

## THE TOP TEN MYTHS ABOUT EXTRAORDINARY ABILITY: WHAT OTHERS MAY KNOW, BUT WOULDN'T TELL YOU

by Rita Kushner\*

In 2003, the Administrative Appeals Office (AAO) of the U.S. Citizenship and Immigration Services (the Service or USCIS) rendered 88 decisions in connection with appealed O-1 visa petitions. Nearly one-third of these were cases filed by physicians.<sup>1</sup> While no official study has been done on this subject, it appears that International Medical Graduates (IMGs), as a group, apply for extraordinary ability visas more frequently than any other professional group. This is partly because the vast majority of IMGs arrive in the United States to perform graduate medical training in J-1 status, which subjects them to the two-year home residence requirement.<sup>2</sup> Being subject to this requirement disqualifies IMGs from permanent residence and most nonimmigrant visas, with a few narrow exceptions, including the O-1 visa for aliens of extraordinary ability.<sup>3</sup> Thus, those qualified physicians who, under other circumstances, would prefer the less complicated H-1B route, are left with no choice but to ask the Service to classify them as aliens of extraordinary ability. Therefore, the notion of extraordinary ability is particularly relevant to the IMG community.

The concept of extraordinary ability exists in both immigrant (EB-1-1<sup>4</sup>) and nonimmigrant (O-1<sup>5</sup>)

contexts. While the regulatory criteria that can qualify an alien as extraordinary slightly differ (ten criteria are listed for the EB-1-1,<sup>6</sup> while only eight exist for the O-1<sup>7</sup>), the statutory standards are identical. In order to qualify as an alien of extraordinary ability, the individual must demonstrate sustained national or international acclaim and recognition for achievements in the field through extensive documentation.<sup>8</sup> The statute does not offer further detail on what is required in order to demonstrate sustained national or international acclaim. Therefore, practitioners must rely on the regulations for additional guidance. The regulations provide that sustained acclaim can be demonstrated through either evidence of a one-time achievement (a major, internationally recognized award) or at least three of the criteria listed in the regulations.<sup>9</sup>

While there is no doubt that this standard was intended to be restrictive,<sup>10</sup> it was nevertheless created as an avenue that would allow extraordinary persons to enter the United States on an ongoing basis. Accordingly, the regulations refer to a "small percentage" that has reached the top of the field,<sup>11</sup> which varies in numerical significance depending on the size of the field.

Most immigration law practitioners would agree that immigration options have become tougher for aliens of extraordinary ability. While the legal standards have not changed, the attitudes within the Ser-

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<sup>1</sup> <http://uscis.gov/graphics/lawsregs/admindec3/index.htm>.

<sup>2</sup> INA §212(e).

<sup>3</sup> Letter from Jacquelyn A. Bednarz, Chief, Nonimmigrant Branch, Adjudications, legacy INS, to Bernard P. Wolfsdorf, 71 Interpreter Releases 1376-77 (Oct. 7, 1994).

<sup>4</sup> INA §203(b)(1)(A); 8 CFR §204.5(h).

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<sup>5</sup> INA §101(a)(15)(O); 8 CFR §214.2(o). This article will discuss only the highest standard of extraordinary ability for O-1 visas applicable to the sciences, education, business, and athletics. It will not address the lesser legal standards of distinction pertaining to the arts or extraordinary achievement pertaining to motion pictures and television productions.

<sup>6</sup> 8 CFR §§204.5(h)(3)(i)-(x).

<sup>7</sup> 8 CFR §§214.2(o)(3)(iii)(B)(1)-(8).

<sup>8</sup> INA §§203(b)(1)(A), 101(a)(15)(O)(i).

<sup>9</sup> 8 CFR §§204.5(h)(3), 214.2(o)(3)(iii)(A)-(B).

<sup>10</sup> 137 Cong. Rec. S18247 (daily ed. Nov. 16, 1991).

<sup>11</sup> 8 CFR §§204.5(h)(2), 214.2(o)(3)(ii).

vice certainly have. Following the “Zero-Tolerance Memo”<sup>12</sup> that was reportedly eventually withdrawn, immigration cases that involve subjective judgment have become prime targets for Requests for Evidence (RFEs), denials, and even revocations of prior approvals.<sup>13</sup> While the reasons for this may be manifold, the consequence is that case preparation has become a more sophisticated process that requires careful examination of available evidence and proper application of the law.<sup>14</sup> After reviewing numerous RFEs, denial notices, and decisions by the AAO, it is apparent that USCIS holds a number of preconceived notions based on misinterpretations of the law.

In this new era of restrictive adjudication, it is an immigration practitioner’s duty not only to represent the client, but also to educate the immigration examiner on proper application of the law and dispel the myths that have been perpetuated by the Service.

Following are some of the most common myths on which the Service has been relying in adjudicating extraordinary ability cases for the past few years.

### MYTH 10: PUBLICATIONS MUST BE IN TOP JOURNALS

Publication of research work is an important way to demonstrate a scholar’s reputation in the community, ability to deliver original findings, and prolificacy. Publishing in certain top journals, such as *Proceedings of the National Academy of Sciences of the U.S.A.*, *The New England Journal of Medicine*, *Lancet*, *Science*, and *Nature*, is highly competitive and is open only to researchers reporting cutting-edge

information. A record of several first-author publications in these journals, in and of itself, may mean that a scientist is “one of that small percentage who have risen to the very top of the field.”<sup>15</sup> However, the plain language of the regulatory criterion of “scholarly articles” does not place this requirement on the alien who is seeking to qualify as extraordinary. The regulations simply ask for “evidence of authorship of scholarly articles in the field, in professional journals”<sup>16</sup> and do not require that the journals be prominent.

Despite the language of the law, one of the most common requests by the Service in an RFE is “to establish the significance and importance of the alien’s scholarly articles” and “the significance and importance of the publications.” In other words, even where satisfactory evidence is submitted that the alien has authored scholarly articles, the Service demands proof that the journals are prestigious publications and that the articles themselves are important.

In a number of decisions, the AAO states that because it is common for scientists to publish, publications do not automatically qualify a scientist as extraordinary. The decisions claim “[i]t is expected that medical scientists will publish articles discussing their research. It does not follow that all scientists who publish articles in peer-reviewed journals enjoy sustained acclaim in their field.”<sup>17</sup> While this statement is accurate (*i.e.*, publishing does not equal sustained acclaim), the AAO further makes the bold conclusion that an individual who has authored scholarly articles in the field does not meet the “authorship of scholarly articles in the field” criterion:

Medical researchers are expected to and routinely publish results of their scholarly research. Not every researcher who publishes articles in the field will satisfy this criterion.<sup>18</sup>

This is a stunning departure from the language of the regulations that simply calls for evidence that the alien has authored scholarly articles in the field.

In recent decisions, the AAO refers to the 1998 *Report and Recommendations* by the Association of

<sup>12</sup> INS Memorandum, “Zero Tolerance Policy” (Mar. 22, 2002), posted on AILA InfoNet at Doc. No. 03121942 (Dec. 19, 2003).

<sup>13</sup> The Service does not openly admit that it has implemented a new policy to heighten the requirements for extraordinary ability. However, in a 2003 case litigated in Texas, USCIS conceded that “they now apply [the regulations] more strictly than they have in the past.” *Texas A & M University – Corpus Christi v. Upchurch*, 2003 WL 21955866 (N.D.Tx.).

<sup>14</sup> As a response to this influx of RFEs, the Service recently issued an Interoffice Memorandum ordering to cease issuing RFEs in “complete” cases and proceed directly to a decision. USCIS Interoffice Memorandum, “Requests for Evidence (RFE)” (May 4, 2004), posted on AILA InfoNet at Doc. No. 04050476 (May 4, 2004). This Memorandum is expected to result in an increased number of denials, as petitioners will no longer be afforded an opportunity to respond to the Service’s potential questions.

<sup>15</sup> 8 CFR §§204.5(h)(2), 214.2(o)(3)(ii).

<sup>16</sup> 8 CFR §§204.5(h)(3)(vi), 214.2(o)(3)(iii)(B)(6).

<sup>17</sup> *Matter of [name not provided]*, LIN 02 298 52969 (AAO Mar. 12, 2003).

<sup>18</sup> *Matter of [name not provided]*, EAC 02 208 53073 (AAO Jan. 23, 2003).

American Universities' Committee on Postdoctoral Education, which states that postdoctoral appointees are expected to publish the results of their research.<sup>19</sup> Based on this stated expectation, the Service concludes that "[t]his report reinforces the Service's position that publication of scholarly articles is not automatically evidence of sustained acclaim."<sup>20</sup>

Of course simply meeting the criterion of "scholarly articles" could not automatically qualify an individual for the extraordinary ability standard. It is precisely because no single criterion can qualify a person as extraordinary that the regulations require meeting at least *three*. In other words, asking an alien to demonstrate extraordinary ability solely through this particular regulatory criterion is beyond the requirements of the law. This is exactly why the regulations do not afford any one criterion more significance than others; nor should the standard for any one be augmented.

Different USCIS service centers have expressed conflicting opinions on this issue. The Texas Service Center (TSC) advised during the Liaison Meeting with the American Immigration Lawyers Association (AILA) on October 7, 2002, that "[t]he journal does not have to be in the highest tier of ranked publications,"<sup>21</sup> which, is the correct interpretation of the regulations. On the other hand, the California Service Center (CSC) stated just the opposite at the Annual AILA California Chapters Conference in San Diego, on November 8, 2003. The CSC noted that it requires that the scholarly publications appear

in top-ranked journals in order to satisfy the "scholarly articles" criterion.<sup>22</sup>

It may be tempting for those immigration law practitioners whose clients can, in fact, demonstrate publication only in top journals, to submit rankings of the journals, the impact factors, or other information about the reputation of the journals. However, it is even more prudent to argue the law and to enforce its proper application. The ranking requirement is a myth. In order to dispel it, practitioners must educate the Service on correctly applying its own regulations.

### MYTH 9: "SCHOLARLY ARTICLES" MUST BE CITED

Most academics do indeed publish their work in professional journals. Both the service centers and the AAO recognize this reality and, as a result, do not regard the very act of publication of scholarly articles as automatic indication of extraordinary ability. Nevertheless, per the regulations, the act of publication should be sufficient to meet the singular criterion of "authorship of scholarly articles."<sup>23</sup> The Service, however, has held that in order to successfully meet the criterion of "authorship of scholarly articles," the alien must compare his or her publications to those of others in the field and demonstrate that they stand above the rest or have won recognition.<sup>24</sup> The AAO concluded that citations of an applicant's work by other researchers is appropriate evidence to establish such recognition.<sup>25</sup> The AAO, in affirming a denial by the TSC, demanded evidence that publications set the beneficiary apart from other researchers and claimed that only citations can serve as such evidence. It stated:

The director determined that what the beneficiary has done is not different from other doctors or researchers, as it is common for doctors to write

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<sup>19</sup> "Committee on Postdoctoral Education. Report and Recommendations" (Mar. 31, 1998), available on the Association of American Universities Web site, [www.aau.edu](http://www.aau.edu).

<sup>20</sup> *Matter of [name and number not provided]* (AAO Feb. 5, 2003). As a side note, in its discussion of the *Report and Recommendations*, the Service fails to analyze the *Report* as a whole. It neglects to mention that the *Report* also said that "postdoctoral appointees perform a significant portion of the nation's research and augment the role of graduate faculty in providing research instruction to graduate students." In other words, it is the Committee's opinion that postdocs are full members of their respective professions and should not be considered students. While this subject is outside of the scope of this article's discussion, legacy INS/USCIS has rejected many petitions by postdocs arguing that they cannot be considered at the top of the field because they are still in the process of pursuing education. This *Report and Recommendations* may serve as evidence to the contrary.

<sup>21</sup> "AILA/TSC Liaison Minutes," posted on AILA InfoNet at Doc. No. 02121641 (Dec. 16, 2002).

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<sup>22</sup> 16th Annual AILA California Chapters Conference, "Changing Times for Immigration: Life After INS Reorganization," tape 8 (Nov. 8, 2003).

<sup>23</sup> 8 CFR §§204.5(h)(3)(vi), 214.2(o)(3)(iii)(B)(6).

<sup>24</sup> *Matter of [name not provided]*, WAC 98 230 52249 (AAO Aug. 15, 2000); *Matter of [name not provided]*, EAC 99 081 50490 (AAO Apr. 13, 2001).

<sup>25</sup> *Matter of [name not provided]*, EAC 02 208 53073 (AAO Jan. 23, 2003); *Matter of [name not provided]*, LIN 02 259 51613 (AAO Feb. 13, 2003); *Matter of [name not provided]*, SRC 02 219 50217 (AAO Feb. 13, 2003); *Matter of [name not provided]*, LIN 02 298 52969 (AAO Mar. 12, 2003).

and publish material and present it at different functions. Counsel for the petitioner argues that there is no requirement that the articles have to set the beneficiary apart from his peers and that furthermore, the fact that the beneficiary received an award for one article is evidence that he satisfies this criterion. Counsel's arguments are not persuasive . . . . The beneficiary has not submitted a citation history of the beneficiary's articles or established that the articles have influenced the field.<sup>26</sup>

In other words, counsel for the petitioner, while arguing that this requirement is inapplicable, was still prepared to demonstrate how the petitioner's work set him apart from his peers, and presented evidence in that regard. The Service, however, dismissed the fact that the publication received an award, instead ruling that citations are the only suitable type of evidence for this purpose. This is inappropriate and inaccurate.

The regulations do not demand that publications be accompanied by citations in order to meet this regulatory criterion. The law simply asks for evidence of publication authorship. The logical connection that the Service fails to make is that, while it may be relatively easy to meet the "scholarly articles" criterion for many researchers, meeting at least three regulatory criteria required to prove extraordinary ability is not simple. Only those at the very top of the field could meet at least three criteria, which is why not every published researcher will be classified as extraordinary by USCIS. Again, the regulations speak to establishing *three* criteria and not just *one* in order to prove extraordinary ability.

Moreover, USCIS frequently dismisses publications that are collaboratively authored as inadmissible evidence arguing that working as a team disqualifies an alien beneficiary from being extraordinary. This myth was recently dispelled by the Service itself in an AAO decision:

We find nothing about the nature of working with a team that diminishes the ability of the members of that team. The Bureau does not disregard Olympic team medals. We see no reason to discount contributions and publications simply

because they represent the work of a research team.<sup>27</sup>

Thus, the regulatory criterion of "authorship of scholarly articles" is satisfied by evidence of just that—published scholarly articles. It is not necessary to submit any evidence about the impact of the articles or how and where the articles are published. While being a published author does not secure an alien the status of extraordinary ability, it should certainly secure meeting this regulatory criterion.

#### **MYTH 8: THE JOB MUST REQUIRE AN ALIEN OF EXTRAORDINARY ABILITY**

In order to qualify as an alien of extraordinary ability, the beneficiary must demonstrate that he or she will continue to work in the area of extraordinary ability on entry to the United States.<sup>28</sup> There is no prerequisite, however, that the alien's job require a person of extraordinary ability. In other words, if a beneficiary is able to show that he is a surgeon who is capable of performing unique procedures that few surgeons in the world have mastered, he may qualify as a surgeon of extraordinary ability. However, it does not follow that the petition may only be approved if the hospital that is sponsoring this extraordinary surgeon is looking exclusively for extraordinary surgeons. Just because the hospital would be willing to hire other, less extraordinary surgeons, it should not be penalized by denying the extraordinary surgeon access to the job (and, as a result, punishing the patients who are awaiting his expertise).

The USCIS service centers, however, have often denied approvable cases because the petitioner failed to establish that the position required a person of extraordinary ability. In a 2002 decision, the AAO finally dispelled this myth by sustaining an appeal that challenged it.<sup>29</sup> The AAO cited the supplementary information from the regulations<sup>30</sup> and confirmed that there is no statutory support for the requirement that the alien must be coming to the United States to perform services that require extraordinary ability. Thus, not-so-extraordinary employers may now hire extraordinary aliens.

<sup>26</sup> *Matter of [name not provided]*, SRC 02 219 50217 (AAO Feb. 13, 2003).

<sup>27</sup> *Matter of [name not provided]*, EAC 01 108 53232 (AAO Jul. 8, 2003).

<sup>28</sup> 8 CFR §204.5(h)(5); INA §101(a)(15)(O)(i).

<sup>29</sup> *Matter of [name not provided]*, LIN 02 184 53385 (AAO Sep. 17, 2002).

<sup>30</sup> 59 Fed. Reg. 41820 (Aug. 15, 1994).

### **MYTH 7: THE ALIEN MUST HAVE AN EMPLOYER (FOR EB-1-1 ONLY)**

While sponsorship by a U.S. employer is required for the nonimmigrant visa of extraordinary ability (*i.e.*, O-1),<sup>31</sup> no offer of employment is necessary to qualify for an extraordinary ability immigrant visa (*i.e.*, EB-1-1),<sup>32</sup> and the alien may self-petition for an immigrant visa under this category. There is no statutory or regulatory requirement that the petitioner have an offer of employment. The law, however, states that the petition must be accompanied by evidence that the alien is coming to the United States to continue work in the area of expertise.<sup>33</sup> The regulations state that letters from a prospective employer, contracts, or even a statement from the beneficiary explaining his or her professional plans are acceptable to meet this requirement.<sup>34</sup>

In self-sponsored extraordinary ability cases, practitioners often encounter RFEs asking for a list of potential employers willing to hire the alien. This is the case even in matters where the alien is employed within his field of endeavor, but chooses to self-petition. In one such RFE, the Service stated that “a reason for exemption of the requirement of obtaining a labor certification for the prospective beneficiary is because the expertise is so great that any employer involved in the prospective beneficiary’s field of endeavor would be willing to hire that individual.” While it may be true that someone with extraordinary ability would have a number of job offers, it nevertheless remains that requiring EB-1-1 petitioners to provide confirmation of employment offers is beyond the requirements of the law.

Work by aliens of extraordinary ability, unlike others, may be performed in a variety of settings. Innovation and advancement that is out of the ordinary may not necessarily happen at a traditional place of employment. A free expression of one’s genius often requires independent and unsupervised work, outside the confines of the traditional employment setting. If all extraordinary individuals were restricted to holding traditional employment that does not allow for such flexibility, it is almost certain that the advancement of world science, art, business, athletics, and education would be severely arrested. Many extraordinary people are motivated

to excel by passion for their craft rather than financial considerations and, thus, choose independent work instead of regular employment. This is precisely why the regulations do not require an employer to petition for the category of extraordinary ability. Although it is common for physicians to work in a regular employment setting of a hospital, a university, or a scientific laboratory, it does not follow that physicians, as a group, should be subjected to a different legal standard and be required to produce evidence of a job offer.

While it is not necessary to provide evidence of employment in the context of immigrant visa petitions for aliens of extraordinary ability, it is essential to show that the alien will prospectively substantially benefit the United States.<sup>35</sup> The regulations are silent about this statutory prerequisite and provide no guidance as to documentation requirements in this regard. The district court in *Buletini v. INS* analyzed the statute and applicable persuasive evidence and concluded that the Service should assume that “persons of extraordinary ability working in their field of expertise will benefit the United States.”<sup>36</sup> In other words, according to *Buletini*, if an extraordinary alien will work in his field of expertise, it is reasonable to assume that he will substantially benefit prospectively the United States.

The Service has also stated that “[o]rdinarily, the ‘substantial benefit’ criterion is met through satisfying the other statutory requirements” and that “there may be very rare instances where an extraordinary alien’s admission may be damaging or detrimental to the interests of the United States.”<sup>37</sup> Therefore, as long as the alien meets the other requirements for extraordinary ability, the prospective benefit of his or her work is implied, with rare exceptions.

### **MYTH 6: THE JOB MUST BE TEMPORARY (FOR O-1 ONLY)**

In the context of O-1 visa petitions, practitioners report an influx of RFEs requesting evidence that the position for which the O-1 visa is requested is a temporary position and asking for a specific termination date of the position. This is yet another myth

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<sup>31</sup> 8 CFR §214.2(o)(1)(i).

<sup>32</sup> 8 CFR §204.5(h)(5).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

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<sup>35</sup> 8 USC §1153(b)(1)(A)(iii).

<sup>36</sup> 860 F. Supp. 1222, 1229 (E.D.Mich. 1994).

<sup>37</sup> Letter, Skerrett, Chief, Imm. Branch, Adjudications, HQ 204.23-C (Mar. 8, 1995).

that imposes conditions not contemplated by statute or the regulations.

The applicable statute places no limit on the length of admission of an O-1 alien. While both the statute and the regulations require that the O-1 alien seek to enter the United States temporarily,<sup>38</sup> they do not require that the job itself be temporary. Put another way, it is possible for a position not to have a termination date, but for the alien to intend to take the position only for a temporary period of time. If O-1 visas could only be granted for temporary positions, numerous university classrooms, research laboratories, hospital operating rooms, and medical offices would be empty.

The law authorizes the admission of an O-1 alien for the period of the “event”<sup>39</sup> in question, which is broadly defined. The regulations define an “event” as including, but not limited to “a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement.”<sup>40</sup> It appears that virtually any legitimate activity may qualify as an “event” under the O-1 regulations. A 2001 Service Memorandum explained that the examples of an event contained in the regulations are not all inclusive and that almost anything can qualify; an employment agreement or even a summary of a verbal contract can be classified as an event.<sup>41</sup> In fact, the Memorandum continues by saying that the event is what allows the Service to determine whether the alien is planning to work in the area of his extraordinary ability and, in addition, provide potential validity dates.<sup>42</sup>

The law does not require that the event have a temporary nature or a specific end date. If an extraordinary researcher is entering the United States to participate in a “scientific project” studying a cure for cancer, it is safe to say (unfortunately) that this is an “event” that could go on for decades. Similarly, if a hospital hires an extraordinary surgeon for a “business project” that involves starting a new organ transplantation program, it is inherently clear that this “event” is not going to end unless it is a failure.

In fact, the regulations even discuss the effect of an approval of a labor certification on a pending O-1 petition,<sup>43</sup> implying that an O-1 holder may, indeed, hold a permanent position. The regulations dispose of this issue in favor of the O-1 nonimmigrant by reasoning that the alien may legitimately come to the United States temporarily to perform the duties of the O-1 assignment and then depart at the end of the O-1 stay, while, at the same time, seeking permanent residence.<sup>44</sup> The *Foreign Affairs Manual* confirms that the issue of temporariness of stay is not relevant to O-1 aliens: “consular officers shall not apply any standard of temporariness or immigrant intent . . . .”<sup>45</sup>

Once again, the Service’s demands with respect to the temporary nature of an O-1 position are beyond the requirements of the law. It is irrelevant whether or not the position is temporary. What matters is that the O-1 alien intends to enter the United States temporarily.

#### **MYTH 5: EXTENSIONS REQUIRE EVIDENCE OF EXTRAORDINARY ABILITY (FOR O-1 ONLY)**

The regulations state plainly and clearly that, in order to extend O-1 status, “[s]upporting documents are not required.”<sup>46</sup> This, however, has not been implemented in practice, and exhibits submitted with O-1 extensions by most practitioners virtually mirror those in the original petitions. In fact, the Service practically calls for re-qualifying aliens as extraordinary each time extensions are filed, with many O-1 extensions denied due to insufficient evidence of extraordinary ability. In one such case, the AAO sustained a denial of an O-1 extension for an Assistant Professor of Surgery who had six prior O-1 approvals.<sup>47</sup>

Because the regulations do not require supporting documents in order to qualify for an O-1 extension, the burden of proof should be on the Service to demonstrate that the original O-1 was approved in error. In reality, practitioners, in order to successfully qualify their clients for O-1 extensions, continue to provide the same type of extensive documentation

<sup>38</sup> INA §101(a)(15)(O)(i), 8 CFR §214.2(o)(13).

<sup>39</sup> 8 CFR §214.2(o)(6)(iii)(A).

<sup>40</sup> 8 CFR §214.2(o)(3)(ii).

<sup>41</sup> INS Memorandum, “Guidance on the Adjudication of O-1 and P Petitioners Filed for Extensions of Stay and the Term ‘Event’ HQ 70/6.2.8 (Oct. 17, 2001).

<sup>42</sup> *Id.*

<sup>43</sup> 8 CFR §214.2(o)(13).

<sup>44</sup> *Id.*

<sup>45</sup> 9 FAM §41.55, Note 5.1.

<sup>46</sup> 8 CFR §214.2(o)(11).

<sup>47</sup> *Matter of [name not provided]*, SRC 02 240 50457 (AAO Jan. 24, 2003).

required only for the initial petitions with O-1 extension filings.<sup>48</sup>

On a related note, the validity period of an extension has been an important issue of debate. The regulations do not address this question in depth, but simply state that extensions may be authorized in increments up to one year.<sup>49</sup> The regulations define an “extension” as an action required “to complete the same activities or events specified in the original petition.”<sup>50</sup> This definition does not cover the following three scenarios that should not be considered “extensions” within the meaning of the regulations:

Filing a petition requesting consular notification;

Filing a petition to start new activities or events; or

Filing a petition for a change of employer.

These three scenarios should qualify the O-1 nonimmigrant for additional three years of O-1 status, as they are not considered “extensions.” The Immigration Services Division, in a liaison teleconference, has opined that the one-year limit should not apply to petitions by new O-1 employers or petitions by the same employer for a new event.<sup>51</sup> However, the Service has been inconsistent in adjudicating these petitions. Yet another myth that practitioners, as advocates, must dispel.

#### MYTH 4: THE ALIEN MUST HAVE INTERNATIONAL ACCLAIM

An alien beneficiary may qualify for an extraordinary ability visa by demonstrating either national or international acclaim. Service Centers often seem to misunderstand this concept by requiring alien beneficiaries seeking this classification to demonstrate both. In a 2000 case, the AAO dismissed a director’s decision and remanded the petition for further consideration where the director denied the petition. The

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<sup>48</sup> Recently, in an effort to rectify this situation, the Service issued guidance on readjudication of previously approved petitions advising that readjudication would be allowed only where there is material error, change in circumstances, or new material information adversely impacting eligibility. USCIS Interoffice Memorandum, “The Significance of Prior CIS Approval of Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity” (Apr. 23, 2004), *posted on AILA InfoNet at Doc. No. 04050510* (May 5, 2004).

<sup>49</sup> 8 CFR §214.2(o)(12)(ii).

<sup>50</sup> 8 CFR §214.2(o)(11).

<sup>51</sup> “ISD Teleconference of 10/3/02,” *posted on AILA Infonet at Doc. No. 02110470* (Nov. 4, 2002).

AAO rejected the directors conclusion that only internationally known individuals have reached the top of the field<sup>52</sup>:

[T]here is no statutory or regulatory support for the contention that ‘international’ fields of endeavor require a higher standard of proof than ‘national’ fields, nor is it clear how finely one could draw a distinction between the ‘national’ and the ‘international.’ ... An alien who has reached the top of the field in a given country can, therefore, qualify for this classification... There is no support for placing a heavier burden on aliens in some occupations than in others.<sup>53</sup>

Despite both the AAO’s very clear guidance and the language of the applicable statute and the regulations, service centers continue to issue RFEs and denials where international acclaim is not shown. The CSC recently denied an immigrant visa to a classical violinist because the director identified the beneficiary’s field of endeavor as “classical music” and concluded that it is an international, rather than a national, field.<sup>54</sup> “Therefore, the beneficiary’s expertise in his field of endeavor will be judged at the international level.”<sup>55</sup> The director restated this standard later in the decision noting that the petitioner’s field “is a worldwide field and therefore the petitioner must establish that the beneficiary not only has national acclaim but international acclaim in the field as well.”<sup>56</sup> Since similar reasoning can be applied to physicians, this case merits discussion.

This standard is improper for the adjudication of extraordinary ability petitions, since the law clearly dictates that either national or international acclaim will qualify a person as an alien of extraordinary ability. In essence, the director has created a whole new standard solely for the beneficiary because the

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<sup>52</sup> *Matter of [name not provided]*, (AAO Aug. 10, 2000).

<sup>53</sup> *Id.*

<sup>54</sup> *Matter of [name not provided]*, WAC 02 282 51671 (CSC Jul. 18, 2003).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* During the preparation of this article, the AAO remanded this case back to CSC: “The regulation does not provide that sustained acclaim in some fields of endeavor can only be met at the international level. By requiring musicians, or more specifically classical musicians, to establish sustained international acclaim, the director imposes a standard higher than that set by statute, and applies the criteria more narrowly than the regulation requires.” *Matter of [name not provided]*, WAC 02 282 51671 (AAO Mar 8, 2004).

director concluded that his field was an “international” and a “worldwide” field. The same logic could be applied to a physician, as medicine, much like classical music, can be considered an “international” field. However, had Congress intended to evaluate individuals practicing in “international” fields under international acclaim, it would have created appropriate legal standards to reflect this differentiation. Indeed, most fields of endeavor, including clinical practice of medicine and medial research, are inherently “international,” with the exception of a few narrow fields that are specific to certain ethnic groups, like Israeli dancing, matrioshka-making (Russian nesting dolls), or playing sepak takraw (an Asian ball game).

Likewise, the Service recently issued a Notice of Intent to Revoke an approved immigrant visa petition to a research scientist, claiming that “[a]ll of the documents in support of his qualifications are from the former Soviet Union. The fact that there is no documentation of recognition of his accomplishments from outside of Russia and Armenia indicates that he has not had sustained national or international acclaim as required by the regulations.”<sup>57</sup> Here, the Service correctly quotes the legal standard as “national or international,” but it appears to think either that international recognition of accomplishments is required nevertheless, or that Russia is not a nation.

The AAO has continuously remanded and approved cases where service centers attempted to apply the “international acclaim” standard. The AAO remanded an appeal for further consideration where the Vermont Service Center denied an immigrant petition by stating that the petitioner did not qualify as “one of the very top ... in the world.”<sup>58</sup> The AAO rejected the concept of “one of the top in the world” as contrary to the statute and regulations because it implied that international acclaim was required. It stated that evidence of sustained national acclaim in the alien’s home country would suffice to classify him as extraordinary.

Similarly, the AAO approved an immigrant petition after the California Service Center denied the petition claiming that the petitioner must show international, rather than national, acclaim:

[T]here is no justification in the language of either the statute or the regulations for arbitrarily dividing fields of endeavor into “national” and “international” fields. The statute calls for evidence of “national or international acclaim,” with no indication that national acclaim is sometimes insufficient.<sup>59</sup>

Thus, the Service acknowledges that standards for acclaim may differ internationally, and that the alien should be judged by the standards appropriate within his or her country, if he or she is attempting to qualify through proving national acclaim. *Buletini* confirms this reasoning by stating that there is no requirement to show the significance of various national accomplishments outside of the alien’s home country.<sup>60</sup>

The Director’s requirement that the award be of significance outside of Albania adds to the 1990 Amendment a requirement of international recognition that Congress did not demand. The 1990 Amendment states ... that an alien may demonstrate extraordinary ability through “national or international acclaim.”<sup>61</sup>

Thus, the award need not have significance outside of one country.

The *Buletini* court discussed the impossibility of comparing certain aspects of recognition in other countries to those in the United States, which, according to this court, is why Congress allowed the national acclaim standard. As an example, it highlights the criterion of “significantly high remuneration,” concluding that remuneration must be compared to others similarly situated in the alien’s home country and should not be analyzed on the international scale. In *Buletini*, the plaintiff’s salary as a physician in Albania, when converted into U.S. dollars, equaled \$40 per month, which is extremely low by U.S. standards. However, an average Albanian doctor’s salary, when converted to U.S. dollars, is \$20 per month, making the plaintiff’s salary significantly higher in relation to others in the same field.<sup>62</sup> It would be contrary to the regulations and the intention of the “national acclaim” standard to discount

<sup>57</sup> *Matter of [name not provided]*, SRC 00 149 52185 (CSC Oct. 14, 2003).

<sup>58</sup> *Matter of [name not provided]*, EAC 02 042 57685 (AAO Mar 11, 2003).

<sup>59</sup> *Matter of [name not provided]*, WAC 01 256 55308 (AAO May 29, 2003).

<sup>60</sup> *Buletini v. INS*, 860 F. Supp. 1222, 1229 (E.D.Mich. 1994).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 1231–32 n. 12.

evidence of a salary twice the national average, based on the standards of a different nation.

Requiring extraordinary aliens to be extraordinary on both national and international scales creates an impermissibly restrictive standard—one not contemplated by Congress. National recognition is specifically identified in both the statute and the regulations as sufficient to qualify an individual as extraordinary.

### MYTH 3: EACH REGULATORY CRITERION MUST BE SATISFIED AS A RESULT OF THE ALIEN'S EXTRAORDINARY ABILITY

It is common practice for USCIS to disregard evidence offered by petitioners to demonstrate eligibility for regulatory criteria by stating that the beneficiary did not attain each criterion by virtue of those extraordinary abilities. In a fascinating exercise of circular reasoning, USCIS wants the alien to demonstrate that his or her extraordinary ability caused him or her to meet the regulatory criteria that demonstrate extraordinary ability. This is akin to a doctor requiring that a patient first demonstrate he has cancer before he would be tested for cancer.

The Service frequently insists on evidence that the alien was selected to serve as a judge *because of extraordinary abilities* or received an award *because of sustained acclaim*. If such evidence is not produced, the Service deems these criteria not met. This is a myth on which the Service, including the AAO, has based numerous denials. For example, the AAO dismissed an appeal filed by a university on behalf of an Assistant Professor of Orthodontics by rejecting all evidence where the petitioner was not able to demonstrate sustained acclaim in connection with each regulatory criterion.<sup>63</sup> The AAO said:

Counsel for the petitioner argues that the American Society of Association Executives' Gold Circle Award for the best Scientific Article for 2001 satisfied this criterion [of lesser national awards]. Although the petitioner may have established that this award has national recognition . . . this one award is insufficient evidence of sustained acclaim. The beneficiary does not satisfy this criterion . . .

. . . .

For criterion number three, the petitioner submitted copies of three articles about the beneficiary

and his work . . . . The director determined that these articles did not report anything of great significance regarding the beneficiary . . . . The evidence submitted in each category must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise.<sup>64</sup>

This analysis constitutes gross misinterpretation of the law. If the Service's own regulations had intended for each regulatory criterion, standing on its own, to be able to demonstrate sustained national or international acclaim, than meeting one criterion could qualify a person as an alien of extraordinary ability. There would be no need to meet at least three, as required by the regulations. Sustained national or international acclaim is demonstrated by collecting evidence to satisfy at least three regulatory criteria, which is why it is not necessary to show that each criterion was met as a result of extraordinary ability.

Applicable case law fully supports this position. In *Muni v. INS*, the District Court for the Northern District of Illinois discussed the exact issue debated in the AAO decision that dismissed articles about the beneficiary because they "did not report anything of great significance."<sup>65</sup> The *Muni* court said:

[T]he INS gave short shrift to the articles Muni submitted to support his petition. These articles do not establish that Muni is one of the stars . . . , but that is not the applicable standard. Under the INS' own regulations, all Muni need show is that there is "published material about [him] in professional or major trade publications or other major media . . . ."<sup>66</sup>

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<sup>64</sup> *Id.*

<sup>65</sup> 891 F. Supp. 440, 445 (N.D. Ill. 1995).

<sup>66</sup> *Id.* The *Muni* case echoes an earlier decision by the same court in *Racine v. INS*, 1995 U.S. Dist. LEXIS 4336, which criticized the legacy INS for not following its own regulations where it held that none of the articles about the beneficiary said that he was "one of the best in his field." The *Racine* court held that "under the Act, he need not be one of the best, he need be only one who is in that small percentage at the top of his field." As for the articles about the alien, the court said: "there is no requirement under the Act that the articles need to state that he is one of the best or even that the articles describe him at the top of his field. The articles need to demonstrate his work within the field. The INS has not only inserted a new qualification . . . , it has also altered its own definition of extraordinary ability . . . ."

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<sup>63</sup> See *Matter of [name not provided]*, SRC 02 219 50217 (AAO Feb. 13, 2003).

Thus, the *Muni* court confirmed that it is unnecessary to establish sustained acclaim for each criterion. It is the reverse that is true—by satisfying three criteria through meeting the plain language of the regulations, an alien is deemed to have sustained acclaim and, therefore, the alien is deemed extraordinary.

Another district court case, *Buletini v. INS*, provides a more detailed explanation of how a person can qualify as extraordinary.<sup>67</sup>

The Director also augments the fourth criterion of the regulation by requiring plaintiff to demonstrate not only that he participated as a judge of the work of other doctors but also that his participation on the commission “required or involved extraordinary ability.” The fourth criterion, however, only requires evidence that the alien participated as a judge of others in his field; it does not include a requirement that an alien also demonstrate that such participation was the result of his having extraordinary ability. Such a requirement would be a circular exercise: the criterion is designed to serve as proof that plaintiff is a doctor of extraordinary ability; the Director’s requirement would mean that plaintiff must prove that he is a doctor of extraordinary ability in order to prove that he is a doctor of extraordinary ability.<sup>68</sup>

Thus, it is confirmed by case law that asking an alien to demonstrate not only that he meets the regulatory criteria, but also that he is able to achieve each criterion because of his extraordinary ability is inappropriate and not required by law.

## MYTH 2: MEETING THREE CRITERIA IS NOT ENOUGH

This has been a point of major contention between the Service and immigration law practitioners: is meeting the minimum three criteria enough? Yes, it is! The law clearly says “at least three,” which means that more than three is acceptable, but “three” is certainly sufficient. In other words, if three were not enough, the law would have chosen another number to serve as the minimum requirement.

Service centers, however, regularly issue RFEs and denials that hold the contrary. They use ambi-

guous language like “the regulatory criteria are only categories of evidence rather than types of documentation that automatically prove eligibility.” In a recent denial of an extraordinary ability petition, the CSC concluded that the alien had actually met at least three regulatory criteria, but said that this was not sufficient to qualify him for the immigrant visa. The director denied the petition because “ ‘the list’ of regulatory items . . . is a representation of the items that can be submitted but that it does not take the place of the statutory requirement of extensive documentation . . . .” The director, however, did not detail why the petitioner’s submitted evidence failed to meet this standard of “detailed documentation” or what exactly is required in order to meet it.<sup>69</sup> This disregard of the legal standard is erroneous. Meeting three criteria is sufficient to qualify as extraordinary, and the regulations, the case law, and even some of the most recent AAO decisions fully support this position.<sup>70</sup>

The Act provides that an alien qualifies for an extraordinary ability visa if he or she has extraordinary ability that has been demonstrated by “sustained national or international acclaim” and if the alien’s achievements have been recognized in the field through extensive documentation.<sup>71</sup> However, the Act does not specify exactly how a petitioner is to meet this standard of sustained acclaim or what type of “extensive documentation” the petitioner must provide in order to meet it. It is the purpose of the regulations to clarify and interpret the statute, provide definitions, and give guidance as to the specific ways of meeting the legal standard articulated in the statute.

Applicable regulations define the meaning 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

<sup>67</sup> *Buletini v. INS*, 860 F. Supp. 1222, 1229 (E.D.Mich. 1994).

<sup>68</sup> *Id.*

<sup>69</sup> See *Matter of [name not provided]*, WAC 02 282 51671 (CSC Jul. 18, 2003). In its decision remanding this case back to CSC, the AAO stated: “Clearly, if the petitioner satisfies three of the regulatory criteria, he will qualify for the visa classification.” *Matter of [name not provided]*, WAC 02 282 51671 (AAO Mar 8, 2004).

<sup>70</sup> *Matter of [name not provided]*, WAC 02 070 52665 (AAO Feb. 27, 2003); *Matter of [name not provided]*, WAC 01 109 53910 (AAO Apr. 11, 2003); *Matter of [name not provided]*, WAC (AAO Aug. 19, 2003); *Matter of [name not provided]*, NSC (AAO Sept. 10, 2003).

<sup>71</sup> See INA §§203(b)(1)(A), 101(a)(15)(O)(i).

endeavor.”<sup>72</sup> The regulations also provide specific instructions on what type of evidence is required in order to meet the statutory legal standard of demonstrating sustained national or international acclaim and that the alien’s achievements have been recognized in the field of expertise. Accordingly, the regulations indicate that an alien may meet the legal standard through either evidence of a one-time achievement or, in the alternative, evidence of “at least three” of the enumerated regulatory criteria.<sup>73</sup>

Therefore, meeting at least three of the regulatory criteria qualifies the alien as one who has demonstrated sustained national or international acclaim and whose achievements have been recognized in the field of expertise. It is precisely because the statute does not provide adequate guidance that the Service drafted regulations to clarify what exactly constitutes “extensive documentation.” Thus, the list of regulatory criteria was created to afford petitioners clear instructions on how to qualify for extraordinary ability.<sup>74</sup> More specifically, the Service, in its own regulations, stated that meeting “at least three” of the criteria *will* constitute evidence of sustained national and international acclaim and recognition of achievements in the field.<sup>75</sup> The Service, thus, defined that meeting at least three of the regulatory criteria constitutes “extensive documentation” for the purposes of the statute.

It is clear that the mere submission of evidence relating to at least three of the regulatory criteria could be insufficient to actually meet the three criteria and, thus, may not satisfy the legal standard of sustained national or international acclaim.<sup>76</sup> How-

ever, *meeting* at least three regulatory criteria is sufficient, according to the Service’s own regulations.<sup>77</sup>

Additionally, case law confirms that meeting at least three regulatory criteria satisfies the burden of proof for extraordinary ability. In *Buletini v. INS*, the court states:

Proof that an alien meets three of the criteria of the regulation is intended to constitute evidence that the alien has extraordinary ability . . . . It is an abuse of discretion for an agency to deviate from the criteria of its own regulation. Once it is established that the alien’s evidence is sufficient to meet three of the criteria listed in 8 C.F.R. §204.5(h)(3), the alien must be deemed to have extraordinary ability unless the INS sets forth specific and substantiated reasons for its finding that the alien, despite having satisfied the criteria, does not meet the extraordinary ability standard.<sup>78</sup>

The AAO has been complying with this standard by overturning or remanding decisions (mostly originating out of the CSC) that turned on the notion that “three is not enough.”<sup>79</sup> It is imperative to remember that the statute supersedes the regulations. The AAO recently analyzed this issue and reversed a Vermont Service Center denial where the director concluded that “sustained national acclaim, in and by itself, does not automatically establish that the beneficiary is, in fact, one of those few who are at the very top of their field of endeavor.”<sup>80</sup> In overturning this decision, the AAO recognized that this reasoning disregarded the plain wording of the controlling statute:

While the phrase “small percentage at the very top of the field” derives from the legislative history, that phrase does not supersede the plain language of the statute, which established the “sustained acclaim” threshold.<sup>81</sup>

<sup>72</sup> 8 CFR §204.5(h)(2). The regulations provide a virtually identical definition for the O-1 visa at 8 CFR §214.2(o)(15), but replace the word “individual” with “person” and word “risen” with “arisen.”

<sup>73</sup> See 8 CFR §§204.5(h)(3), 214.2(o)(3)(iii)(A)–(B).

<sup>74</sup> 8 CFR §§204.5(h)(3)(i)–(x), 214.2(o)(3)(iii)(B)(1)–(8)

<sup>75</sup> See 8 CFR §§204.5(h)(3), 214.2(o)(3)(iii)(A)–(B).

<sup>76</sup> *Muni* makes this statement at page 446: “[w]hile the satisfaction of the three-category production requirement does not mandate a finding that the petitioner has sustained national or international acclaim and recognition in his field, it is certainly a start . . . .” Thus, the *Muni* court correctly makes a distinction between “production” of evidence toward the three categories and satisfaction of the three categories. Some AAO decisions have made the same observation that “addressing the criteria is not equivalent to satisfying the criteria.” *Matter of [name not provided]*, SRC 02 186 52971 (AAO Jan. 10, 2003).

<sup>77</sup> See 8 CFR §§204.5(h)(3), 214.2(o)(3)(iii)(A)–(B).

<sup>78</sup> 860 F. Supp. 1222, 1231, 1234 (E.D.Mich. 1994).

<sup>79</sup> *Matter of [name not provided]*, WAC 02 070 52665 (AAO Feb. 27, 2003); *Matter of [name not provided]*, WAC 01 109 53910 (AAO Apr. 11, 2003); *Matter of [name not provided]*, WAC (AAO Aug. 19, 2003); *Matter of [name not provided]*, NSC (AAO Sept. 10, 2003).

<sup>80</sup> *Matter of [name not provided]*, EAC 02 099 53226 (AAO Mar. 24, 2003).

<sup>81</sup> *Id.*

Thus, the message to the Service Centers is clear—“three means three!” Satisfying three regulatory criteria is enough to qualify as extraordinary.

**AND THE NUMBER 1 MYTH ABOUT  
EXTRAORDINARY ABILITY IS ...  
THAT THE AAO ALWAYS KNOWS  
THE RIGHT ANSWER!**

The Diagnostic Statistical Manual (DSM-IV™), the main tool used by psychiatrists to diagnose patients, defines the Schizotypal Personality Disorder as characterized by peculiarities of thinking, odd beliefs, and eccentricities, involving beliefs in mythical phenomena. While the author does not attempt to diagnose the current problem of inappropriate adjudications by USCIS, it is apparent that many decisions, including those made by the AAO, involve peculiar beliefs in the mythical phenomena described in this article.

In the past couple of years alone, the AAO dismissed numerous appeals from inappropriate denials by using erroneous (or mythical) reasoning:

The AAO dismissed an appeal filed by the University of Mississippi Medical Center on behalf of the Head of Critical Care Division and Associate Professor, rejecting evidence of a national award because it was won as a team; of peer review as insufficient to show sustained acclaim; of a major invention because it was collaborative; and of the alien’s high wage (three times the state average for a physician) because it was not “as high as originally envisioned by Congress.”<sup>82</sup>

The AAO dismissed an appeal filed by the University of Texas Medical Branch at Galveston for a Cardiothoracic Surgeon, even though the Service recognized that the alien met at least three of the regulatory criteria.<sup>83</sup>

The AAO dismissed an appeal filed by a medical oncology practice on behalf of an Assistant Medical Director of Clinical Trials, rejecting evidence of a feature article about the alien because it was not about his “national significance”; of peer review for the National Medical Oncology Forum because he was not selected as a result of ex-

traordinary ability; and of publications because all scientists are expected to publish.<sup>84</sup>

The AAO dismissed an appeal filed by Northwestern University on behalf of a Physician, rejecting evidence of original contributions of significance because this criterion alone did not establish the beneficiary’s sustained acclaim; of scholarly publications because citation history was not offered; and of his leading role because the beneficiary was not a university dean or provost.<sup>85</sup>

The AAO dismissed an appeal filed by a university on behalf of an Orthodontist, rejecting evidence of a national award because it alone did not establish sustained acclaim; of articles about the beneficiary because they did not report “anything of great significance”; of an award-winning publication because citation history was not offered; and of high salary because it deemed the Department of Labor an inappropriate entity to determine prevailing wage.<sup>86</sup>

The AAO dismissed an appeal filed by the University of Kansas on behalf of a Researcher, citing the *Report and Recommendations* of the Committee on Postdoctoral Education by the Association of American Universities as evidence that researchers are expected to publish, and thus, rejected the alien’s publications.<sup>87</sup>

The AAO dismissed an appeal filed by a medical school on behalf of a Physician, citing as one of the reasons that the beneficiary’s articles were not “conclusive evidence of sustained acclaim” and disregarding six prior O-1 approvals.<sup>88</sup>

The AAO dismissed an appeal filed by the University of California, San Diego on behalf of a Research Scientist, rejecting the alien’s service as a peer reviewer because there was no evidence that he was selected as a result of extraordinary ability.<sup>89</sup>

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<sup>82</sup> *Matter of [name not provided]*, SRC 03 030 50095 (AAO Aug. 28, 2003).

<sup>83</sup> *Matter of [name not provided]*, SRC 02 186 54316.

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<sup>84</sup> *Matter of [name not provided]*, SRC 02 191 52008 (AAO May 20, 2003).

<sup>85</sup> *Matter of [name not provided]*, LIN 02 259 51613 (AAO Feb. 13, 2003).

<sup>86</sup> *Matter of [name not provided]*, SRC 02 219 50217 (AAO Feb. 13, 2003).

<sup>87</sup> *Matter of [name not provided]*, LIN (AAO Feb. 5, 2003).

<sup>88</sup> *See Matter of [name not provided]*, SRC 02 240 50457 (AAO Jan. 24, 2003).

<sup>89</sup> *Matter of [name not provided]*, WAC 01 254 55882 (AAO Jan. 17, 2003).

Over the years, legacy-INS/USCIS has denied many petitions filed by extraordinary physicians and medical researchers and, as a consequence, changed the course of their lives and the lives of U.S. medical patients, including those patients with incurable conditions awaiting scientific breakthroughs, who would have benefited from their services. Undoubtedly, these denials have also stifled scientific progress, economic growth, and cultural innovation in the United States. This is the harsh real-life result of adjudications based on misinterpretations of the law, misguided analyses, and, yes, mythical beliefs. In this article, only a fraction of these myth-based decisions were discussed, but hopefully, readers will use these conclusions as a device to continue dispelling the myths.