petitioner were selected for "oral presentation" at the AGA DDW meetings in 2003 and 2005. Aside from presentation of research findings being inherent to the petitioner's field, the plain language of this criterion requires evidence of his "receipt of lesser nationally or internationally recognized *prizes* or *awards* for excellence in the field of endeavor." [Emphasis added.] The petitioner has not established that having his abstracts selected for oral presentation at the AGA DDW meetings equates to his receipt of nationally or internationally recognized "prizes or awards" in his field.

The petitioner submitted evidence showing that he received a "Dana-Farber Cancer Institute Service Award" in 2005. The record does not include information from the DFCI indicating the significance of this honor or its evaluation criteria. Nevertheless, this award reflects institutional recognition from the petitioner's employer rather than a nationally or internationally recognized award for excellence in his field.

The petitioner submitted an October 5, 2006 letter from [REDACTED] Research Administration, Cancer Research and Prevention Foundation, stating:

On behalf of the Cancer Research and Prevention Foundation, we are happy to provide funding for fees associated with publication of the above named research article. Enclosed is a check for the amount of \$500.00. CRPF takes pride in supporting researchers who focus on prevention and early detection of cancer. We applaud your efforts and wish you luck in with [*sic*] your publication and future research.

The petitioner has not established that receiving publication support funding equates to a nationally or internationally recognized prize or award for excellence in the field. A substantial amount of published research is funded by grants from a variety of public and private sources. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Thus, we cannot conclude that having one's work funded in such a manner constitutes receipt of a nationally or internationally recognized prize or award for excellence in the field of endeavor.

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in digestive disease research." See [http://www.gastroresearch.org/downloads/Fellow\\_Travel\\_Award\\_Desc\\_App.pdf](http://www.gastroresearch.org/downloads/Fellow_Travel_Award_Desc_App.pdf), accessed on October 22, 2009, copy incorporated into the record of proceeding.

In response to the director's request for evidence, the petitioner submitted a June 2008 letter stating that Marquis Who's Who selected his biography "for inclusion in the forthcoming 2009 Edition of *Who's Who in America*." On appeal, the petitioner submits a certificate from Marquis Who's Who stating that he "is a subject of biographical record in *Who's Who in America Sixty-Third Edition 2009*." **The petitioner also submits material about the publication from its internet site.** The petitioner's appellate submission also includes a February 2009 letter announcing "consideration" of his biographical profile for inclusion in the "2010 Edition of *Who's Who in the World*." The petitioner's selection and inclusion in these voluminous annual directories of professionals post-date the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, the petitioner's selection to appear in Marquis *Who's Who in America* and *Who's Who in the World* represents his inclusion in comprehensive professional directories rather than his receipt of nationally or internationally recognized prizes or awards for excellence in his field. Appearing as one of thousands of other successful professionals in a frequently published directory is not persuasive evidence of national or international acclaim.

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

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

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 documentation showing that he "qualified for and became a member of Mensa." Information submitted by the petitioner from Mensa's internet site indicates that "the only qualification for membership" in the society is "a high IQ" and that "[t]here is simply no one prevailing characteristic of Mensa members other than high IQ. . . . Mensas range in age from 4 to 94 . . . ." There is no evidence showing that this organization requires outstanding achievements rather than simply demonstrating a high intelligence quotient. Moreover, there is no evidence indicating that Mensa constitutes an association "in the field for which classification is sought," biomedical research.

The petitioner submitted evidence of his membership in the American Association of Cancer Research (AACR) and material from its internet site stating that "Active membership is open to established investigators who have conducted two years of research resulting in articles in peer-

reviewed publications." As publication of research findings is inherent to the petitioner's field, we cannot conclude that authorship of refereed journal articles and having two years of experience equate to outstanding achievements.<sup>3</sup>

The petitioner submitted a letter welcoming him as an "Associate" of the American College of Physicians (ACP) stating:

Associateship is a special, but temporary, category of membership usually limited to physicians in residency programs within the first five postgraduate years after medical school. As an Associate, you will enjoy all membership privileges except the right to vote, hold office, or to propose candidates for Membership in the College.

There is no evidence showing that acceptance as an Associate in the ACP requires outstanding achievements. Rather, the Associate member designation is among the least restrictive of the ACP's membership classifications and is an entry-level designation intended for "Residents and fellows-in-training."<sup>4</sup> We cannot conclude that the petitioner's level of membership in the ACP is an indication that he "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). As discussed, the petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

The petitioner submitted evidence that he is a member of the American Society of Clinical Oncology (ASCO), the AGA, the GRG, and the American Medical Association (AMA). The petitioner also submitted general information about these organizations, but there is no evidence (such as membership bylaws or other official documentation of membership criteria) showing their admission requirements. In this case, there is no evidence showing that Mensa, the AACR, the ACP, the ASCO, the AGA, the GRG, or the AMA require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one. Accordingly, 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.*

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<sup>3</sup> For "Biological Scientists," the Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at <http://www.bls.gov/oco/>), states that a "solid record of published research is essential in obtaining a permanent position involving basic research." See <http://data.bls.gov/cgi-bin/print.pl/oco/ocos047.htm>, accessed on October 23, 2009, copy incorporated into the record of proceeding.

<sup>4</sup> See <http://www.acponline.org/membership/types/>, accessed on October 23, 2009, copy incorporated into the record of proceeding.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>5</sup>

The petitioner initially claimed that his conference presentations met this criterion. The petitioner's conference presentations constitute scholarly material prepared by him rather than published material authored by another about him in major publications or media. The petitioner's conference presentations are more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi) and will be addressed there. In response to the director's request for evidence, the petitioner submitted copies of requests for reprints of his articles as additional evidence for this criterion. The plain language of this regulatory criterion requires the submission of "[p]ublished material about the alien in professional or major trade publications or other major media" including "the title, date, and author of the material." The reprint requests from others in the petitioner's field and his conference presentations do not meet the preceding requirements.

The petitioner also submitted articles that cite to his published and presented work. Regarding the scientific articles that merely reference the petitioner's work, we note that the plain language of this regulatory criterion requires that the published material be "about the alien." In this case, the articles citing the petitioner's work are primarily about the authors' work, not the footnoted material identifying the petitioner. With regard to this criterion, a footnoted reference to the alien's work without evaluation is of minimal probative value. Further, we note that the articles citing the petitioner's work similarly referenced numerous other authors. The submitted citations to the petitioner's work do not discuss the merits of his work, his standing in the field, any significant impact that his work has had on the field, or any other aspects of his work so as to be considered published material about the petitioner as required by this criterion. Instead, these citations are more relevant to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vi) and will be addressed there.

The petitioner submitted an "acknowledgement" at the conclusion of a research article written by his superior, [REDACTED] and others stating: "We are indebted to [REDACTED] [the petitioner], MD, and [REDACTED] for assistance with patient recruitment, data collection, and data entry . . . ." This material only mentions the petitioner's name in passing in a brief acknowledgement at the conclusion of the research article. The research article, however, is not about the petitioner and therefore does not meet the requirements of this criterion.

The petitioner submitted a June 2008 letter stating that Marquis Who's Who selected his biography "for inclusion in the forthcoming 2009 Edition of *Who's Who in America*." On appeal, the petitioner submits a certificate stating that he was included in the 2009 edition and self-serving material about

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<sup>5</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

the publication from its internet site. The petitioner also submits a February 2009 letter announcing "consideration" of his biographical profile for inclusion in the "2010 Edition of *Who's Who in the World*." The record, however, does not include the page containing the petitioner's biographical entry for these editions. The petitioner was selected for and included in these voluminous annual directories subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, there is no evidence (such as circulation statistics) showing that these biographical directories qualify as professional or major trade publications or other major media.

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

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The petitioner claims to have participated on peer review panels for *Cancer, Journal of Medical Genetics, New England Journal of Medicine, Clinical Cancer Research, and American Journal of Gastroenterology*, but the record does not include evidence of his participation originating from these journals. 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)).

The petitioner submitted a September 22, 2005 e-mail from [REDACTED] *Southern Medical Journal*, stating: "Many thanks for your letter dated September 16 and the attached CV, which looks quite impressive. We are always looking for good reviewers for the *Southern Medical Journal* and I am pleased to welcome you to our team." In response to the director's request for evidence, the petitioner submitted a manuscript review request from the *Southern Medical Journal* dated May 30, 2007 and his completed review. The petitioner also submitted a March 14, 2007 manuscript review request from *Gut* and his completed review. The director concluded that the petitioner's limited participation in the manuscript review process had not set him apart from others in his field and was not consistent with sustained national or international acclaim. The director specifically noted that the petitioner had not reviewed an unusually large number of articles or served in an editorial position for a scientific journal.

On appeal, counsel argues that the plain language of 8 C.F.R. § 204.5(h)(3)(iv) "does not necessarily demand a large volume or principal editorial role." The controlling regulation at 8 C.F.R. § 204.5(h)(3), however, 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." The evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with sustained national or international

acclaim.<sup>6</sup> 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).

Counsel cites *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994), in which the court held that 8 C.F.R. § 204.5(h)(3)(iv) had been met by the alien having served as "Chief of the Certification Commission" and through his participation on other committees such as his "chairmanship of the Scientific Council." *Id.* at 1231. Counsel argues that the court found this criterion to have "been met where the applicant merely served on 'more than one' panel." We find that the present matter is distinguishable from *Buletini* as the petitioner's occasional participation as an ad hoc manuscript reviewer has not been shown to be commensurate with serving as "Chief of the Certification Commission" or Chairman of the Scientific Council.

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, 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 inconsistent 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 national acclaim.<sup>7</sup>

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 an individual has sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of researchers 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 pre-dating the filing of the petition that sets the petitioner apart from others in his field, such as evidence that he has reviewed manuscripts for a

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<sup>6</sup> We note that although not binding precedent, this interpretation has been upheld in *Yasar v. DHS*, 2006 WL 778623 \*9 (S.D. Tex. March 24, 2006) and *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 \*11 (S.D. Tex. Aug. 26, 2005).

<sup>7</sup> *Accord Yasar v. Dep't of Homeland Security*, 2006 Westlaw 778623, \*9 (S.D. Tex. March 24, 2006) (citing *Buletini* as an example of sufficient judging responsibilities rather than for the proposition that no evaluation of the judging responsibilities is permissible).

journal that credits a small, elite group of referees, received and completed independent requests for review from a substantial number of journals, or served in an editorial position for a distinguished journal in the same manner as his references,<sup>8</sup> 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 several letters of support discussing his original research contributions. We cite representative examples here.

[REDACTED] of Medicine at Harvard Medical School and Professor of Clinical Cancer Epidemiology at the Harvard School of Public Health, states:

[The petitioner] has conducted studies on how the site of the mutations on the *APC* gene affect[s] the clinical presentation of the familial adenomatous polyposis (FAP) disease. FAP is a syndrome characterized by multiple premalignant colon polyps that progress to colon cancer by the age of 20-30 years in the absence of treatment. He identified and described for the first time in the medical literature that mutations at specific regions of the gene are associated with extracolonic tumors including desmoids, osteomas, liver and thyroid cancers. This has led to a much better understanding of the pathogenesis of the disease and help[s] us to predict the type of cancers, individuals with different mutations are likely to develop. . . . He has also authored another article on how desmoid tumors can predate the development of FAP. This not only helps in the earlier recognition of this syndrome, but also in the prevention of colon and stomach cancers.

Hereditary non-polyposis colon cancer (HNPCC) has traditionally been considered as a primarily gastrointestinal cancer syndrome associated with very young onset colon cancers.... [The petitioner] based on his research has been has been [*sic*] able to point out that in more than 50% of the cases an extracolonic cancer, such as endometrial or ovarian cancer is the 'sentinel' (or the first cancer) to be identified. This new finding has very important implications and helps physicians around the world to identify the syndrome in the early stages and in early detection of the associated cancers, which is so vital in cancer prevention and management. One of his other articles on HNPCC has identified for the first time novel genotype-phenotype associations that helps [*sic*] in correlating the different gene mutations (*hMLH1* and *hMSH2*) and their clinical presentations, which is so important for efficient cancer screening.

[REDACTED] Associate Professor of Medicine and Co-Director of Thoracic Oncology, University of Michigan Cancer Center, states:

[The petitioner's] studies on the clinical presentation of the HNPCC syndrome, primarily considered a colon cancer predisposition syndrome, have revealed that in more that half of

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<sup>8</sup> For example, [REDACTED] served as an Associate Editor for *Cancer Genetics and Cytogenetics*.



William Harvey Hospital, United Kingdom,

states:

I am familiar with [the petitioner's] work through . . . his research articles published in medical literature.

\* \* \*

[The petitioner's] work has revealed that . . . [FAP] may actually at first present with other tumors . . . . This is very important in recognizing the syndrome promptly . . . . His other work on this syndrome has identified that the type of tumors that develop can be related to the location of the mutations in the *APC* gene. This sheds light on the genotype-phenotype correlations, which helps us to better understand the molecular mechanisms that underlie this disease.

\* \* \*

Mutations in another gene known as the *MYH* gene have been recently reported to be a cause of multiple (10-100) colon polyps. [The petitioner's] work on this syndrome has shown that the number of polyps and family history are actually not reliable indicators of the presence of such *MYH* gene mutations. This is very important since it indicates that such mutations could be a new genetic mechanism for the occurrence of colon cancer even in individuals with only a few polyps.

an oncologist at Duke University Medical Center, states:

I have become familiar with [the petitioner's] work in the field of colon cancer through some of his publications.

\* \* \*

Hereditary nonpolyposis colon cancer (HNPCC) is an inherited cancer predisposition syndrome caused by mutations in the mismatch repair genes *MLH1* and *MSH2* with a very high risk of cancer. [The petitioner's] work has demonstrated very novel genotype-phenotype correlations and has shown that the type of cancer individuals develop is actually related to the type of gene affected. This sheds light on the complex genetic mechanisms that underlie the pathogenesis of this disease. . . . In addition, his other work on this syndrome has shown that in many cases it can actually present initially with extra-colonic cancers such as gynecologic malignancies. This is very important since HNPCC is usually considered a colon cancer syndrome, and highlights that this syndrome should be considered as part of the differential diagnosis even in patients presenting with other cancers.

[The petitioner's] studies on FAP have been able to show that the type of cancers individuals develop can be related to the site of the mutation on the gene. This helps us to understand the intricate genetic pathways involved in this syndrome that causes several cancers as early as in the second or third decade of life . . . . Furthermore, his other work on this syndrome has been able to demonstrate that in many cases, families with this disease may actually present at first with other cancers such as desmoids & comprehensive evaluation would be necessary to identify this underlying syndrome. This is very important to be able to recognize the disease early and institute appropriate cancer prevention interventions.

In recent years, mutations in the *MYH* gene have also been reported to cause an attenuated FAP syndrome with up to a hundred colon polyps. [The petitioner's] work on this has demonstrated that the polyp number is not a reliable predictor of this syndrome and some patients with even a few polyps may actually harbor this gene mutation. This has important implications as the underlying cause of cancer even in patients with just a few adenomas.

In support of the preceding experts' statements, the petitioner submitted documentation showing a significant amount of cites to his published findings. These citations are solid evidence that others in the field have been influenced by the petitioner's work and are familiar with it. This evidence corroborates the independent experts' statements that the petitioner has made original contributions of major significance in his field. The record reflects that the petitioner's contributions are important not only to the institutions where he has worked, but throughout the greater field as well. Leading researchers from around the world have acknowledged the value of the petitioner's work and its major significance in the field. Accordingly, the petitioner has established that he meets this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner submitted evidence of his authorship of articles in publications such as *Obstetrics & Gynecology*, *Familial Cancer*, and *Clinical Gastroenterology and Hepatology*. The petitioner also submitted abstracts and other material showing that his work was presented at various scientific and medical conferences. As discussed previously, the record also includes evidence of a significant amount of articles that cite to his work. Accordingly, the petitioner has established that he meets this criterion.

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

The petitioner asserts that his work has been displayed at scientific conferences. The petitioner's field, however, is not in the arts. The plain language of this regulatory criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for biomedical researchers such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner's conference presentations are more relevant

to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi), a criterion that has already been met. Nevertheless, in the fields of science and medicine, acclaim is generally not established by the mere act of presenting one's work at a conference or symposium along with dozens of other participants. Nothing in the record indicates that the presentation of one's work is unusual in the petitioner's field or that an invitation to make a presentation at the venues where the petitioner's work appeared was a privilege extended to only a few top researchers. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Such events are not artistic exhibitions or showcases.

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.*

At issue for this criterion are the position the petitioner 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 is in itself indicative of or consistent with national or international acclaim.

The petitioner submitted a letter of support from [REDACTED] discussing the petitioner's research projects. In response to the director's request for evidence, the petitioner submitted an August 18, 2008 letter from [REDACTED] extending an offer for the petitioner's continued employment as a "Senior Research Scientist." On appeal, counsel argues that the petitioner has performed in a leading or critical role for the DFCI. We agree with counsel that the DFCI has a distinguished reputation. However, while the petitioner has performed admirably on the research projects to which he was assigned, there is no evidence showing that his role as a Senior Research Scientist was leading or critical for the DFCI. For example, the petitioner has not submitted an organizational chart or other similar evidence showing where his position falls within the DFCI's organizational hierarchy. The letter of support from [REDACTED] and the other evidence submitted does not demonstrate how the petitioner's role differentiated him from the other researchers in his department, let alone the DFCI's tenured faculty and principal investigators. Rather, a comparison of the petitioner's position with that of his superiors (such as [REDACTED] and [REDACTED] and of the other individuals offering letters of support indicates that the very top of his field is a level above his present level of achievement. For instance, there is no indication that the petitioner has served as a principal investigator and initiated his own research projects. The documentation submitted by the petitioner does not establish that he was responsible for the DFCI's 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 he meets this criterion.

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

The August 18, 2008 letter from [REDACTED] states that the petitioner's "salary will be \$35,000 per year" at the DFCI. This salary offer post-dates the filing of the petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, the plain language of this criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that his \$35,000 salary is significantly high in relation to others in his field.

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

In this case, we find that the petitioner meets only two regulatory criteria, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). We concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 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 petitioner as one of the small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

While USCIS has approved prior O-1 nonimmigrant visa petitions filed on behalf of the petitioner, these prior approvals do not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. Each case must be decided on a case-by-case basis on the evidence of record. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien's qualifications).

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. 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 has approved a nonimmigrant petition on behalf of the alien, 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).

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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 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).

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.