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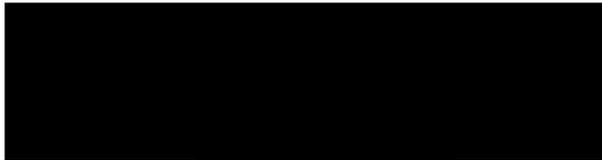
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

B2



FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: APR 07 2010
SRC 08 173 52192

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).

S. Maigle
Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences.¹ The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

I. Law

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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be

¹ At the time he filed the petition, the petitioner indicated that he was in the United States as an F-1 nonimmigrant student.

established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten criteria.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) 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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification, *Kazarian v. USCIS*, 2010 WL 725317 (9th Cir. March 4, 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.² With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate

² Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent “final merits determination.” *Id.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that “the proper procedure is to count the types of evidence provided (which the AAO did),” and if the petitioner failed to submit sufficient evidence, “the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded).” *Id.* at *6 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the “final merits determination” as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2), and “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered “sustained national or international acclaim” are eligible for an “extraordinary ability” visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at *3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under three criteria, considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

This petition, filed on May 6, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a neurobiology researcher. At the time of filing, the petitioner was working as a postdoctoral researcher in the Department of Neurobiology at Harvard Medical School. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).³

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

The petitioner initially submitted an April 13, 2007 letter from the Marine Biological Laboratory (MBL) in Woods Hole, Massachusetts stating that he was awarded scholarships from the Caswell

³ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Grave Scholarship Fund, the Herbert W. Rand Fellowship and Scholarship Fund, and the Milton L. Shifman Endowed Scholarship to attend the MBL's "Neural Systems & Behavior course." Academic study is not a field of endeavor, but training for a future field of endeavor. Accordingly, course scholarships cannot be considered prizes or awards for excellence in the petitioner's field of endeavor. Moreover, competition for scholarships is limited to other students applying for the same funding. In this instance, there is no evidence showing that the petitioner's scholarships from the Caswell Grave Scholarship Fund, the Herbert W. Rand Fellowship and Scholarship Fund, and the Milton L. Shifman Endowed Scholarship equate to nationally or internationally recognized prizes or awards for excellence in neurobiology.

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.

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

The petitioner submitted a certificate stating that he was elected a member of Sigma Xi in 2007. The materials about Sigma Xi submitted by the petitioner reveal that Sigma Xi invites to full membership "those who have demonstrated noteworthy achievements in research. Each year the Society initiates nearly 5,000 new members." These achievements "must be evidenced by publications, patents, written reports or a thesis or dissertation, which must be available to the Committee on Admission if requested." A noteworthy achievement is not necessarily an outstanding achievement. We cannot conclude that primary authorship of one or two papers equates to outstanding achievements.⁴ In this

⁴ For "Biological Scientists," the Department of Labor's Occupational Outlook Handbook, 2010-11 Edition (accessed at <http://www.bls.gov/oco/>), states that a "solid record of published research is essential in obtaining a permanent position involving basic research." See <http://data.bls.gov/cgi-bin/print.pl/oco/ocos047.htm>, accessed on March 25, 2010, copy incorporated into the record of proceeding. The handbook also provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See <http://data.bls.gov/cgi-bin/print.pl/oco/ocos066.htm>, accessed on March 25, 2010, copy incorporated into the record of proceeding. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that publishing original research, whether arising from research at a university or private employer, is an expectation in the petitioner's field rather than evidence of "outstanding achievements."

instance, the submitted documentation does not establish that Sigma Xi requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one. Accordingly, 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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.⁵

The petitioner submitted citation evidence showing approximately forty cites to his three published articles. Regarding the scientific articles that merely reference the petitioner's published work, we note that the plain language of this regulatory criterion requires that the published material be "about the alien." In this case, the articles citing to the petitioner's work are primarily about the authors' work, not the footnoted material identifying the petitioner. With regard to this criterion, a footnoted reference to the alien's work without evaluation is of minimal probative value. Further, we note that the articles citing to the petitioner's work similarly referenced numerous other authors. The submitted citations to the petitioner's work do not discuss the merits of his work, his standing in the field, any significant impact that his work has had on the field, or any other aspects of his work so as to be considered published material about the petitioner as required by this criterion. Instead, these citations are more relevant to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) and will be addressed there.

The petitioner submitted an editorial preview article in *Neuron* and an "Editor's Choice" article in *Science STKE*, but neither article was about the petitioner. As previously noted, the plain language of this criterion requires "[p]ublished material about the alien." The petitioner also submitted a brief mention of him in the "Beaker bytes" section of *Children's News Online*, a newsletter posted on the internet site of Children's Hospital Boston. This author of this material was not identified and there is no evidence showing that this institutional newsletter qualifies as a professional or major trade publications or some other form of major media. The petitioner's initial submission also included pages from Harvard Medical School's 2007-2008 Biological and Biomedical Sciences Rotation Manual. The petitioner is credited with photographing the cover image for the manual, but there is no evidence showing that any portions of the manual included material about him.

⁵ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

The petitioner claims to have submitted an April 2005 press release from the Press Room of Children's Hospital Boston, but record does not include a copy of this article. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Nevertheless, a press release is a written communication directed at the news media for the purpose of announcing information claimed as having news value rather than "published material . . . in professional or major trade publications or other major media." We cannot conclude that a press release, which is not the result of independent media reportage and which is sent to journalists in order to encourage them to develop articles on a subject, meets the plain language of this regulatory criterion.

In light of the above, the petitioner has not established 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 submitted documentation indicating that he peer reviewed one manuscript submitted to *International Journal of Cancer* and four papers submitted to the *Journal of Biological Chemistry*. Accordingly, the petitioner's evidence appears to meet the plain language of this regulatory criterion. However, certain deficiencies pertaining to this evidence were noted by the director. These deficiencies will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor.

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

The petitioner submitted several letters of support discussing the impact of his Ph.D. research under the guidance of [REDACTED] of Neurology and Neurobiology at Harvard Medical School, and Director of the Division of Neuroscience at Children's Hospital Boston.

[REDACTED] states:

As his Ph.D. advisor, I am very familiar with [the petitioner's] expertise

* * *

My laboratory is highly regarded in the field of molecular neurobiology

* * *

Research in my laboratory at Harvard Medical School has focused on identifying the mechanisms by which extracellular stimuli trigger cellular responses that are critical for neural circuit assembly in the developing nervous system, and for the adaptive responses of neurons in the mature nervous system. . . . While pursuing his Ph.D., Dr. [the petitioner] performed groundbreaking research in my lab that has significantly impacted the field of neurobiology. He is a co-first author of an article published in one of the most prestigious journals in the field of neuroscience, *Neuron* (2005).

* * *

It has been known that cells synthesize an inhibitory protein called ephrin, which binds to a receptor called Eph on the axon's growth cone. However, how this triggers the axon to change course or stop growing has been a mystery. In fact, very little has been known about the inner workings of the cell that govern axon guidance.

A breakthrough came when [the petitioner] revealed important insights into how inhibitory cues affect the growth cone, and his valuable research has opened the door to understanding how the various steps of axon guidance are controlled. He discovered that when ephrin binds to Eph receptors on the axon, it activates a protein called Vav2 in the cell's growth cone. Activation of Vav2 induces the cell to engulf the ephrin-Eph complex, breaking the bond between the cell and the repelling the axon, causing it to turn away. . . . During the course of the project, [the petitioner] developed a new method that could efficiently trace neural connections from the eye to the mid-brain in living animals. This method is now widely used in a number of laboratories. [The petitioner] spearheaded the entire project and made essential and indispensable contributions to the study. He was indeed key to its success, and therefore was one of the co-first authors when these discoveries were reported in an article in *Neuron*

[redacted] of Pathology and Cell Biology, and Neuroscience, Columbia University, states:

[The petitioner's] study discovered an intracellular signaling mechanism that determines the midline choices of retinal axons. [The petitioner] was able to demonstrate that activation of a molecule, Vav, by the Eph receptors that normally help axons to remain on the same side of the brain and not to cross over the midline, was able to prevent the midline crossing of ipsilaterally projecting axons. Therefore, the signal pathway identified in [the petitioner's] study plays a key role in establishing the fundamental functional organization of the mammalian visual system.

Moreover, [the petitioner] identified possible targets within axons, Vav proteins, which could be blocked to overcome growth inhibition. Under normal circumstances, mature retinal ganglion cells (RGCs) cannot regenerate their axons after optic nerve damage and begin to die. [The petitioner's] finding may provide novel targets for therapeutic intervention so that injured RGCs can regenerate their axons through the inhibitory environment of the optic

nerve. The petitioner's research has stunning ramifications with respect to developing therapeutic treatments for brain and spinal cord injuries and disorders. His work was published in the leading international scientific journal, *Neuron* (2005). This article has been cited 39 times thus far.

statement is supported by an ISI Web of Knowledge citation index reflecting 39 cites to the petitioner's article in *Neuron* as of the petition's filing date.

in the Department of Neuroscience at the University of Pennsylvania, states:

[The petitioner's] landmark doctoral research at Harvard Medical School, he revealed a general signal transduction mechanism for axon guidance. He identified the missing link between surface Eph receptors and cell motility machinery, which has been an outstanding question in the axon guidance field for some time. [The petitioner's] findings also help resolve the paradox of how an adhesive receptor-ligand interaction generates a repulsive cellular response. Ephrin-Eph receptor interaction initially mediates cell-to-cell contact. However, this interaction usually leads to subsequent repulsive responses of the axonal growth cones. [The petitioner's] research uncovered the significance of Vav-mediated endocytosis in switching the adhesive interaction to the repulsive response.

* * *

[The petitioner's] findings have greatly accelerated research in related fields and have had a direct impact on my research.

These remarkable findings of [the petitioner] were published in . . . *Neuron* (2005).

, Department of Molecular Neurobiology, Max Planck Institute of Neurobiology, Germany, states:

My knowledge of [the petitioner] stems primarily from his first author article that was published by the prestigious journal, *Neuron* (2005).

* * *

[The petitioner's] research results are the first to demonstrate the signaling mechanism of Eph-mediated endocytosis in axon guidance. These findings have opened up a new field of research.

The citation evidence submitted by the petitioner and the independent testimonials from individuals such as professors , and are adequate to demonstrate that the petitioner's findings pertaining to the signaling mechanism of Eph-mediated endocytosis in axon guidance are an

original contribution of major significance in his field. Accordingly, we concur with the director's finding that the petitioner meets this criterion.

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

The petitioner submitted evidence that he coauthored three articles in *Acta Crystallographica* (2001), *Chinese Science Bulletin* (2001), and *Neuron* (2005).⁶ Accordingly, we concur with the director's finding that the petitioner meets this criterion.

In this case, the petitioner has submitted evidence that qualifies under three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3).

B. Final Merits Determination

Thus, in accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). See also *Kazarian*, 2010 WL 725317 at *3. In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

The record reflects that the petitioner received his Bachelor of Science degree in Biology from Tsinghua University in 2000. Prior to his beginning his Ph.D. studies at Harvard University in 2000, the petitioner coauthored two journal articles while working in the Laboratory of Structural Biology at Tsinghua University. According to the citation history submitted by the petitioner, neither of these articles published in 2001 in *Acta Crystallographica* and *Chinese Science Bulletin* was independently cited. Rather, each article was cited to only twice by the petitioner or his coauthors.⁷ Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. While pursuing his Ph.D. under the guidance of [REDACTED] at Harvard University, the petitioner coauthored his only frequently cited article, which was published in *Neuron* in 2005. The petitioner received his Ph.D. in 2007 and then accepted a postdoctoral fellow position in the Department of Neurobiology at Harvard Medical School, where he remained as of the date of filing.

With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(iv), we cannot conclude that the petitioner's occasional participation as a manuscript reviewer demonstrates a level of expertise

⁶ Aside from the petitioner's article in *Neuron* in 2005, none of his other two articles were frequently cited by independent researchers.

⁷ The citation evidence submitted by the petitioner indicates only self-cites to these articles by the petitioner or his collaborators Hongzhen He and Yi Ding.

indicating that he is among that small percentage who have risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2). Peer review of manuscripts is a routine element of the process by which articles are selected for publication in scientific journals. Occasional participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of researchers who publish themselves in scientific journals. Normally a journal's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask several reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has received and completed independent requests for review from a substantial number of journals or served in an editorial position for a distinguished journal in the same manner as his references, we cannot conclude that the petitioner's level of peer review is commensurate with sustained national or international acclaim at the very top of the field of endeavor.

For example, [REDACTED] states:

I have served on the Editorial Boards of the *Journal of Neuroscience*, *Perspectives on Developmental Neurobiology*, *Journal of Neurocytology*, *Experimental Neurology*, and the *Journal of Comparative Neurology* (2000-2003). . . . I have also been a Reviewing Editor for the *Journal of Neuroscience* (2000-2003) and the *Journal of Neurocytology* (2000-2004). I am a Reviewer for *Nature*, *Science*, *Cell*, *Neuron*, *Nature Neuroscience*, *Development*, *Developmental Biology*, *Mechanisms of Development*, *Journal of Neurobiology*, *Neuroscience*, *PNAS*, *European Journal of Neuroscience*, *Trends in Neuroscience*, and *Journal of Comparative Neurology*.

[REDACTED] states:

I serve or have served on the Editorial Boards of *Neuron*, *Molecular and Cellular Biology*, *Learning and Memory*, *Molecular and Cellular Neuroscience*, *Progress in Neuroscience*, *NeuroMolecular Medicine*, and *Experimental Cell Research*. I have also served as the Chair of the National Institutes of Health Neurology C Study Section, in which federal funding of Neurobiology research is decided.

[REDACTED] curriculum vitae reflect that he has served on the editorial boards of *Neurogenerative Diseases*, *Current Opinion in Neurobiology*, *Genes & Development*, and *Molecular and Cellular Neuroscience*. Moreover, [REDACTED] curriculum vitae reflect that he has served on the editorial boards of *Journal of Neuroscience Research* and *Neurosignal*, as a grant reviewer for at least eleven scientific institutions, and as a journal reviewer for more than twenty distinguished journals. [REDACTED]

[REDACTED] curriculum vitae reflect that he has performed manuscript reviews for more than ten journals. Further, [REDACTED] curriculum vitae reflect that he has served on the editorial boards of more than a dozen journals. In addition, [REDACTED] curriculum vitae reflect that she was the Senior Editor for the *Journal of Virology* and served on the editorial boards of numerous

other journals. Finally, the curriculum vitae for [REDACTED] reflect that he serves on the editorial boards of *Journal of Cell Biology* and *Cell*. Thus, we cannot conclude that the petitioner's peer review of a manuscript submitted to *International Journal of Cancer* and four papers submitted to the *Journal of Biological Chemistry* is commensurate with sustained national or international acclaim in neurobiology, or being among that small percentage at the very top of the field of endeavor.

With regard to the documentation submitted for 8 C.F.R. §§ 204.5(h)(v) and (vi), we cannot ignore that the petitioner's last significant research achievement was his co-authorship of the article published in *Neuron* in April 2005, more than three years prior to the petition's May 6, 2008 filing date. We cannot conclude that the petitioner's meager publication record of only three journal articles in the decade preceding the petition's filing date is commensurate with sustained national or international acclaim in neurobiology, or being among that small percentage at the very top of the field of endeavor. In contrast, [REDACTED] states: "I have written more than 80 papers that have been published in leading peer-reviewed scientific journals. Other publications include 30 reviews, chapters and editorials and a chapter in the most widely-used textbook for medical students, in *Neural Science*." [REDACTED] curriculum vitae reflect that he has authored more than 121 journal articles. The petitioner's research supervisor, [REDACTED] states that he "has published 137 papers in high impact peer-reviewed journals." Moreover, [REDACTED] states: "Over the course of my career, I have published at least 135 peer-reviewed papers in such leading journals as *Cell*, *Science*, and *Nature*." Finally, [REDACTED] states: "I have well over 300 publications to my name, including research papers, reviews, and book chapters." Subsequent to the 2005 article in *Neuron*, the petitioner has not submitted evidence of any significant published findings in the three years immediately preceding the petition's filing date. Accordingly, the petitioner has not demonstrated that his national or international acclaim in neurobiology has been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. §§ 204.5(h)(3)(v) and (vi) is not consistent with sustained national or international acclaim as of the date of filing this petition and there is no further evidence under these criteria or any other criteria documenting the petitioner's more recent national or international acclaim as a neurobiology researcher.

In this case, 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. See 8 C.F.R. § 204.5(h)(2). The petitioner, a postdoctoral researcher, relies primarily on his occasional service as a peer reviewer, his limited publication record including an article he coauthored with [REDACTED] in *Neuron* in 2005, and the praise of his references. For comparison, aside from [REDACTED] comments regarding his extensive publication record and editorial positions for distinguished journals, [REDACTED] states:

I am Professor of Neurology and Neurobiology at Harvard Medical School and Director of the Division of Neuroscience at Children's Hospital at Boston. . . . I have received many distinguished awards in my career, including the McKnight Scholars Award in Neuroscience (1990-1993), the American Cancer Society Faculty Research Award (1991-1996), the Japan Society for the Promotion of Science Fellowship (1995), the McKnight Innovation in Neuroscience Award (1999-2001), the Jacob Javits Neuroscience Award (1999-2006), Ellison Medical Foundation Senior Scholars Award (2000), election to the American

Academy of Arts and Science (2003), McKnight Neuroscience of Brain Disorders Award (2004), and the Edward M. Skolnick Prize in Neuroscience (2006). I am an elected Member of the American Society for Microbiology, the American Association for the Advancement of Science, and the Society for Neuroscience.

Aside from her extensive publication record and editorial positions for distinguished journals, [REDACTED] discusses her other achievements:

I currently hold the title of Professor of Pathology and Cell Biology and Neuroscience. . . . I joined the faculty of Columbia University, College of Physicians and Surgeons, in 1987 as an Associate Professor of Pathology, and Anatomy and Cell Biology, in the Center for Neurobiology, Columbia University, and became Professor of Pathology, and Anatomy and Cell Biology, in the Center for Neurobiology in 1992. My honors and awards include the Research Career Development Award, NIH (1983-1987), the Irma T. Hirschl Career Scientist Award (1983-1987), the Jacob Javits Award, NIH-NINDS ROI N527615 (1992-1999), and election as a Fellow, American Association for the Advancement of Science (2006-).

Finally [REDACTED] describes her additional achievements:

I am currently the Chair of the Department of Cell Biology at Harvard Medical School and a Professor in the same department. I have been an independent faculty member since 1979, having served on the faculties of the State University of New York at Stony Brook, University of Pennsylvania and Harvard Medical School. While at the University of Pennsylvania, I was an investigator of the Howard Hughes Medical Institute. From 1992 to 1997, I helped to found a biotechnology company (ARIAD Pharmaceuticals, Cambridge, MA) and served as its Scientific Director and Senior Vice President of Research. . . . I have received numerous awards for my scientific achievements, including election to the National Academy of Sciences, the American Association for the Advancement of Science, and the Institute of Medicine. In addition, I was awarded a Research Professorship from the American Cancer Society and a Merit Award from the National Institutes of Health. . . . I serve or have served on many national committees including the Advisory Committee to the Director of the National Cancer Institute, the Board of Scientific Advisors of the National Cancer Institute, the Council of the American Society of Cell Biology and many others.

Thus, when compared to his esteemed references, it appears that the highest level of the petitioner's field is far above the level he has attained. In stark contrast to his references, the petitioner has not established that his achievements are commensurate with sustained national or international acclaim in the biomedical research field, or being among that small percentage at the very top of the field of endeavor.

III. Conclusion

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the

small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.