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



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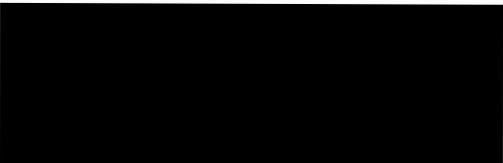


FILE: SRC 08 800 13483 Office: TEXAS SERVICE CENTER Date: **OCT 28 2009**

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:



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).

M. Deadrick
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, counsel submits a brief and additional evidence. In general, counsel asserts that the director applied the wrong evidentiary standard. Specifically, counsel asserts that the director’s conclusion that the petitioner failed to “clearly establish eligibility” suggests that the director used a higher standard of proof than the appropriate “preponderance of the evidence” standard.

Section 291 of the Act provides:

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this Act, and, if an alien, that he is entitled to the nonimmigrant; immigrant, special immigrant, immediate relative, or refugee status claimed, as the case may be.

The law goes on to assert that the evidence must establish eligibility “to the satisfaction” of the adjudicating officer. This burden is confirmed in *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965) and *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). While the director used the phrase “clearly establish” instead of “preponderance of the evidence,” the director appears to be using the common usage of the word “clearly” as opposed to articulating a higher standard of proof, such as “clear and convincing.” The AAO finds that the director’s use of the phrase “clearly establish” was innocent of any intent to hold the petitioner to a higher standard of proof and constitutes harmless error, at worst. Regardless, for the reasons discussed above, we do not find that the petitioner has established his eligibility for this exclusive classification by a preponderance of the evidence. Our conclusion, reached by considering the evidence under the individual criteria, is consistent with an analysis 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 postdoctoral fellow. Postdoctoral positions are temporary positions that offer specialized research experience. *See* <http://www.bls.gov/oco/ocos047.htm#training> (accessed October 22, 2009 and incorporated into the record of proceeding). While neither the statute nor the regulations preclude an individual still in the training stages of his career from establishing eligibility, we will not narrow the petitioner's field to recent graduates. As stated above, the regulation at 8 C.F.R. § 204.5(h)(2) provides that the petitioner must establish that he is one of that small percentage who have risen to the very top of the field of endeavor, including in comparison with the most experienced and renowned members of the field.

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 director concluded that the petitioner meets the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) and we will not withdraw that finding. The regulation at 8 C.F.R. § 204.5(h)(3), however, states that a petitioner must meet at least three of the ten regulatory criteria set

forth in that provision. The petitioner has submitted evidence that, he claims, meets the following additional criteria under 8 C.F.R. § 204.5(h)(3).¹

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.

Initially, counsel asserted that the petitioner meets this criterion through his inclusion in for-profit biographical directories such as *Strathmore's Who's Who* and *2000 Outstanding Scientists*, press releases in *NewsRx* prepared by the journals that published the petitioner's own work, links to his work on the websites of professional associations in his field, an abstract of his work included in the "In this Issue" section of the *Journal of Immunology* and citations of the petitioner's work by other researchers. In response to the director's request for additional evidence, counsel noted that the petitioner has been included in additional for-profit directories, including *2000 Outstanding Intellectuals of the 21st Century, 2008*; *Marquis Who's Who in America, 2009*; *Great Minds of the 21st Century* and *Cambridge's Who's Who*.

The director concluded that the materials submitted to meet this criterion did not meet the requirements set forth in the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Counsel does not contest this conclusion on appeal.

The promotional materials for *Strathmore's Who's Who* indicate that it is an annual 2000-page directory that purportedly is limited to those who have demonstrated leadership and achievement in their occupation, industry or profession but permits self-nomination. The letter from *2000 Outstanding Intellectuals* reveals that the publishing company sells books and even awards to those included in its volumes, revealing that it is a vanity press-type publication. The petitioner was only included in the remaining biographical directories after the date of filing. Thus, those inclusions cannot be considered evidence of 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). That said, the record contains no evidence that these biographical directories, which appear to also include thousands of other professionals, are any more significant than the two discussed above.

Significantly, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence of the author, revealing that the identity of the author is relevant and material. The inclusion of the petitioner's own autobiographical blurb in a for-profit vanity press-type publication along with thousands of other professionals cannot serve to meet this criterion.

In response to the director's request for additional evidence, the petitioner submitted information from the website of *NewsRx*. The materials indicate that the *New York Times* characterized *NewsRx* as "the world's largest producer of weekly health information." Other major media reference the publication

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

as comprehensive and extensive. The materials do not explain how *NewsRx* selects its topics and, in fact, indicate that the publication utilizes an Artificial Intelligence Journalist rather than human journalists who investigate recent research or editors who select which research will be covered. As stated above, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material include the identity of the author. The “articles” in *NewsRx* are actually press releases prepared and authored by the journals publishing the petitioner’s work rather than independent journalists. Moreover, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence of published material about the petitioner. *Compare* 8 C.F.R. § 204.5(i)(3)(i)(C) (requiring evidence of published material about the alien’s work). The press releases in *NewsRx* are not “about” the petitioner relating to his work but abstracts of the petitioner’s work. Similarly, the inclusion of a link to the petitioner’s work on the website of the National Multiple Sclerosis Society is not authored published material about the petitioner.

In light of the above, the petitioner has not established 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.

Counsel has asserted throughout the proceedings that the petitioner’s publications, including an article highlighted in the same issue in which it appeared, and reference letters, including letters from independent members of the petitioner’s field, demonstrate that the petitioner meets this criterion. On appeal, counsel relies on a non-precedent decision by this office in support of the proposition that the director did not afford sufficient weight to the citations of the petitioner’s work. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. We will, however, consider the citations below.

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 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 to meet the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they constitute contributions of major significance).

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 reputation and who have applied his work are the most persuasive. 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*, 2009 WL 2836453 at *5.

The petitioner received his Ph.D. from the Institute of Biochemistry and Cell Biology, Shanghai Institutes for Biological Sciences, in 2004. While studying for his Ph.D., the petitioner authored (as first author) his only moderately cited article, which addressed the pertussis toxin and dendritic cells. He then accepted a postdoctoral fellow position at Northwestern University, where he remained as of the date of filing.

The petitioner submitted two letters from U.S. researchers asserting that they collaborated with the petitioner on his Ph.D. research although their names do not appear as coauthors on any of the articles he authored while a Ph.D. student. ██████████, an associate professor of immunology at the University of Texas' M.D. Anderson Cancer Center whose curriculum vitae shows no recent experience in China, asserts that he "observed [the petitioner] throughout his PhD study" and collaborated on research projects regarding bystander activation and gene mutations involved in autoimmune pathogenesis. ██████████ explains the significance of dendritic cells, noting that they take pieces of foreign particles such as bacteria or viruses and alert the body to begin an immune response. In autoimmune diseases such as multiples sclerosis and lupus, however, dendritic cells can overexcite the immune system, causing the body to attack itself. In the case of bystander activation, pertussis toxin causes dendritic cells to overexcite, leading to autoimmune diseases. While ██████████ acknowledges that the role of the pertussis toxin in activating dendritic cells was previously known, he explains that

the petitioner was the first to examine the cellular and molecular mechanisms involved. According to [REDACTED], the petitioner discovered that dendritic cells stimulated by pertussis toxin can substitute for the toxin and can induce the immune system to respond as it would to the toxin, essentially driving dendritic cells to become “supercharged cells which over-excite the immune system.” [REDACTED] asserts that these findings “form the cornerstone for scientists and corporations worldwide to exploit the biological power of dendritic cells to generate modified vaccines, and to harness the therapeutic potential of dendritic cells.” [REDACTED] notes that this work was published in the *Journal of Immunology* and highlighted in the same issue of that journal along with at least three other articles in the issue.

In addition to the petitioner’s work on the pertussis toxin, [REDACTED] also addresses the petitioner’s work on gene mutations associated with autoimmune diseases, which focused on the deficiency of interferon-gamma as the causation of dendritic cells to travel more efficiently to the spleen and lymph nodes where they interact with T cells to unnecessarily activate the immune system. According to [REDACTED] the petitioner found that supplying interferon-gamma to subject mice enabled them to resist the induction of autoimmune diseases. [REDACTED] characterizes this work as a “breakthrough” that will allow scientists to explore the therapeutic “potential” of interferon-gamma.

While [REDACTED] asserts that the medical community has “paid attention” to the petitioner’s publications and presentations, his only example is a single request for a reprint of one of the petitioner’s reports. [REDACTED] provides no examples of independent research laboratories pursuing therapeutic therapies for autoimmune disorders using the petitioner’s work as the foundation of their work.

[REDACTED] a professor at Northwestern University who has coauthored a recent article with the petitioner, also claims to have collaborated with the petitioner on two of his Ph.D. projects. As stated above, [REDACTED] is not a listed coauthor on the petitioner’s published Ph.D. research. [REDACTED] discussion of the petitioner’s Ph.D. work is similar to that provided by [REDACTED]. [REDACTED] then discusses the petitioner’s work at Northwestern University. Specifically, [REDACTED] explains that the petitioner’s aim was to identify the cellular and molecular mechanisms which determine susceptibility to virally induced autoimmune diseases, which varies from person to person. According to [REDACTED] the petitioner examined the possibility that dendritic cells may respond differently in resistant and susceptible individuals, which the petitioner tested by using the Theiler’s virus-induced demyelinating disease as a model for multiple sclerosis. [REDACTED] asserts that the petitioner confirmed his hypothesis, demonstrating that resistant mice have dendritic cells which can prompt an immune response to Theiler’s virus while susceptible mice have dendritic cells which self-destruct or are weakened in the presence of this virus.

[REDACTED] concludes that the petitioner is “a driving force behind research efforts to understand the role of dendritic cells in the immune system, and his findings, publications and presentations at top-tiered journals and well-respected conference presentations indicate that he is an exceptional scientist and researcher.” [REDACTED] however, provides no examples of independent laboratories that are using the petitioner’s results as the foundation of their own research.

In his second letter submitted in response to the director's request for additional evidence, [REDACTED] discusses research that appears to postdate the filing of the petition. This work cannot be considered evidence of the petitioner's eligibility as of that date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 4 I&N Dec. at 49.

[REDACTED] another professor at Northwestern University, provides similar information to that discussed above, asserting that his own laboratory is using the petitioner's animal model of Theiler's virus induced demyelinating disease, similar in many respects to multiple sclerosis. This application of the petitioner's model, however, does not demonstrate his impact beyond Northwestern University.

The petitioner also initially submitted three letters from independent researchers. [REDACTED] a professor at Harvard Medical School, asserts that he knows the petitioner through his research publications. [REDACTED] singles out the petitioner's Ph.D. research with the pertussis toxin. Noting that methods designed to prevent pertussis toxin from supercharging dendritic cells stifles the development of the body's autoimmune disease, [REDACTED] concludes that the petitioner's study "clarified the cellular target of the pertussis toxin for researchers engaged in similar work worldwide." [REDACTED] asserts that the more knowledge scientists have about the immune system, the more likely they are to control its response. All published research, however, adds to the general pool of knowledge. Not every published article is a contribution of major significance. *Kazarian*, 2009 WL 2836453 at *6. [REDACTED] does not claim to be utilizing the petitioner's work as the foundation of his own research and does not identify any independent laboratories that are doing so.

[REDACTED] then discusses the petitioner's work with gene mutations, concluding that the petitioner "composed one of the most comprehensive data sets to indicate that interferon-gamma is an integral part of resistance of the induction of autoimmune diseases." [REDACTED] characterizes this work as "a conceptual leap in using interferon-gamma to help the body to resist the onset of autoimmune disease but does not explain how this work has already impacted the field.

[REDACTED] a professor at the University of Pennsylvania, provides similar information to that discussed above, asserting that she invited the petitioner to give her laboratory a seminar on dendritic cell biology. Thus, it is clear that she views the petitioner's work as interesting and relevant to those working in her laboratory. A contribution of major significance, however, should be evidenced by a demonstrable impact in the field on a wide scale. [REDACTED] does not assert that her laboratory has adopted the petitioner's model or has otherwise been impacted by the petitioner's work such that his work can be deemed a contribution of major significance.

[REDACTED] of the Immunology Laboratory at the London Research Institute, provides similar information to that discussed above, asserting that the petitioner's work with the pertussis toxin has identified that toxin "as a powerful adjuvant for immunizations that should give rise

to protective type 1 T cell-mediated protection, such as against tuberculosis.” [REDACTED] does not claim to be pursuing such an immunization and does not identify any laboratory that is.

In response to the director’s request for additional evidence, the petitioner submitted a letter from [REDACTED] of Immunology at Focus Diagnostics. [REDACTED] indicates that his recommendation is based on a review of the petitioner’s curriculum vitae and publications and peer review for the journal for which [REDACTED] serves on the editorial board. [REDACTED] does not claim to have been familiar with the petitioner’s work prior to being requested to provide a reference letter or to have been impacted by the petitioner’s work. Rather, he concludes that, based on his review of the petitioner’s credentials and publications, the petitioner’s contributions “substantially exceed those made by the majority of research scientists with the comparable qualifications in the field.” If [REDACTED] is attempting to narrow the petitioner’s field to other postdoctoral researchers, we reiterate that the petitioner must compare with the most experienced and renowned members of his field. Regardless, bare assertions of significant contributions without an explanation of the impact of the petitioner’s work in the field cannot establish the petitioner’s eligibility under this criterion.

We acknowledge that the petitioner has published his work in distinguished journals and has presented his work at notable conferences. As stated above, however, publications and presentations are insufficient to meet the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they constitute contributions of *major significance*. *Kazarian*, 2009 WL 2836453 at *6. We acknowledge that the petitioner’s 2003 article regarding the pertussis toxin and dendritic cells is moderately cited, although we note that two 2005 articles that cite his work have been cited approximately twice as often in less time. Thus, this topic is heavily researched and cited. The petitioner has not maintained this level of interest in his work as his later articles have been only minimally cited. We are not persuaded that this citation level is indicative of contributions of *major significance* and sustained national or international acclaim. The petitioner’s 2003 article was highlighted in the same issue of the *Journal of Immunology* as it appeared and, on appeal, the Editor-in-Chief of the journal asserts that only the top 10 percent of articles are so highlighted. Nevertheless, the highlighted work was only being published at that time and its ultimate impact was as of yet unknown. Thus, the highlighting can only be considered evidence of the potential of this work. The petitioner’s citation and the highlighting of his article, however, will be considered below as it relates to the publication of scholarly articles by the petitioner pursuant to 8 C.F.R. § 204.5(h)(3)(vi).

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 postdoctoral 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.

While the record includes numerous attestations of the potential impact of the petitioner’s work, none of the petitioner’s references provide examples of how the petitioner’s work is already

influencing the field. While the evidence demonstrates that the petitioner is a talented researcher 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 submitted seven articles and seven conference presentations. He also submitted evidence that his 2003 article on the pertussis toxin and its effect on dendritic cells had been cited twice. In response to the director's request for additional evidence, the petitioner submitted additional citations of the petitioner's 2003 article and three articles that cite other work by the petitioner.

The director concluded that the petitioner had not established that his articles constitute contributions of major significance. On appeal, counsel asserts that the director failed to consider the letters of recommendation or citation evidence. The petitioner submits evidence that his 2003 article had been moderately cited as of the date of filing and that six of his other articles have been minimally cited. Finally, counsel notes that the petitioner's article in the *Journal of Immunology* was highlighted in that issue.

The director erred in concluding that the petitioner did not meet this criterion because his articles do not rise to the level of contributions of major significance. Contributions of major significance are addressed under a separate criterion at 8 C.F.R. § 204.5(h)(3)(v), discussed above. While the two criteria are related in that a researcher may report his contribution of major significance in a scholarly article, we withdraw any implication from the director's decision that an alien must meet the criterion set forth at 8 C.F.R. § 204.5(h)(3)(v) in order to meet the scholarly articles criterion, set forth separately at 8 C.F.R. § 204.5(h)(vi).

Nevertheless, the Department of Labor's Occupational Outlook Handbook, (OOH), available at <http://www.bls.gov/oco/ocos047.htm#training> (accessed October 22, 2009 and incorporated into the record of proceeding), provides that a solid record of published research is essential in obtaining a permanent position in basic biological research. As a researcher must demonstrate published research prior to even obtaining a permanent job in the petitioner's field, published research alone cannot serve to set the petitioner apart from others in his field.

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*, 2009 WL 2836453 at *6.

In this matter, we are satisfied that the petitioner's publication record, including citations, is sufficient to meet this criterion. For the reasons discussed above, however, the record falls far short of meeting a third 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 postdoctoral fellow, relies on the volume of his judging experience, his publication record, and the praise of his peers. While this may distinguish him from other postdoctoral fellows and research associates, we will not narrow his field to others with his level of training and experience. [REDACTED] and [REDACTED] have served on the editorial boards of several journals. [REDACTED] is a fellow of both the American Association for the Advancement of Science and the American Academy of Microbiology and is Director of the Interdepartmental Immunobiology Center at Northwestern University. [REDACTED] is Director of the Clinical Immunology Laboratory at the Center for Neurologic Diseases at Brigham and Women's Hospital and a fellow of the American Neurological Association. Although we typically do not presume the influence of a given article solely from the publication in which it appeared, we simply note that several references have been published in *Nature* or *Science*. Finally, as stated above, two of the articles citing the petitioner have themselves been cited considerably more often than the petitioner's article in less time. 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 researcher 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 postdoctoral fellow, 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.