



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-S-T-

DATE: SEPT. 28, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a cardiologist who is currently engaged in research on Takotsubo cardiomyopathy, seeks classification as an individual of extraordinary ability in the sciences. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director, Texas Service Center, denied the petition. The Director determined that the Petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which necessitates either 1) documentation of a one-time major achievement, or 2) materials that show he meets at least three of ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x).

The matter is now before us on appeal. In his appeal, the Petitioner submits no new evidence but argues that the Director erred in concluding that he did not meet the original contributions criterion or the leading or critical role criterion.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Petitioner may establish his eligibility by demonstrating extraordinary ability through sustained national or international acclaim and achievements that have been recognized in the field through extensive documentation. Specifically, section 203(b)(1)(A) of the Act states, in pertinent part:

Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals "in that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition his achievements in the field through a one-time achievement (that is a major, internationally recognized award). If a petitioner does not submit this documentation, then he must provide sufficient qualifying evidence indicating that he meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

A. Evidentiary Criteria

Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may document a one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not claimed or shown that he is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, the Petitioner must provide at least 3 of the 10 types of documentation listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

On appeal, the Petitioner specifically challenges the Director's findings relating to regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(v) and (viii). As the Petitioner does not continue to maintain that he meets, and has not argued that the Director erred in regard to, any other enumerated criteria, they will not be discussed in this decision.

For the reasons discussed below, the Petitioner has not demonstrated that he meets either of the claimed criteria.

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.

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The Director found that the Petitioner satisfied the plain language of this criterion. Upon a review of the record, we agree that the Petitioner has provided evidence of his peer review of scholarly articles submitted for publication in medical journals. Specifically, the Petitioner presented emails confirming the completion of the peer review of at least two scientific articles submitted for publication to [REDACTED]. As a result, the Petitioner has satisfied the plain language of this criterion.

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

The Petitioner claims to meet this criterion based upon his research in differentiating Takotsubo cardiomyopathy (TC) from acute myocardial infarction (ACI). To satisfy this criterion, a petitioner's contributions must be both original and of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v). The term "original" and the phrase "major significance" are not superfluous and, thus, they have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3d Cir. 1995), *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003). Regardless of the field, the phrase "contributions of major significance in the field" requires substantiated impacts beyond one's employer, clients or customers. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

To demonstrate that his research in TC constitutes an original scientific contribution of major significance, the Petitioner refers to testimonial letters; the citation to his published works; the fact that he was a principal investigator on two research studies, one of which won a prize for a poster presentation; and the fact that his articles have been published in prestigious journals.

The Petitioner submitted eight testimonial letters from other cardiology researchers, each of which discussed his work on TC and its differentiation from ACI. The authors all explained the originality of the work. However, none of them described, in definite terms, any measurable impact that the Petitioner's findings have made upon the field of cardiology. For example, [REDACTED] chairman, [REDACTED] noted the Petitioner's principal investigatory role on a research project involving ACI. The project involved reviewing the cases of cardiology patients during the five years prior to the study and measuring "electrocardiographic (ECG) changes in TC patients." The Petitioner found the ECG changes to be very different from those observed "in a typical heart attack." [REDACTED] described the Petitioner's finding as "very significant" for cardiologists. He further maintained that the Petitioner's "research described all the ECG abnormalities, which helps cardiologists diagnose and differentiate TC from a heart attack, which is extremely important due to much higher chances of patient survival and prognosis in TC." While noting the importance of the Petitioner's finding, [REDACTED] does not explain how the Petitioner's differentiation of TC from ACI has impacted the field of cardiology in any measurable manner. Specifically, he states, "[The Petitioner's] research in [TC] is undoubtedly original and significantly contributes to medical literature, helping physicians and cardiologists all over the world to better understand the pathophysiology of TC and helping in its accurate diagnosis." However, he did not

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identify any physicians or cardiologists who have appropriated the Petitioner's findings or entities that have implemented his research to aid in the diagnosis of TC.

_____ chairman emeritus, Department of Medicine, _____ discussed the importance of the Petitioner's research findings, stating:

[T]akotsubo symptoms were previously thought to be indistinguishable from those of acute myocardial infarction (MI) or heart attack, but in this study, [the Petitioner] described the electrocardiographic (ECG) changes in patients with Takotsubo Cardiomyopathy (TC) and showed that these ECG changes are distinctive and differ from those typically seen in acute MI or a heart attack.

In evaluating the Petitioner's research on TC which he published in two articles, _____ noted "[The Petitioner] has given the international medical community of cardiologists a better understanding and insight into the diagnosis of this rare syndrome that seem to be indistinguishable from real Myocardial Infarction or a heart attack on presentation." Although _____ maintained that the Petitioner's research would assist cardiologists in their ability to diagnose TC, he did not identify any cardiologists who have already successfully utilized the Petitioner's findings to make such diagnoses.

_____ director, _____ and medical director, _____ related the Petitioner's findings on TC and assessed the value of such findings, stating "[The Petitioner's] research papers on Takotsubo Cardiomyopathy, add to the existing knowledge base and give a better understanding of the diagnosis and pathophysiology of this rare syndrome that can be indistinguishable from a real Myocardial Infarction or a heart attack on presentation." While adding to the knowledge base is important, the Petitioner has not demonstrated how this constitutes an original contribution of major significance. Further, _____ does not identify any cardiologists or institutions that have appropriated or implemented such knowledge.

_____ staff cardiac electrophysiologist, _____ reiterates the other authors' praise of the Petitioner's findings, stating "[The Petitioner's] research on Takotsubo Cardiomyopathy (TC) helps Cardiologists diagnose this rare syndrome and differentiate TC from patients with coronary artery disease (CAD) and acute myocardial infarction (MI) or a heart attack on initial presentation." However, _____ did not identify any cardiologists who have employed the Petitioner's research to aid them in their diagnosis of TC or further explain how this research has impacted the broader field of cardiology.

In his appellate brief, the Petitioner states that USCIS failed to "recognize the significant content of these [testimonial] letters," and failed to consider the fact that they "do explain how his research has had a major significance in the field" and has been adopted by other researchers in the field. However, as explained above, while the authors all testify to the importance of the Petitioner's research into differentiating TC from AMI, none provided any specific indication of the extent other cardiology researchers have implemented his findings with respect to diagnosing TC. Contrary to the Petitioner's

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claim, none of the authors identified institutions or individuals that have appropriated or implemented the Petitioner's findings.

The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the foreign national's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Accordingly, the content of the letters is insufficient to establish the Petitioner's eligibility for the immigration benefit sought.

On appeal, the Petitioner challenges the Director's assessment of the low citation rate of his publications as contraindicative of the significant impact of his published works. The Petitioner maintains that, according to [REDACTED] his publications have collectively generated 20 citations, with two of his articles receiving the bulk of them. He claims that 18 of the 20 citations are "independent citations," and this indicates that his work "is receiving attention as having major significance." According to the citation index provided as evidence, the Petitioner has been involved in the publication of seven articles, three of which have been cited by other researchers in the field. The most heavily cited article received 10 citations and the three articles collectively received 16 citations.

While the Petitioner notes that the volume of citations indicates that his work is "receiving attention" and that his work on TC "is spawning research that builds off of his work," he has not demonstrated how the level of citation identified is commensurate with an original contribution of major significance in the field of cardiology or otherwise reflects that his work on TC constitutes an original contribution of major significance. Further, the Petitioner has not shown that a notable number of the citing authors placed unusual reliance on his work. He did not identify any of the authors who cited his work and has not demonstrated that any have singled out his publications as significantly notable among other research in the field.

On appeal, the Petitioner argues that he was the principal investigator on research studies, one of which won a prize for a poster presentation and that this is indicative of the major significance of his work. In his appellate brief, the Petitioner states that his research "produced important results, helping physicians diagnose and differentiate Takotsubo Cardiomyopathy from Acute Myocardial Infarctions, leading to better prognoses and outcomes." We have previously discussed the originality of the Petitioner's research. Apart from the nature and impact of the research, the Petitioner has not demonstrated how the act of leading the various research projects, and a subsequent poster presentation, constitutes an original contribution of major significance in the field.

The Petitioner also maintains that his research has been published "in high quality prestigious journals," and that, according to [REDACTED] director, [REDACTED] he received invitations to publish in such journals "due to his reputation of being an outstanding researcher in the field of Cardiology." While it is notable that some top rated journals have published the Petitioner's work, the appearance of the Petitioner's articles in such journals is not

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sufficient to meet the regulatory requirements of this criterion. The Petitioner still bears the burden of establishing that the results of his research constitute a contribution of major significance in his field. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Further, the prestige of the journal might be reflective of the overall quality of the research contained within a publication. It does not however, demonstrate the influence of any particular author within the field or how an author's research has had an impact within the field. Although the record shows that others in the Petitioner's field have cited to his work, it lacks evidence that this citation rate is indicative of significant influence within the field. That the Petitioner has published work within highly ranked journals does not necessarily demonstrate contributions that are of major significance.

On appeal, the Petitioner also argues that another reason that his research has "been of major significance is the sheer millions of people afflicted with cardiovascular disease." Further, the Petitioner maintains that "his important work in [TC] assists clinicians in differentiating and properly diagnosing [TC] from [MI] (heart attacks), leading directly to better patient outcomes." While we would not dispute the critical nature of cardiovascular disease nor of the importance of the Petitioner's field of research, the Petitioner bears the burden of demonstrating both the originality of his contribution and the impact of his work upon the field, such that it must have been of major significance. The Petitioner has not sustained the burden in this case.

In his appellate brief, the Petitioner maintains that the fact that he was involved in multiple research studies is "illustrative of his significant contributions of major significance" because he was responsible for reviewing the cases on TC and "described the electrocardiographic changes, which were vital in demonstrating the differences between [TC] and [ACI] (heart attacks)." However, we have already considered the Petitioner's research and the opinions of other researchers who discussed the Petitioner's findings relative to the differentiation of TC from ACI. That the Petitioner was successful in making such a determination is not in dispute. The issue to be proven in this case is whether such a finding constitutes an original contribution to the field of cardiology and whether this contribution was of major significance. The Petitioner has not made such a showing.

For these reasons, the Petitioner has not demonstrated that he has satisfied the plain language of this regulatory criterion.

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

The Director found that the Petitioner satisfied the plain language of this criterion. Upon a review of the record, we agree that the Petitioner has provided evidence of his authorship of scholarly articles that were published in professional journals. Specifically, the Petitioner authored seven articles that were published in journals such as [REDACTED]

[REDACTED]
As a result, the Petitioner has satisfied the plain language of this criterion.

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

The Petitioner stated that he meets this criterion based upon the two fellowships he held at prestigious medical centers and the research which he conducted during that time. This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. A critical role should be apparent from the Petitioner's impact on the organization or the establishment's activities. The Petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole. The Petitioner must demonstrate that the organizations or establishments have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."¹ Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the Petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or a similar reputation. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The Petitioner claims to have performed in a critical role while holding fellowships at the [redacted] and the [redacted] and relies on testimony contained in five of the support letters (i.e. [redacted] and [redacted] to attest to the critical nature of his work for these institutions. More specifically, the Petitioner maintains that he performed his critical roles for the Division of Cardiovascular Diseases at the [redacted] and for the Department of Cardiology at the [redacted] and that the critical nature of his roles for these bodies was attributable to the research which he conducted while there.

According to [redacted] assistant professor of medicine, [redacted] Division of Cardiovascular Medicine, [redacted] the Petitioner began an [redacted] at the [redacted] in 2013. She documented the progress he made and the success he enjoyed while completing his fellowship. [redacted] also discussed the research that the Petitioner began when he commenced his residency, noting that he was the "first author of the research paper – "Electrocardiographic changes in Takotsubo Cardiomyopathy'...." While detailing the various aspects of the Petitioner's advanced heart failure training, [redacted] did not claim that the Petitioner performed in either a lead or a critical role for the [redacted] or for the Division of Cardiovascular Diseases at [redacted]

[redacted] also discussed the Petitioner's fellowship at the [redacted] noting that he "possesses an outstanding fund of medical knowledge," "is a skilled bedside clinician, and displays keen clinical judgement." [redacted] lauded the Petitioner's interactions with, and care for, his patients. He further mentioned that the Petitioner "has been actively involved in clinical research since he was an Internal Medicine resident," and went on to note that the Petitioner's "commitment to research and

¹ See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on August 18, 2016, a copy of which is incorporated into the record of proceeding.

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interest in advancing our medical knowledge will play a key role in the future.” However, [REDACTED] did not attribute a lead or critical role to the Petitioner, with respect to the [REDACTED] or the Division of Cardiovascular Diseases, or claim that the Petitioner made a specific impact on the overall operation of the organization.

The Petitioner references [REDACTED] as attesting to the critical role which he performed during his two fellowships. [REDACTED] discussed the Petitioner’s research on TC and also mentioned the Petitioner’s fellowship at the [REDACTED] noting that it “gives him an opportunity to take care of the sickest [patients] in Cardiology and clinical exposure to advanced therapies for heart failure, including implantable cardiac devices.” [REDACTED] spoke of this fellowship as “an extra year of experience and training in Cardiology.” However, he did not state that the Petitioner performed in a lead or a critical role for either of the medical centers at which he was completing his fellowships and did not articulate any impact the Petitioner, or his work on TC, made on the organization, as a whole.

Dr. Lichstein made statements about the Petitioner that were similar to those of other authors with respect to the various fields of knowledge and practice that the Petitioner sharpened while completing his fellowships at the [REDACTED] and at the [REDACTED]. He stated that the Petitioner has “an excellent fund of medical knowledge” and is skilled “in physical diagnosis” as well as “many advanced procedures.” According to [REDACTED] the Petitioner was actively involved in Maimonides’ “program in clinical research” and was the “first author of 2 publications” which [REDACTED] co-authored. However, he does not claim that the Petitioner performed in a lead or a critical role for either the [REDACTED] or the [REDACTED] or for their cardiology departments.

[REDACTED] noted that he “served as [the Petitioner’s] direct supervisor” who saw “many of his achievements first hand,” and would “explain [the Petitioner’s] critical role at [REDACTED] as well as his original research contributions....” According to [REDACTED] the Petitioner “worked as a resident in the Department of Internal Medicine from July 2009 to June 2012 and has been a Cardiology fellow in the Department of Cardiology at [REDACTED] since July 2014.” In assessing the Petitioner’s value to the department, [REDACTED] maintained that the Petitioner “continues to be an integral part of our [REDACTED]” and his clinical skills and research “have greatly helped to enhance our work.” He went on to discuss the Petitioner’s research, stating “he has led multiple research projects in the role of principal investigator and seen them to completion.” While [REDACTED] noted that the Petitioner’s “clinical skills and research have greatly enhanced” the department’s work, he does not explain how the Petitioner’s role was critical either for the [REDACTED] or for the Department of Cardiology. He also spoke of the Petitioner’s lead role over research projects involving TC. However, he did not explain the impact such research had upon the hospital or the department and whether this research was critical to the mission of either entity.

The letters submitted in support of the Petitioner’s claim describe the activities in which the Petitioner participated during the course of the fellowships that he completed at the [REDACTED] and the [REDACTED]. However, these activities involved various aspects of advanced education in the field of cardiology. The letters did not describe any duties the Petitioner performed for the organizations that were commensurate with a lead role for either the hospitals or the departments in which he worked. Neither did the letters specify how the Petitioner contributed to the organizations in ways that were significant to the

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organizations' outcome or what role he played in the organizations' activities. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, at 135 (D.D.C. Dec. 16, 2013).

Evidence under this criterion must provide specifics relating to how the Petitioner's role was critical to the organization as a whole. *Noroozi v. Napolitano*, 905 F.Supp.2d 535, 545 (S.D.N.Y. 2012). In his appellate brief, the Petitioner argues that the Director's adverse finding with regard to this criterion was erroneous, and that "it is an impractical standard to hold a practicing doctor to a hospital's top executives or surgeons." With respect to standards by which a lead or critical role could be measured, the Director indicated the record lacked evidence such as organizational charts "documenting where [the Petitioner's] position fell within the general hierarchy" of the entities at which the Petitioner worked. Further, the Director explained that the evidence did not demonstrate how the Petitioner's "appointments differentiated [him] from other physicians employed by [redacted] including "the hospital's top executives and surgeons." The director noted that the record lacked evidence demonstrating that the Petitioner "was responsible for the hospital's success or standing to a degree consistent with the meaning of 'leading or critical role.'"

For the reasons discussed above, we concur with the Director's finding that the evidence, including his reference letters, does not show how the Petitioner contributed to the organizations in ways that were significant to the organizations' outcome or what role he played in the organizations' activities.

III. CONCLUSION

The documents submitted in support of extraordinary ability must show that the individual 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. Had the Petitioner provided evidence satisfying at least three evidentiary categories, the next step would be a final merits determination that considers all of the filings in the context of whether or not the Petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) that the individual "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20 (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. It is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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ORDER: The appeal is dismissed.

Cite as *Matter of S-S-T-*, ID# 7769 (AAO Sept. 28, 2016)