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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
and Immigration
Services**

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FILE: [REDACTED]
SRC 07 800 23433

Office: TEXAS SERVICE CENTER Date: OCT 05 2009

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:

SELF-REPRESENTED

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 Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner submits a statement and additional evidence. The petitioner’s specific concerns, at least one of which arises from a misreading of the director’s request for additional evidence (RFE), will be addressed below. For the reasons set forth in this decision, we uphold the director’s finding that the petitioner has not established his eligibility for the exclusive classification sought. As explained in the conclusion, our decision, based on an evaluation of the evidence under the various regulatory criteria, is consistent with an evaluation of the evidence in the aggregate.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien’s entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). 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.

According to Part 6 of the petition, this petition seeks to classify the petitioner as an alien with extraordinary ability as a physical 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, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).¹

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 did not initially claim to meet this criterion, he lists two academic awards on his curriculum vitae. He did not submit either award as evidence. In response to the director's request for evidence of the significance of these awards, the petitioner did not address this criterion. Thus, the director concluded that the petitioner had not submitted evidence to meet this criterion. The petitioner does not challenge that conclusion on appeal. We concur with the director that the record lacks copies of the awards or evidence of their significance. Moreover, we note that the most experienced and renowned members of the field do not compete for academic awards. Thus, they cannot be considered lesser nationally or internationally recognized prizes or awards for excellence such that they are indicative of or consistent with 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.

Initially, the petitioner asserted that he meets this criterion based on his past membership in the American Physical Society (APS) and his current membership in the Institute of Electrical and Electronics Engineers (IEEE), "which are among the prestigious professional associations in the according field." The petitioner submitted evidence of his student membership in IEEE and asserted that it has been upgraded to regular membership. He further asserted that IEEE requires certain combinations of education and experience for membership but submits no supporting evidence of this assertion. 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

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

The director's RFE requested evidence of the actual membership requirements and who judges eligibility for membership. The petitioner submitted no new evidence relating to this criterion. The director concluded that while the petitioner had established his IEEE membership, he had not established that IEEE requires outstanding achievements of its members. The petitioner does not contest this conclusion on appeal.

The petitioner did not submit the primary evidence necessary to establish eligibility under this criterion, the actual membership requirements for IEEE. Even if we accepted the petitioner's assertion that IEEE has education and experience requirements, we are not persuaded that a certain level of education and/or experience is an outstanding achievement. While APS, assuming the petitioner was a member of APS, and IEEE may be prestigious associations, we will not presume the membership requirements for these associations based on their overall reputation in the field, which may be earned in ways other than exclusive membership.

In light of the above, 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.

The petitioner relies on a 2007 article in *Laser Focus World* reporting that physicists at the National Institute of Standards and Technology, Stanford University and Northwestern University have built micron-size solid-state lasers in which a single quantum dot can play a dominant role in device performance. The petitioner, who received his Ph.D. from Stanford in 2005, is not mentioned by name in the text of the article, but his first-authored article is cited in the article's only footnote.

The petitioner also relies on a 2007 article in *EE Times* reporting that Applied Materials, Inc., where the petitioner has been employed since August 2005, has "claimed" two new breakthroughs in the patterning arena for chip designs, rolling out a self-aligned double patterning technology and a hardmask system, Versa TTN. The petitioner is not named in this article although the record contains a letter from [REDACTED] of the thin film group at Applied Materials, asserting that the petitioner is the technology node owner for Versa TTN. The petitioner also submitted evidence that *EE Times'* website cites "a recent study" finding that the publication is the most preferred industry publication by a three-to-one margin over the second most preferred publication.

Further, the petitioner relies on what appears to be a promotion of Versa TTN in *Semiconductor International* as it concludes with contact information for Applied Materials. This promotion does not name the petitioner or, contrary to the petitioner's assertion, cite his paper. Finally, the petitioner relies on the selection of his 2007 article in *Physical Review Letters* for reprint in the March 26, 2007 edition of the *Virtual Journal of Nanoscale Science and Technology*. The petitioner submitted evidence that this weekly journal reprints articles, mostly from the previous week, from participating source journals that fall within a number of contemporary topical areas in nanometer-scale science and technology.

The director's RFE advised that evidence submitted to meet this criterion must be "about the alien." In response, the petitioner reiterates the previous evidence submitted and asserts that he has authored a chapter in a book that is reviewed on the publisher's own website. He submitted selected pages from the book establishing his authorship of a chapter.

The director concluded that the petitioner has not submitted any published material about himself. On appeal, the petitioner reiterates his previous claims and asserts that a journal or newspaper will usually report a scientist's work and not the scientist himself. Assuming that to be the case, it does not change the fact that the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material "about" the petitioner relating to his work. *Compare* 8 C.F.R. § 204.5(i)(3)(i)(C). It must be noted that the criteria are not designed to be met by the majority of successful members of the field but only by those who are truly among the small percentage at the top of the field. Ultimately, we are not persuaded that published material that does not even mention the petitioner by name can be considered indicative of or consistent with national or international acclaim.²

Moreover, the petitioner did not submit any evidence to support his assertions about *Laser Focus World*. As stated above, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). The reference to information "claimed" by Applied Materials, suggests that the *EE Times* article may derive from a press release rather than journalistic reporting. Finally, the publisher's own review of a book on its own website, had the petitioner submitted this review, is not indicative of the national or international acclaim of the author of one chapter of that book.

In light of the above, the evidence submitted to meet this criterion does not fall within the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) and fall far short of being indicative of or consistent with national or international acclaim. Thus, the petitioner has not demonstrated 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 initially submitted evidence that he had refereed one manuscript for the *Journal of Quantum Electronics*. In response to the director's RFE, the petitioner submitted evidence of requests for manuscript reviews that postdate the filing of the petition. The requests all ask that if the petitioner

² See generally *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). While we acknowledge that a district court's decision is not binding precedent, the decision underscores the fact that USCIS's interpretation is reasonable.

is unable to complete the review, he recommend an alternate reviewer. In thanking the petitioner for completing a review, the editor of the *Journal of Lightwave Technology* asks that the petitioner update his profile with his “fields of interest” to serve as a reviewer in the future.

The director concluded that the petitioner’s participation in the widespread peer review process was commensurate with being a published author. On appeal, the petitioner asserts (grammar as it appears in original):

It is not surprising to take more responsibilities for a senior education dedicated professional, such as a university professor. At my current stage (2-3 years after PhD graduation), it is a reasonable load considering the research work on hand. It should NOT be considered as “rare.”

* * *

As a summary, I have submit[ted] evidence to serve as a peer reviews [sic] from multiple invitations, for multiple scientific journals (such as, *Journal of Quantum Electronics*, and *Journal of Lightwave Technology*). It must [be] due to a sustained national and international acclaim that I will be picked by these international publications (journal) for multiple times. The judging (peer reviewer) is of no question, on an international level since they are all international published journals and the authors and readers are word [sic] wide. While the review process is anonymous and I have no access to get another reviewer’s information, they usually are from some professors in a research university (considered to be accomplished professionals).

(Emphasis in original.)

The evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with sustained national or international acclaim.³ We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. The petitioner himself acknowledges that professors typically complete peer reviews. While professors may be “accomplished professionals,” we are not persuaded that the majority of professors are nationally or internationally acclaimed. Given the widespread nature of the peer-review process, participation in this process is routine in the field and, by itself, is not indicative of or consistent with sustained national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion.

³ *Accord Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner asserts on appeal that the RFE and final decision are contradictory in that the RFE concluded that the petitioner's contributions were sufficiently original and scientific but in the wrong field but the final decision concludes that the petitioner had not demonstrated that his contributions were original. This assertion is based on the petitioner's misreading of the concerns stated in the RFE. Contrary to the petitioner's assertion, the RFE clearly states that while the petitioner's contributions are original and scientific, they have not been demonstrated to be of major significance, an element of the regulatory criterion set forth at 8 C.F.R. § 204.5(h)(3)(v). In the final decision, the director's complete conclusion states that the petitioner had not demonstrated that his work "constitutes original contributions of major significance." (Emphasis added.) Thus, we find no contradiction between the two notices.

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.

According to the Department of Labor's Occupational Outlook Handbook (OOH), available at www.bls.gov/oco/ocos052.htm#nature, accessed October 1, 2009 and incorporated into the record of proceeding), most physicists work in research and development. Some do basic research to increase scientific knowledge. Others conduct applied research to build upon the discoveries made through basic research and work to develop new devices, products, and processes. For example, basic research in solid-state physics led to the development of transistors and, then, integrated circuits used in computers.

The OOH further states, at www.bls.gov/oco/ocos027.htm#nature, that engineers apply the principles of science and mathematics to develop economical solutions to technical problems. Their work is the link between scientific discoveries and the commercial applications that meet societal and consumer needs. Many engineers develop new products. Thus, the development of a new product, in and of itself, does not set an engineer apart from the remaining members of his occupation. Significantly, this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. See *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm'r. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.*

The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. *See also Kazarian v. USCIS*, 2009 WL 2836453, *6 (9th Cir. 2009) (publications and presentations are insufficient absent evidence that they constitute contributions of *major* significance).

While we acknowledge that a few of the petitioner's references appear to be independent members of his field,⁴ the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his/*her reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. Vague, solicited letters from local colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field are insufficient. *Kazarian v. USCIS*, 2009 WL 2836453 at *5.

The petitioner obtained his Ph.D. at Stanford University in 2005. Since that time, he has worked as a process engineer for Applied Materials. He submits letters from one of his professors at Stanford, [REDACTED] and a manager at Applied Materials, [REDACTED] in addition to letters from those who purport to be independent of the petitioner.

⁴ As will be explained below, some of the references claimed to be independent have a clear connection to the petitioner.

asserts that the petitioner was one of his Ph.D. students and that he worked with the petitioner “on a daily basis.” [REDACTED] however, is not listed as a coauthor on any of the petitioner’s articles. While [REDACTED] asserts that there is a national shortage of individuals in the petitioner’s field, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *New York Dep’t. of Transp.*, 22 I&N Dec. at 221. At issue for the classification sought is whether the petitioner is nationally or internationally acclaimed in his field. [REDACTED] explains that the petitioner “played a critical role” on a project involving Terahertz emissions, which has defense and homeland security “implications” and was supported by the Defense Advanced Research Projects Agency (DARPA) and the Army Research Office (ARO). [REDACTED] asserts that this area of research is unique and “completely new.” According to [REDACTED], the petitioner used MBE regrowth to align quantum dots with lithographically defined microdisk cavities, which has been a challenge over the past 20 years. While [REDACTED] asserts that this work has advanced work on semiconductor based Terahertz quantum dots and has changed the way other scientists now utilize semiconductor quantum dots, he does not provide any specific examples of independent research institutions or private companies applying this work. The record contains no patents or articles citing the petitioner’s work as the foundation of the work in the citing article or patent.

[REDACTED] an associate professor at Northwestern University, claims to know the petitioner because their interests overlap. We note that [REDACTED] is a coauthor of three of the petitioner’s articles in 2003, 2005 and 2007 and, as such, is not an independent reference. [REDACTED] asserts that their joint article “will be a milestone” and “will lead [the] computer industry toward quantum computation, with faster speed and more compact devices at extremely low power dissipation.” [REDACTED] further asserts that the petitioner’s proposal to use intra-band transition of quantum dots as a Terahertz emission source “will be [a] very promising method” for the development of practical Terahertz emission devices. These speculative statements cannot establish that the petitioner has already impacted his field such that he has made a contribution of *major significance*.

[REDACTED] Director of the Center for the Computational Design of Nanomaterials at the University of Utah, asserts that he is an independent reference who has not worked with the petitioner but does not explain how he knows of the petitioner’s work. [REDACTED] asserts that the petitioner “developed a revolutionary method to grow low-density InAs quantum dots and accurately control the alignment of these nano-emitters with [sic] semiconductor optical cavity.” While [REDACTED] explains that InAs materials are extensively used, he does not assert that the petitioner’s method for growing those materials is widely used. In fact, [REDACTED] merely speculates that this method “may be widely sought after.” [REDACTED] further asserts that the impact of the petitioner’s nano-laser based on a few quantum dots is apparent from the “many independent researchers” who cite this work. As of the date of filing, however, the petitioner claimed only five citations for all of his articles and did not document any of those citations.

[REDACTED] a scientist at the California Institute of Technology and graduate of Stanford University where the petitioner also obtained his Ph.D., asserts that the petitioner’s wide impact in the field is

apparent from the petitioner's publications. As stated above, however, the publication of scholarly articles is a separate criterion, 8 C.F.R. § 204.5(h)(3)(vi), and cannot serve as the sole basis to meet this criterion set forth at 8 C.F.R. § 204.5(h)(3)(v). *See Kazarian*, 2009 WL 2836453 at *6. [REDACTED] then provides speculation about the future use of the petitioner's work similar to that contained in [REDACTED] letter.

[REDACTED] of the Material Sciences Division at Ernest Orlando Lawrence Berkeley National Laboratory, asserts that he met the petitioner when the petitioner was a finalist for a fellowship at the laboratory. [REDACTED] praises the value of the petitioner's research but does not provide any examples of the petitioner's work being applied in the field.

[REDACTED] a senior engineer at IBM Microelectronics, asserts that he learned of the petitioner's work "from some conference talk" and provides general praise of the petitioner's research as having important future applications. [REDACTED] does not state that he has personally applied the petitioner's work or that IBM has done so.

[REDACTED] discusses the petitioner's work at Applied Materials but concedes that he is not the petitioner's supervisor. [REDACTED] asserts that the petitioner has made an "irreplaceable contribution" to several nano-engineering projects at Applied Materials. One of those projects, according to [REDACTED] is the Versa TTN process and engineering development, for which the petitioner is the "technology node owner." [REDACTED] explains that Versa TTN is the fastest deposition method for Titanium Nitride (TiN), a widely used material in the semiconductor industry. [REDACTED] asserts that after the petitioner's renovation to this project, "it has been widely applied in meta-gate and 3D memories, which are the backbone of next-wave semiconductor industry development and will have [a] direct impact on computer techniques and consumer electronics." Specifically, according to [REDACTED] Samsung and IBM have adopted Applied Materials' technology. [REDACTED], however, while working at IBM, does not confirm this assertion. Finally, [REDACTED] asserts that Versa TTN is also applicable to solar energy cells, although he provides no examples of its use in this industry. As noted above, Versa TTN is promoted on *EE Times* and *Semiconductor International*, although these materials appear to be based on press releases. As stated above, it is inherent to the position of an engineer to develop new products. That the petitioner's product has applications in the real world does not necessary demonstrate that his product is a contribution of major significance. The record lacks objective evidence, such as widespread coverage in major trade journals not merely reporting the release of this product but its significance, of the impact of the petitioner's product.

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. Any Ph.D. thesis or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. 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.

Ultimately, the record includes attestations of the *potential* impact of the petitioner's work without concrete examples of how the petitioner's work is already influencing the field. While the evidence demonstrates that the petitioner is a talented researcher and engineer with potential, it falls short of establishing that the petitioner had already made contributions *of major significance*. Thus, the petitioner has not established that he meets this criterion.

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

Initially, the petitioner asserted that most Nobel Prizes in physics are based on work reported in *Physical Review Letters*. 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 a journal has published the work of those who have won the Nobel Prize does not impart that distinction to the vast majority of its authors who have not been so recognized.

On appeal, the petitioner submits a statistical analysis purportedly derived from the Stanford Alumni directory and Google.Scholar indicating that of the 343 Ph.D. graduates in Physics from Stanford between 2000 and 2008, only 19.5 percent have published articles in *Physical Review Letters*. The petitioner concludes that his publication record "is very distinguished" in his field for Ph.D. graduates with two to three years of experience. This analysis assumes that *Physical Review Letters* is the only prestigious physics or applied physics journal through which a Ph.D. student might demonstrate a distinguished publication record. We note that [REDACTED] asserts that he published a 2002 article in *Science* which has been cited 82 times. Regardless, the petitioner may not narrow his field to recent graduates. Rather, he must compare with the most experienced and renowned members of his field. While we would not expect the petitioner to have the same quantity of publications as a more experienced member of the field, the petitioner must demonstrate comparable significance.

While we acknowledge that we must avoid requiring acclaim within a given criterion, it is not a circular approach to require some evidence of the community's reaction to the petitioner's published articles in a field where publication is expected of those merely completing training in the field. *Kazarian v. USCIS*, 2009 WL 2836453, at *6.

Initially, the petitioner submitted a short list of articles that purportedly cite his 2005 article in *Physical Review Letters*. On appeal, the petitioner submits a list of 19 articles that purportedly cite his various articles. First, as stated above, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Moreover, the petitioner must demonstrate his eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 4 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Moreover, citations that postdate the filing of the petition cannot demonstrate the petitioner's acclaim as of that date. As discussed above,

the petitioner also submitted an article in *Laser Focus World* that includes a citation to the petitioner's 2007 article.

While *Laser Focus World* covered one of the petitioner's recent articles, the record does not establish that the petitioner's publication record is indicative of or consistent with *sustained* national or international acclaim. Even if we were to conclude that the petitioner's publications alone are sufficient to meet this criterion, and we do not, the record falls far short of establishing that the petitioner meets any other criterion.

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

On appeal, the petitioner does not contest the director's conclusion that the record does not establish that the petitioner meets this criterion. As the petitioner submitted evidence of his own salary without any means of comparing this salary with other process engineers, we cannot determine whether the petitioner's remuneration is significantly high "in relation to others in the field." Thus, we uphold the director's finding that the petitioner has not established that he meets this criterion.

Finally, 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 has risen to the very top of the field of endeavor. The petitioner, a process engineer, relies on his professional memberships, his volunteer services as a manuscript reviewer, his publication record and the praise of his immediate circle of peers. While this may distinguish him from other recent graduates, we will not narrow his field to others with his level of training and experience. _____ is a fellow of the IEEE, the Optical Society of American and the APS and is an editor for the *Journal of Lightwave Technology*. _____ has published an article in *Science* that, according to his letter, has been cited 82 times. Thus, it appears that the highest level of the petitioner's field is far above the level he has attained.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a physical scientist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a physical scientist and engineer, 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.