U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: FEB 20 2015 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

I. PROCEDURAL HISTORY

The petitioner filed a Petition for a Nonimmigrant Worker (Form I-129) to classify the beneficiary, an "Assistant Professor – Clinical Physician," as an H-1B temporary nonimmigrant worker pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The Director of the U.S. Citizenship and Immigration Services (USCIS) California Service Center (director) denied the petition, concluding that the evidence did not demonstrate that the beneficiary was exempt from the United States medical licensing examination requirement as a "physician of national or international renown in the field of medicine." *See* 8 C.F.R. § 214.2(h)(4)(viii)(C). The matter is now before the Administrative Appeals Office (AAO) on appeal. Upon *de novo* review, we find that the petitioner has overcome the specified basis for denial of the petition.[1] The appeal will be sustained.

II. APPLICABLE LAW AND INTERPRETATIONS

Section 212(j) of the Act, 8 U.S.C. § 1182(j), states in pertinent part:

> (2) An alien who is a graduate of a medical school and who is coming to the United States to perform services as a member of the medical profession may not be admitted as a nonimmigrant under section 101(a)(15)(H)(i)(b) unless—
>
> (A) the alien is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency, or
>
> (B) (i) the alien has passed the Federation licensing examination (administered by the Federation of State Medical Boards of the United States) or an equivalent examination as determined by the Secretary of Health and Human Services, and
>
> (ii) (I) has competency in oral and written English or (II) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States).

Section 101(a)(41) of the Act, 8 U.S.C. § 1101(a)(41), defines the term "graduates of a medical school" to mean "aliens who have graduated from a medical school or who have qualified to

[1] We conduct appellate review on a *de novo* basis. *See Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine."

Because section 101(a)(41) of the Act excludes individuals of national or international renown in the field of medicine from the definition of "graduates of a medical school," the former Immigration and Naturalization Service (INS) concluded that these individuals are not subject to section 212(j) of the Act. *See* 59 Fed. Reg. 1468, 1469 (Jan. 11, 1994) (amending the final rule "to indicate that aliens of national or international renown in the field of medicine are exempt [from the] requirements set forth in section 212(j)(2) of the Act"). Accordingly, in implementing sections 101(a)(41) and 212(j) of the Act, the regulations specifically provide a licensing examination exception for physicians of national or international renown in the field of medicine.

The regulations at 8 C.F.R. § 214.2(h)(4)(viii) state:

> *Criteria and documentary requirements for H–1B petitions for physicians—*
>
> (A) *Beneficiary's requirements.* An H–1B petition for a physician shall be accompanied by evidence that the physician:
>
> (1) Has a license or other authorization required by the state of intended employment to practice medicine, or is exempt by law therefrom, if the physician will perform direct patient care and the state requires the license or authorization, and
>
> (2) Has a full and unrestricted license to practice medicine in a foreign state or has graduated from a medical school in the United States or in a foreign state.
>
> (B) *Petitioner's requirements.* The petitioner must establish that the alien physician:
>
> (1) Is coming to the United States primarily to teach or conduct research, or both, at or for a public or nonprofit private educational or research institution or agency, and that no patient care will be performed, except that which is incidental to the physician's teaching or research; or
>
> (2) The alien has passed the Federation Licensing Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) or is a graduate of a United States medical school;[2] and

[2] The United States Medical Licensing Examination (USMLE) replaced the Federation Licensing Examination (FLEX). 57 Fed. Reg. 42755 (Sept. 16, 1992); 59 Fed. Reg. 1468 (Jan. 11, 1994). The USMLE website states the following:

> In the United States and its territories ("United States" or "US"), the individual medical licensing authorities ("state medical boards") of the various jurisdictions grant a license to practice medicine. Each medical licensing authority sets its own rules and regulations and

(i) Has competency in oral and written English which shall be demonstrated by the passage of the English language proficiency test given by the Educational Commission for Foreign Medical Graduates; or

(ii) Is a graduate of a school of medicine accredited by a body or bodies approved for that purpose by the Secretary of Education.

(C) *Exception for physicians of national or international renown.* A physician who is a graduate of a medical school in a foreign state and who is of national or international renown in the field of medicine is exempt from the requirements of paragraph (h)(4)(viii)(B) of this section.

To satisfy the exemption at 8 C.F.R. § 214.2(h)(4)(viii)(C), the petitioner must therefore demonstrate the beneficiary: (1) is a physician; (2) is a graduate of a medical school in a foreign country; and (3) is of national or international renown in the field of medicine.

III. LEGAL ANALYSIS

A. Definitions

Neither the Act nor the regulations define the terms "physician" or "of national or international renown in the field of medicine."[3] Accordingly, we reviewed the definitions of these terms with regard to their common usage as well as their meaning within the context of H-1B petitions and other nonimmigrant and immigrant classifications.

We look first to the term "physician." While the term appears throughout the governing regulations, we found only one specific definition, stated parenthetically, in regulations relating to a national interest waiver (NIW) for second-preference immigrant petitions: "[a]ny alien physician (namely doctors of medicine and doctors of osteopathy) . . . ." 8 C.F.R. § 204.12(a); 65 Fed. Reg. 53889

requires passing an examination that demonstrates qualification for licensure. Results of the USMLE are reported to these authorities for use in granting the initial license to practice medicine. The USMLE provides them with a common evaluation system for applicants for medical licensure.

Bulletin, U.S. Med. Licensing Examination, http://www.usmle.org/bulletin/overview (last visited February 19, 2015). Despite the existence of a national medical licensing examination, each individual state determines its own requirements for medical licensure. There are instances, such as here, where a state's physician licensing requirements differ from those under federal immigration law such that a beneficiary may satisfy one but not the other.

[3] Analogous with the definition at section 101(a)(41) of the Act, we interpret the phrase "graduate of a medical school in a foreign state" to mean individuals who have graduated from a foreign medical school or who have qualified to practice medicine in a foreign country.

(Sept. 6, 2000) (clarifying that this provision applies to "physicians (namely doctors of medicine and doctors of osteopathy)").

Outside of the immigration regulations, several other expert sources use a similar definition. For example, the U.S. Department of Health and Human Services (HHS) defines a physician as "a doctor of medicine or osteopathy." 45 C.F.R. § 60.3. The U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) reports that there are two types of physicians: medical doctors and doctors of osteopathic medicine.[4] Lastly, the American Medical Association describes the term physician as a doctor of medicine or doctor of osteopathy.[5] This common description "doctor of medicine or osteopathy" is likewise appropriate here for the term "physician" as used in 8 C.F.R. § 214.2(h)(4)(viii)(C).

Next we reviewed the phrase "national or international renown," which contains both geographic and qualitative elements. While the geographic and qualitative elements inform each other, we will parse them out temporarily here for purposes of construction. First, the term "national or international" in 8 C.F.R. § 214.2(h)(4)(viii)(C) refers to one or more countries, and that the adjective "national" does not refer only to the United States in this context. *Cf., e.g.*, 53 Fed. Reg. 43217, 43220, 43225 (Oct. 26, 1988) (referring to "national" as "(foreign or U.S.)"); 45 Fed. Reg. 83926, 83927 (Dec. 19, 1980) (with regard to Schedule A filings, DOL noted that "national" refers to one country and "international" refers to two or more countries); *The Mary Imogene Bassett Hosp.*, 92-INA-232 (BALCA 1993) (finding the individual was a "physician of national (in South Africa), but not of international, renown in the field of medicine"). Although they relate to different classifications, these interpretations are apt for the present context.

Turning our focus to "renown," the commonly understood meaning of the term is "[t]he quality of being widely honored and acclaimed."[6] *See, e.g.*, *Webster's New College Dictionary* 961 (3rd ed. 2008). We will adopt this common definition of "renown" for purposes of 8 C.F.R.

[4] While it is not a binding or exclusive resource, the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) is an expert and persuasive source of information on the duties and educational requirements of a range of occupations. The *Handbook* is available on the Internet at http://www.stats.bls.gov/oco/. U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Physicians and Surgeons, on the Internet at http://www.bls.gov/ooh/healthcare/physicians-and-surgeons.htm#tab-2 (last visited February 19, 2015).

[5] *See* the American Medical Association (AMA) website, http://www.ama-assn.org/ama (last visited February 19, 2015).

[6] In determining whether an alien is "renowned," we note that this term is also mentioned in connection with the following nonimmigrant classifications: H-1B distinguished merit and ability (prominence) for models, O-1 extraordinary ability (distinction), and P-1 internationally recognized. 8 C.F.R. § 214.2(h)(4)(ii), (o)(3)(ii), (p)(3). More specifically, these categories are described as requiring *inter alia* "a high level of achievement [in the field] evidenced by a degree of skill and recognition substantially above that ordinarily encountered[,] to the extent that [such achievement] is renowned . . . ." *Id.* This case, however, focuses solely on how USCIS interprets "physicians of national or international renown" for purposes of 8 C.F.R. § 214.2(h)(4)(viii)(C).

§ 214.2(h)(4)(viii)(C) and next consider how the terms "national or international" and "renown" interact.

According to the two definitions we have adopted above, "national or international renown" could be restated as "widely honored and acclaimed in one or more countries," and this definition could generally suffice to adjudicate most 8 C.F.R. § 214.2(h)(4)(viii)(C) exemption claims. But we note that the U.S. Department of State (DOS) recognizes that "national renown" in some, individual countries – considering factors such as population size and available medical resources – may not be comparable to the national renown exhibited by a physician in the United States.

According to DOS: "In general, evidence required to support a claim to international renown would be similar to that required to support a claim to qualification for labor certification under Schedule A, Group II Aliens of Exceptional Ability in Sciences or Arts." Volume 9 of the Foreign Affairs Manual, 9 FAM 40.52 note 2. DOS further states, however, that "[the] evidence required to support a claim to national renown, while not required to be of the same high standard, would nonetheless have to show a degree of excellence *comparable* to that which would result in national renown in the United States." *Id.* (emphasis added).

This interpretation is in accord with that previously expressed in a final rule issued by DOL with respect to Schedule A physicians of national or international renown, in which it explained the following:

> Establishing that a physician has only national renown, especially from a nation with limited medical education and medical resources, is not sufficient for DOL to predetermine that there would be no adverse effect on workers in the United States. Absent passage of the [requisite medical examination], the achievements of nationally known physicians (and surgeons) cannot be shown to be of the caliber necessary to avoid adverse effect, as required under the Immigration and Nationality Act.

45 Fed. Reg. at 83927.

We are persuaded by the interpretation expressed by DOS and supported by DOL. Therefore, with respect to this exemption from the additional requirements at 8 C.F.R. § 214.2(h)(4)(viii)(B), while a beneficiary's achievements may be renowned in a country outside the United States, the petitioner must demonstrate that such renown in the field of medicine is at a level comparable to that which would result in national renown in the United States.

Accordingly, in this context and for purposes of 8 C.F.R. § 214.2(h)(4)(viii)(C), a "physician of national or international renown" is: (1) a doctor of medicine or osteopathy (2) who is widely honored and acclaimed in the field of medicine (3) within one or more countries, so long as the level of national renown is comparable to that which would result in renown in the United States.

B. Evidence

The regulations do not currently provide a list of the specific types of evidence for demonstrating that an alien is a physician of national or international renown under 8 C.F.R. § 214.2(h)(4)(viii)(C). We therefore reviewed and took into account the types of documentation that are often persuasive in establishing eligibility for these cases, as well as the categories of probative evidence that are described in the regulations for other classifications, including H-1B distinguished merit and ability (models), O-1 extraordinary ability, P-1 internationally recognized, and labor certification under Schedule A, Group II Aliens of Exceptional Ability in Sciences or Arts. The following is a non-exhaustive list of suggested evidence that may establish eligibility for the exemption at 8 C.F.R. § 214.2(h)(4)(viii)(C):[7]

- Documentation of the beneficiary's receipt of nationally or internationally recognized prizes or awards in the field of medicine;
- Evidence of the beneficiary's authorship of scientific or scholarly articles in the field of medicine published in professional journals, major trade publications, or other major media;
- Published material about the beneficiary's work in the medical field that appears in professional journals, major trade publications, or other major media (which includes the title, date, and author of such material);
- Evidence that the beneficiary has been employed in a critical, leading, or essential capacity for organizations or establishments that have distinguished reputations in the field of medicine;
- Evidence of the beneficiary serving as a speaker or panelist at medical conferences;
- Evidence of the beneficiary's participation as a judge of the work of others in the medical field;
- Documentation of the beneficiary's membership in medical associations, which require significant achievements of their members, as judged by recognized experts in the field of medicine;
- Evidence that the beneficiary has received recognition for his/her achievements or contributions from recognized authorities in the field of medicine; and
- Any other evidence demonstrating the beneficiary's achievements, contributions, and/or acclaim in the medical field.[8]

[7] The list of documents is not mandatory, exhaustive, or numeric. Rather, it provides guidance as to the types of evidence that may establish eligibility for this exemption.

[8] We recognize that a petitioner seeking eligibility under 8 C.F.R. § 214.2(h)(4)(viii)(C) is requesting an exemption to either the teaching or research provisions or the USMLE and English testing requirements, not

IV. DISCUSSION

In the instant case, the petitioner is a university that operates a multidisciplinary academic medical center, which is nationally ranked in the United States in several medical specialties. In this matter, the petitioner states that the beneficiary will be expected to perform duties in the areas of teaching, research, and clinical patient care, with patient care being the primary component of the position.

The petition was accompanied by evidence that the beneficiary received a Doctor of Medicine degree from the in Canada and has licentiate status with the [9] The beneficiary possesses an active license to practice medicine in Ohio, the state of intended employment. The petitioner asserts that the beneficiary is exempt from the U.S. medical licensing examination requirement, because he is a physician of both national and international renown in the field of medicine, specifically in orthopedic surgery.

In support of this assertion, the petitioner provided probative evidence regarding the beneficiary's credentials and employment demonstrating that the beneficiary is highly trained and experienced in arthroscopy/sports medicine and arthroscopic hip surgery. This evidence also establishes that the volume and complexity of procedures the beneficiary has performed places him at a level of clinical experience in the subspecialty matched by few others in the world. The record shows that the majority of these surgical procedures took place at one of the most respected medical facilities for the subspecialty in Australia. Further, the evidence indicates that the beneficiary is credited with a reputation for positive outcomes and patient satisfaction.

The record also evinces the beneficiary's authorship of scholarly works. The petitioner emphasizes in particular an article written by the beneficiary regarding orthopedic surgery procedures and practices published in the a top-ranking journal in the field of orthopedics.[10] The petitioner provided evidence that the beneficiary's article garnered numerous

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classification as an alien of exceptional ability in the sciences. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining exceptional ability as "a degree of expertise significantly above that ordinarily encountered in the arts, sciences, or business"). Nor is the standard similar to that required to demonstrate extraordinary ability. *Cf.* 8 C.F.R. § 214.2(o)(3)(ii) (defining extraordinary ability as "a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of their field of endeavor"). So, while the types of evidence may be similar, we do not intend to suggest that the standard to establish an individual as a physician of national or international renown is equivalent to eligibility standards for these other categories.

[9] The is a school of medicine accredited by the Thus, the beneficiary is a graduate of a school of medicine accredited by a body approved for that purpose by the Secretary of Education. *See* 8 C.F.R. § 214.2(h)(4)(viii)(B)(*2*)(*ii*); 34 C.F.R. § 600.20 to 600.55. For additional information, see the website at (last visited February 19, 2015).

[10] In support of this assertion, the petitioner "dotted the 'i'" by providing documentation from the website indicating the journal's standing with regard to several defined categories, including its Impact Factor, Total Cites, Total Articles, and

independent citations by peers in professional journals, major trade publications, and other major media. Further, the record demonstrates that the beneficiary's work has been presented at major medical conferences in the United States, Canada, and France.

The petitioner submitted letters from physicians who are recognized authorities in the field of orthopedic medicine and who attest to the beneficiary's renown in the field of orthopedic surgery. Specifically, the authors describe and corroborate the beneficiary's level of clinical experience, expertise performing surgery in his subspecialty, and accomplishments in Canada and Australia.

The petitioner references other documentation to be considered in support of the petition. Specifically, the record contains evidence that the beneficiary served as a physician for a nationally ranked sports team in Canada. Further, the petitioner asserts that the beneficiary's salary in the proffered position should be considered, as it is significantly higher than others within the occupation and reflects the value of the beneficiary's prior experience and his reputation.

Upon review of the totality of the evidence, we find that the petitioner has shown by a preponderance of evidence that the beneficiary is a physician of national renown in the field of medicine and, thus, is exempt from the medical licensing examination requirement.[11] *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) "[t]he 'preponderance of the evidence' standard requires that the evidence demonstrate that the applicant's claim is 'probably true,' where the determination of 'truth' is made based on the factual circumstances of each individual case"). As the beneficiary satisfies the other requirements for approval, including that he possesses a license to practice medicine in the state of intended employment, the petition will be approved.

V. CONCLUSION

In visa petition proceedings, 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 Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, the petitioner has sustained that burden. Accordingly, the director's decision is withdrawn.

ORDER: The appeal is sustained.

[11] The petitioner asserts that the beneficiary is a physician of national and international renown in the field of medicine. Applying the standard above, the evidence supports a determination that the beneficiary's national renown in the field of medicine is at a level comparable to that which would result in national renown in the United States. Accordingly, we need not address here whether the beneficiary is internationally renowned or whether, generally, international renown must also be at a level comparable to that which would result in national renown in the United States.