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U.S. Citizenship and Immigration Services

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[redacted]

FEB 0 2 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

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:

SELF-REPRESENTED

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.

Mari Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 to the United States will substantially benefit prospectively the United States.

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 Citizenship and Immigration Services (CIS) 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 seeks to classify the petitioner as an alien with extraordinary ability as a biochemist. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, she claims, meets the following criteria.

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 her undergraduate degree from the Lawrence University of Wisconsin and her Ph.D. from the University of California at San Francisco (UCSF). She also provided evidence that UCSF is highly ranked as a graduate school. In addition, the petitioner submitted a letter from UCSF offering her a merit based

Non-resident Tuition Scholarship based on grade point average. Finally, the petitioner submitted a letter from the Keystone Symposia advising her that she won a "scholarship" that would reimburse her or her institute for her hotel and transportation costs for attending a symposium. Finally, the petitioner submitted evidence of membership in Phi Beta Kappa, Lawrence University of Wisconsin Chapter, and evidence that she made the Dean's List in 1993 and 1994 at Lawrence University of Wisconsin.

In his request for additional documentation, the director concluded that the awards submitted were academic awards. In response, the petitioner submitted evidence that in 2003, she received an American Heart Association (AHA), Western States Affiliate research award. The materials for the award indicate that they are "designed to assist beginning investigators in developing research careers or to fund research projects investigating the broad field of cardiovascular function, cardiovascular diseases and stroke." The petitioner also resubmitted the documentation submitted initially and submitted a 1997 travel award from the Protein Society and evidence of merit-based scholarships awarded by Lawrence University of Wisconsin in "recognition of [the petitioner's] superior academic achievement."

In his final decision, the director concluded that the awards were either in recognition of academic achievements or in expectation of future accomplishments. On appeal, the petitioner asserts that the travel awards and AHA grant were not based on academic achievements. She notes that AHA grants are not restricted to U.S. citizens or residents, making the applicant pool international. She submits the reviews of her AHA proposal.

The petitioner's tuition scholarships and Dean's List recognition appear based almost entirely on academic performance. Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships and student awards cannot be considered prizes or awards in the petitioner's field of endeavor. Moreover, competition for scholarships is limited to other students. Experienced experts in the field are not seeking scholarships. Similarly, experienced experts do not compete for travel awards, fellowships and competitive postdoctoral appointments. Thus, they cannot establish that a petitioner is one of the very few at the top of her field.

Regarding the petitioner's AHA research grant, research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals, as is evident in the commentary on her proposal. 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. Finally, even if we were to consider the research grant an award for excellence, it was awarded in 2003, after the date of filing, and cannot be considered evidence of the petitioner's eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

For the above reasons, we concur with the director.

> *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.*

The petitioner submitted evidence of membership in Phi Beta Kappa, Lawrence University of Wisconsin Chapter and the Federation of American Societies for Experimental Biology (FASEB).

The petitioner submitted materials regarding FASEB but failed to submit evidence of its membership requirements. In response to the director's request for additional documentation, the petitioner submitted materials regarding Phi Beta Kappa and its prestige. The materials list several prominent members and assert that candidates are nominated for election upon completion of undergraduate study. The materials do not provide the actual membership requirements, however, and, instead, refer interested individuals to request such information from chapter officers at their university. The petitioner also submitted an issue of *FASEB News* that does not address the organization's membership requirements.

The petitioner also appears to claim that her postdoctoral position at UCSF serves to meet this criterion as she submits evidence that the university employs several prominent scientists.

The director concluded that the petitioner had not demonstrated that the above organizations require outstanding achievements of their members. On appeal, the petitioner reiterates the prestige of UCSF and Phi Beta Kappa. She asserts that while FASEB does not list its membership requirements on its website, "the excellence of its members speaks for themselves."

While perhaps not expressed clearly by the director, the issue is not whether the associations are prestigious and have members who happen to be at the top of their field. Nor is the issue whether membership suggests the potential for accomplishment. The plain language of the pertinent regulation requires membership in associations that *require* outstanding achievements of their members.

On appeal, the petitioner submits materials indicating that the UC Davis Chapter of Phi Beta Kappa (not the chapter that admitted her) requires: a specific grade point average, knowledge of a foreign language at an "intermediate level," a specific number of academic units (a certain number of which must have been completed at Davis), college preparatory level mathematics, and breadth in the course record represented by a certain number of academic units in various fields. None of these are outstanding achievements in the field as judged by recognized national or international experts in the field. Rather, they are all academic achievements judged by local chapter officials.

The record does not reflect that FASEB has strict membership requirements, admitting only those with demonstrated outstanding achievements as judged by recognized national or international experts in the field.[1]

Finally, regardless of the competitive nature of the petitioner's position for recent graduates, the petitioner's postdoctoral appointment is not a membership but a job. We cannot conclude that a job offer, even from a prestigious university, meets this criterion. A petitioner cannot demonstrate national acclaim simply by association with a prestigious employer. Rather, as will be discussed below, she must demonstrate that she plays a leading or critical role for that employer.

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[1] FASEB does not admit members itself, rather, membership in its associated societies includes membership in FASEB. Thus, the membership requirements are located on the websites of the associated societies. The petitioner's membership information indicates that she is a student member of the Protein Society of FASEB. The Protein Society's website, www.proteinsociety.org, reveals that membership is open to "scholars and researchers in the analysis, chemistry, folding, structure, function, and regulation of proteins." The materials further indicate that full membership requires an academic degree. In addition, membership in the Protein Society includes membership in FASEB. Participation in a field and an academic degree are not outstanding achievements. Thus, FASEB does not require outstanding achievements of its members.

In light of the above, the petitioner has not demonstrated that she meets this criterion.

Published materials 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.

The petitioner submitted a half-page article about her postdoctoral research on protease falcipain 2 in *UCSF Magazine*. A review of the magazine reveals that all of the articles focus on research ongoing at UCSF. The credits indicate that the magazine is published by the UCSF's Department of Public Affairs.

In his request for additional documentation, the director noted that the magazine appeared to be a student publication. In response, the petitioner asserted that it is not a student publication, but a bi-annual magazine that "features stories that showcase the programs, people and discoveries that breathe life into the UCSF mission." The petitioner concludes: "Since UCSF is one of the world's most renowned biomedical research centers, the selected stories published in the Magazine not only represent the breadth and significance of the campus, they also highlight the world's top-notch research programs." In support of these claims, the petitioner submitted materials from the magazine's website providing similar statements.

The director concluded that the petitioner had not established that *UCSF Magazine* is a professional or major trade publication. Rather, the director concluded that the magazine was dedicated to providing insight into the UCSF campus.

On appeal, the petitioner submits an e-mail from the editor of the magazine who asserts that the magazine is circulated among science and health editors at major newspapers and that half of the readers are donors. The magazine is also distributed to local legislators. The petitioner submitted evidence indicating that the magazine is listed among other school publications, has won awards designed for university publications, and that it has been referenced in other education related stories and excerpted in an electronic magazine.

The materials submitted on appeal merely affirm the director's analysis. *UCSF Magazine* is designed to promote the university among its donors and prompt news stories about its accomplishments in the major media. Stories in the magazine are more akin to press releases by UCSF than independent journalistic reportage. The evidence submitted to meet any criterion must be indicative of or at least consistent with national or international acclaim. An article about the petitioner in a magazine published by UCSF that covers only its own laboratories and is designed to promote itself is not evidence that the petitioner is known beyond UCSF. There is no evidence that the science editors at major newspapers picked up the story and published it in their own papers.

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 an e-mail from Dr. James H. McKerrow requesting that the petitioner review an article for the *Journal of Biological Chemistry*. While the petitioner submitted evidence that Dr. McKerrow is a member of the journal's editorial board, he is also a professor at UCSF and the petitioner's supervisor. The director questioned the significance of this request. In response, the petitioner asserted that it was not a student-level function, but "a great honor for a young scientist." The director concluded that the petitioner had not demonstrated that only those at the top of their fields are requested to referee articles.

On appeal, the petitioner discusses the journal's prestige and reiterates her claim that it was an honor to be requested to referee an article for the journal. She submits materials from the journal indicating that decisions are made by editors but that "referees may be consulted when additional expertise is required."

Being requested to review an article by one's own supervisor is not evidence of national or international acclaim. Moreover, 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 sustained national or international acclaim. Without evidence that sets the petitioner apart from others in her field, such as evidence that she has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion. That Dr. McKerrow serves on the journal's editorial board indicates that the highest level in the petitioner's field is significantly higher than the level she has attained.

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

In discussing this criterion, the director notes the petitioner's temporary position. On appeal, the petitioner argues that postdoctoral experience is necessary before applying for a permanent position. We find that the nature of the petitioner's position does not inherently preclude her from establishing that she has made contributions of major significance. Nevertheless, as will be discussed below, the nature of the petitioner's position is very relevant to a different criterion claimed by the petitioner.

As evidence to meet this criterion, the petitioner submitted reference letters from several current and former faculty members of UCSF, a former housemate, and a collaborator currently working at the Howard Hughes Medical Institute. The director concluded that the letters did not establish that the petitioner is generally recognized as being at the top of her field. On appeal, the petitioner notes her presentations and publication history and urges this office to consider the content of the letters from "world class scientists from the renowned biomedical health institutes."

First, we do not contest the credentials of the petitioner's references. A few of them have chaired departments, reviewed grant applications, organized conferences, served on editorial boards for more than one journal, and published hundreds of articles. While we will consider their assertions below, we note that their accomplishments suggest that the top of the petitioner's field is considerably higher than the level attained by the petitioner. Moreover, we concur with the director that while letters from one's immediate circle of colleagues are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's national or international acclaim. Once again, the evidence submitted for this criterion fails to demonstrate that the petitioner is known beyond UCSF and her collaborators from other institutions.

Dr. Robert Fletterick, a professor at UCSF in whose laboratory the petitioner worked, and Dr. Charles T. Esmon, an investigator at Howard Hughes Medical Institute who collaborated with the petitioner, discuss the petitioner's protein crystallization work in the human blood clotting program. Specifically, the petitioner was the first to create crystals of all three major blood clotting proteins with the protein inhibitor ecotin: ecotin thrombin, ecotin human Fact IXa and ecotin human factor Xa. The petitioner demonstrated that pan-specific inhibition is related to the formation of the target proteases. Building on that discovery, the petitioner focused

her work on thrombin, an enzyme responsible for preventing bleeding at wound sites as well as clots that cause strokes and heart attacks. As noted by Dr. Esmon, "by understanding how the enzyme can catalyze both blood clot promoting and blood clot inhibiting reactions, it can be imagined that drugs could be designed to favor either clot formation or clot inhibition."

In her work with thrombin, the petitioner demonstrated that ecotin fails to inhibit thrombin without a mutation of amino acid M84R, which causes surface loops necessary for inhibitor binding. According to Dr. Fletterick, based on these studies, "she was the first scientist to show that the active site of thrombin could be filled with eight consecutive amino acids." Dr. Esmon adds that the crystal structure completed by the petitioner "revealed a remarkable capacity for thrombin to change its shape, something many investigators in the field had viewed as improbable or even impossible." Dr. Charles Craik, a professor at UCSF, further elaborates that this work provided the first detailed understanding of ecotin's interaction with thrombin and could lead to treatments for heart attacks, strokes, and deep vein thrombosis. Dr. Jennifer Turner, a fellow postdoctoral researcher at UCSF, states that the petitioner "has directly collaborated with companies that are in the position to put her work into clinical practice."

Dr. Fletterick further describes the petitioner's upcoming publications regarding Factor Xa, a critical protein in controlling blood homeostasis. According to Dr. Fletterick, this work will be utilized by the medical and pharmaceutical research companies and may save tens of thousands of lives per year.

While several of the references allude to pharmaceutical company interest in the petitioner's work, the record contains no letters from senior level employees at any pharmaceutical company affirming that they are utilizing the petitioner's work or even expressing an interest in the petitioner's work.

Finally, the petitioner submitted a letter from Dr. James McKerrow, Director of the Sandler Center for Basic Research in Parasitic Diseases at UCSF. In his letter, he discusses the petitioner's recent work at that center, funded by the National Institutes of Health "as part of the new biodefense program to develop drugs to treat category B bioterrorism agents." Dr. McKerrow asserts that the petitioner, who is the center's resident X-ray crystallographer, "is essential for this work." At the center the petitioner "made considerable progress" in the crystallization of several proteins, including the protein that causes Chagas' disease, a parasite induced heart disease. Dr. McKerrow asserts that it was the petitioner's hypothesis that this protein "may function as a virulence factor working against host proteins to facilitate parasite invasion" that resulted in the 2003 AHA grant referenced above. While complimentary, Dr. McKerrow does not identify a specific contribution made by the petitioner at the center during her year working there prior to the date of filing and explain its significance.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. While the petitioner has presented her work at conferences and published her work, the record does not establish the influence of these presentations and articles. As will be discussed below, the petitioner's citation history is minimal and not indicative of national or international acclaim.

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 obtains a Ph.D., is published or is working with a government grant has made a contribution of major significance. The record does not establish that the petitioner's work is viewed outside the petitioner's immediate circle of colleagues as a groundbreaking advance in protein science.

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

The petitioner submitted evidence that, at the time of filing she had authored two published articles and had published abstracts in conference proceedings. The director considered the evidence, but noted that it is common in the petitioner's field to publish one's work and concluded that the petitioner had not demonstrated that her work has been more influential than most published work in the field.

On appeal, the petitioner submits evidence that the Protein Databank listed one of the petitioner's articles among at least 44 articles relating to its molecule of the month for one month in 2002. The petitioner also submits evidence that she was included on a list of papers on peptidase in 2001, and that one of her articles has been cited three times.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces CIS's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

The number of citations in the record is not evidence that the petitioner's work is widely cited. The record contains no other evidence that the petitioner's work is more influential than most other published articles.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner claims to meet this criterion through her presentations at scientific conferences. The director concluded that the petitioner had not established how these presentations set her apart from others in her field. On appeal, the petitioner reiterates that she attended conferences.

A scientific conference is not an artistic exhibition or showcase. Thus, this criterion does not appear applicable to the petitioner. Nor has the petitioner demonstrated how presenting her findings at scientific conferences, inherent to the field of research, is comparable to displaying one's artwork at exclusive and nationally prestigious exhibitions or showcases.

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

The petitioner claims to have played a leading or critical role for the Sandler Center at UCSF. The director did not discuss this claim. The petitioner reiterates her claim on appeal.

While UCSF may have a distinguished reputation, we cannot conclude that every postdoctoral researcher who plays an important role in a distinguished university's laboratory plays a leading or critical role for the university as a whole.

The record contains little information about the Sandler Center's national reputation. According to an article in *UCSF Magazine*, the center is actually a "confederation of seven 'core' laboratories." The center was recently formed at UCSF to take university medical research to the next level, by conducting preclinical testing of drugs before supplying this information to pharmaceutical companies and non-governmental health organizations in the U.S. and abroad. While the director of the center, Dr. McKerrow asserts that the center is unique in the world, the record contains no independent media coverage or other objective evaluations of the center from outside UCSF.

Even if we were to conclude that the Sandler Center has its own national distinguished reputation independent from that of UCSF, the petitioner has not demonstrated that she plays a leading or critical role for the center. We have already considered above the petitioner's alleged contributions to the field while working at the center. What is relevant in evaluating the evidence submitted to meet this criterion is the nature of the position that the petitioner was hired to fill. In this case, the petitioner was hired as a postdoctoral fellow. As stated above, Dr. McKerrow asserts that the petitioner's expertise is essential for the center. Nevertheless, the article in *UCSF Magazine* indicates that seven separate laboratories are involved in the center. The petitioner has not established that the position of postdoctoral fellow in one of those laboratories is a leading or critical position for the entire center above and beyond the other research positions in the center.[2]

Finally, as stated above, the petitioner argues on appeal that the temporary nature of her position should not be held against her, noting that postdoctoral research is required to apply for tenured professorships. In support of this assertion, the petitioner submits several job announcements for permanent positions that require a period of postdoctoral research. The petitioner is not persuasive. While employment as a postdoctoral researcher may not preclude eligibility where national or international acclaim is demonstrated in other ways, the nature of the position held by the petitioner is relevant to this criterion, which the petitioner specifically claims to meet. Assuming postdoctoral experience is a necessity in the field, that fact does not elevate such experience to a leading or critical role for the entity employing the postdoctoral researcher. We note that an advanced degree is also required for these positions. That fact does not mean that we cannot question whether a graduate student who has yet to receive a degree has truly reached the top level of her field.

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 letter from Sila Maria Alvarenga, Academic Personnel Coordinator indicating that the petitioner is a full-time employee at UCSF with an annual salary of $46,056. Ms. Alvarenga further indicates that the National Research Service Award (NRSA) for postdoctoral researchers with seven or more years of

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[2] According to the Parasite Page at www.itsa.ucsf.edu, Dr. McKerrow's laboratory alone includes four research scientists, five research associates, and eight postdoctoral fellows including the petitioner. The petitioner has not demonstrated how the position of a single postdoctoral fellow is a critical position above and beyond the other researcher positions at the laboratory.

experience is $44,412. Ms. Alvarenga does not indicate whether NRSA stipends are notably high or even typical reimbursement for postdoctoral researchers nationwide. Regardless, she does not indicate the top salaries in the field beyond the postdoctoral level.

The director concluded that the petitioner's salary, while high among others at her level of experience, did not establish that she was at the top of her field. On appeal, the petitioner asserts that the term "postdoctoral" in her position title merely reflects that she has a Ph.D. and that she does not have an immigrant visa. She further asserts that a high salary for her level of experience demonstrates her ability.

The petitioner is not persuasive. Postdoctoral research positions are temporary positions regardless of the researcher's immigration status. The petitioner has not provided any evidence that U.S. citizens do not work in these positions. If UCSF wanted to offer the petitioner a permanent job they could do so regardless of her immigration status.[3] While their failure to do so is not evidence of the petitioner's ineligibility, we note the possibility of such offers to rebut the petitioner's argument that her temporary job is due only to her temporary immigration status. Moreover, "ability" is a subjective term. The regulations require objective evidence reflecting that an alien is one of the few at the top of her field and that she has sustained national or international acclaim.

While the regulations do not preclude those at the beginning of their careers from establishing eligibility under this highly restrictive classification, such individuals bear a heavy burden. In addition, while there may be valid reasons why someone at the top of her field is not earning a significantly high wage in comparison to all others in the field, a petitioner need not meet this particular criterion to establish eligibility. Where a petitioner does claim to meet this criterion, however, the evidence submitted must be indicative of or consistent with being one of the very few at the top of the field, including the most experienced members of that field.

In order to meet this criterion, the petitioner must demonstrate that she is one of the very few at the top of the field, including in comparison to the most experienced members of that field. The petitioner cannot establish her eligibility by narrowing her field to postdoctoral researchers. It remains, the petitioner has not demonstrated that she has received significantly high remuneration in comparison with all those in her field, including the most experienced researchers who have long since completed their postdoctoral training.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a biochemist 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 indicates that the petitioner shows talent as a biochemist, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

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[3] For example, the labor certification process is available to UCSF.

ORDER: The appeal is dismissed.