U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23944938

Date: JAN. 26, 2023

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner seeks to employ the Beneficiary under the H-1B nonimmigrant classification for specialty occupations. See Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both: (a) the theoretical and practical application of a body of highly specialized knowledge; and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The California Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the Beneficiary does not meet the requirements set forth in section 212(j)(2) of the Act and 8 C.F.R. § 214.2(h)(4)(viii), regarding nonimmigrant H-1B physicians who are exempt from either (1) the teaching or research provisions, or (2) the licensing exam and English testing requirements. Accordingly, the Director determined that the petition cannot be approved. On appeal, the Petitioner contends that he is exempt from the requirements of 212(j)(2) of the Act and 8 C.F.R. § 214.2(h)(4)(viii)(B) because he satisfies paragraph (C), as a "physician of national or international renown."

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Section 212(j)(2) of the Act states the following:

> 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 1101(a)(15)(H)(i)(b) of this title 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 foreign nationals "who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such [foreign nationals] 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 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 exemption 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 (administered by the Federation of State Medical Boards of the United States) or is a graduate of a United States medical school; 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.

II. ANALYSIS

The Petitioner does not dispute that the Beneficiary satisfies neither 8 C.F.R. § 214.2(h)(4)(viii)(B)(1) or (2). Accordingly, the issue on appeal is whether the Petitioner has established the Beneficiary's eligibility for the exemption at paragraph (C), pertaining to physicians of national or international renown.

A. Adopted Decision and Evidence

Neither the statute nor the pertinent regulations define the term "physician of national or international renown." However, USCIS personnel are directed to follow the reasoning in the Administrative Appeals Office (AAO) adopted decision, Matter of T-O-S-U-, Adopted Decision 2017-01 (AAO Jan. 4, 2017) when analyzing this issue. The policy memorandum accompanying the adopted decision states that:

> Matter of T-O-S-U- clarifies that, for purposes of 8 C.F.R. § 214.2(h)(4)(viii)(C) (2016), a "physician of national or international renown" is a doctor of medicine or osteopathy who is widely acclaimed and highly honored in the field of medicine within one or more countries, so long as the achievements leading to national renown are comparable to that which would result in national renown in the United States. The decision also suggests, but does not mandate, what types of evidence may be persuasive in establishing eligibility for this exemption.

USCIS Policy Memorandum PM-602-0140, SUBJECT: Matter of T-O-S-U-, Adopted Decision 2017-01 (AAO Jan. 4, 2017) 1 (January 4, 2017), http://www.uscis.gov/legal-resources/policy-memoranda. As we explained in Matter of T-O-S-U-, "the regulations do not currently provide a list of the specific types of evidence for demonstrating that a foreign national is a physician of national or international renown under 8 C.F.R. § 214.2(h)(4)(viii)(C)." Matter of T-O-S-U-, Adopted Decision 2017-01 at 6. Therefore, the adopted decision directs us to consider the types of documentation that are often persuasive in establishing eligibility in other visa classifications, namely, the categories of probative evidence that are described in the regulations for classifications involving national or international renown, recognition, or acclaim. As Matter of T-O-S-U- states, these categories include "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. Id.; see also 8 C.F.R. §§ 204.5(h)(3), 214.2(h)(4)(vii)(C), (o)(3)(iii)- (v), (p)(4)(ii)(B), (p)(4)(iii)(B)(3)."

In Matter of T-O-S-U-, we compiled the following non-exhaustive list of evidence that, depending on the qualitative nature of the evidence, may establish eligibility for the exemption at 8 C.F.R. § 214.2(h)(4)(viii)(C):

1. Documentation of the beneficiary's receipt of nationally or internationally recognized prizes or awards in the field of medicine;
2. 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;
3. 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);
4. 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;
5. Evidence of the beneficiary serving as a speaker or panelist at medical conferences;
6. Evidence of the beneficiary's participation as a judge of the work of others in the medical field;
7. 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;
8. Evidence that the beneficiary has received recognition for his/her achievements or contributions from recognized authorities in the field of medicine; and
9. Any other evidence demonstrating the beneficiary's achievements, contributions, and/or acclaim in the medical field.[1]

[1] As explained in Matter of T-O-S-U-:

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 for purposes of classification of the beneficiary as an H-1B nonimmigrant, and not an immigrant visa classification as an alien of exceptional ability in the sciences. . . . We further recognize that the "national or international renown" standard is not the same as that required to demonstrate extraordinary ability. See 8 C.F.R. §§ 204.5(h)(2) and 214.2(o)(3)(ii) (defining extraordinary ability as "a

Matter of T-O-S-U-, Adopted Decision 2017-01 at 6-7.

We emphasize that the above list of documents is not mandatory or exhaustive. Rather, it provides guidance as to the types of evidence that may establish eligibility for this exemption. Although, we have numbered this list, we have done so only for ease of reference. The burden remains on the Petitioner to demonstrate how the evidence presented establishes the Beneficiary's national or international renown within one or more countries. See section 291 of the Act, 8 U.S.C. § 1361 (2012); Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012).

B. Legal Discussion

For ease of analysis, we provide a discussion of the Petitioner's evidence as organized by the types of evidence in the list, as well as a qualitative examination of that evidence. While we may not discuss each piece of evidence individually, we have reviewed and considered each one. Additionally, because the Petitioner does not argue that the evidence it provided would fall within the types numbered 1, 3, or 5, we omit a discussion relating to those types.

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

An in-house affiliated organ within the [redacted] hospital system, called the [redacted] Hospital, produces [redacted] an electronic journal. From all sources and all countries, [redacted] accepts original unpublished research manuscripts, manuscripts to review, clinical case study reports, review articles, as well as letters to the editor related to clinical, epidemiological, and basic aspects of medicine. Written works appearing in [redacted] are edited by the editor-in-chief as well as an editorial committee. The Petitioner presented evidence that the Beneficiary is a named author on five written works, including case study summaries and research project findings, which appeared in [redacted]

When considering the quality of the evidence, we conclude that the Petitioner has not provided sufficient evidence with which to determine whether an in-house medical journal published within a private hospital system would be considered a professional journal or major trade publication, particularly as it accepts submissions from "all sources." We also question whether [redacted] considered the Beneficiary's employment as a pediatrician within the same hospital system when it accepted the Beneficiary's works for publication.[2] Regardless, the record does not reflect the effect, if any, that the Beneficiary's works produced in the field of medicine.

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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"). Although the types of evidence that may be submitted in support of any of these types of cases may be similar, the standard to establish an individual as a physician of national or international renown is not equivalent to the eligibility standards for these other categories.

Matter of T-O-S-U-, Adopted Decision 2017-01 at 7.

[2] The record reflects that the [redacted] Hospital in Mexico employed the Beneficiary as a pediatrician.

We reviewed the Google Scholar printout provided; however, it does not clearly indicate which articles belong to the Beneficiary or whether the articles were cited by others. Rather, the printout lists a variety of articles, and we cannot distinguish which articles the Beneficiary wrote. Although most articles have a link to the number of versions the article has and another link to related articles, very few articles contain any indication they have been cited. As such, the Google Scholar printout does not support a finding that the Beneficiary's articles were read or discussed by other professionals, nor does it establish that they had any effect on the field of medicine. Although the Petitioner asserted that the Beneficiary's research appeared at congresses and conferences for medical professionals in 2012 and 2013, the Petitioner did not back that claim with sufficient evidence. The Petitioner must support its assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). Nor did the Petitioner explain what research the congresses and conferences featured in 2012, as the Petitioner has not claimed the Beneficiary published any research prior to 2013.

We examined the advisory opinion from Dr. [redacted] of the University of [redacted] School of Medicine in [redacted] as well as the letter from Dr. [redacted] the chief of the emergency department at one of Mexico's government-run public hospitals. Although Dr. [redacted] and Dr. [redacted] both emphasized the importance of the Beneficiary's written works, neither provided a sufficient explanation for why the articles are important. To support their conclusion that the Beneficiary's research is important, both Dr. [redacted] and Dr. [redacted] relied upon the premise that all research is important. While we recognize that all research adds information to the pool of knowledge in some way in order to be accepted for publication, we conclude that not every physician who has written research reports and case studies for publication will be found to be widely acclaimed and highly honored in the field of medicine within one or more countries.

The Director concluded that the record did not demonstrate that the Beneficiary's published work differed from that of other doctors or researchers, as it is common for doctors and researchers to write and publish material. Similarly, we conclude that even if we consider [redacted] to be a professional journal or trade publication which contains the Beneficiary's written scientific or scholarly articles, this would not establish how the evidence is probative of the Beneficiary's national or international renown.

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

The Petitioner presented evidence that the Beneficiary had been employed in highly ranked institutions, such as the [redacted] hospital and the medical school within [redacted] university. We certainly do not question the ability of these institutions to effectively execute their missions. However, that is not the issue before us. As the Director explained, the Petitioner has not established how this employment indicates that the Beneficiary is of national or international renown. The Petitioner did not submit evidence establishing that these employers only hire individuals of national or international renown, nor has the Petitioner established how the Petitioner's employment at these organizations was in a critical, leading, or essential capacity.

To illustrate, the Beneficiary worked as a pediatrician and professor at [redacted] While physicians, especially teaching physicians, are important for any hospital, the evidence does not suggest that the Beneficiary occupied a role that was significant or integral in comparison with other physicians and professors within the hospital. As the Director explained, the Petitioner did not establish how the Beneficiary's role at the

hospital, which involved overseeing the education of other physicians or evaluating other physicians' performance, demonstrated the Beneficiary's national or international renown. Similarly, the Petitioner has not explained how the Beneficiary's role as a professor at [redacted] which employs an academic staff of approximately 2,990 persons, according to the evidence the Petitioner provided, would be considered critical, leading, or essential. Therefore, while we agree that [redacted] are highly ranked organizations and that they have respected reputations nationally, the evidence does not sufficiently establish that the Beneficiary has national or international renown simply by virtue of his employment with such organizations.

Evidence of the beneficiary's participation as a judge of the work of others in the medical field

The Petitioner asserted that the Beneficiary worked as a professor at [redacted] the Mexican Institute of [redacted] and at [redacted] As a professor in the hospitals, the Beneficiary taught other physicians, oversaw their education, and evaluated their performance. While we do not doubt the veracity of this assertion, it lacks detail and context. For instance, overseeing and evaluating another physician's performance could simply mean that the Beneficiary observed another doctor's surgery and formed his own personal opinion about how that doctor performed. Such opinion may or may not be shared with anyone else and may even be irrelevant or inconsequential. Without more detail and context, the Petitioner has not established how serving as a professor in hospitals represents participation as a judge of the work of others in the medical field.

In Dr. [redacted] opinion letter, he claimed that the Beneficiary:

> [W]as the sole evaluator of the performance of their physicians for several years in the field of pediatrics. His evaluations of these highly distinguished physicians determined their advancement, the computation of their bonus compensation, whether any disciplinary action was required, and whether their very employment should be terminated if their performance was not to his satisfaction. [The Beneficiary] had the ultimate discretionary authority over their work performance and judged the quality of their work on a continuous basis for years.

However, the letters from the organizations that employed the Beneficiary do not contain these claims. We question the origin of the information provided and it appears that Dr. [redacted] may have inflated the role of the Beneficiary, particularly as it relates to the above human resource functions.

The Petitioner asserted that at [redacted] the Beneficiary taught pediatrics to other physicians, had ultimate discretionary authority over their work, and judged the quality of their work on a continuous basis. However, a professor's duty to evaluate or judge the performance and work of students at a university, even physician students, is the primary role of a professor. These duties are not outside of a professor's regular day-to-day work. Accordingly, we conclude that the Beneficiary's judgment of others' work in this context is not indicative of his national or international renown, either as a pediatrician or as a professor.

The Petitioner submitted a letter from Dr. [redacted] which clarified that the Beneficiary served as an evaluator, judge, and member of the jury panel on seven students' examinations for entry into the emergency medicine specialization at the Mexican Council of [redacted] In

support, the Petitioner provided a copy of the Beneficiary's certificate for his participation as a judge over the course of two days in February 2016. Dr. [redacted] further stated that only "well-regarded" physicians were invited to be judges and that they selected the Beneficiary because of his national reputation for excellence. Dr. [redacted] did not provide detail concerning how [redacted] determined that the Beneficiary has a national reputation for excellence or what makes him "one of the very best in his area of practice." Although the Petitioner provided more detail concerning the Beneficiary's role as a judge in this context, the evidence does not suggest that the Beneficiary gained wide acclaim or honor in the field of medicine as a result of judging the examinations of seven emergency medicine candidates in a single two-day event. Nor does the evidence establish that the Beneficiary was required to have such acclaim and honor in order to serve as a judge.

Considering the evidence of the Beneficiary's participation as a judge both individually and collectively, we conclude that it is not probative of national or international renown.

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

We reviewed the letters from the Mexican Board [redacted], the [redacted], and the [redacted] stating that the Beneficiary is a member of each of their organizations, respectively. The authors of the letters praise the Beneficiary's reputation, achievements, and contributions to the field of medicine. Each organization claims the Beneficiary's achievements enabled him to become a member; however, none of the letters contain a detailed explanation of the Beneficiary's specific achievements. Therefore, we cannot determine what achievements were judged as prerequisites for the Beneficiary's membership in these organizations, nor can we ascertain how they were significant. Additionally, the authors do not explain how or when experts in the field judged the Beneficiary's achievements, nor the identities or specific roles of the specific "recognized experts." Rather, the letters repeat portions of regulatory criteria found at 8 C.F.R. 214.2(o)(3)(iii) regarding O-1 nonimmigrants of extraordinary ability. Merely repeating the language of a statute or regulation 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); Avyr Associates, Inc. v. Meissner, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. 1756, Inc. v. The Attorney General of the United States, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Here, the evidence regarding the Beneficiary's "significant achievements" and the "recognized experts" that judged them is general and conclusory in nature. Therefore, we conclude that the evidence is not probative of national or international renown.

Evidence that the beneficiary has received recognition for his/her achievements or contributions from recognized authorities in the field of medicine

For the same reasons as described above, we conclude that the evidence of the Beneficiary's achievements or contributions is general and conclusory. Therefore, the record does not reflect that the Beneficiary has achievements or contributions in the field, nor does the record reflect that the Beneficiary received recognition from recognized authorities in the field of medicine. Even if the Petitioner had provided evidence that the Beneficiary received recognition for his achievements or contributions from recognized authorities in the field of medicine, the Petitioner would still need to establish how this indicates that the Beneficiary is a physician of national or international renown.

Any *other evidence demonstrating the beneficiary's achievements, contributions, and/or acclaim in the* medical field

The record does not reflect that the Petitioner submitted other evidence that cannot be categorized in the evidence types discussed above.[3] Once again, the list referenced above is not mandatory or exhaustive. Rather, it provides guidance as to the types of evidence that may establish eligibility for the exemption. When viewing the evidence individually as well as collectively and in the totality of circumstances, we conclude that the Petitioner has not established that the Beneficiary is a physician of national or international renown. In other words, we conclude that the record does not establish that the Beneficiary is widely acclaimed and highly honored in the field of medicine within one or more countries. Therefore, the Beneficiary does not qualify for the exemption at C.F.R. § 214.2(h)(4)(viii)(C).

We acknowledge that the Beneficiary offers valuable services as a physician specialized in the field of pediatrics and that his education and qualifications suggest that he has performed well in his past employment positions at highly ranked institutions. Nevertheless, the evidence is not sufficient to conclude that the Beneficiary is a physician of national or international renown.

III. CONCLUSION

The record does not demonstrate that the Beneficiary meets the requirements for classification as an H-1B physician as required by 212(j)(2) of the Act and 8 C.F.R. § 214.2(h)(4)(viii). Therefore, the Director's decision will be upheld. It is the Petitioner's burden to establish eligibility for the benefit sought. Section 291 of the Act. The Petitioner has not done so here.

ORDER: The appeal is dismissed.

[3] In its initial filing, the Petitioner provided evidence of the Beneficiary's salary. Although, the Petitioner provided evidence that medicine is the third best-paid profession in Mexico, the Petitioner did not provide evidence with which to compare the Beneficiary's salary to the salaries of other pediatricians in his geographical area. Furthermore, the Petitioner did not provide any additional evidence or arguments regarding the Beneficiary's salary either in response to the Director's RFE or on appeal. We conclude that the Petitioner has not provided sufficient evidence with which to conclude that the Beneficiary's salary is indicative of national or international renown.