U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

January 4, 2017 **PM-602-0140**

Policy Memorandum

SUBJECT: *Matter of T-O-S-U-*, Adopted Decision 2017-01 (AAO Jan. 4, 2017)

This policy memorandum (PM) designates the attached decision of the Administrative Appeals Office (AAO) in *Matter of T-O-S-U-* as an Adopted Decision. Accordingly, this adopted decision establishes policy guidance that applies to and binds all USCIS employees. USCIS personnel are directed to follow the reasoning in this decision in similar cases.

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.

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Contact Information
Questions or suggestions regarding this PM should be addressed through appropriate directorate channels to the AAO.

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

ADOPTED DECISION

MATTER OF T-O-S-U-

ADMINISTRATIVE APPEALS OFFICE
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
DEPARTMENT OF HOMELAND SECURITY

January 4, 2017[1]

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.

FOR THE PETITIONER: Mark J. Hedien, Esquire, Columbus, Ohio

I. PROCEDURAL HISTORY

The Petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, 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) (2012).

The Director, California Service Center, 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 us on appeal. Upon *de novo* review, we find that the Petitioner has overcome the specified basis for denial of the petition. We withdraw the Director's decision and approve the petition.

[1] On February 20, 2015, we issued this decision as a non-precedent decision. We have reopened this decision on our own motion under 8 C.F.R. § 103.5(a)(5)(i) for the purpose of making revisions in preparation for U.S. Citizenship and Immigration Services designating it as an Adopted Decision.

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 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 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

(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.

[2] The United States Medical Licensing Examination ("USMLE") replaced the Federation Licensing Examination. 57 Fed. Reg. 42,755 (Sept. 16, 1992); *see also* 59 Fed. Reg. 1468 (Jan. 11, 1994). Despite the existence of a national medical licensing examination, each individual state determines its own requirements for medical licensure. There are instances, such as in this case, where a state's physician licensing examination requirement differs from that under federal immigration law such that a beneficiary may satisfy one but not the other. For an H-1B petition to be approved, a beneficiary must satisfy any licensing and licensing examination requirements that are mandated by the Act and controlling federal regulations.

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." 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.[3] *Taniguchi v. Kan Pacific Saipan, Ltd.*, 132 S. Ct. 1997, 2002-03 (2012) (explaining that terms that are undefined in a statute should be given its ordinary meaning).

We look first to the term "physician." While the term appears throughout Department of Homeland Security (DHS) immigration regulations, we found only one specific definition, stated parenthetically, in regulations relating to a national interest waiver for second-preference immigrant petitions: "[a]ny alien physician (namely doctors of medicine and doctors of osteopathy) . . . ." 8 C.F.R. § 204.12(a); *see also* 65 Fed. Reg. 53,889 (Sept. 6, 2000).

Outside of the DHS immigration regulations, several other expert sources use a similar definition. For example, the U.S. Department of Health and Human Services ("HHS") generally 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] Accordingly, this same definition, "doctor of medicine or osteopathy," is appropriate for the term "physician" as used in 8 C.F.R. § 214.2(h)(4)(viii)(C), and we hereby adopt it.

Next we review the phrase "national or international." The common dictionary definition of the term "national" is "of or relating to a nation . . . affecting one nation as distinguished from several nations or a supranational group." *See, e.g.*, *Webster's Third New International Dictionary* (2017), *available at* http://unabridged.merriam-webster.com/unabridged/national (last visited Jan. 4, 2017). The word "international" means "common to or affecting two or more nations." *Id.* at http://unabridged.merriam-webster.com/unabridged/international. Consistent with these definitions,

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[3] We need not consider the dictionary definition of "graduate of a medical school in a foreign country," the third element necessary to satisfy the exemption at 8 C.F.R. § 214.2(h)(4)(viii)(C). Section 101(a)(41) of the Act itself defines the term "graduates of a medical school." Consistent with that definition, we interpret the above phrase to mean individuals who have graduated from a foreign medical school or who have qualified to practice medicine in a foreign country. The final part of that definition, i.e., "other than such aliens who are of national or international renown in the field of medicine," is inapplicable as it concerns the very exemption being considered here.

[4] For additional information, see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Physicians and Surgeons," https://www.bls.gov/ooh/healthcare/physicians-and-surgeons.htm (last visited Jan. 4, 2017). The DOL *Handbook* provides expert and persuasive information on the duties and educational requirements of a range of occupations. The *Handbook* is available on the Internet at https://www.bls.gov/ooh/.

[5] *See* American Medical Ass'n (AMA) website, https://www.ama-assn.org/membership/ama-membership-eligibility (last visited Jan. 4, 2017), for a description of physicians.

for purposes of 8 C.F.R. § 214.2(h)(4)(viii)(C), the phrase "national or international" means within one (whether foreign or the United States) or more countries.[6]

Turning our focus to "renown," the commonly understood meaning of the term is "the state of being widely acclaimed and highly honored."[7] *See, e.g.*, *Webster's Third New International Dictionary* (2017), *available at* http://unabridged.merriam-webster.com/unabridged/renown (last visited Jan. 4, 2017). We will adopt this common dictionary definition of "renown" for purposes of 8 C.F.R. § 214.2(h)(4)(viii)(C) and next consider how the terms "national or international" and "renown" interact. *See also Taniguchi v. Kan Pacific Saipan, Ltd.*, 132 S. Ct. 1997, 2002-03.

According to the definitions we have adopted above, "national or international renown" could be restated as "widely acclaimed and highly honored within one or more countries" for purposes of adjudicating 8 C.F.R. § 214.2(h)(4)(viii)(C) exemption claims. But we note that this regulation cannot be interpreted to permit standards that may allow physicians from certain countries where renown in the field of medicine is more readily achieved – considering factors such as population size and available medical resources – to more easily qualify than those from countries where renown in the field of medicine is more difficult to achieve, notwithstanding whether a physician's capabilities or achievements in fact are of a lesser order qualitatively. Considering that physicians meeting the requirements for this exemption are permitted to provide patient care in this country without passing the USMLE or establishing competency in English, the standard for national renown should be set at a level that requires achievements necessary to garner national renown in the United States and thus, applied consistently, would obviate potentially adverse effects on U.S. patients.

Therefore, with respect to this exemption from the requirements at 8 C.F.R. § 214.2(h)(4)(viii)(B), while a beneficiary's accomplishments may achieve renown in a country outside the United States, the petitioner must also demonstrate that such accomplishments are comparable to those that would result in national renown in the field of medicine in the United States.[8]

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 acclaimed and highly honored in the field of medicine within one or more countries, (3) so long as

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[6] *Cf. The Mary Imogene Bassett Hosp.*, 92-INA-232 (BALCA 1993) (finding the individual was a "physician of national [renown] (in South Africa), but not of international renown in the field of medicine").

[7] In determining whether an individual 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 the phrase "physicians of national or international renown" and each of these individual terms for purposes of the H-1B regulatory provision, 8 C.F.R. § 214.2(h)(4)(viii)(C).

[8] *Cf.* 9 Foreign Affairs Manual (FAM) 302.1-6(B)(1)(6) ("Evidence required to support a claim to national renown . . . would nonetheless have to show a degree of excellence comparable to that which would result in national renown in the United States.").

the achievements leading to national[9] renown are comparable to that which would result in national 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 involving national or international renown, recognition, or acclaim, 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. *See* 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*). The following is a 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):[10]

- 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;

[9] We reserve without answering the question of whether international renown must also be at a level comparable to that which would result in national renown in the United States.

[10] 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. Further, the burden remains on the petitioner to demonstrate how the evidence presented establishes the physician'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).

- 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.[11]

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 University of Saskatchewan in Canada and has licentiate status with the Medical Council of Canada.[12] 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 relevant, credible, and probative evidence regarding the Beneficiary's credentials and employment demonstrating that he 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 of orthopedic sports medicine matched by few others in the world. The record shows that the majority of these surgical procedures performed by

[11] 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. *See* 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"). 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 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.

[12] The University of Saskatchewan is a school of medicine accredited by the Liaison Committee on Medical Education. *See* 8 C.F.R. § 214.2(h)(4)(viii)(B)(*2*)(*ii*). For additional information, see the Liaison Committee on Medical Education website at http://lcme.org/directory/ (last visited Jan. 4, 2017).

the Beneficiary took place at one of the most respected medical facilities for the subspecialty in Australia.

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 Journal of Bone and Joint Surgery (American volume), a top-ranking journal in the field of orthopedics.[13] The Petitioner provided evidence that the Beneficiary's article garnered numerous 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 in the United States and abroad and who attest to the Beneficiary's renown in the field of orthopedic surgery. Specifically, the authors describe and corroborate his level of clinical experience, expertise performing surgery in his subspecialty, and accomplishments in Canada and Australia. The documentation shows that the Beneficiary's work is at a degree of excellence comparable to that which would result in national renown in the United States.

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 his prior experience and 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 widely acclaimed and highly honored in at least one country in the medical subspecialty of orthopedic sports medicine at a level of renown comparable to that in the United States.[14] *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) ("The '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."). Accordingly, we conclude that the Beneficiary is a physician of national renown in the field of medicine and, thus, is exempt from the medical licensing examination requirement. As the Beneficiary satisfies the other requirements for approval, including

[13] In support of this assertion, the Petitioner "dotted the 'i'," in the Ohio-based university's tradition, by providing documentation from the Thomas Reuters Journal Citation Reports® website indicating the journal's high standing with regard to several defined categories, including its Impact Factor, Total Cites, and Total Articles. The page links to the independent Eigenfactor® webpage, which confirms the journal's score as being in the top 95th percentile, and its article influence score as within the top 78th percentile.

[14] 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 presented is sufficient to support 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 generally, as noted above, whether international renown must also be at a level comparable to that which would result in national renown in the United States.

that he possesses a license to practice medicine in the state of intended employment, the petition will be approved.

V. CONCLUSION

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met. Accordingly, the Director's decision is withdrawn.

ORDER: The appeal is sustained.

Cite as *Matter of T-O-S-U-*, Adopted Decision 2017-01 (AAO Jan. 4, 2017)