



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

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

MATTER OF M-M-C-

DATE: OCT. 17, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a hospital, seeks to classify the Beneficiary as an individual of extraordinary ability in the sciences to perform services as a surgical associate. *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 Nebraska 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 it must meet at least three.

On appeal, the Petitioner submits a brief and additional evidence. It contends that the Beneficiary meets an additional six of the required criteria and possesses the required level of expertise for this classification.

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

I. LAW

Section 203(b)(1)(A) of the Act states:

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 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). Alternately, he or she must provide evidence that meets at least three of the criteria 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 an independent teaching hospital in [REDACTED] New York. The Beneficiary currently serves as an attending physician in cardiothoracic surgery. He received his medical degree in 1988 from [REDACTED] India; and subsequently completed an adult cardiac surgery fellowship at [REDACTED] Tennessee.

As the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). In denying the Petition, the Director found that that the Beneficiary met the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv) and the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), and we agree with that determination. On appeal, the Petitioner maintains that the Beneficiary also meets the following six criteria: awards,¹ published material,² original contributions,³ membership,⁴ leading or critical role,⁵ and remuneration.⁶ We

¹ 8 C.F.R. § 204.5(h)(3)(i).

² 8 C.F.R. § 204.5(h)(3)(iii).

³ 8 C.F.R. § 204.5(h)(3)(v).

⁴ 8 C.F.R. § 204.5(h)(3)(ii).

have reviewed all of the evidence in the record of proceedings, and it does not support a finding that the Beneficiary meets the plain language requirements of at least three criteria.

A. Evidentiary Criteria

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner claims that the Beneficiary meets the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) based upon his receipt of the 2002 and 2004 [REDACTED] at the [REDACTED] and his receipt of the 2007 [REDACTED]

The Petitioner explains that [REDACTED] is a privately held company that specializes in consumable and implantable medical devices and that the company awards the annual prize to the top registrar paper, as judged by guest speakers, based upon originality of the research.

The Petitioner has not established that the [REDACTED] award satisfies the criterion under 8 C.F.R. § 204.5(h)(3)(i) because it has not presented sufficient evidence that it is nationally or internationally recognized for excellence in the Beneficiary's field. On appeal, the Petitioner asserts that the conference where the [REDACTED] prize is awarded is "endorsed" by the [REDACTED] and the [REDACTED] therefore, it is an internationally recognized prize. However, the record does not contain evidence to indicate whether this award enjoys national or international recognition. The endorsement of the proprietary conference by professional organizations is not sufficient to establish that the award itself is nationally or internationally recognized. Furthermore, as noted by the Director, the award is given to students and young professionals under the age of 35. The Petitioner has not shown that such an award, in which competition is limited to other students and young practitioners as opposed to recognized experts in the field, is nationally or internationally recognized for excellence in the field.

Similarly, the [REDACTED] is given to a [REDACTED] by the [REDACTED]. This award is limited to students and [REDACTED] and the Petitioner has not demonstrated it is a recognized prize or award for excellence in the field. Furthermore, the Petitioner did not provide evidence that the award garners national or international recognition. As such, the Petitioner has not shown that the Beneficiary meets this criterion.

⁵ 8 C.F.R. § 204.5(h)(3)(viii).

⁶ 8 C.F.R. § 204.5(h)(3)(ix).

Documentation of the alien's membership in associations in the field for which is 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)

The Petitioner claims that the Beneficiary meets this criterion based upon his membership in several medical associations. In order to demonstrate that the Beneficiary's membership meets this criterion, the Petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements.

Here, the Petitioner has not provided the membership requirements for most of the claimed associations, including the [REDACTED] the [REDACTED] the [REDACTED] or the [REDACTED]. We will not presume exclusive membership requirements from the general reputation of a given association, as the association's reputation may derive from its size, the number of symposiums it hosts, or other factors independent of the nature of its membership. As the record does not contain the bylaws or other official documentation of the noted associations' membership criteria, we cannot evaluate whether the Beneficiary's memberships are qualifying.

The record does include the membership requirements for the [REDACTED] the [REDACTED] and the [REDACTED]. The requirements do not reflect either that the associations require outstanding achievements as a condition of eligibility for prospective membership, or that they utilize nationally or internationally recognized experts to judge the achievements of prospective members. For example, the membership [REDACTED] website excerpts describe that becoming a fellow or member "is a privilege that is only earned through hard work and an uncommon dedication to excellence," and that fellows undergo a "rigorous evaluation" of their "education and training, professional qualifications and surgical competence" that is "consistent with high standards." The submission does not show that such requirements constitute outstanding achievements in the field as judged by recognized national or international experts.

Similarly, the Petitioner provided a copy of the constitution of the [REDACTED]. The membership section states that "voting members" decide membership; candidates must be "physicians or surgeons who are practicing independently and have shown that their primary interest and commitment is the practice of cardiovascular medicine or cardiothoracic surgery;" and, "three years post completion of recognized specialty training." The constitution does not explain the qualifications

⁷ The Petitioner also claimed that his membership in the [REDACTED] the [REDACTED] and the [REDACTED] render him eligible for this criterion; however, he did not provide evidence of either his membership or their membership requirements.

of the “voting members” to demonstrate that they are recognized experts in their field, nor does it state that membership requires outstanding achievements beyond three years of specialty training.

The record also includes a copy of the constitution of the [REDACTED]. It states that membership is by election and that candidates must have completed a formal thoracic surgical training program. The document does not indicate that membership requires outstanding contributions or that it is judged by experts in the field. Thus, the Petitioner has not established that the Beneficiary meets the requirements of 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 Petitioner maintains that the Beneficiary is eligible under this criteria based upon the publication of an article entitled [REDACTED] discussing a research study conducted by the Beneficiary and his colleagues, published in [REDACTED]. The copy of the article submitted, however, does not list an author, a date, or any other evidence of its publication. As such, we find that the Petitioner has not met 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 the Beneficiary has made original contributions of major significance to the field through his clinical and research history. The Director acknowledged the relevant evidence, but found that it was not sufficient to demonstrate that his work constituted original contributions of major significance in the field.

On appeal, the Petitioner maintains that a number of experts and colleagues have offered testimony regarding the Beneficiary’s contributions of major significance.⁸ Some of the letters commend the Petitioner for his expertise in both research and cardiothoracic surgery, but lack specificity regarding how his asserted achievements are being widely used or reproduced within the field, or have otherwise been considered of major significance. For example, [REDACTED] clinical associate professor at [REDACTED] describes how the Beneficiary, “participated in multiple research projects,” and his work “will facilitate and improve our understanding of heart disease and lead to new life saving innovations in heart surgery.” [REDACTED] vascular surgeon at [REDACTED] in New York comments that the Beneficiary possesses “outstanding clinical and surgical skills.”

Other references state that they are implementing the Beneficiary’s findings in their own surgical practice, focusing on the Beneficiary’s research relating to minimally invasive [REDACTED] surgery.

⁸ While we discuss only a sampling of these letters, we have reviewed and considered each one.

For example, [REDACTED] professor at [REDACTED] notes that the Beneficiary developed a “unique technique of performing [REDACTED] surgery,” that is “now accepted as the standard of care for patients undergoing open heart surgery.” Similarly, [REDACTED] cardiothoracic surgeon at [REDACTED] in New Zealand, noted that the Beneficiary’s research on minimally invasive heart valve surgery is “central to his success as a world-renown surgeon.” [REDACTED] cardiac surgeon with [REDACTED] comments that the Beneficiary’s findings have “changed surgical practice in coronary artery bypass surgery.”

While these letters indicate that the Beneficiary’s research findings have been implemented in surgical practices in the United States and abroad, the record does not support their statements. The Petitioner provided a [REDACTED] report listing the Beneficiary’s peer-reviewed publications. The report indicates that the article “[REDACTED] published in the [REDACTED] in 2008 has been cited 45 times, but the Petitioner has not demonstrated that such a rate is high relative to other works in the field, or that the citing works characterize the Beneficiary’s research as holding major significance. Nor has the Petitioner provided other information or documentation supporting the referrers’ contention that his technique has “changed surgical practice.” These assertions do not explain who is using the Beneficiary’s techniques or otherwise describe how his methods have been implemented throughout the field. The Beneficiary’s remaining publications have not been cited and no additional evidence indicates that other surgeons have widely relied on his work. Without additional detail explaining the Beneficiary’s accomplishments relating to new or innovative techniques, the record does not adequately demonstrate that this work has made a significant impact on his field.

On appeal, the Petitioner asserts that the fact that this work was introduced at an international conference and published in the conference proceedings contributes to the Beneficiary’s eligibility under this criterion. Many professional fields regularly hold conferences and symposia to present new work, to discuss new findings, and to network with other professionals. Professional associations, businesses, educational institutions, and government agencies promote and sponsor these conferences. Participation in these events, however, does not necessarily reflect an original contribution of major significance in the field. Additionally, demonstrating ability as a skilled surgeon is not itself a contribution of major significance; rather, the Petitioner must demonstrate that the Beneficiary has impacted the field of cardiothoracic surgery as a whole. *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 as a whole). Here, the record does not include documentary evidence showing the widespread implementation of the Petitioner’s work, that it has been seminal, or that it otherwise equates to an original contribution of major significance in the field.

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).

On appeal, the Petitioner contends that the Beneficiary has performed in a leading and critical role for the petitioning hospital and previously for [REDACTED]. In general, a

leading role is evidenced from the role itself, and a critical role is one in which the Beneficiary was responsible for the success or standing of the organization or establishment.

Regarding the Beneficiary's role with the Petitioner, several letters discuss his skill and expertise as a surgeon. For example, [REDACTED] the chief of [REDACTED] states within his letter that the Beneficiary: "has played a critical role in the pre-operative, operative and post-operative care of our patients . . . contributing significantly to reducing both morbidity and mortality rates." He also writes that the Beneficiary "played a leading and critical role in numerous complicated emergent aortic aneurysm dissection cases as well as identifying patients in respiratory distress," and that "his unique skills have directly impacted a reduction in readmission rates." Similarly, [REDACTED] a cardiothoracic surgeon employed by the Petitioner, offers a letter attesting that the Beneficiary has been "instrumental in lowering readmission rates at [the Petitioner] following surgery." [REDACTED] the Petitioner's president and chief executive officer, writes that the Beneficiary has "helped increase the [REDACTED] excellent reputation by his critical contributions in areas such as reduction of morbidity and mortality rates, performance of life-saving surgical procedures, and reduction in readmission rates."

While the above letters credit the Beneficiary with reducing the hospital's overall morbidity, mortality, and readmission rates, they do not specifically explain how he was responsible for this achievement, and the record does not include documentary evidence to support their assertions. The letters refer to a New York state report on adult cardiac surgery and readmission outcomes from 2011 through 2013. The report does not name the Beneficiary; instead, it provides a list of hospitals in New York and their risk-adjusted mortality rates. The report also includes a list of risk-adjusted mortality rates by surgeon following cardiac surgery; however, the Beneficiary is not listed as a provider for the Petitioner. Without additional evidence and information, we cannot conclude that any reduction in mortality rates at the Petitioner is specifically attributable to the Beneficiary's contributions. As such, the record is insufficient to establish that the Beneficiary performed in a leading or critical role for the Petitioner.

The Petitioner further contends that the Beneficiary performed in a leading or critical role as a fellow with [REDACTED]. It provides several letters attesting that the Beneficiary "played a crucial role" in research involving minimally invasive heart valve surgery resulting in post-operative early recovery from surgery. [REDACTED] assistant professor at [REDACTED] commented that the Beneficiary's clinical research was "outstanding," and [REDACTED] assistant professor at [REDACTED] agreed that the Beneficiary's "research has resulted in significant findings that have advanced our understanding of how cardiac surgery can be done in a minimally invasive way." The letters, both dated in 2008, do not suggest the manner in which the Petitioner's research findings have resulted in a measurable level of success for the medical center. While complementary of the Petitioner's work, these letters fall short of specifying how the Beneficiary contributed to the overall organization in a way that is significant to its success or standing. *See Visinscaia*, 4 F. Supp. 3d at 135.

Overall, the letters do not demonstrate how the Beneficiary served in a leadership role for the entire organization or establishment, nor do they demonstrate how the success of the organization or establishment itself is attributable to a critical role the Beneficiary performed. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *See 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); *Astyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner avers that the Beneficiary has commanded a high salary or other significantly high remuneration for services in relation to others surgeons in his field under 8 C.F.R. § 204.5(h)(3)(ix). In order to satisfy this criterion, the Petitioner must offer evidence of objective earnings data showing that the Beneficiary has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers). Here, the Petitioner provided a copy of the Foreign Labor Certification (FLC) Data Center Online Wage Library wage results for physicians and surgeons in [REDACTED]. The average wage for an experienced surgeon is noted as \$223,600. The Petitioner also provided a copy of the Beneficiary's 2016 W-2 Wage and Tax Statement indicating that he earned \$260,735.35. While the evidence shows the Beneficiary earned approximately 17% above the FLC "average" wage for doctors, it does not demonstrate that he has commanded a high salary in relation to other surgeons.

B. Summary

As explained above, the record only satisfies two of the regulatory criteria. As a result, 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 listed at 8 C.F.R. §§ 204.5(h)(3)(i)-(x).

Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of evidence in the context of whether or not the Petitioner has demonstrated 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," 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. 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. Specifically, while the Petitioner has documented the Beneficiary's success as a cardiothoracic surgeon, along with publication of a peer-reviewed articles and work conducting peer-review, the evidence does not sufficiently demonstrate that he is in the small percentage at the top of the field or show the sustained national or international acclaim required for

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this highly restrictive classification. Nor does the record include extensive documentation showing recognition of the Petitioner's achievements in the field.

III. CONCLUSION

The Petitioner has not demonstrated that the Beneficiary qualifies as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. Accordingly, it has not established eligibility for the immigration benefit sought.

ORDER: The appeal is dismissed.

Cite as *Matter of M-M-C-* ID# 596563 (AAO Oct. 17, 2017)