U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-M-H

DATE: SEPT. 27, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a cardiologist, seeks classification as an individual of extraordinary ability in the arts. *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 only two of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and asserts that he satisfies the original contributions criterion.

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 –
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> (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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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 has indicated he is an interventional cardiologist, claiming major achievements for his work on the prevention of post cardiac catheterization contrast induced acute kidney failure and for his work on the non-ischemic cardiomyopathy registry. The Director found that the Petitioner met the initial evidence requirements for two criteria: judging the work of others and scholarly articles.[1] However, the Director concluded that the record failed to establish that the Petitioner had made original contributions of major significance and thus denied the petition without a final merits analysis.

On appeal, the Petitioner maintains that the Director failed to consider all of the evidence in the record and incorrectly applied a higher standard of proof than the preponderance of the evidence.

> *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 record contains evidence demonstrating that the Petitioner has been engaged as a reviewer for the [redacted] since 2014. In that capacity, he has reviewed manuscripts

[1] 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

on topics related to structural heart disease, which is the core focus of interventional cardiology. Thus, we agree with the Director that the Petitioner has established that he satisfies this criterion.

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

The Director found that the Petitioner satisfied the plain language of this criterion. Upon a review of the record, we agree that he has provided evidence of his authorship of scholarly articles that were published in professional journals. Specifically, the Petitioner provided evidence of 20 articles written and published since 2009, many of which were published in professional or trade publications. Accordingly, the Petitioner has satisfied this criterion.

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

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

On appeal, the Petitioner contends that his research on contrast-induced acute kidney injury constitutes an original contribution of major significance in the field of interventional cardiology.[2] In 2012, the Petitioner was the lead author on a paper published in the journal [redacted] that discussed a trial of 320 cardiac catheterization patients with kidney issues. The patients received a hydration therapy including either normal saline or sodium bicarbonate, with half of each group further also receiving N-acetylcysteine. The study concluded that the incidence of patients demonstrating contrast induced acute kidney injury was even between the two hydration therapies, and that the administration of N-acetylcysteine did not reduce the incidence of acute kidney injury in either hydration therapy.

The [redacted] a professional organization focused on cardiac catheterization and related laboratory procedures, publishes the journal. In 2012, [redacted] published a consensus statement on best practices for cardiac catheterization laboratories.[3]

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[2] Initially, the Petitioner claimed to have satisfied this criterion based on his work in three separate areas: his heart attack research, his work on the non-ischemic cardiomyopathy register, and his research on contrast induced acute kidney injury. On appeal, the Petitioner did not submit any evidence or raise concerns regarding the other two grounds, so we will not review them.

[3] [redacted]

The clinical experts who drafted the statement cite to the Petitioner's paper in the section on pre-procedural checklists, where they recommend that providers should strongly consider either saline of sodium bicarbonate hydration for patients with baseline renal insufficiency, unless contraindicated by congestive heart failure. They further indicated that recent data suggests that N-acetylcysteine does not provide significant benefit and no longer recommend its routine use for patients with baseline renal insufficiency. In 2016, [redacted] issued a second expert consensus statement and once again cited to the Petitioner's work with similar language.[4]

Much of the Petitioner's claim to have made an original contribution of major significance comes from the reference to his research in the [redacted] consensus statement. In his appellate brief, he contends that the consensus statements "do not simply cite to his work, but list [his] above findings as the best practice in these cases." The Petitioner maintains that the [redacted] consensus statements are considered the standard of care to be followed for all cardiac catheterization laboratories, emphasizing the significance of his research.

The Petitioner equates references to the [redacted] consensus statement of best practices regarding contrast-induced acute kidney injury as citations directly to his research. We disagree, finding that the record does not support the Petitioner's contention. The introduction to the 2012 consensus statement explains that many of the recommendations contained in the document are based on the expert opinions of the authors and that references would be provided, if available. Relevantly, while the authors cite to the Petitioner's findings on the two hydration therapies, the guidance in the consensus statement goes beyond his research. The authors, citing no other research, restrict their recommendation to those patients who are not contraindicated by congestive heart failure. The record does not demonstrate that the Petitioner's paper addresses additional concerns for patients with congestive heart failure.[5] In the same section, when discussing the effectiveness of N-acetylcysteine, the authors cite to the Petitioner's research and an unassociated work. As authors of the 2012 consensus statement independently expand on the Petitioner's findings and cite to additional research, the best practices contained therein distinguish themselves from the Petitioner's paper and two cannot be considered synonymous.

The 2016 [redacted] consensus statement similarly differentiates the authors' recommended best practices from the Petitioner's research. The authors cite his research twice in a section on chronic kidney disease, referencing multiple other sources both times. The first reference notes that the only strategies consistently shown to reduce kidney injury are hydration and minimizing the contrast dose. While the Petitioner's paper is cited, the text of the consensus statement credits guidelines

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[redacted] (2012).

[4] [redacted] (2016)

[5] The record contains only the title page of the Petitioner's paper, which provides only a brief abstract of the research and findings.

jointly issued by [redacted] the [redacted] and the [redacted] in 2011, a year before the Petitioner's paper was published. The authors also cited the Petitioner and two other sources when discussing the effectiveness of N-acetylcysteine.[6] As the 2016 consensus statement never cites solely to the Petitioner's work, the record does not support the Petitioner's contention that references to the best practices contained therein are referring to his research.

The Petitioner provides a number of testimonial letters from other interventional cardiologists in support of the value of his work on contrast induced acute kidney injury. Several of these address the importance of the [redacted] consensus statement as they relate to procedures in the cardiac catheterization laboratory. The Petitioner contends that any reference to the [redacted] consensus statement relate specifically to his findings, even if the letter does not reference the Petitioner or his research. We are not persuaded as the consensus statements, even in the sections dealing specifically with contrast induced acute kidney injury, contain guidance beyond the scope of the Petitioner's research.

The letters that do specifically reference the Petitioner or his research are insufficient to establish that he has made original contributions of major significance in the field. The record contains a letter from [redacted] director of the [redacted] at [redacted] stating that the [redacted] consensus statement and the Petitioner's paper on contrast induced acute kidney injury are "very relevant" to his practice. [redacted] does not indicate what impact the Petitioner's research has had on the field or that his findings are of major significance.

Similarly, [redacted] a professor of medicine at the [redacted] states that he finds the Petitioner's paper and the [redacted] consensus statement to be "important" publications on the implementation of best practices and his understanding of the national standard of care and ongoing research interests. [redacted] letter does not substantiate the impact that the Petitioner's contributions have had on his own practice or demonstrate that they have been of major significance to the field.

[redacted] Chief of Medicine for the [redacted] writes about the impact of the [redacted] consensus statement, noting that both the 2012 and 2016 guidelines reference the Petitioner's work. [redacted] further states that he considers the Petitioner's paper to be an important source of evidence for developing guidelines for the best practices for the operation of cardiac catheterization laboratories. While acknowledging that the Petitioner's research affected the field through its use as supporting evidence in the development of best practices, [redacted] letter does not indicate that the Petitioner's research has had substantiated impacts and has been a contribution of major significance.

[6] Of note, both other sources cited predate the publication of the Petitioner's research.

The record contains a letter from [redacted] one of the senior writers on the [redacted] consensus statement, indicating that he reviewed hundreds of publications on the subject of the Petitioner's research, contrast induced kidney injury. [redacted] notes that the Petitioner's research was one of three papers on the topic that the writers thought worthy of citation, but provides no explanation of what made the Petitioner's work more meritorious than the hundreds of other publications on the same topic. Most importantly, [redacted] letter does not explain how the Petitioner's paper has had an impact on the field in general or that it is a contribution of major significance.

Furthermore, the record does not establish that citation of the Petitioner's work by [redacted] and others in his field makes his research a contribution of major significance. The Petitioner states that his 2012 article has been cited 28 times, which he claims is three times the average citation rate for the journal in which it was published. However, the Petitioner does not explain how he arrived at his conclusion that the article has been cited three times more than an average article from the journal and provides no evidence supporting this claim.[7] Furthermore, he has not demonstrated that the level of citation identified is commensurate with an original contribution of major significance in the field of interventional cardiology.

Tangentially, the Petitioner has submitted evidence to demonstrate the importance of [redacted] consensus statements within the field of interventional cardiology. Some of the documentation relates to accreditation programs for cardiac catheterization laboratories through entities like the [redacted] or the [redacted] Additionally, many of the testimonial letters highlight the importance of [redacted] and its consensus statements. While the evidence submitted may suffice to establish the status of [redacted] within the field, it is insufficient to demonstrate that the citation to the Petitioner's paper in the [redacted] consensus statement makes his research a contribution of major significance in the field.

The Petitioner provided documents related to the [redacted] He claims credit for certain best practice protocols identified in the documents, pointing to the similarities to his research. However, the documents do not reference him, his research, or the [redacted] consensus statements citing his work. Without a link to the Petitioner, the documents do not substantiate the impact of his work or establish that his contribution is of major significance.

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[7] Contextually, the Petitioner appears to multiply the journal's impact factor by the number of years that have passed since publication to calculate the theoretical average number of citations for an article in the journal. The impact factor attempts to quantify a journal's prestige and influence on a field of study and is derived by dividing the total number of citations to a journal over the previous two whole years by the total number of citable documents in the journal over the same time period. The limited range of data considered in determining the impact factor prevents it from being an accurate portrayal of average citations over the life of a document, as the Petitioner is using it. For a discussion of how [redacted] the ultimate source of the Petitioner's information, calculates impact factors for its [redacted] see http:/[redacted]

The Petitioner also indicates that his work was cited in a chapter of the [redacted] edition of the [redacted] A letter from the publisher indicates that the textbook is one of two core references for the interventional cardiology specialty. The only reference to the Petitioner's research in the chapter occurs when author notes that recent clinical trials have not demonstrated any significant difference between sodium bicarbonate and sodium chloride hydration therapies, for which the author cites to the Petitioner and four other sources. The evidence in the record does not demonstrate that the citation to the Petitioner's research has had an impact of major significance on the field.

Finally, the Petitioner contends on appeal that the record of his achievements must be considered as a whole, rather than piecemeal, in determining whether he meets the eligibility requirements. In considering the totality of the evidence before us, the Petitioner demonstrates that he has made an original contribution to the field of interventional cardiology, but has failed to substantiate impacts on the field at large that would demonstrate his contribution has been of major significance. Accordingly, the Petitioner has not established that he satisfies the plain language of 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 qualities for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of A-M-H-*, ID# 537165 (AAO Sept. 27, 2017)