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



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: SEP 03 2009
SRC 08 193 52606

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).

John F. Grissom
Acting 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 generally that 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. While the director's decision would have been bolstered by a discussion of the evidence as it relates to the specific regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3), we concur with the director's ultimate conclusion that the petitioner has not demonstrated his eligibility for the exclusive classification sought. As will be apparent from our discussion below, counsel frequently presumes the petitioner's extraordinary ability in order to demonstrate that the petitioner meets a given criterion rather than explaining how the evidence submitted to meet a given criterion is indicative of or consistent with national or international acclaim. Counsel also inflates the significance of training programs that, while competitive among novices, are ultimately training programs that cannot demonstrate the petitioner's sustained national or international acclaim in the field.

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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a house staff physician and pathologist. 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.

Counsel initially asserted that the petitioner meets this criterion based on his receipt of a one-month Donald West King Fellowship at the Armed Forces Institute of Pathology (AFIP) in January 2008, which allowed him to "expand his knowledge and skills at one of the leading institutes in the world for advancing [the] science of pathology." Counsel acknowledges that the petitioner served "under the tutelage" of another doctor during this fellowship.

Counsel also relies on the petitioner's "opportunity to do an advanced training elective in cytology at Brigham & Women's Hospital" where he "trained with" a Harvard professor. In addition, counsel notes that the petitioner was selected for an "advanced training" opportunity in Hematopathology at Massachusetts General Hospital.

While counsel discussed the prestige of the above institutions, she did not explain how training opportunities or even regular jobs at prestigious institutions constitute awards or prizes. Finally, counsel asserted that the petitioner meets this criterion through his travel grants to attend scientific meetings.

In support of the above assertions, the petitioner submitted a "Graduate Medical Education Trainee Agreement" from the University of Texas M.D. Anderson Cancer Center offering the petitioner a one-year position as a Fellow at Post Graduate Year 6 level beginning July 1, 2008. The petitioner signed the agreement as the "trainee." The petitioner also submitted a certificate from AFIP confirming the petitioner's satisfactory completion of his one-month fellowship at that institution. A separate electronic mail message from _____ Executive Director of the American Registry of

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

Pathology, advises that the petitioner's lodging would be covered during this fellowship in addition to a "meal stipend."

The petitioner further submitted a letter from ██████████ of Harvard Medical School confirming that the petitioner "was a rotating resident in cytopathology at the Brigham and Women's Hospital" in October 2007. ██████████ explains that the petitioner "attended daily signouts, conferences, and tutorials, and reviewed teaching cases from our teaching slide-collection" during this time. Finally, ██████████ praises the petitioner's enthusiasm and attitude and asserts that he was "genuinely out to learn and master cytopathology." ██████████ does not suggest that this residency was an award or prize recognizing past excellence in cytopathology rather than an opportunity to learn cytopathology.

Without explanation, the petitioner submitted announcements from a physician search and consulting firm addressed to the petitioner announcing available pathology positions. These announcements are not job offers, let alone prizes or awards recognizing excellence in pathology.

The petitioner submitted evidence that his abstracts had been accepted for presentation at various meetings but no evidence that the petitioner received travel grants. Regardless, even assuming the petitioner did receive travel grants, the record lacks evidence that travel grants are nationally or internationally recognized awards or prizes for excellence for which the most renowned members of the field compete rather than financial assistance to residents in order to allow them the opportunity of presenting their work with their more experienced colleagues.

In light of the above, we are not persuaded that the petitioner's training and job opportunities or his alleged travel grants constitute nationally or internationally recognized awards or prizes for excellence as a pathologist. Thus, the evidence falls far short of establishing 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.

Counsel asserted that the petitioner had been admitted "to a number of highly prestigious and selective societies" where memberships "are only awarded to those physician-scientists who have attained an extraordinary level of expertise unmatched by the vast majority of their colleagues." The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submitted evidence of his membership in the American Society for Clinical Pathology (ASCP) and the Massachusetts Medical Society as well as his "junior membership" in the College of American Pathologists (CAP). The bylaws for ASCP, submitted by the petitioner, reflects that eligible members include "(A) any person who is currently, or has been previously, certified by the Board of Registry in one or more categories or (B) any non-physician whose interests parallel those of the

Society and who holds an academic doctorate acceptable to the Membership Commission (whether or not certified or currently registered by the Board of Registry." The "fact sheet" of information about CAP does not discuss the society's membership criteria for regular or "junior" members, but states that it is the "world's largest association composed exclusively of pathologists." CAP also has a large "Residents Forum" for medical residents.

While the petitioner did not submit evidence of his membership in the United States and Canadian Academy of Pathology (USCAP), he did submit the bylaws of this academy. Even assuming the petitioner is a member, eligible members need only a medical doctor degree, four years of training or experience and sponsorship by two members.

The petitioner also submitted a letter from the American Board of Pathology advising that the petitioner qualified for the combined Anatomic Pathology and Clinical Pathology examination. This qualification allows the petitioner to sit for the examination five times each before 2013. The record does not establish that this qualification to sit for an examination is an exclusive membership.

We are not persuaded that education (required of every member of the petitioner's profession), a specific amount of experience² or the sponsorship of current members are outstanding achievements. Thus, the evidence falls far short of meeting 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.

Counsel asserted that the petitioner's "leadership appointments and clinical expertise is testament to his extraordinary abilities and standing in the field of pathology." Even if the petitioner had demonstrated leadership appointments, such appointments are best considered under the criterion that relates to leading or critical roles pursuant to 8 C.F.R. § 204.5(h)(3)(viii), addressed below. We are not persuaded that such appointments should be presumed to meet this criterion as well, which, according to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), requires explicit evidence that the petitioner has judged the work of others.

Counsel asserted that the petitioner "judged" his subordinates, prospective employees and students. In addition, counsel asserted that the petitioner attended "Journal clubs" where he was responsible for "critically evaluating and scrutinizing scientific articles published in peer reviewed journals" and then presents these critiques. Counsel further asserted that the petitioner has performed "mock inspections" of clinical laboratory facilities and staff to assess readiness for CAP inspections. Finally, counsel asserted that the petitioner "has reviewed control slides for special stains to evaluate and judge the histo-technologist performed the stain in a satisfactory manner or not," requesting a repeat procedure from the tech where necessary. As stated above, the unsupported assertions of counsel do not

² Even ten years of experience is only potential partial evidence of eligibility for the lesser classification of exceptional ability pursuant to section 203(b)(2) of the Act. 8 C.F.R. § 204.5(k)(3)(ii)(B).

constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The petitioner submits an electronic mail message from a second year fellow working on submitting a case of cryptococcal meningitis for the IDSA Fellows Day seeking help finding pictures of a specific stain. The message appears to be within the internal webmail service of Tufts, suggesting no recognition of the petitioner beyond the institution where he works. The petitioner also submitted a letter to the petitioner from [REDACTED], Curriculum Coordinator at Tufts University, providing the petitioner with his room assignment for a lecture. Once again, this lecture is not evidence of the petitioner's recognition beyond the institution where he works. Another Tufts University internal webmail electronic mail message thanks the petitioner for making an "M&M" conference worthwhile and for his effort with the slides and reviewing the bone marrow biopsy during a case presentation. The petitioner provided a list of several lectures and presentations at Tufts Medical Center where he is employed. The petitioner also submitted copies of his Blood Bank Transfusion Services (BBTS) Journal Club presentation and evaluation (including the question "Is this something we should adopt?"), but no evidence of the scope of this club. The petitioner's list of presentations lists his Journal Club presentation on Hematopathology as a presentation at Tufts Medical Center for the Pathology Staff. Presentations at a local club at the petitioner's own institution designed to improve the institution's transfusion services do not demonstrate his national or international recognition. Finally, the petitioner submitted three reviews of pathology residence program candidates for the Tufts-New England Medical Center and a Mock CAP inspection form completed by the petitioner.

The evidence to meet this criterion, or any criterion, must be indicative of or consistent with national or international acclaim if that criterion is to have any meaning. *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). We cannot conclude that the inherent duties of a first line supervisor or lecturer at a teaching hospital can serve to meet this criterion. The evidence submitted to meet this criterion is not suggestive of any recognition outside the institutions where the petitioner has worked. Thus, the evidence of record falls far short of meeting this criterion.

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

Counsel asserted that the petitioner meets this criterion based on the following: (1) his "rare" specialization in both anatomic and clinical pathology, (2) his ability to perform the "modern investigative technique" and "integral tool" known as flow cytometry, (3) his "reputation as one of the most foremost experts in immunohistochemistry" that distinguishes between different types of cancer cells on a slide, (4) his expertise in hematopathology, (5) his case study showing an enlarged lymph node was a rare form of lymphoma, (6) "mastery of many of the most complex procedures in pathology" and (7) his "rare and unique ability to diagnose pathologic conditions from a unique clinical perspective, which very few if any pathologists in the United States, can claim." As stated above, the

unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be both original and of major significance. To be considered "original," the petitioner must have contributed something new rather than merely have mastered an existing procedure, regardless of how complex that procedure may be. To be considered a contribution of *major significance* in the field of medicine, it can be expected that the results would have already demonstrably impacted the treatment of patients beyond the institutions where the petitioner has worked.

We acknowledge that the petitioner has presented three case studies which have been published as abstracts in pathology journals. The regulation at 8 C.F.R. § 204.5(h)(3)(vi) sets forth a separate criterion for published scholarly articles. We cannot conclude that evidence relating to that criterion is presumptive evidence to meet this separate criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence and the regulatory requirement that the petitioner meet at least three regulatory criteria. While the petitioner submitted materials about the journals in which the abstracts appeared, we will not presume the influence of an abstract from the journal in which it appeared. The record contains no evidence that the petitioner's abstracts have been extensively cited or otherwise proven influential.

The petitioner also submitted several reference letters. 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 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.

██████████, a professor of pathology at Tufts University School of Medicine, asserts that he interacts daily with the petitioner. ██████████ recites the petitioner's credentials and asserts broadly that he is extraordinary. While ██████████ discusses the complex procedures the petitioner has mastered he does not explain how the petitioner's mastery of previously utilized techniques is "original." ██████████ also does not provide a single example of how the petitioner's work has impacted the field as a whole.

██████████, an assistant professor of pathology at Tufts University Medical School, asserts generally that the petitioner has "led many landmark research studies that have been published in the most notable medical journals." While we do not question ██████████ sincerity, ██████████ provides no explanation as to how these studies were "landmark" studies. For example, ██████████ does not provide examples of other independent hospitals that have changed their procedures based on the petitioner's studies or coverage of these studies in medical or general media. 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). More specifically, ██████████ discusses the petitioner's case study showing that primary renal lymphoma can be diagnosed on percutaneous needle biopsies and lymphoma involving the kidney should be suspected in renal failure patients with elevated serum immunoglobulin/cryoglobulin levels. While ██████████ asserts that this study has had "a major impact on our current understanding of primary renal lymphomas and their early diagnosis by minimally invasive procedures," ██████████ does not provide examples of independent hospitals who have incorporated this study into their guidelines, course curricula at independent universities listing the abstract of this study as required reading or equivalent examples of the impact of this study.

██████████, an associate professor of pathology and ophthalmology at Tufts Medical Center provides a similar letter, making broad assertions about the petitioner's talent and notoriety without providing specific examples of how the field has been impacted by the petitioner's work beyond a single patient where the petitioner disagreed with the consensus and was proven correct. While we do not contest the significance of this example to the individual patient, additional evidence is required to demonstrate how this diagnosis has impacted the field as a whole.

The record also includes a letter from ██████████, Director of Hematopathology at Allegheny General Hospital. ██████████ is not an independent reference as his curriculum vitae confirms that he was a pathology resident at Tufts Medical Center at the same time as the petitioner. ██████████ asserts that "many expert pathologists" at the USCAP conference remarked that the petitioner's renal lymphoma study would "significantly change the way" they would work up lymphoid infiltrate in kidney biopsies in the future. The record lacks letters from any of these "expert pathologists." The record contains a similar letter from another former Tufts Medical Center resident and Brigham & Women's Hospital fellow.

The petitioner also submitted a letter from an independent reference who claims to have reviewed the petitioner's work and credentials in order to render an opinion. This reference, however, does not claim to have ever heard of the petitioner or his work prior to being requested for a reference letter.

While the petitioner's ability to master complex techniques has clearly impressed his immediate circle of colleagues and earned him prestigious training opportunities, it does not follow that every pathologist who masters complex techniques and presents case studies of correct diagnoses has inherently made a contribution of major significance to the field as a whole.

In light of the above, the evidence falls far short of meeting this criterion.

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

Counsel asserted that the petitioner "has demonstrated his excellence as one of the most heralded physician-scientists through his numerous academic projects and research presentations." We reiterate that the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The petitioner submitted cases studies published as abstracts in *Modern Pathology* (based on a USCAP 2008 conference), *Archives of Pathology & Laboratory Medicine* (based on a 2006 CAP conference) and the *Journal of Clinical Apheresis* (based on a 2006 American Society for Apheresis (ASFA) conference). The petitioner also provided a list of lectures and presentations given at Tufts Medical Center where he is employed. The petitioner also submitted two unpublished manuscripts.

As stated above, the evidence submitted to meet a given criterion must be indicative of or at least consistent with national or international acclaim if that statutory standard is to have any meaning. The record lacks evidence that the petitioner's publications have been particularly influential, such as evidence that they are cited within the field. The petitioner has not even established that the quantity of his publications sets him apart from others in the field. For example, the petitioner submitted the curriculum vitae of one of his references, [REDACTED]. Within eight years of obtaining her medical degree (this petition was filed eight years after the petitioner received his medical degree), [REDACTED] had authored seven full length articles, three book chapters and 19 abstracts.

Even if we concluded that the petitioner's authorship of abstracts alone served to meet the plain language of this criterion, and we do not, the evidence falls far short of meeting any other criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

We have already considered the petitioner's alleged contributions in the field above pursuant to the criterion set forth at 8 C.F.R. § 204.5(h)(3)(v). At issue for this criterion are the nature of the roles the petitioner was selected to fill and the reputation of the entities that selected him for those roles. In other

words, the nature of the role must be such that the petitioner's very selection for the role, in and of itself, is indicative of or consistent with national or international acclaim.

Counsel asserted:

[The petitioner] is part of a very small minority of pathologists who have achieved an extraordinary level of expertise because of his clinical and diagnostic abilities. Only the top physicians choose to specialize in pathology, as the specialty is one of the most complex and difficult medical fields in medicine. Of this elite group, [the petitioner] is one of the best. . . . Due to the shortage of physicians with [the petitioner's] high degree of expertise in pathology, there is a dire need for pathologists, especially those who specialize in **Anatomic and Clinical Pathology** emphasizing **Hematopathology**, in the United States. Extraordinary pathologists like [the petitioner] play an important and critical role at medical institutions across the country.

(Emphasis in the original.) Counsel appears to be presuming the petitioner's extraordinary ability in order to establish the petitioner's leading or critical role rather than relying on the nature of his role as evidence of his extraordinary ability. The director concluded that a shortage in a field did not demonstrate the extraordinary ability of those within the field. On appeal, counsel acknowledges that a shortage alone can not demonstrate eligibility for this classification but asserts that the shortage should be taken into account as evidence of the importance of the petitioner's work and its national impact.

The issue of whether a shortage exists falls under the jurisdiction of the Department of Labor. *New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Comm'r 1998). Nevertheless, the projections submitted by the petitioner do not support her position. The petitioner submitted data generated in 2000 purportedly from the U.S. Department of Health and Human Services (HHS) projecting the number of pathologists in 2005 as 20,970 and in 2010 as 21,580. Another chart, Exhibit 30, projects physician requirements for pathologists as 18,400 in 2005 and 19,800 in 2010, less than the number of actual pathologists projected in both years. Even the "high economic growth series" requirements chart, Exhibit 32, projects a need for only 18,000 in 2005 and 21,000 in 2010. While the high economic growth series projects a need for more pathologists in 2010 than are projected to exist in that year, the difference is only 580. Moreover, the petition was filed in 2008.

Regardless, a shortage in a given field does not establish that every member of the field is playing a leading or critical role within that field such that the role distinguishes him from other practitioners in that field.

More specifically, counsel notes that the petitioner is a house staff physician in the Department of Pathology at Tufts Medical Center, served a one-month fellowship at AFIP, and a one-year fellowship at the M.D. Anderson Cancer Center. While the petitioner submitted evidence that these institutions enjoy distinguished reputations, the petitioner has not satisfactorily demonstrated that his role for any of these institutions was leading or critical beyond the need for the institute to employ a competent

pathologist. The petitioner's fellowships were both training opportunities. We are not persuaded that a trainee performs in a leading or critical role for the training institution. As the most experienced and renowned pathologists do not compete for trainee positions, such a role cannot set the petitioner apart from other pathologists, including those at the top of the field. The petitioner did not submit an organizational chart or other evidence demonstrating where the role of house staff physician fits within the hierarchy of Tufts Medical Center.

In light of the above, the evidence falls far short of establishing that the petitioner meets this criterion.

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 have 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 house staff physician and pathologist 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 house staff physician and pathologist, 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.