



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

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

MATTER OF N-S-S-

DATE: DEC. 11, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a physician, 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 immigrant 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 of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied two of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, contending that he satisfies at least three criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified immigrants with extraordinary ability 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 implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification’s initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *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). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “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.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is a staff physician at the [REDACTED] in [REDACTED] Mississippi. Because he has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met two criteria: judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, the Petitioner maintains that he also meets the following criteria: memberships under 8 C.F.R. § 204.5(h)(3)(ii), published material under 8 C.F.R. § 204.5(h)(3)(iii), original contributions under § 204.5(h)(3)(v), and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii).¹ We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

¹ While the Petitioner previously claimed eligibility for the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), he does not continue to do so on appeal, nor does the record support a finding that he meets it. Accordingly, we will not further address this criterion in our decision.

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. 8 C.F.R. § 204.5(h)(3)(ii).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the Petitioner must establish that he is a member of associations requiring outstanding achievements of their members, as judged by recognized national or international experts. The Petitioner contends that his "Degree of Fellow" by the [REDACTED] is an elevated class of membership in that organization, and therefore, that it meets this criterion.² However, according to Article IV of [REDACTED] bylaws submitted by the Petitioner, "[a] Fellow shall not be considered a separate membership classification but shall be considered an earned degree." As such, [REDACTED] bylaws do not support the Petitioner's assertion.

Notwithstanding the above, the Petitioner claims that he received the fellow degree based on his publications on hyperhomocysteinemia and his review of work of others. The record contains screenshots from [REDACTED] website reflecting that [REDACTED]

[REDACTED] and [REDACTED]. In addition, the Petitioner provided his fellowship application reflecting the assignment of points based on answers to questions relating to lifelong learning, practice or quality improvement, volunteer teaching, public service, publishing and research, and specialty service. Further, the Petitioner submitted a letter from [REDACTED] board chair and immediate past president, who stated that [REDACTED] established the fellow "to recognize members who have distinguished themselves among their colleagues, and in their communities, by their service to family medicine, the advancement of healthcare to the American people and professional development through medical education."³

The Petitioner did not demonstrate that the [REDACTED] "Degree of Fellow" requires outstanding achievements. Specifically, as indicated above, the [REDACTED] fellowships are open to any [REDACTED] members who accrue at least 100 points on the application and pay the fee. As it pertains to the application, points are assigned for various criteria, such as receiving and continuing education and training, working in the field of family medicine, volunteering and mentoring, and publishing articles. The Petitioner has not established that these standards represent outstanding achievements. Instead, they reflect education, training, and experience from individuals practicing in the family medicine field. Although [REDACTED] offers some individuals a credential to distinguish themselves from other [REDACTED] members who do not possess such professional achievements, the Petitioner has not shown that the "Degree of Fellow" requires accomplishments rising to the level of "outstanding achievements" consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

² The Petitioner does not indicate, nor does the record reflect, that regular or active membership with [REDACTED] satisfies the regulatory requirements of this criterion.

³ The Petitioner also offered a similar letter from [REDACTED] member relations specialist.

Further, this regulatory criterion requires the outstanding achievements to be judged by recognized national or international experts in their disciplines or fields. According to [REDACTED] of [REDACTED] bylaws, [REDACTED]. Therefore, the record does not indicate recognized national or international experts judge the outstanding achievements of potential [REDACTED] fellows; rather, prospective candidates qualify for the fellowship once they have six years of [REDACTED] membership, score at least 100 on the application, and pay the required fee. For these reasons, the Petitioner did not show that his [REDACTED] "Degree of Fellow" meets this criterion.

The Petitioner also claims that his certification by the [REDACTED] satisfies this criterion. Specifically, the Petitioner contends that "[t]he very fact that the examination tests the competence of the physician attests to the outstanding achievements, and may not be ignored as such or slighted." The record contains a letter from [REDACTED] verification coordinator and candidate assistant for [REDACTED] who verified the Petitioner's certification and generally indicated that certification is based on completing family medicine requirements and examinations. In addition, the record contains screenshots from [REDACTED] website reflecting that certification requires successfully passing an examination, completing training, maintaining a license to practice medicine, finishing family medicine certification points, and paying the examination fee. Although candidates must meet certain standards in order to be certified by the [REDACTED] they do not rise to the level of "outstanding achievements" consistent with this regulatory criterion. Moreover, the Petitioner did not establish that [REDACTED] certification is judged by recognized national or international experts. Similar to the [REDACTED] fellow, candidates become certified once all requirements have been satisfied. Accordingly, the Petitioner did not establish that he meets this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

The record includes provides two articles, posted on the websites [http://\[REDACTED\]](http://[REDACTED]) and [http://\[REDACTED\]](http://[REDACTED]) relating to the Petitioner's research on memory loss from micro strokes. However, the Petitioner did not establish that these websites constitute major media. Regarding [http://\[REDACTED\]](http://[REDACTED]) the Petitioner offers a screenshot from its website reflecting that it launched in 2013 to focus on [REDACTED] India and that it "also reaches a large section of readers in North America, the United Kingdom and Europe." As it relates to [http://\[REDACTED\]](http://[REDACTED]) the Petitioner presents a screenshot from its website indicating that it "is one of the world-class news portal[s] that runs in Hindi language." The Petitioner, however, did not provide corroborating evidence, such as viewership statistics, to demonstrate that the websites reach a "large audience" or are "world-class." U.S. Citizenship and Immigration Services (USCIS) need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL

604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliant evidence of major media). Accordingly, the Petitioner did not establish that he satisfies this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

The Director determined that the Petitioner met this criterion. The record reflects that he reviewed manuscripts and articles for professional publications, such as the [REDACTED]. As such, we agree with the Director's conclusion for this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner contends that his three published articles relating to the amino acid homocysteine demonstrate "the major influence and impact of [his] findings across the entire field of numerous medical disciplines." In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The Petitioner provided citation data regarding his three articles from [REDACTED]

[REDACTED] citations;

[REDACTED] citations; and

[REDACTED] citations. The Petitioner

also submits copies of over 70 articles that cited to his articles. The articles, however, do not show that his work was singled out as particularly important or indicative of major significance. Rather, the papers credit the Petitioner for his research, along with all of the papers that are cited, but do not demonstrate that his work has been considered to hold major significance.

For instance, in the introduction to the article "[REDACTED]"

[REDACTED] the authors state that "experimental studies demonstrated that [hyperhomocysteinemia] causes a pathologic hypertrophy, the reformation of both ventricles and is associated to left ventricle diastolic dysfunction," citing to the Petitioner's work as one of those studies. The articles acknowledge the Petitioner's research findings but do not indicate that his published works are original contributions of major significance beyond briefly summarizing his research findings. Publications are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115. In 2010, the

Kazarian court reaffirmed its holding that we did not abuse our discretion in our adverse finding relating to this criterion. 596 F.3d at 1122. The Petitioner has not shown that the submitted citations establish his publications rise to a level of contributions of major significance consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Similarly, the Petitioner provided recommendation letters that discussed his studies but did not show that his research or publications constituted original contributions of major significance.⁴ For example, [REDACTED] dean and professor at the [REDACTED] stated that the Petitioner's work is "highly novel and original." [REDACTED] however, did not establish whether the field recognizes the Petitioner's work as being majorly significant. Likewise, [REDACTED] vice president and director of the [REDACTED] indicated that he and the Petitioner were "the first to demonstrate that homocysteine indeed injures heart muscles and the endothelial lining of the chambers," and without the Petitioner's dedication his manuscripts would have never been published. Again, [REDACTED] did not show how the Petitioner's research or subsequent publications significantly impacted the field. Further, [REDACTED] member of the board of directors for the [REDACTED] summarized the Petitioner's research findings and claimed that the Petitioner "has made important contributions to the cardiovascular literature" without demonstrating how his work has vastly influenced the field. *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 corroborate her impact in the field).

The letters considered above primarily contain attestations of the Petitioner's status in the field without providing specific examples of how his contributions rise to a level consistent with major significance. Letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian*, 580 F.3d at 1036, *aff'd in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). For these reasons, the Petitioner has not met his burden of showing that he has made original contributions of major significance in the field.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The Director determined that the Petitioner satisfied this criterion. As discussed above, the Petitioner authored scholarly articles that were published in professional journals such as the [REDACTED] and [REDACTED]. Accordingly, the Petitioner established that he meets this criterion.

⁴ While we discuss a sampling of the recommendation letters, we have reviewed and considered each one.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner argues that he performed in a critical role as a physician for [REDACTED] in [REDACTED] Mississippi.⁵ He references a letter from [REDACTED] DO, physician and founder of the [REDACTED] who stated that the Petitioner “has served the Clinic well as a primary care physician for over two years, contributing critically to the daily successes and operations of the Clinic despite receiving a salary below that of larger clinics and hospitals in the area.” In addition, the record includes a letter from [REDACTED] clinic coordinator for [REDACTED] who indicated that his “critical contributions to the smooth operation at the Clinic is the best testimony of [the Petitioner’s] role in the success of the [REDACTED] to care for individuals where other US doctors have turned their faces away.”

In general, a critical role is one in which a petitioner was responsible for the success or standing of the organization or establishment. The Petitioner claims that being “the only MD in the clinic is the biggest evidence of how my role has impacted the outcomes of the clinic in its mission to serve the people of Mississippi.” While the record indicates that [REDACTED] possesses a degree as a doctor of osteopathy rather than a doctor of medicine, the Petitioner did not otherwise offer evidence to support his assertion that he is the only physician possessing an MD degree at the clinic.⁶ Regardless, he did not sufficiently explain how possession of this degree is reflective of the critical nature of his role for the clinic.

Further, although the letters repeatedly use the term “critical,” they do not show how the Petitioner has contributed to the success or reputation of the clinic. Repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Here, the Petitioner did not sufficiently demonstrate how he has impacted the overall status or success of the clinic.

In addition, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires a petitioner to establish that his role is for organizations or establishments that have a distinguished reputation. On appeal, the Petitioner submits a screenshot for a 2012 article posted on an unidentified website, which quotes [REDACTED] relating to the physician shortages and mentions [REDACTED] as not being sufficiently staffed to handle the patients. In addition, the record includes several articles profiling [REDACTED] and praising her work treating disadvantaged patients. However, these articles do not demonstrate that the [REDACTED] as an establishment, enjoys a distinguished reputation.

⁵ The Petitioner does not claim in his brief that he performed a “leading” role for the [REDACTED] nor does the record demonstrate it.

⁶ While the record contains a letter from [REDACTED] officer manager for [REDACTED] who stated that the Petitioner “personally sees 29 percent of the patients seen in this clinic,” she did not indicate who handles the other 71 percent.

Finally, the Petitioner claims that his “roles as a physician should also be considered critical at the [REDACTED] in [REDACTED] Mississippi for nearly four years.” In addition, the Petitioner indicates that he will provide statistics regarding obesity and letters from employers and prominent physicians in Mississippi. The record, however, does not reflect that the Petitioner submitted such evidence. Accordingly, the Petitioner did not establish that he performed in a critical role for [REDACTED] nor did he demonstrate that the hospital enjoys a distinguished reputation. For these reasons, the Petitioner did not show that he meets this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought. For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of N-S-S-*, ID# 696653 (AAO Dec. 11, 2017)