

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

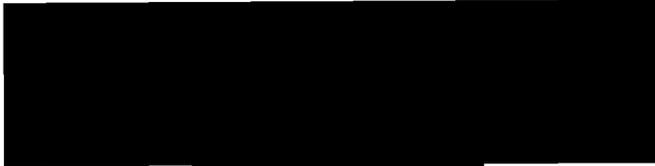
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2



FILE: [REDACTED]
SRC 08 003 51222

Office: TEXAS SERVICE CENTER Date:

MAR 08 2010

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 education. 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. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The director also determined that the petitioner had not established that her entry will substantially benefit prospectively the United States.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that her work will prospectively benefit the United States. Counsel indicated on the Form I-290B, Notice of Appeal or Motion, that a brief and/or additional evidence would be submitted to the AAO within 30 days. The appeal was filed on May 4, 2009. As of this date, more than nine months later, the AAO has received nothing further.

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.

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 she has sustained national or international acclaim at the very top level.

This petition, filed on August 9, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a physical scientist. At the time of filing, the petitioner was working in the Department of Physics at the University of Puerto Rico, Rio Piedras Campus (UPRRPC). 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 she received a Senior Research Fellowship (SRF) from the Council of Scientific and Industrial Research (CSIR) of India in 2001. The petitioner's initial submission included a July 30, 2007 letter from [REDACTED] Department of Chemistry, UPRRPC, stating that the petitioner received the preceding fellowship "for three years while she conducted her research for a Ph.D." The petitioner's CSIR Fellowship represents financial support for her advanced research training under the supervision of an experienced faculty member or scientist rather than a nationally or internationally recognized prize or award for excellence in her field of endeavor.² With regard to this fellowship for which the petitioner applied and received funding, we note that a substantial amount of scientific research is funded by 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 applicant are a factor in the fellowship application process. The funding

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

² "The EMR [Extra Mural Research] Division under HRD [Human Resources Development] Group of CSIR provide CSIR Research Fellowship and Associateships to bright young men and women for training in methods of research under the expert guidance of faculty members /scientists working in University Departments/ National Laboratories and Institutes in various fields of Science & Technology and Medical Sciences. . . . The upper age limit for SRF shall be 32 years." See <http://csirhrdg.nic.in/jrfsrfral.htm>, accessed on January 29, 2010, copy incorporated into the record of proceeding.

institution has to be assured that the fellowship recipient is capable of performing the proposed research. Nevertheless, a fellowship grant is principally designed to fund temporary scientific training and research, and not to honor or recognize past research achievements. Moreover, as experienced faculty and scientists do not compete for fellowships, we cannot conclude that the petitioner's selection for a CSIR fellowship limited to individuals age 32 and under demonstrates that she is among "that small percentage who have risen to the very top of the field of endeavor." Accordingly, we cannot conclude that having one's scientific training and research funded in this manner equates to the petitioner's receipt of a nationally or internationally recognized prize or award for excellence in her field. Receipt of such a fellowship offers no meaningful comparison between the petitioner and experienced researchers in the field who had long since completed their advanced research training.

In light of the above, the petitioner has not established that she 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 documentation indicating that she is a member of the Electrochemical Society (ECS), but there is no evidence (such as membership rules or bylaws) showing that this society requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one.³ Accordingly, the petitioner has not established that she 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.

³ "In order to join ECS you must have a bachelor's degree in natural science or engineering, or seven years' undergraduate study and relevant work experience in electrochemistry or allied subjects. For a modest annual dues payment of \$98, members receive a complete benefits package . . ." See <http://www.electrochem.org/membership/>, accessed on January 29, 2010, copy incorporated into the record of proceeding. We cannot conclude that the preceding membership requirements equate to outstanding achievements.

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

In response to the director's request for evidence, the petitioner submitted search results from Google Scholar and Scopus reflecting approximately three dozen cites to her body of work. The petitioner's evidence included examples of more than a dozen articles that reference her work. Regarding the scientific articles that merely reference the petitioner's 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 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 the petitioner's work similarly referenced numerous other authors. The submitted citations to the petitioner's work do not discuss the merits of her work, her standing in the field, any significant impact that her work has had on the field, or any other aspects of her 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.

In light of the above, the petitioner has not established that she 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.⁵ 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).

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.

⁵ 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).

In response to the director's request for evidence, the petitioner submitted a November 13, 2008 letter from the Editor-in-Chief of *Diamond and Related Materials* stating that the petitioner "served as a peer-reviewer for the journal . . . during the 2008 calendar year." The petitioner also submitted a November 10, 2008 letter from the Director of Publications for the ECS stating that the petitioner "has been invited by the ECS Journals Editorial Board to conduct reviews for the *Journal of the Electrochemical Society*. Most recently [she] was invited to and did perform the review for the following: [REDACTED] . . ." The petitioner's response included an August 28, 2008 letter from Editor-in-Chief of *Electrochimica Acta* stating that the petitioner "has collaborated as a referee to evaluate articles" submitted to his journal, but his letter does not specify the dates of the evaluations. There is no evidence showing that the petitioner has reviewed articles for the *Journal of the Electrochemical Society* and *Electrochimica Acta* as of the petition's filing date. Further, the petitioner's service as a peer-reviewer for *Diamond and Related Materials* in 2008 post-dates the filing of this petition. A petitioner, however, must establish 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 manuscript reviews completed after August 9, 2007 in this proceeding.

Even if the petitioner were to submit evidence showing that she has reviewed manuscripts for the preceding journals as of the petition's filing date, we note that peer review 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 her field, such as evidence that she has reviewed an unusually large number of articles for multiple journals or served in an editorial position for a distinguished journal, we cannot conclude that she meets this criterion.

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. We cite representative examples here.

[REDACTED] states:

[The petitioner's] doctoral research focused on the synthesis, characterization and reactivity of nickel catalysts for the hydrodechlorination of 1, 2, 4 trichlorobenzene. These niobium oxide supported nickel catalysts were reported for the first time through her publications in *Catalysis Communications* and *Journal of Molecular Catalysis*. The work done during her Ph.D. was recognized by its publication in major scientific journals and through presentations at major scientific international meetings. After the completion of her Ph.D. studies, [the petitioner] was offered a position as a postdoctoral fellow at University of Puerto Rico, Rio

Piedras Campus In the project “Synthesis of binary alloy catalysts for fuel cell applications” she published her work in a high impact factor journal *Langmuir* that was highly cited by researchers in that field.

In April 2006, [the petitioner] joined the laboratory of [REDACTED] as a Postdoctoral fellow. In this project she discovered the bamboo-like carbon nanotubes deposited on a copper substrate by hot filament chemical vapor deposition technique. Bamboo-like carbon nanotubes are currently being developed as anode materials for lithium rechargeable batteries by [the petitioner] with funding from the Department of Energy. This data will be communicated to the prestigious journal, *Journal of Electrochemical Society*. A series of papers in the area of rechargeable lithium batteries are also in the pipeline as this very important new area is further developed.

[The petitioner’s] expertise in the field of heterogeneous catalysis, characterization, instrumentation and in the area of synthesis of nano materials particularly in the area of power sources like rechargeable lithium batteries, has already had a profound influence on the field and the understanding of the mechanisms by which the bamboo like carbon nanotubes works as anode material.

While the petitioner’s research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole.

The letter from [REDACTED] states that the petitioner’s postdoctoral work in *Langmuir* “was highly cited by researchers” in her field, but the record does not support this conclusion. While the citation evidence submitted by the petitioner demonstrates some outside interest in her research findings, she has not shown that five cites to her 2006 article in *Langmuir* is an indication that her work equates to original contributions of major significance in the field.⁶ See also *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) (publications and presentations are insufficient absent evidence that they constitute contributions of *major* significance).

[REDACTED] University of Hyderabad, India, states:

I have . . . worked with [the petitioner] in University of Puerto Rico where she has been actively involved in the project “Development of anode materials for rechargeable lithium batteries” and other projects in Diamond Nanotechnology. [The petitioner] had a dynamic and result oriented role to play in the projects she handled. [The petitioner] introduced the

⁶ The Google Scholar citation history submitted by the petitioner reflects five cites to the petitioner’s 2006 article in *Langmuir* entitled “PtRu Nanoparticle Electrocatalyst with Bulk Alloy Properties Prepared through a Sonochemical Method.”

work on deposition of nanocomposite diamond thin films on copper substrates. As a result of her extraordinary capabilities and her scientific thinking [the petitioner] is managing a new project "Synthesis of bamboo like carbon nano tubes on copper substrates." These materials and bamboo like carbon nanotubes developed as anode materials by [the petitioner] for rechargeable lithium batteries is a very specialized area in materials science which requires high expertise of [the petitioner]. She has already fabricated many anode materials and coin cells for battery applications for micro batteries and capacitors. These anode materials developed in her laboratory are application oriented for renewable energy sources like rechargeable lithium batteries and semiconductor devices

* * *

[The petitioner] collaborates with me in a project "Thin films of bamboo like boron nitride carbon nanotubes and nanocomposites of diamond for microwave absorbers." These boron nitride materials are good for giving structural strength for aircraft structures. Simultaneously if they are made absorbing in the microwave frequency range they will serve also as a radar absorbing material. This endeavor requires expertise from different fields of research, which we jointly possess, and hence we are joining hands.

[REDACTED], states:

[The petitioner] is the Team Leader of an Interdisciplinary Research Group devoted to cutting-edge scientific research on Novel Nanostructured Electrodes for High Performance Rechargeable Batteries. . . . She earned this leadership role through the tangible outcomes of her research entitled "Films of bamboo-like carbon nanotubes (BCNT) as electrode material for rechargeable batteries," which led to the discovery of a new nanostructured carbon-based material that can bring a significant enhancement to the field of rechargeable batteries. This represents a new technological development in the area of thin film battery research

* * *

The BCNT electrode is one of a series of battery materials currently undergoing research and development at UPR. Under [the petitioner's] leadership, the Team is developing various types of novel electrode materials with ultra-high reversible lithium insertion capacity. These materials are synthesized, characterized, and tested under her lead and supervision. Those electrodes that achieve the benchmarks established by the National Aeronautics and Space Administration for future Aerospace Applications and Space Exploration Missions are appropriately channeled for further testing at the Agency.

* * *

[The petitioner] is currently in the process of submitting two Invention Disclosures to the UPR Intellectual Property Office, which is the first step in the process for obtaining an

invention patent from the U.S. Patent and Trademark Office. Her research project is expected to result in additional invention disclosures in the near future.

states that the petitioner's work is undergoing "the first step in the process for obtaining an invention patent from the U.S. Patent and Trademark Office." A petitioner, however, cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. at 49. Further, with regard to the two pending invention disclosures, this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm'r. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* letter does not indicate that his university or any companies have licensed or marketed the petitioner's inventions. Thus, the impact of her inventions is not documented in the record.

Department of Physics,
UPRRPC, states:

[The petitioner's] work in particular is beneficial to United States of America because she is engaged in the thin film research which is used to fabricate batteries with ultra high energy density used in hybrid electric vehicles and in batteries used in combat operations. . . . [The petitioner's] work is significantly above the line of work encountered by others in her field because she uses thin film electrodes without employing a catalyst where others in her field employ thick films which do not deliver high energy density. This is evidenced by her recent publications.

With regard to the petitioner's published and presented work as discussed by , and , the regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. We will fully address the petitioner's published and presented work under the next criterion.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the evidence indicates that the petitioner performed admirably on the research projects to which she was assigned, the submitted documentation does not establish that she has already made original scientific contributions of "major significance" in her field commensurate with sustained national or international acclaim. For example, the record does not indicate the extent to which her work has impacted others in her field

nationally or internationally, nor does it show that the field has significantly changed as a result of her work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this regulatory criterion. We note that the submitted letters are all from her superiors and collaborators who are affiliated with the UPRRPC. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish her acclaim beyond her immediate circle of colleagues. 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 (Commr. 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 795-796. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a scientist who has sustained national or international acclaim. Without evidence showing that the petitioner's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she 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 her co-authorship of articles in publications such as *Langmuir*, *Catalysis Communications*, and *Applied Catalysis A: General*. The petitioner also submitted evidence showing that she coauthored abstracts for presentation at meetings of the Electrochemical Society and the Materials Research Society. While we acknowledge that we must avoid requiring acclaim within a given criterion, it is not a circular approach to require some evidence of the scientific community's reaction to the petitioner's published work in a field where publication is expected. *See Kazarian v. USCIS*, 580 F.3d at 1036. As authoring scholarly articles is inherent to research in a university setting,⁷ we will evaluate a citation history or other evidence of the impact of the petitioner's articles when determining their significance to the field. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that other researchers have been influenced by her work and are familiar with it. On the other hand, few

⁷ The Department of Labor's Occupational Outlook Handbook, 2010-11 Edition (accessed at <http://www.bls.gov/oco/>), 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 29, 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 reinforces USCIS' position that publication of scholarly articles is not automatically evidence of sustained national or international acclaim; we must consider the field's reaction to those articles.

or no citations of an article authored by the petitioner may indicate that her work has gone largely unnoticed by her field. As previously discussed, the petitioner submitted evidence showing approximately three dozen cites to her body of work. While these citations demonstrate some interest in her published articles, they are not sufficient to demonstrate that her articles have attracted a level of interest in her field commensurate with sustained national or international acclaim. Accordingly, the petitioner has not established that she 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 her. 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.

The petitioner submitted letters of recommendation discussing her work at the UPRRPC, but there is no evidence demonstrating that the university has a distinguished reputation. Moreover, while the petitioner has performed admirably on the research projects to which she was assigned, there is no evidence showing that her role as a postdoctoral research fellow and physical scientist was leading or critical to the UPRRPC. For instance, there is no organizational chart or other evidence documenting how the petitioner fits within the general hierarchy of the UPRRPC. We note that the petitioner's postdoctoral position at the UPRRPC was intended to provide specialized research experience and training in her field of endeavor. The petitioner's evidence does not demonstrate how her subordinate position differentiated her from the other researchers employed at UPRRPC, let alone the university's tenured faculty and departmental leadership. A comparison of the petitioner's position with those of her superiors (such as [REDACTED] and [REDACTED] indicates that the very top of her field is a level above her present level of achievement. The documentation submitted by the petitioner does not establish that she was responsible for the UPRRPC's success or standing 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 she meets this criterion.

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

The petitioner submitted a July 31, 2007 letter from [REDACTED] Dean of the College of Natural Sciences, UPRRPC, stating that she earns a "salary of \$37,000" as a research scientist in the Morell-Weiner research group. The plain language of this criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that her \$37,000 salary is significantly high in relation to others in her field. Accordingly, the petitioner has not established that she meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she 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).

The director also determined that the petitioner had not established that her entry will substantially benefit prospectively the United States. The director did not specify the reasoning for this determination. As the submitted documentation demonstrates the national importance of the petitioner's field of research, we withdraw the director's finding in that regard.

Nevertheless, review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.