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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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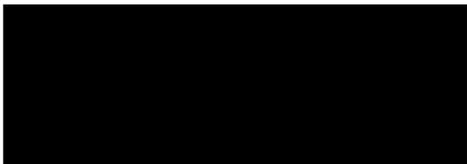


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: FEB 01 2010
WAC 08 001 50282

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).

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. The director determined 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 argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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, 60898-99 (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, filed on July 27, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a biomedical researcher. At the time of filing, the petitioner was working as a research

scientist in the Department of Immunology and Infectious Diseases, Harvard School of Public Health (HSPH). The petitioner has worked in the laboratory of [REDACTED] Professor of Immunology at the HSPH and Professor of Medicine at Harvard Medical School, since 2001.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to 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.

The petitioner submitted documentation indicating that he was among four recipients of a "Career Development Award" from the Dana-Farber/Harvard Cancer Center (DF/HCC) Specialized Program of Research Excellence [SPORE] in Multiple Myeloma in 2004-2005. Information submitted by the petitioner about this Career Development Award states:

The goal of the Career Development Program of our Myeloma SPORE is to . . . establish a formal process for the identification, selection, funding, and mentoring of individuals pursuing careers in the study of the basic and clinical aspects of myeloma. These awards will facilitate the development of physicians, physician scientists, clinical investigators, and scientists in training within the Myeloma SPORE Program towards faculty status. Thus, candidates will be junior faculty or fellows and postdoctoral fellows within the various training programs across DF/HCC and participating institutions It is our goal to attract, mentor, and assure the success of several candidates within the timeframe of this SPORE. Success will be defined as the development of physician/scientists in training towards careers as independent investigators.

The petitioner's selection for an award limited by its terms to "junior faculty or fellows and postdoctoral fellows within the various training programs across DF/HCC and participating institutions" is not an indication that he is among "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced

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

competition from throughout his field, rather than competition limited to “physician/scientists in training” affiliated with the DF/HCC. Receipt of an award limited to those in the developmental stage of their career offers no meaningful comparison between the petitioner and experienced scientists in the field who have long since completed their advanced research training and who have already achieved “independent investigator” status. The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. For comparison, USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *See, e.g., Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.² Likewise, it does not follow that recipients of a “Career Development Award” in the training phase of their career should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”

Moreover, the petitioner’s Career Development Award from the DF/HCC reflects institutional recognition rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor. On appeal, the petitioner submits a September 20, 2007 press release entitled “[REDACTED] and DF/HCC Ovarian Cancer SPORE Honored at ‘Teal Ribbon’ Awards Ceremony” and general information about SPOREs from the internet sites of the DF/HCC and the National Cancer Institute. The preceding documentation does not mention the petitioner’s 2004-2005 Career Development Award from the DF/HCC or demonstrate that his award meets the requirements of this criterion. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that petitioner’s awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this instance, there is no documentary evidence demonstrating that the petitioner’s Career Development Award is recognized beyond the DF/HCC and therefore commensurate with a nationally or internationally recognized prize or award for excellence in the field.

The petitioner’s appellate submission includes a May 29, 2008 e-mail indicating that he received a “Scientist Development Grant” from the American Heart Association. This grant was awarded to the petitioner subsequent to the petition’s filing date. A petitioner, however, must establish

² While we acknowledge that a district court’s decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this 2008 grant approval in this proceeding. Nevertheless, the grant represents financial support for the petitioner's proposed research project rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor. We note that research grants simply fund a scientist's work. A substantial amount of scientific research is funded by research grants from a variety of public and private sources. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the researcher are a factor in grant applications. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement. Thus, we cannot conclude that securing research grants equates to receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

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 initially submitted evidence of his "Trainee" membership in the American Association of Immunologists (AAI). There is no evidence (such as membership rules or bylaws) showing the admission requirements for the AAI's "Trainee" category. With regard to the petitioner's "Trainee" membership, we cannot conclude that such a designation is an indication that he "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). As discussed previously, the petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

On appeal, the petitioner submits a May 20, 2009 letter from the American Society for Biochemistry and Molecular Biology (ASBMB) stating that he was "accepted to Regular membership" and that his membership would become active after his payment was processed. As previously discussed, a petitioner, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's 2009 ASBMB membership in this proceeding. Nevertheless, the admission requirements for the ASBMB

submitted on appeal state that Regular membership is “[a]vailable to any individual who holds a doctoral degree and who has published, since the receipt of a doctoral degree, at least one paper in a refereed journal devoted to biochemistry and molecular biology. The applicant must also be sponsored by one Regular member of the Society.” As publication is inherent to the petitioner’s research field and to doctoral training programs, we cannot conclude that holding a doctorate and publishing a single paper in a refereed journal equate to outstanding achievements.³

In this case, there is no evidence showing that AAI and the ASBMB require outstanding achievements of their 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.⁴

The petitioner submitted citation indices from ISI Web of Knowledge demonstrating hundreds of cites to his 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

³ 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 January 13, 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 January 13, 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, does not set the researcher apart from faculty in that researcher’s field or otherwise equate to outstanding achievements.

⁴ 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 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)(vi) and will be addressed there.

On appeal, the petitioner submits an April 2003 press release posted on the internet site of *Nature Immunology* entitled "Anti-body producing cells need stress." This press release discusses research findings reported in a *Nature Immunology* article authored by the petitioner and five others, but it is not about the petitioner. 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.

The petitioner submits an October 15, 2004 review article in *Science* entitled "Insulin Resistance Takes a Trip Through the ER." This article cites to an article coauthored by the petitioner and to nine additional research articles authored by other scientists, but it does not specifically mention the petitioner.

The petitioner submits a June 12, 2008 article by [REDACTED] of *HealthDay News* entitled "Scientists Discover Protein Involved in Fat Production" that was posted on the internet sites of *U.S. News & World Report*, *The Washington Post*, *MedicineNet.com*, and *healthfinder.gov*. The petitioner also submits a June 14, 2008 article entitled "Unexpected Finding of Molecule's Dual Role in Mice May Open New Avenue To Cholesterol Production" posted at *medicalnewstoday.com*,⁵ but the article only mentions his name in passing. The petitioner's appellate submission also includes articles posted on the Harvard School of Public Health internet site on July 3, 2008 and September 12, 2008, but this material is not primarily about the petitioner. The petitioner also submits a September 5, 2008 article posted on the internet site of *Drugs.com*, but the article only mentions the petitioner's name in passing.

The petitioner submits a September 5, 2008 preview article in *Cell* entitled "Unresolved ER Stress Inflames the Intestine." This article cites to two articles coauthored by the petitioner and to seven additional research articles authored by other scientists, but it is not about the petitioner. The petitioner also submits a February 12, 2009 article in *New England Journal of Medicine* entitled "Inflammatory Bowel Disease, Stress, and the Endoplasmic Reticulum." The article cites to two articles coauthored by the petitioner and to three additional research articles authored by other scientists, but it is not about the petitioner. The petitioner's appellate submission also includes an article in the November 2008 issue

⁵ The article was adapted from an original press release issued by the Harvard School of Public Health.

of *Nature Reviews Immunology* entitled “Mismanaged ER stress and inflammation.” This article discusses research findings published by the petitioner and his collaborators, but it only mentions his name in a citation at the conclusion of the article. The petitioner also submits a June 13, 2008 review article in *Science* entitled “Unfolding Lipid Metabolism” that previews a research article by the petitioner included in the same issue. Finally, the petitioner submits a seven-sentence piece entitled “Unfolded liver” in the July 2008 issue of *Nature Medicine*.

The preceding articles from June 2008 and later post-date the filing of this petition. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider material published subsequent to July 27, 2007 in this proceeding.

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 regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” The evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with sustained national or international acclaim.⁶ A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

In her July 25, 2007 letter accompanying the petition, [REDACTED] states:

Another indication of [the petitioner’s] extraordinary abilities includes receiving invitations to review the research of others from his scientific peer community. He supervised a research assistant and currently provides guidance for postdoctoral fellows in the laboratory. [The petitioner] participated in the review of manuscripts by other scientists for many journals, such as *Immunity*

The plain language of this regulatory criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others in the same or an allied field of specification.” With regard to the petitioner’s supervision of a research associate and his guidance of postdoctoral fellows in the laboratory of [REDACTED] at the HSPH, we cannot conclude that such supervisory duties equate to judging the work of others in the field for purposes of this criterion. For instance, internal review of

⁶ We note that although not binding precedent, this interpretation has been upheld in *Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006) and *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

student work is not indicative of or consistent with national or international acclaim and, thus, cannot serve to meet this criterion. *See, e.g., Kazarian v. USCIS*, 580 F.3d 1030, 1035 (9th Cir. 2009). Moreover, we note that [REDACTED], rather than the petitioner, is the final authority on issues relating to the researchers in her laboratory. We further note that not one of the letters of support, including the letter from [REDACTED] refers to the petitioner as serving as a “judge” of the work of others in the field. While the petitioner may supervise and guide subordinate researchers within the confines of [REDACTED] laboratory, such duties are inherent to his position and are not commensurate with sustained national or international acclaim at the very top of his field.

Regarding [REDACTED] claim that the petitioner “participated in the review of manuscripts by other scientists for many journals,” the record does not include evidence originating from the editorial staff of those journals to corroborate [REDACTED] assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. The petitioner has not established that evidence of the petitioner’s manuscript review participation does not exist or cannot be obtained. Further, [REDACTED] letter of support does not equate to secondary evidence or an affidavit.

Nevertheless, 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 pre-dating the filing of the petition 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,⁷ we cannot conclude 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.

⁷ For example, Dr. Vijay Kuchroo “is on the Editorial Boards of the journals *Autoimmunity* and *Journal of Experimental Medicine*.” Further, Dr. Gregory Petsko is “an editor of the *Proceedings of the National Academy of Sciences*, *Trends in Biochemical Sciences*, and . . . a founding editor of *PloS Biology*.”

The petitioner submitted letters of support discussing his original research contributions. We cite representative examples here.

██████████ Professor of Microbiology and Biochemistry & Molecular Biophysics at Columbia University College of Physicians, states:

[The petitioner's] contributions to the field of Cell Biology and Immunology are truly remarkable. In ██████████, [the petitioner] investigated the mechanisms of B cell differentiation into the antibody producing plasma cells. . . . [The petitioner's] contribution to the field of Immunology includes his discovery of the action mechanisms for the transcription factor, XBP-1, which is a master regulator of the gene expression in plasma cells. . . . [The petitioner] has shown that plasma cells require machinery to make extraordinary amount of antibody molecules, and XBP-1 is critical in this process. . . . In subsequent researches . . . [the petitioner] systematically analyzed the genes that are regulated by XBP-1 to clarify the action mechanism of XBP-1. [The petitioner] further investigated the role of XBP-1 in animal physiology, which culminated with the conclusion that XBP-1 plays an important role in professional secretory cells, increasing the capacity of the ER to handle cargo proteins, and therefore is essential for both the survival and function of these cells.

[The petitioner]'s another [sic] important scientific achievement is to demonstrate the potential mechanism of a novel class of cancer drug targeting cellular protein degradation machinery, proteasome. . . . [B]ortezomib, a proteasome inhibitor, was proven to be effective in phase II/III trials in patients with multiple myeloma and non-Hodgkin's lymphoma. [The petitioner] clearly showed that proteasome inhibitors disrupt the XBP-1 activation, which would leads to the death of the tumor cells. This discovery also suggested that compounds targeting XBP-1 pathway would be promising therapeutic agents for the treatment of multiple myeloma.

██████████ Professor of Medicine and Honorary Consultant Physician, King's College London, University of London, states: "[The petitioner] had done some of the best research on the unfolded protein response (UPR) in this field. He has described in detail the role of the transcription factor XBP-1 and has discovered a number of roles for these pathways in disease processes"

██████████ Professor, Department of Molecular Cell Biology, Sungkyunkwan University School of Medicine, South Korea, states:

[The petitioner] discovered the function of a gene that plays an essential role in the ER stress response. . . . He also suggested a novel strategy to develop anti-cancer drugs by targeting the ER stress response.

[The petitioner] has made significant contributions to the field to understand the importance of the ER stress response in various human diseases

██████████ Professor and Chair, Department of Biochemistry, Brandeis University, is an elected member of the U.S. National Academy of Sciences. ██████████ states:

Among [the petitioner's] seminal discoveries is the identification of a new gene that is critical in controlling diseases such as atherosclerosis; still another is a startling new insight into the origins of the disease known as inflammatory bowel disease, a cause of suffering for millions of people in the world. [The petitioner] is one of the world experts on the unfolded protein response (UPR), a fundamental process in all cells of higher organisms. Because of [the petitioner's] work, we now know that the UPR is a central regulator of fat synthesis in the liver, and is a major factor that links obesity, action, and type 2 diabetes.

██████████ Professor of Neurology at Harvard Medical School and ██████████ Chair in Inflammatory Diseases at the Center for Neurological Diseases, Brigham and Women's Hospital, Boston, states:

One of [the petitioner's] contributions to the field is to demonstrate that the endoplasmic stress response is activated during the plasma cell differentiation and XBP-1 capacitates the cell to produce large amounts of antibodies by inducing endoplasmic reticulum (ER) chaperone genes responsible for the maturation of antibodies in the ER.

* * *

[The petitioner] further showed that XBP-1 is also required for the development and function of other secretory organs, such as the pancreas, that produce large amounts of digestive enzymes to the small intestine, conclusively demonstrating the essential role of XBP-1 in the cellular protein secretion in general. This discovery . . . defined the role of XBP-1 in the . . . secretory cells. Recently, he has also generated a mouse strain that lacks XBP-1 in the gastrointestinal tracts.

In support of the preceding experts' statements, the petitioner submitted citation indices from ISI Web of Knowledge demonstrating hundreds of cites to his published articles. The citation records submitted initially and on appeal are solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. This evidence corroborates the experts' statements that the petitioner has made original contributions of major significance in his field. The record reflects that the petitioner's contributions are important not only to the institutions where he has worked, but throughout the greater field as well. Leading scientists from around the world have acknowledged the value of the petitioner's work and its major significance in the biomedical field. Accordingly, the petitioner has 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.

The petitioner submitted evidence of his co-authorship of numerous articles appearing in publications such as *Proceedings of the National Academy of Sciences*, *Cancer Research*, *Science*, *Immunity*, *Molecular and Cellular Biology*, and *Nature Immunology*. The petitioner also submitted evidence of his conference presentations and abstracts. As previously discussed, the record includes evidence of hundreds of articles that cite to his work. Accordingly, the petitioner has established that he meets this criterion.

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

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

On appeal, counsel argues that the petitioner performed in a leading or critical role for the HSPH. The record adequately demonstrates that the HSPH has a distinguished reputation. The petitioner submitted letters of support from [REDACTED] and others discussing his work in her laboratory, but there is no evidence showing that his role was leading or critical for the HSPH as a whole. The petitioner's evidence does not demonstrate how his role differentiated him from the other researchers in the HSPH, let alone its tenured professors and principal investigators. For example, the petitioner has not submitted an organizational chart for the HSPH showing where his position falls within the institutional hierarchy. The documentation submitted by the petitioner does not establish that he was responsible for the success or standing of the HSPH to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. Accordingly, the petitioner has not established that he meets this criterion.

In this case, we find that the petitioner meets only two regulatory criteria, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). The petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). 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. 8 C.F.R. § 204.5(h)(2). A comparison of the petitioner's position and achievements with those of his references, including his superiors at the HSPH, indicates that the very top of his field is a level above his present level of achievement. For example, [REDACTED] is a Professor of Immunology at the HSPH, a member of the U.S. National Academy of Sciences, and has served as President of the American Association of Immunologists. [REDACTED] is a Professor of Molecular Immunology and Director of the Program in Biological Sciences in Public Health at the [REDACTED]. Dr. [REDACTED] has won top awards such as the Max Planck Prize and the Pfizer Award of the American Chemical Society, serves in editorial positions for distinguished journals, is a member of the U.S. National Academy of Sciences, and Chairs the

Department of Biochemistry at Brandeis University. Thus, it appears that the highest level of the petitioner's field is well above the level he has presently attained.

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.