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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
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**NOV 04 2009**

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:  
LIN 08 103 51277

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

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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

Perry Rhew  
Chief, Administrative Appeals Office

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

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

U.S. Citizenship and Immigration Services (USCIS) and the 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 has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated,

however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on February 19, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a research physicist. 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 of the criteria outlined in 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The petitioner has submitted evidence that, he claims, meets 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 claims to meet this criterion based on his receipt of the Japan Society for the Promotion of Science (JSPS) Postdoctoral Fellowship. The petitioner submitted a copy of a December 20, 2002 letter from the JSPS advising him that the application submitted on his behalf had been approved and that he would be awarded "a fellowship under the 'FY2003 JSPS Postdoctoral Fellowship for Foreign Researchers' to conduct research in Japan under the leadership of your host researcher for a period of 24 consecutive months."

In response to the director's request for evidence (RFE) dated December 2, 2008, the petitioner provided a document from the website of the JSPS describing the organization's history and purpose:

The [JSPS] . . . is an independent administrative institution, established by way of a national law for the purpose of contributing to the advancement of science in all fields of the natural and social sciences and the humanities. JSPS plays a pivotal role in the administration of a wide spectrum of Japan's scientific and academic programs. While working within the broad framework of government policies established to promote scientific advancement, JSPS carries out its programs in a manner flexible to the needs of the participating scientists.

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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.

JSPS was founded in 1932 as a non-profit foundation through an endowment granted by Emperor Showa. JSPS became a quasi-governmental organization in 1967 under the auspices of the Ministry of Education, Science, Sports and Culture (Monbusho), and since 2001 under the Ministry of Education, Culture, Sports, Science, and Technology (Monbukagakusho). Over this 70-year period, JSPS has worked continuously to develop and implement a far-reaching array of domestic and international scientific programs.

The petitioner also provided copies of pages from a 2008-2009 brochure from the JSPS. In a section entitled "Message from JSPS President," [REDACTED] stated:

JSPS administers the Grants-in-Aid for Scientific Research Program, aimed at forging milestone advances in highly creative, cutting-edge research across the spectrum of the humanities, social sciences and natural sciences. JSPS's Research Fellowships for Young Scientists serve to foster and secure a top world-class caliber of Japanese researchers, whereas our international exchange programs place strong emphasis on collaborations with partner countries that work to build research hubs of the highest world order.

Page 19 of the brochure indicates that the "JSPS carries out programs to invite researchers for other countries to Japan" and that the programs "are open to all eligible researchers irrespective of their nationality or specialization." Page 28 of the brochure indicates that the program for Postdoctoral Fellowship for Foreign Researchers "allows researchers affiliated with Japanese universities or research institutes to invite promising young researchers from overseas to Japan to participate in collaborative research activities at their institutions for 1-2 years. The fellowship includes a travel grant and monthly stipend." At the request of the director, the petitioner also provided information regarding the selection process for applicants for the fellowship program, which he indicated was taken from the JSPS website. According to the petitioner, selection is done by committee comprised of 47 members and approximately 1,700 examiners and involves a document review followed by a panel review. The document review is based on a grading system of 1 to 5, with 5 being "superlative," and "tak[es] into account research achievements, the research plan, estimated research capacity, and future potential of the research."

In denying the petition, the director stated:

[T]he evidence submitted fails to establish that this fellowship satisfies this criterion. Most notably, the petition has failed to provide specific evidence to establish the actual eligibility requirements to compete for the Postdoctoral Fellowship for Foreign Researchers. In any instance, the evidence submitted indicates the program was established to assist promising and highly qualified young foreign researches [sic] wishing to conduct research in Japan. It is readily apparent that this award is designed for young postdoctoral researchers. The Service finds that this award is limited in scope as more established and experienced researchers do not compete for such awards.

On appeal, counsel states that "nothing in the JSPS criteria for Post-Doctoral Fellowship relates to age or youth." Referencing the JSPS website, counsel further states that applicants for the year 2010 "must have received their doctorate within the past six years" and that, based on a Canadian study, "all students from a doctorate program graduating from a Canadian university in 2004-2005, the average age was 36 years." Counsel thus opines that "a JSPS Award might be given to a scientist six years after their PhD is awarded might be well into their 40s." The petitioner submits a February 26, 2009 letter from [REDACTED] director of the San Francisco Office of the JSPS, in which he states, "JSPS offers a fellowship program for foreign post-doc researchers who have received a doctorate degree within the past 6 years."

We note that while the JSPS does not specify an age limit in its selection process, its brochure provides, at page 28, that the Postdoctoral Fellowship for Foreign Researchers "allows researchers affiliated with Japanese universities or research institutes to invite promising young researchers from overseas to Japan to participate in collaborative research activities." [Emphasis added.]

"Young" in this context therefore limits those who are eligible to apply for the JSPS Postdoctoral Fellowship for Foreign Researchers to those who have obtained a doctorate degree within the six years prior to applying for the fellowship. Thus it excludes from consideration other experienced experts in the field. Honors limited by their terms to a specified group 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 petitioner's receipt of the JSPS Postdoctoral Fellowship for Foreign Researchers offers no meaningful comparison between him and more experienced professionals in the field who have long since completed their educational training. Thus, they cannot establish that the petitioner is one of the very few at the top of his field.

Furthermore, the petitioner has not established that the JSPS Postdoctoral Fellowship for Foreign Researchers is a nationally or internationally recognized award for excellence in the petitioner's field of endeavor. That the fellowship is sponsored in part by the Japanese government or that it selects from an international pool is not sufficient, by itself, to establish that the award is recognized as an award of excellence, either nationally or internationally. 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 case, there is no evidence showing that the JSPS Postdoctoral Fellowship for Foreign Researchers commanded a significant level of recognition beyond the context of the process in which it was awarded. For example, there is no evidence showing that the petitioner's award was announced in major media or in some other manner consistent with national or international acclaim.

Accordingly, the petitioner has failed to establish that he meets this criterion.

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

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

The petitioner did not initially claim to meet this criterion. However, with the petition, he submitted a copy of a purported translation of an undated copy of *Nikkan Industrial Business Newspaper* containing an article on "High Efficiency Diode Development." The article does not mention the petitioner or that he was a member of the team working on the project. Therefore, the article is not about the petitioner or his work. Further, the petitioner provided no documentation to establish that the *Nikkan Industrial Business Newspaper* is a professional or major trade publication or other major media. Additionally, petitioner did not submit the original copy of the publication and the article does not contain a date or author, as required by 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner also provided a copy of an article that appeared in the June 2, 2006 edition of *SLAC today*. The article includes the petitioner in a list of team members that had "recently made a promising breakthrough in understanding a fundamental process associated with [random access memory (RAM)] magnetic storage devices." The article describes the work of the team. Nonetheless, the petitioner provided no documentation to establish that *SLAC today* is a professional or major trade publication or other major media.

In response to the director's RFE, the petitioner resubmitted the purported translation from *Nikkan Industrial Business Newspaper*, which counsel alleged is also known as *Nikkan Kogyo Shimbun*. The petitioner again failed to provide a copy of the original publication. The petitioner submitted information about *Nikkan Kogyo Shimbun*, retrieved from the online encyclopedia *Wikipedia*, which reports that *Nikkan Kogyo Shimbun* is "one of the leading daily newspapers in Japan" with a circulation of approximately 420,000. We note first that *Wikipedia* does not support counsel's assertion that *Nikkan Industrial Business Newspaper* and *Nikkan Kogyo Shimbun* are the same. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, with regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>2</sup> See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008). Accordingly, we will not assign weight to information for which *Wikipedia* is the only cited source.

In response to the RFE, the petitioner also submitted a copy of an article from *S&T Today*. The document shows a date of January 1 but does not contain a year. Additionally, the article does not identify the author of the material as required by 8 C.F.R. § 204.5(h)(3)(iii). The article reports on the development of a "new type of diode" by a "joint research team" from the Japan Science and Technology Agency, the Osaka University, the National Institute of Advanced Industrial Science and Technology and Canon ANELVA Corporation. The article does not mention the petitioner and therefore there is no evidence that it is about his work.

The director determined that the petitioner did not meet this criterion and the petitioner did not challenge this determination on appeal. Accordingly, we find that the petitioner has failed to establish 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 claims to meet this criterion based on his work in the field of spintronics, "a cutting edge revolutionary technology which exploits the quantum spin states of an electron as well as its charge." In his personal statement submitted in support of the petition, the petitioner stated:

I am studying nano-meter sized magnetic heterostructures which exhibit GMR effect. These nano-devices can be used as non-volatile memory called Magneto-resistive random Access Memory (MRAM). MRAM has been touted as the universal memory which combines all the strengths and none of the weaknesses of the existing memory types. Thus MRAM can be used in digital cameras as well as personal computers. My research is focused on writing MRAM cells by a new

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<sup>2</sup> Online content from *Wikipedia* is subject to the following general disclaimer:

**WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY.** Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields. [Emphasis in the original.]

See [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on October 27, 2009, a copy of which is incorporated into the record of proceeding.

technique called spin-transfer torque (STT) switching where spin-polarized current is used to change the magnetic state of MRAM bits. This technique is far superior to the conventional use of magnetic field for writing MRAM bits, and will lead to increase in area-density of MRAM and decrease in its power consumption. Myself, working with the team at SLAC is developing techniques to obtain precise, high-speed, microscopic details of exactly how the magnetic state of MRAM bit reverses by spin-polarized current. We are using ultrafast X-ray pulses from linear electron accelerator, to image the magnetic state during the reversal process.

The petitioner submitted documentation indicating that, with co-inventors, he has applied for two patents, one internationally and one in the United States. Although counsel initially alleged that the international patent had been approved, in response to the RFE, he acknowledges that both patents are still pending. The petitioner also submitted letters of reference commenting on the significance of his work in spintronics. These include:

[REDACTED] of Physics and Chemistry at the University of California, Irvine (UC Irvine). [REDACTED] stated:

[The petitioner's] research turned to the exploitation of the new experimental demonstration that a current can rotate the spin (spin-torque effect) and thus change the magnetic properties of layered materials. Surprisingly, [he] discovered that a dc current is induced by an ac current in the radio frequency range because of the spin-torque effect in specially fabricated nanostructured materials. This work is very important and potentially has novel technological applications . . . . In his present position . . . [the petitioner] is continuing the work in probing the speed at which the magnetism can be changed by a short pulse of current. Furthermore, he is using the unique x-ray source at Stanford University to image the changes that occur as the spins rotate. In addition to the work aiming at a fundamental understanding of the electronic spin in nanostructured solids, [the petitioner] also has focused on fabricating device structures that are relevant to technological applications. This has resulted in a number of patents.

[REDACTED] professor in the Graduate School of Engineering Science at Osaka University, stated that he was the petitioner's host researcher at the national Institute of Japan.

[The petitioner] worked on magnetization reversal of nano-pillars by spin polarized current and obtained distinctive results on the high speed spin-transfer switching . . . . He then led the work on the spin-accumulation effects in spin-transfer process, and discovered a novel effect of spin-torque diode. He showed that spin-transfer effect can excite ferromagnetic resonance, which can be detected by measuring dc voltage produced across the sample . . . . Based on this work we have also submitted a patent for use of magnetic tunnel junctions as an rf detector.

also provided a letter in response to the director's RFE in which he stated:

[The petitioner] has applied for patents based on [his] work. His discoveries will be especially useful as a nano-scale microwave detector especially in telecommunication circuits. Another important component of this invention is that it is shown to work in MgO based magnetic tunnel junctions. These kind of magnetic tunnel junctions are highly promising for Spintronics applications, and some of the applications based on them are already in production stage. Thus, new inventions such as shown by [the petitioner] which use these magnetic tunnel junctions, will be easy to incorporate into new and advanced technology.

[redacted] of the Nanoelectronics Research Institute of the National Institute of Advanced Industrial Science and Technology (AIST) stated that he met the petitioner when he joined their group as a JSPS Fellow, although the petitioner did not work directly with him.

[The petitioner] worked on switching of magneto-resistive random access memory (MRAM) bits by spin-polarized current. He had made extremely important contributions to this field. He was the very first scientist in the world to measure the switching speed of MRAM bits by applying current pulses of nano-second durations. This work is particularly significant for practical application of spin-transfer effect in the next generation of MRAM chips. He followed this work by yet another remarkable discovery of a new effect called as 'spin-torque diode effect'. This effect can be used to distinguish between different fundamental processes which are responsible for the spin-transfer effect. It also has a potential for applications in telecommunication circuits as a nano-meter scale radio-frequency detector.

a research staff member with the IBM T.J. Watson Research Center, stated:

[The petitioner's] work . . . pioneered the method of spin-torque-induced ferromagnetic resonance. The work was published in Nature in 2005, and was immediately followed up by many groups around the world including ours as a way for quantitative experimentation with the phenomenon of spin-torque. Since the, [he] has moved to Stanford University to continue his investigation of spin-excitation phenomenon using the state-of-the-art tools available at the Stanford Synchrotron Radiation Laboratory (SSRL). I followed the research of the SSRL group enthusiastically. Through site visits and collaborative discussions I come [sic] to appreciate the power and significant promise of their work. Over the last few years [the petitioner] worked diligently with his colleagues to bring that vision to reality. These efforts have brought the successful demonstration of time-resolved X-ray magnetic imaging of a nanostructured spin-valve. This is another pioneering experiment, representing the first demonstration of a time-resolved, element-specific imaging of magnetic dynamics on the smallest structure to date.

[REDACTED] of the Stanford Linear Accelerator Center (SLAC) and Director of the SSRL, stated:

I hired [the petitioner] in April 2005 as a researcher at SSRL because of his expertise in nanomagnetism, in particular, his previous work on switching magnetic nanoelements by means of spin polarized currents. This new technique of spin torque switching is a forefront area in magnetism research because of its revolutionary underlying concept and its potential for spintronics applications . . . At the time of his hire, I wanted to move SSRL into this research area with the goal of using advanced time-resolved x-ray imaging techniques to directly observe the fast magnetic switching processes in nanomagnets.

who also works at the SSRL, described the petitioner's work as "rich and outstanding."

In his research related to spin injection, one of the basic processes of Spintronics, [the petitioner] achieved a number of outstanding results already before he joined us from his work in Japan . . . I mention here the invention of a "spin diode" which might find application as a nano-scale radiofrequency detector in telecommunication circuits. This work also opens the door to the development of numerous future spintronic devices.

It is not possible to describe all his interesting inventions and experiments here. I just mention yet another important example . . . where [he] measures the speed with which the magnetization of small nano-scopic magnetic elements can be switched by spin injection. This is essential for applications, e.g., in random access memories. The important result is that the reversal of the magnetization can take place within a few 100 Picoseconds at low cost of energy . . .

Further insight into the physics of magnetic switching by spin injection arises from his work here at SLAC. Together with his collaborators, he developed a unique technique to actually image the switching process in a spin transfer structure in space and time using advanced pump probe x-ray microscopy.

While the petitioner'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. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole. The petitioner's field, like most science, is research-driven, and there would be little point in publishing research 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.

While it is clear from the petitioner's references that he has been involved in novel research and is one of the pioneers in spintronics, they do not indicate that the petitioner's advances in this area constitute a contribution of major significance to his field. Further, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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 petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a researcher who has sustained national or international acclaim.

The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition. The petitioner's references indicate that his work has been significant. However, the regulation requires the petitioner to establish that his work has been of major significance to his field of endeavor. It is reasonably assumed that evidence of a contribution of such significance would be readily available in the form of public recognition from the scientific community or the public at large, including generous publicity of the import of the petitioner's work.

Counsel alleges that the fact that the petitioner's research was published in *Nature* should by itself establish the petitioner as one of extraordinary ability. Apparently quoting from the website of *Nature*, counsel asserts, "A publication in *Nature* means the subject matter is not only 'novel' but 'of extreme importance in the specific field.'" Again, however, that a contribution is important or even extremely important does alone establish that it is a contribution of major significance.

The petitioner's evidence does not establish 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 director determined that the petitioner meets this criterion and we will not disturb his finding.

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

The petitioner initially claimed to meet this criterion based on his presentations "at international conferences." In his RFE, the director advised the petitioner that this criterion pertained to the visual arts. The petitioner did not challenge this finding either in response to the RFE or on appeal.

In this case, the petitioner's field is not in the arts. The plain language of this criterion indicates that it applies to visual artists (such as sculptors and painters) rather than to scientists such as the petitioner. The ten criteria in the regulations are designed to cover different areas and not every criterion will apply to every occupation. The petitioner's presentations in scientific conferences have been considered under the criterion listed at 8 C.F.R. § 204.5(h)(3)(v).

The regulation at 8 C.F.R. § 204.5(h)(4) states: "*If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.*" [Emphasis added]. The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation. However, we will briefly address evidence counsel believes is applicable to this provision.

Counsel asserted that the petitioner's recognition by other experts in his field is evidence of his standing as a physicist of extraordinary ability. We have considered the petitioner's references as discussed above. Additionally, while they state that the petitioner ranks among the very top of scientists in the field of spintronics, the documentation provided by the petitioner does not support their assessment. Counsel stresses the importance of the field in which the petitioner performs his research, indicating that researchers in that field have won the Nobel Prize. Nonetheless, the petitioner provided no documentation to establish that he has been the recipient of a Nobel Prize, and while others may have used his research as a building block for their own, that is the very nature of scientific research.

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 his field of endeavor. Review of the record, however, 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 indicates that the petitioner is a talented and skilled researcher, 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.