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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B2

[Redacted]

FILE: [Redacted]

Office: [Redacted]

Date: **APR 06 2011**

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:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Perry Rhew
Chief, Administrative Appeals Office

II. Analysis

A. Evidentiary Criteria

According to the petitioner's initial statement, this petition, filed on November 2, 2009, seeks to classify the petitioner as an alien with extraordinary ability in the field of neuroscience. The petitioner received his Ph.D. in Neuroscience from [REDACTED] in 2005. At the time of filing, the petitioner was working a postdoctoral research fellow at the [REDACTED] at [REDACTED]

[REDACTED] The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).²

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 a letter indicating that he received a [REDACTED] loan scholarship for the year 1998-99"; a 1998 Graduate Aptitude Test in Engineering Score Card reflecting a second position ranking; a "Rank Certificate" for the First Year Bachelor of Pharmacy student examination (1995) at the [REDACTED] indicating that his test results ranked first among his classmates; a "Rank Certificate" for the Second Year Bachelor of Pharmacy student examination at the [REDACTED] indicating that his test results ranked second among his classmates; a 1998 letter from the [REDACTED] indicating that he received a "Donation as an education aid for tuition fees, books, health insurance . . . at the [REDACTED] and documentation indicating that he received a \$433 [REDACTED] Scholarship for Graduate Students in Neuroscience at [REDACTED]. The petitioner did not submit evidence of the national or international *recognition* of his academic awards, such as national or widespread local coverage of the award in professional or general media. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the 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. Further, we note that eligibility for the preceding awards was limited to students. Significantly, this office has held, in a precedent decision involving a lesser classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 219, n.6 (Comm'r. 1998). Thus, academic performance is certainly not comparable to the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), designed to demonstrate an alien's eligibility for this more exclusive classification.

In response to the director's request for evidence, the petitioner states that preceding awards were submitted as "background information" and not intended to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(i). The petitioner's appellate submission does not include any arguments or

² The petitioner does not claim to meet or submit evidence relating to the categories of evidence not discussed in this decision.

evidence addressing this category of evidence. 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. 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.³

In 2007, [REDACTED] published an article coauthored by the petitioner and his Ph.D. advisor [REDACTED] Department of [REDACTED]. With regard to this regulatory criterion, the petitioner submitted a 25-page review article in [REDACTED] (2008) citing to the petitioner and [REDACTED] article in [REDACTED]. Page 513 of the review article in [REDACTED] includes a single paragraph discussing their findings on endocannabinoid signaling. The regulation at 8 C.F.R. § 204.5(h)(3)(iii), however, requires that the published material be “about the alien” relating to his work rather than simply about the petitioner’s work. Compare 8 C.F.R. § 204.5(i)(3)(i)(C) relating to outstanding researchers or professors pursuant to section 203(b)(1)(B) of the Act. It cannot be credibly asserted that the review article is “about” the petitioner relating to his work. Moreover, the review article similarly references numerous other authors.

In response to the director’s request for evidence, the petitioner states: “I understand that the favorable mention in . . . [REDACTED] is about my work, rather than about me, as required by this criterion. As a result, I realize that I do not meet this criterion.” The petitioner’s appellate submission does not include further arguments or evidence addressing this category of evidence. Accordingly, 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 in February 2009 he peer reviewed a single manuscript for [REDACTED] entitled [REDACTED]. We agree with the director that this evidence meets the plain

³ 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.

language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). However, certain deficiencies pertaining to this evidence 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 his work.

██████████ Professor in the Department of Mechanical Engineering and Director of the ██████████, ██████████ states:

Currently, [the petitioner] is working on applying nanotechnological tools developed in my lab to understand neurological disease and neuronal networks in the brain. He has already made significant progress toward this goal and has been at the forefront of setting up the lab, which has been primarily a physics lab, to perform his neuroscience-related experiments. [The petitioner] will be the first researcher in this field to apply such tools to understand human diseases like Alzheimer's disease. I have no doubt in his ability to take his research to a higher level than that of his peers. In a short span of about two years, [the petitioner] has already accomplished a lot. Not only has he set up the lab and perfected new techniques to do his experiments, but he also has been successful in obtaining some extremely promising and ground breaking results. Techniques like patch clamp, immunology and sophisticated light scanning and recording techniques are so challenging that very few people possess the competence to perform them; yet [the petitioner] is using all of them in his current work. [The petitioner] can also integrate vastly different fields like biology and engineering, which makes his talents even rarer. . . . [The petitioner's] findings in this lab will lay a sound foundation for future researchers in the field of neuroscience and provide numerous imperative tools to enable such studies. Information about neuronal networks is indispensable for understanding and treating brain-related diseases. [The petitioner's] results will thus greatly facilitate the functional study of these networks and the discovery of the mechanisms of those diseases.

██████████ comments on the future significance of the petitioner's ongoing work at ██████████ rather than how his work there has already impacted the field so as to be considered original contributions of major significance. For instance, ██████████ opines that the petitioner's findings "will lay a sound foundation for future researchers in the field of neuroscience" and "will thus greatly facilitate the functional study" of neuronal networks. In this instance, there is no evidence showing that the petitioner's work at ██████████ had already significantly influenced the field as of the date of filing. Eligibility must be established 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). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Further, while the petitioner is

The [REDACTED] is a distinguished institute associated with the [REDACTED]. . . . At [REDACTED] I was an associate investigator, which means that I was in charge of a lab conducting neuroscience research on drug addiction. . . . During [the petitioner's] postdoctoral fellowship at [REDACTED] I interacted with him on a personal and professional level for about two years.

* * *

At [REDACTED] where I first came in contact with him, he continued his research on synaptic transmission in a brain region considered important for addiction. He quickly learned techniques associated with obtaining recordings from brain slices, and in a short time, he showed how intra-cellular kinases are important in controlling transmission in the midbrain. With his technical expertise and ease with computers, he designed a setup that would dynamically emulate communications that a neuron in the brain would receive, and then observe how neurons react in response to this communication.

[REDACTED] does not provide specific examples of how the approach developed by the petitioner has influenced others in the field or is being applied in their work. Further, there is no documentary evidence showing that the petitioner's work is frequently cited by independent researchers or that his findings otherwise equate to original scientific contributions of major significance in the field.

[REDACTED] Associate Professor, Department of Neuroscience, [REDACTED] Graduate School of Medicine, [REDACTED] was a postdoctoral fellow at the [REDACTED] from 2006 to 2008. [REDACTED] states:

[The petitioner] accepted a postdoctoral fellowship to pursue research in [REDACTED] lab at the [REDACTED] I have known [the petitioner] since this point and have been quite impressed with his unique research qualities. Since he left the [REDACTED] laboratory and assumed his present position at the [REDACTED] we have remained in close contact.

* * *

During his study on the role of kinases in addiction, [the petitioner] made important contributions to our knowledge of connections in a brain region called the nucleus accumbens. Specifically, he demonstrated that only local connections within this brain region show a unique sensitivity to protein kinase activity. On the other hand, he showed that connections from other brain regions to the nucleus accumbens were insensitive to the activity of this family of enzymes. These results demonstrated how brain regions involved in addiction might differ from others and are a promising step that will fuel further research in the development of new strategies to combat addiction.

Additionally, [the petitioner's] computer skills were pivotal in laboratory projects on simulating brain inputs to a single neuron, followed by a measurement of activity. Using

his expertise with computers, he set up a functioning system that could mimic inputs from multiple neurons. He was also able to determine the effect of stimulating a neuron in the brain and the effect of these multiple inputs. This newly emerging technique mimics the environment surrounding neurons in different parts of the brain and will have a significant impact on the way we understand their functions.

comments that the petitioner's results demonstrating how brain regions involved in addiction may differ from others "are a promising step that will fuel further research," but there is no documentary evidence showing that the petitioner's findings are already being utilized or otherwise applied by others in the field. also states that the petitioner "set up a functioning system that could mimic inputs from multiple neurons," but his letter does not provide any examples of independent research teams adopting the petitioner's system.

states that he is "a postdoctoral fellow at in the Department of Neurology at the further states:

I am aware of [the petitioner's] excellent publications in and As a graduate student at the at [the petitioner] made great contributions towards the understanding of various factors that participated in neural transmission. In his work published in the he performed a comprehensive investigation on the role of calcium stored inside the cell in the dynamic process of neurotransmission. He discovered that one particular type of store was essential and sufficient for this process and that other stores, while functional in that they released calcium, did not promote neurotransmission. When I read this elegant paper, I was thrilled and strongly supported its publication in such a renowned journal. I was happy to see that this work by [the petitioner] was cited about 11 times over the last couple of years, validating his hypothesis and underlining its importance. Additionally his work on the effect of sphingosine in opening specific types of calcium channels, which was published in the has already made significant impact on that field of study.

As previously discussed, the petitioner has not established that the number of independent cites to his article in is indicative of an original contribution of major significance in the field. Further, does not provide specific examples of the petitioner's work being utilized or otherwise applied in the field by independent research teams. Regarding the petitioner's article in the citation evidence submitted by the petitioner from indicates that his findings were independently cited only twice. The petitioner has not established that this minimal level of citation of his published findings demonstrates an original scientific contribution of major significance in the field.

On appeal, counsel argues that the director disregarded the information contained in the letters of support. The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an

alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). 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 that one would expect of a neuroscience researcher who has made original contributions of major significance. Without supporting evidence showing that the petitioner's work equates to original contributions of major significance in his field, we cannot conclude 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 has documented his co-authorship of five journal articles that were published as of the petition's filing date and, thus, he has submitted qualifying evidence pursuant to 8 C.F.R. § 204.5(h)(3)(vi).

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

The petitioner submitted letters of support discussing his work at [REDACTED] under the direction of [REDACTED] at the [REDACTED] under [REDACTED] and at [REDACTED] under [REDACTED]. While the petitioner has performed admirably on the research projects to which he was assigned, there is no evidence showing that his subordinate roles were leading or critical for the preceding institutions. For example, there is no organizational chart or other evidence documenting how the petitioner's positions fell within the general hierarchy of his research institutions. We note that the petitioner's role at [REDACTED] was that of a student. Moreover, the petitioner's postdoctoral appointments at the [REDACTED] and [REDACTED] were designed to provide specialized research experience and training in his field of endeavor.⁴ The petitioner's evidence does not demonstrate how his temporary appointments differentiated him from the other research scientists employed by the preceding institutions, let alone their tenured faculty and principal investigators. For instance, unlike [REDACTED] there is no evidence that the petitioner has often served as a principal investigator and initiated research projects of his own. The documentation submitted by the petitioner does not establish that he was responsible for the preceding institutions' success or standing to a degree consistent with the meaning of "leading or critical role." Accordingly, the petitioner has not established that he meets this criterion.

⁴ "Biological scientists with a Ph.D. often take temporary postdoctoral research positions that provide specialized research experience." *See* <http://www.bls.gov/oco/pdf/ocos047.pdf>, accessed on March 18, 2011, copy incorporated into the record of proceeding.

Summary

In this case, we concur with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). A final merits determination that considers all of the evidence follows.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we will 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." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-1120. In the present matter, 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)(ii), (iii), (iv), (v), and (viii).

With regard to the evidence submitted for 8 C.F.R. § 204.5(h)(3)(i), we note that applicants for the scholarships received by the petitioner were limited to students. Thus, they cannot establish that the petitioner is one of the very few at the top of his field. *See* 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.⁵ Likewise, it does not follow that receipt of an award which excludes veteran scientists in the field from consideration should necessarily qualify a researcher 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."

Regarding the documentation submitted for 8 C.F.R. § 204.5(h)(iv), we cannot conclude that the petitioner's level and frequency of peer review is commensurate with sustained national or

⁵ 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.

international acclaim at the very top of the field of endeavor. As previously discussed, the petitioner submitted documentary evidence that in February 2009 he peer reviewed a single manuscript for [REDACTED] entitled [REDACTED]. In response to the director's request for evidence, the petitioner submitted a December 7, 2009 letter from the Deputy Editor of [REDACTED] stating:

The review of manuscripts is an essential step in maintaining the high scientific and literary standards of our publication. To maintain the distinguished international reputation and worldwide influence of [REDACTED] the following criteria are used to select Expert Reviewers for the journal:

- (1) A reviewer must be a recognized expert in the special field who can give precise comments and decisions on the submitted paper. Preferably, we tend to select leading experts with renowned international reputation in their own fields so that he/she can judge objectively the quality of the manuscript, of its experimental and theoretical work, of its interpretations and its exposition, with due regard to the maintenance of high scientific and literary standards of our journal.
- (2) The reviewer must have proven outstanding research experience in his field of expertise as well as related fields.
- (3) A reviewer must be aware of the most updated technological as well as theoretical developments in areas generally related to his/her own field of expertise.

[The petitioner] meets these requirements for his field of expertise, and I can confirm that his contributions as a peer reviewer have helped to maintain the high quality and standards of the journal, for which we are grateful.

The petitioner's response also included a copy of the "Reviewing Guidelines" for [REDACTED] stating:

We try to ensure that the reviewers we select are experts in the relevant field(s) . . . and can thus assist us in evaluating whether a manuscript is suitable for publication. In rare cases it can happen that we select an inappropriate reviewer – if this occurs, please inform us immediately.

* * *

Suggestions for suitable alternative reviewers are greatly appreciated

* * *

We ask reviewers to recommend a particular course of action in their report. *The final decision by the responsible editor is informed by the strengths of the arguments of the*

author and all reviewers, and may not always agree with the “majority” of the reviewer recommendations.

[Emphasis added.]

According to the submitted “Reviewing Guidelines,” the final decision is made by the “responsible editor” who may override the majority of the peer reviewers’ recommendations.

We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys national or international acclaim. 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. As is the case with ██████████ 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 as of the petition’s filing date, we cannot conclude that his level and frequency of peer review is commensurate with sustained national or international acclaim at the very top of the field of endeavor. For instance, ██████████ curriculum vitae states that he is Associate Editor of ██████████ and that he serves on the editorial boards for at least three different journals.

Regarding the petitioner’s original research findings discussed under 8 C.F.R. § 204.5(h)(3)(v), as stated above, they do not appear to rise to the level of contributions of “major significance” in the field. Demonstrating that the petitioner’s work was “original” in that it did not merely duplicate prior research is not useful in setting the petitioner apart through a “career of acclaimed work.” H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). That page (59) also says that “an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation)...” Research work that is unoriginal would be unlikely to secure the petitioner a master’s degree, let alone classification as a scientific researcher of extraordinary ability. To argue that all original research is, by definition, “extraordinary” is to weaken that adjective beyond any useful meaning, and to presume that most research is “unoriginal.”

While the petitioner has published scholarly articles based on his graduate and postdoctoral research, the Department of Labor’s Occupational Outlook Handbook (OOH), 2010-11 Edition, (accessed at www.bls.gov/oco on March 18, 2011 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See www.bls.gov/oco/ocos066.htm. 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.* Further, the OOH states specifically with respect to the biological sciences that a “solid record of published research is essential in obtaining a permanent position performing basic research,

especially for those seeking a permanent college or university faculty position.” See www.bls.gov/oco/ocos047.htm. This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher’s field.

Moreover, the petitioner’s citation history is a relevant consideration as to whether the evidence is indicative of the petitioner’s recognition beyond his own circle of collaborators. See *Kazarian*, 596 F. 3d at 1122. As previously discussed, the documentation submitted by the petitioner from [REDACTED] indicates that his body of work had been independently cited to no more than a dozen times as of the petition’s filing date. This level of citation is not sufficient to demonstrate that the petitioner’s articles have attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of his field.

Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner relies primarily on his single instance of participation in the widespread peer review process, his co-authorship of five journal articles and five conference papers with his superiors, citation evidence showing that his work has been occasionally cited, and the praise of his references.

We note that the petitioner’s references’ credentials are far more impressive. For example, [REDACTED] states:

I am the [REDACTED] Professor in Department of [REDACTED]
[REDACTED]
I am also the Director of the [REDACTED]
[REDACTED] funded by the [REDACTED] and the Director of the [REDACTED] funded by the U.S. Department of Defense (DoD). I am leading a research laboratory consisting of over 40 graduate students and postdocs and we are one of the leading groups in nano-scale science and technology, metamaterials, nano-photonics and bio-technologies.

As previously discussed, [REDACTED] curriculum vitae states that he is Associate Editor of [REDACTED] and that he serves on the editorial boards for at least three different journals

[REDACTED] states:

I have held research appointments at the [REDACTED]
[REDACTED] In addition to my full time appointment at the [REDACTED] I hold an honorary Professorship at the [REDACTED] My area of expertise is cellular neuroscience Particularly the neurophysiology of the retina, a field in which I am internationally known.

Further, [REDACTED] letter was accompanied by a list indicating that he has authored more than fifty publications.

While the petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought, it appears that the very top of his field of endeavor is far above the level he has attained. In this case, the petitioner has not established that his achievements at the time of filing were commensurate with sustained national or international acclaim as a neuroscience researcher, 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 and 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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.

We note that the petitioner is the beneficiary of an approved petition classifying him as a member of the professions holding an advanced degree pursuant to section 203(b)(2)(B) of the Act. This decision is without prejudice to the approval of that petition, filed under a lesser classification.

ORDER: The appeal is dismissed.