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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



U.S. Citizenship
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Services

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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 05 2009
LIN 06 199 52114

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 preference visa petition was initially approved by the Director, Nebraska Service Center. Following the required interview by the U.S. Embassy in Riyadh, the director served the petitioner with a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

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). The director further determined that the petitioner had not established that he sought to enter the United States for the purpose of continuing in his area of expertise.

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). Counsel further states that the director failed to consider the evidence that the petitioner submitted in response to the NOIR.

The record reflects that the director issued his NOIR on July 14, 2008 and notified the petitioner that he had 30 days in which to rebut the director's proposed grounds for denial as set forth in the NOIR. In his decision, the director noted that the petitioner had failed to respond to the NOIR. On appeal, the petitioner submitted documentation that his response was received by the service center on August 13, 2008. However, the petitioner's response was not considered by the director in his decision. Therefore, the AAO will consider all evidence of record.

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 June 26, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a medical scientist. 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).¹

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

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

Although the petitioner provided a list of "awards won" with his June 15, 2006 letter accompanying the petition, he did not claim to meet this criterion. The awards listed by the petitioner included two Wellcome Trust Fund research grants in 1991 and two University of Nigeria Teaching Hospital outstanding staff development in-service study awards for 1982 through 1985 and 1988 through 1991. The petitioner submitted no documentation with the petition to verify receipt of these "awards" or to establish that they were nationally or internationally recognized as prizes or awards for excellence in his field.

In his August 12, 2008 letter accompanying the petitioner's response to the NOIR, counsel asserted that the petitioner "has received numerous awards and recognition." Nonetheless, the record contains no documentary evidence of any of these awards or that they are nationally or internationally recognized as prizes or awards for excellence in the petitioner's field.

The record does not establish that the petitioner meets this criterion.

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

To demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner stated that he was a member of "learned societies" including the Medical Laboratory Science Council of Nigeria, the Association of Medical Laboratory Scientists of Nigeria, the Institute of Biomedical Science of the United Kingdom, the American Association of Blood Banks, Australia and New Zealand Society for Blood Transfusion, the International Society for Blood Transfusion, the African Society for Blood transfusion, the Nigerian Society for Immunology and the American Association of Clinical Pathologists. The petitioner also stated that in 1993, he had been invited to join the New York Academy of Science.

The petitioner submitted copies of his membership cards for the Saudi Heart Association, the Institute of Biomedical Science, and the African Society for Blood Transfusion. Another card indicated that the petitioner had been a member of the AABB (American Society of Blood Banks). The petitioner submitted no documentation that these memberships were in associations which required outstanding achievements of their members as judged by recognized national or

international experts in their fields. The petitioner also stated that he had been invited to join the New York Academy of Science. However, the petitioner submitted no documentation that he had actually joined the academy or that the organization required outstanding achievements of its members.

In response to the NOIR, the petitioner stated that he belonged to the International Society for Blood Transfusion (ISBT), Australian and New Zealand Society for Blood Transfusion (ANZSBT) and is a clinical scientist member of the American Society of Clinical Pathology (ASCP). The petitioner stated that his memberships in these organizations were available only after expert assessment and council of experts' approval of my qualifications and scholarly activities."

The petitioner submitted a copy of a February 12, 2003 letter informing him that he had been elected as a member of ANZSBT. However, he provided no documentary evidence of his membership in the ISBT. The petitioner submitted information about the ISBT retrieved from the website of the online user-edited encyclopedia *Wikipedia*. The document does not outline the membership criteria for the ISBT. Further, with regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.² See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, we will not assign weight to information for which *Wikipedia* is the only cited source.

The petitioner provided information from the ANZSBT that identifies the objectives of the organization but does not state the criteria it uses in selecting members. The petitioner submitted a copy of an undated letter from the ASCP, thanking him for renewing his membership in the society. The petitioner submitted no documentation about the membership requirements for the organization. The petitioner also provided documentation about the New York Academy of Sciences from the organization's website, accessed by the petitioner on August 12, 2008. The documentation indicates:

² 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 original.]

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on September 1, 2009, a copy of which is incorporated into the record of proceeding.

A candidate for Fellowship must have attained recognition for significant professional achievement in research, or for advancement and leadership in science, medicine, or engineering. All candidates must have been Academy members for at least one year by the application deadline. A candidate for Honorary Life membership must have attained great distinction in science and need not be an Academy member.

The petitioner stated that the members of the Academy include more than 40 Nobel Laureates. The prestige of the Nobel Prize is not in dispute. It remains, however, that the petitioner is not a recipient of the Nobel Prize. Thus, its significance is irrelevant. That the New York Academy of Sciences includes members who have won the Nobel Prize does not impart that distinction to the remainder of its members who have not been so recognized. Additionally, while the petitioner submitted documentation to reflect that he was invited to join the Academy, he submitted no documentation that he is or has been a member of the organization.

The petitioner has failed to establish 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 did not initially allege that he meets this criterion. However, in response to the NOIR, the petitioner claims to meet this criterion based on his selection as an external examiner for the Medical Laboratory Science Council of Nigeria and at the University of Calabar in Nigeria, as a member of the editorial board of the Journal of Medical Laboratory Science (JMLS), and as chairman of the Scientific Sub-Committee of the Nigerian Society for Immunology for its 21st Annual Scientific Conference.

The petitioner submitted a copy of an October 28, 1990 letter from the Institute of Medical Laboratory Technology of Nigeria informing him that he had been nominated to serve as an external examiner for Part IV of the Hematology and Blood Group Serology Examination to be held from November 6 to 9, 1990 and a November 16, 1990 letter of appreciation from the Institute for his service. The petitioner also submitted a copy of a July 24, 1995 letter from the Institute inviting him to serve as an external examiner in the oral examination phase of the examination. The petitioner submitted no documentation that he actually served as an examiner in 1995.

A copy of a December 19, 1994 letter from the University of Calabar informed the petitioner that he had been appointed as an external examiner for the Bachelor of Science program in the Department of Hematology for a period of three years. A second letter dated February 8, 1995 also indicated that the petitioner's nomination as an external examiner had been approved and a June 28, 1995 letter informed the petitioner of examination dates. The petitioner submitted no documentation of any service as an examiner for the University of Calabar subsequent to these dates.

In an August 10, 2008 letter, [REDACTED] of the University of Calabar stated that he was the National Secretary of the Association of Medical Laboratory Scientists of Nigeria (AMLSN) in 1992, and that the petitioner was a member of the editorial board of the JMLS. [REDACTED] stated that the editorial board was selected "based on the judgment of the AMLSN National Executive Council for those who had attained exalted level of academic and professional accomplishments in their disciplines in medical laboratory science." The petitioner provided a copy of the cover and first page of the October 1993 volume of the JMLS that lists him as a member of the editorial board.

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 petitioner'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). For example, evaluating the work of accomplished professors as a member on a national panel of experts is of far greater probative value than evaluating the work of graduate or undergraduate students. Further, the petition was filed on June 26, 2006. The only documentation submitted by the petitioner relevant to this criterion dates more than 11 years prior to the filing date and is not consistent with a claim of sustained acclaim.

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 director determined that the petitioner meets this criterion. However, we do not concur with this determination by the director and withdraw this finding.

In his June 15, 2006 letter submitted in support of the petition, the petitioner stated:

Some of my earlier works on Neutrophil phagocytic competence in sickle cell disease have been sort of springboard for some current research efforts that suggest a possible role for anti-adhesion molecules agents in the therapeutic intervention of vaso-occlusive crisis in sickle cell disease – a genetically-acquired debilitating disease of global distribution, including the USA.

The petitioner submitted letters from several individuals in support of his visa petition. Among those were:

[REDACTED] of the Department of Pathology and Laboratory Medicine at the King Abdul Aziz Medical City in Jeddah, Saudi Arabia. [REDACTED] stated in a May 8, 2006 letter that the petitioner has been supervisor of their Transfusion Medicine Service for more than 10 years, and that:

His work on status of immunological parameters in Sickle Cell Disease has provided not only an objective approach for determining severity of the disease, but also has provided initial findings based on which anti-adhesion molecules therapeutic intervention for the disease is currently being explored with great promise by eminent international scholars in the field that have cited him in their books and journal publications. [The petitioner's] expertise is very frequently sought after not just in Saudi Arabia, but also in various other countries of the Middle East.

[REDACTED], a consultant hematologist and senior lecturer at St. Thomas' Hospital in London, stated that he has known the petitioner in a professional capacity for about 20 years. He further stated:

[H]is original works are very illuminating in understanding the mechanisms of sickle cell disease, a genetic blood disorder common in the United States and across the world. In addition, [the petitioner] has made important contributions in developing ways of providing blood transfusion with greater safety to those who need this life-saving treatment, as well as in the fight against the Human Immune Deficiency Virus (HIV).

The petitioner also submitted a letter from [REDACTED] who identifies himself as director of medical research and a professor of Medical Microbiology and Immunology. The letter, dated May 16, 2006, appears on the letterhead of Sozien Pharmaceuticals but references the e-mail account of another individual. The letter notes the petitioner's paper "on the status of immunological parameters in Sickle Cell Disease" and states that his "work, widely quoted in haematology books as well as journals by his peers, has provided an objective approach for diagnosing the severity of the disease."

While the petitioner's references praise his work on sickle cell disease, none indicate that the petitioner has made a contribution of major significance to his field. References to the petitioner's work by others in their own research is the subject of the criterion regarding authorship of scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi) and will be discussed under that criterion immediately below.

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 above letters are all from the petitioner's collaborators and immediate circle of colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's acclaim beyond his immediate circle of colleagues. 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.

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. To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.

The 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.

Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself. As frequent publication of research findings is inherent to success as an established research scientist, publications alone do not necessarily indicate the sustained acclaim requisite to classification as an alien with extraordinary ability. Evidence of publications must be accompanied by documentation of consistent citation by independent research teams or other proof that the alien's publications have had a significant impact in his field.

The petitioner submitted a list of 26 articles that he stated he had published in "learned journals" and 26 scientific conferences that he had attended and presented papers. The petitioner submitted copies of some of those articles and presentations and copies of articles by ██████████ that cited to the petitioner's articles. However, a review of those articles reveals that the articles cited by ██████████ were articles that he co-authored with the petitioner. Therefore, ██████████ was also citing to his own work. We note that the article, "White blood cell count as a predictor of the severity of sickle cell disease during pregnancy," on which ██████████ served as co-author, was published in 2007, after the filing date of the petition on June 26, 2006. Therefore, it is not evidence of the petitioner's eligibility for this criterion. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1) and (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Although the petitioner's references stated that his published work was "widely quoted in haematology books as well as journals by his peers," the petitioner submitted no documentary evidence of any independent references to his work.

The petitioner has failed to establish 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.

To meet this criterion, the petitioner must show that he performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

In his letter submitted in support of the petition, the petitioner stated that he was "currently employed as Supervisor of Transfusion Medicine for the National Guard Health Affairs in Saudi Arabia."

The petitioner submitted a copy of a March 27, 2002 Certificate of Appreciation from the King Abdulaziz National Guard Medical City recognizing his "outstanding contribution to the successful achievement" of accreditation by the College of American Pathologists (CAP). An April 4, 2005 Certificate of Appreciation from the National Guard Health Affairs recognized the petitioner for "his distinguished service outstanding performance and contribution to the development and accreditation of The Department of Pathology and Laboratory Medicine."

In an April 18, 2006 letter, ██████████ a professor in the Department of pathology at Monmouth Medical Center in Long Branch, New Jersey, stated that:

[I]n his present capacity as the Supervisor of the Transfusion Services at the National Guard Hospital, Jeddah, [the petitioner] has maintained an exceptional standard and led the Blood Bank technical team in this facility to gain accreditation of the [CAP] without any deficiency. He also led the team to gain accreditation of the [AABB] without any citation.

stated that the petitioner "authored more than 250 polices, processes and procedures" which have allowed the Transfusion Service to "run for over ten years now without a single adverse event."

In response to the NOIR, the petitioner stated:

I currently work for and supervise Transfusion Medicine Service at the highly acclaimed and distinguished National Guard Health Affairs, King Abdul Aziz Medical City (KAMC-WR), Jeddah in Saudi Arabia. This state-of-art-equipped hospital ranks amongst the top five most reputed hospitals in the kingdom of Saudi Arabia. It is accredited by JCI, CAP, AABB, the Royal Colleges of pathologists of the UK and Australia . . . There is no doubt that this hospital is an organization that commands [a] distinguished reputation . . . I played [a] pivotal role in guiding the Blood Bank Service of this organization to its first ever accreditations/re-accreditations from" CAP, the AABB and the JCI (Joint Commission International).

The evidence sufficiently establishes that the petitioner served in a leading role for the National Guard Health Affairs King Abdul Aziz Medical City. However, the petitioner submitted no documentation to establish that the hospital enjoys a distinguished reputation. 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 has failed to establish that he meets this criterion.

The director further determined that the petitioner had failed to establish that he sought to enter the United States for the purpose of continuing in his area of expertise.

The regulation at 8 C.F.R. § 204.5(h)(5) provides:

No offer of employment required. Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by 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.

In his June 15, 2006 letter in support of the petition, the petitioner stated that he "look[ed] forward to continuing [his] work within the United States including further advancements in research of the sickle cell disease." In his NOIR, the director stated:

[I]t is noted that while the petitioner relates his career and several of his accomplishments in his June 15, 2006 statement, the petitioner delves little into how he will continue working in his field in this country. Therefore, please submit further evidence to show that the petitioner is coming to the United States to continue working in his area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or another statement from the petitioner, but this time with specific details how he intends to continue working in this country.

The petitioner indicated on his Form I-140 that he intended to work as a medical laboratory science doctor and expected to earn \$56,000 per year. In response to the NOIR, the petitioner stated that he has "initiated contacts for appropriate job positions in the clinical laboratory sciences" and that he is "ready, and willing to serve and contribute to the national interest of the US." The petitioner, however, submitted nothing to document his efforts at obtaining a job in the United States. The petitioner, therefore, has failed to sufficiently establish that he intends to continue to work in his area of expertise.

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. 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).

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.