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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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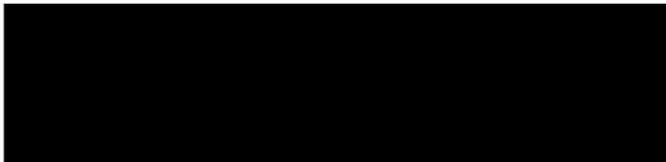


FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 22 2009
SRC 07 234 51462

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel submits a brief. For the reasons discussed below, while the director did not explicitly address all of the regulatory criteria claimed by the petitioner, we uphold the director's ultimate conclusion that the petitioner has not established his eligibility for the exclusive classification sought.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29,

1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a physician. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).¹

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Prior counsel initially asserted that the petitioner "has been the recipient of numerous national awards and distinctions throughout his career." Prior counsel then references the petitioner's job positions and travel awards. The petitioner submitted evidence that he received travel scholarships to attend to Fellows Conferences sponsored by the American College of Chest Physicians (ACCP). One letter references the petitioner's selection by his "training director," revealing that fellows are still in training. An electronic mail message references the courses provided at the conference, suggesting they are primarily training conferences.

Regarding any awards won by the petitioner, the director requested evidence of the geographic range for the pool of candidates and evidence of the scope and media coverage of the award. In response, prior counsel referenced what she conceded are more "distinctions than actual awards," such as the petitioner's job positions and quotes from the petitioner in the media. Finally, prior counsel reiterated that the petitioner has received travel awards.

In support of prior counsel's assertions, the petitioner submitted a letter from _____ an assistant professor at the University of Massachusetts, who evaluates the petitioner's achievements based on a review of the petitioner's curriculum vitae. _____ notes the petitioner's academic awards and then addresses the petitioner's career. Specifically, _____ notes "with great interest" that the petitioner was interviewed in *Health News Daily* and states that only the "top given experts in the medical field" are interviewed in this publication. _____ further states that "only those who have greatly distinguished themselves are selected for a role at" the Albert Einstein College of

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Medicine where the petitioner works. [REDACTED] then discusses the petitioner's memberships and, "much more impressive," the petitioner's publications. Finally, [REDACTED] discusses the petitioner's research on pleural effusion and the petitioner's conference presentation on this subject. [REDACTED] does not explicitly equate any of the petitioner's "distinctions" to awards or prizes.

The director concluded that the petitioner's academic awards could not be considered lesser nationally or internationally recognized awards or prizes for excellence in the field. On appeal, counsel does not specifically address this criterion.

We concur with the director that academic awards cannot serve to meet this criterion. Competition for scholarships and academic awards is limited to other students. Experienced experts in the field are not seeking scholarships or academic awards. Similarly, experienced experts do not compete for travel awards to attend training courses, fellowships or competitive training positions such as internships or residencies. Thus, they cannot establish that a petitioner is one of the very few at the top of his field.

We note that the regulations include separate criteria for published material about the alien and leading or critical roles. 8 C.F.R. §§ 204.5(h)(3)(iii), (viii). Such accomplishments are not awards or prizes. Moreover, the petitioner has not established that this criterion is not readily applicable to the medical field. Thus, we need not consider whether job titles or coverage in the media is comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). Regardless, we are not persuaded that evidence related to but insufficient to meet the criteria at 8 C.F.R. §§ 204.5(h)(3)(iii) and (viii)² must be considered comparable to qualifying awards or prizes pursuant to 8 C.F.R. § 204.5(h)(3)(i).

In light of the above, the petitioner has not established that he meets this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

Prior counsel initially asserted that the petitioner meets this criterion through his board certifications and other memberships that require exceptional ability and significant contributions to the field. The petitioner submitted evidence of his certifications, memberships and materials about the entities through which he has obtained certification or membership. The record reflects that the petitioner was certified in Internal Medicine from the American Board of Internal Medicine (ABIM) and evidence that ABIM certifies physicians who demonstrate an ability and commitment to quality medical care based on an examination. Similarly, the petitioner is certified by the American Board of Medical Specialties (ABMS), which requires a physician to demonstrate, through testing and peer evaluation, the knowledge, experience and skills for providing quality healthcare in a specialty. The materials for

² For the reasons discussed below, the evidence submitted to meet the criteria set forth at 8 C.F.R. §§ 204.5(h)(3)(iii) and (viii) is insufficient.

ABMS submitted by the petitioner tout certification as being significant for physicians "preparing for" a career in teaching, research or practice restricted to that specialty.

The petitioner also submitted evidence of his affiliate membership in ACCP, which has 16,000 active members and requires only completion of medical education, board certification and an interest in cardiopulmonary medicine or a related specialty. In addition, the petitioner submitted evidence of his membership in the American Medical Association (AMA), the largest physicians group in the United States. The petitioner also documented his membership in the Society of Critical Care Medicine (SCCM), which has 13,000 members including non-physicians. The petitioner participated as a fellows presenter at the Laennec Society of Philadelphia which has 350 members within the Delaware Valley. This appears to be a local society. The petitioner is also an associate member of the American College of Physicians (ACP), which is the nation's largest medical specialty society with 120,000 members in seven categories from student to fellow. In addition, the petitioner is a member of the American Thoracic Society (ATS) which has 14,573 members and lists no membership requirements in the materials submitted into the record. Finally, the petitioner is a member of the Association of Physicians of Pakistani Descent in North America (APPNA), which requires a valid physician's license, engagement in academic teaching, research or administration or enrollment in postgraduate training.

The director requested evidence that the petitioner was a member of an association that requires outstanding achievements of its members, including proof of membership and the actual membership requirements. In response, prior counsel asserted that very few societies within the medical field require outstanding achievements for membership and, thus, requested that the director consider the favorable opinions of the petitioner's peers as comparable evidence to meet this criterion.

The director concluded that the esteem of one's colleagues could not be understood as a membership in a qualifying association. Counsel does not challenge this conclusion on appeal.

We concur with the director that the petitioner has not established that he meets this criterion. The petitioner's board certifications are exam-based to confirm competency in a specialty. They are not memberships that require outstanding achievements. The petitioner's professional memberships, some of which are at only the affiliate or associate level, are within large (and thus non-exclusive) associations that require only the necessary credentials to practice in the profession. These memberships cannot be considered qualifying.

Prior counsel asserted in response to the director's request for additional evidence that few societies in the medical field require outstanding achievements. Even if true, the existence of only a few qualifying societies does not suggest that this criterion is inapplicable in the petitioner's field. Prior counsel did not suggest that there is no qualifying society and the petitioner submitted evidence that ACP has a membership level of invited fellows.³ Rather than a reason to find this criterion inapplicable, the

³ As the petitioner is not a fellow of ACP, we need not address whether ACP fellowship is qualifying. Rather, we simply note that there are memberships in the field far higher than those attained by the petitioner. We further note the existence of the Institute of Medicine of the National Academies which, according to

limited number of qualifying societies is precisely why evidence of membership in such a society is indicative of or consistent with national or international acclaim. The fact that it is not easy to meet this criterion does not imply that USCIS should accept lesser evidence; the regulatory criteria were not designed to be easily met by the majority of professionals.

As acknowledged above, the regulation at 8 C.F.R. § 204.5(h)(4) permits the submission of "comparable" evidence where the regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3) are not "readily applicable." We reiterate that the existence of a limited number of qualifying societies does not suggest that this criterion is inapplicable. Rather, the criteria were designed to demonstrate that an alien is one of the small percentage at the top of the field. Thus, they were not designed to be easily met. As the petitioner has not demonstrated that this criterion is inapplicable to the medical profession, we need not consider "comparable evidence" to meet it. 8 C.F.R. § 204.5(h)(4). Regardless, the favorable opinions of a selection of the petitioner's peers are not comparable to formal admittance to an association that limits membership to those able to demonstrate outstanding achievements as judged by national or international experts in the field.

In light of the above, the petitioner has not established that he meets this criterion through the submission of the evidence mandated under 8 C.F.R. § 204.5(h)(3)(ii) or comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4).

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

Prior counsel initially stated: "It is not surprising for someone of [the petitioner's] stature to have his name appear in numerous prestigious directories." Specifically, prior counsel referenced the directory of the American Board of Medical Specialists (ABMS) and *Strathmore's Who's Who*. Finally, prior counsel stated that the petitioner's name "has also appeared frequently in the popular media."

The petitioner submitted an article in *Health News Daily*, a daily news service from "FDC Reports" reporting that infliximab shows promise in effectively and safely treating refractory multisystem sarcoidosis, an off-label use of the medication. The article begins by discussing the petitioner's presentation at the annual meeting of ACCP in which he reported the results of his study of infliximab. The article then notes that audience members "with expertise in using infliximab for refractory sarcoidosis confirmed [the petitioner's] impression that when patients are refractory to conventional therapies, they are generally refractory at sites other than the lung." According to this article, the same panel went on to debate the value of prescribing methotrexate with infliximab. The article concludes with a lengthy discussion of [redacted] view on this issue, noting the session chair's statement: "When an insurance company wants to know [where] the data [are] that infliximab works, you can point to [redacted] study." (Brackets in original.) The article is reprinted from *Elsevier*

their website at <http://www.iom.edu/> (accessed October 15, 2009 and incorporated into the record of proceeding) has a membership of approximately 1,700.

Global Medical News. This article was also reprinted on FDC Report's website as well as other websites of undocumented significance.

In addition, the petitioner submitted an edition of *The White Coat*, a resident newsletter for the Albert Einstein Healthcare Network. The newsletter, under "Einstein Happenings," reports that the petitioner addressed a symposium on the role of infliximab in refractory sarcoidosis at ACCP's annual meeting. Similarly, the *Drexel Newspaper*, a newsletter for Drexel University, notes that in addition to other presenters from Drexel University, the petitioner, a former resident at Drexel, presented his research at an ACCP annual meeting.

The petitioner also submitted evidence that Strathmore's Who's Who: Registry of Outstanding Professionals includes a listing for the petitioner for which he received a plaque. The petitioner submitted promotional materials about Strathmore's from its website. While the materials suggest that individuals are selected based on leadership and achievements, they also indicate that the registry includes thousands of entries and that individuals can self-nominate themselves. There is no indication that the plaques are awarded without fee in recognition of achievements rather than being offered for purchase by this for-profit company.

The director requested evidence of the circulation of the publications in which the petitioner has been covered. In response, prior counsel continued to assert that the petitioner meets this criterion but did not address this criterion in depth. As stated above, ██████████ expresses his "great interest that [the petitioner] was interviewed in a published interview for Health News Daily, a daily news service from FDC reports." ██████████ further asserts that only "the top given experts in the medical field are selected for interviews by the FDC." A review of the article, however, reveals that while the petitioner's statements are paraphrased in the article, it is not an interview with the petitioner. Rather, the article reports on the symposium where the petitioner presented his study. ██████████ concludes that FDC reports help pharmaceutical and healthcare executives, policymakers and analysts to better understand the current developments affecting the regulation of healthcare products in the United States and allowed the petitioner "to reach not only fellow physicians" but also "lay members of the medical field who play a role in the development of new drugs and therapies used to treat various conditions."

The director did not explicitly address this criterion or acknowledge the evidence discussed above. Counsel also fails to address this criterion on appeal. Given the submission of the above evidence, however, we find that this criterion warrants some discussion.

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence of published material "about" the petitioner relating to his work. The article in FDC Reports, reproduced at other sites, is not "about" the petitioner. It is about a symposium where he presented the results of a study in which he participated while a resident at Drexel University. Moreover, the article also discusses the reaction of other physicians also using the U.S. Federal Drug Administration (FDA) approved drug for the same off-label purpose and the presentation of a published study by a different physician. While we acknowledge the statement of ██████████ regarding the usefulness of FDC Reports and the

significance of being interviewed for this publication, the petitioner's presentation was merely paraphrased in this publication, which also covered a separate study by another research team. Moreover, the record includes little information regarding selection for inclusion in FDC Reports. For example, if all studies examining the risks and benefits of an off-label use of an FDA-approved drug are covered in this newsletter, the inclusion of the petitioner's study does not set him apart from other clinical researchers investigating off label uses of FDA-approved drugs. Ultimately, however, as the FDC Reports article is not "about" the petitioner relating to his work, it cannot serve to meet this criterion.

In addition, inclusion in internal institutional newsletters is not indicative of or consistent with national or international acclaim. The record contains no evidence that these newsletters are nationally distributed or otherwise have a circulation consistent with a professional or major trade journal or other major media. Thus, coverage in the internal newsletters where the petitioner has worked and trained cannot serve to meet this criterion. Finally, we are not persuaded that inclusion as one of thousands of professionals in a vanity-press type directory published by a for-profit company intent on selling directories and plaques can serve to meet this criterion.

In light of the above, the petitioner has not demonstrated that he meets this criterion.

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.

Prior counsel initially asserted that the petitioner meets this criterion based on his supervision of junior physicians, fellows, medical students and interns. In addition, prior counsel asserted that the petitioner "regularly lectures to colleagues on some of the most important clinical issues and practices related to the field of critical care" and has led journal clubs and "grand rounds," which "inherently involves judging the work of leading physicians from around the world." Finally, prior counsel references the petitioner's work as a peer reviewer.

The petitioner's self-prepared curriculum vitae states that he is an "Elsevier Resident Advisory Board member" and, in this position, reviews articles and provides valuable feedback to the advisory board. He also notes his participation in Grand Rounds that reviews interesting and challenging cases and a monthly journal club that reviews the latest articles. These duties appear limited to the institutions where he works. Under the pink sheet labeled "Judge of the Work of Others," the petitioner submitted only a review manuscript by the petitioner that was currently under review for publication in *Thorax*. Under the pink sheet labeled "Leading and Critical Roles," the petitioner submitted a self-serving list of his responsibilities at various institutions, internet materials about those institutions and Procedural Skill Documentation forms signed by the petitioner as the supervising physician. Under the pink sheet labeled "Awards and Distinctions," the petitioner included a subsection with a letter inviting the petitioner to attend a professional and cultural program in Vietnam and Cambodia certified as qualifying continuing medical education. The petitioner also included as part of this subsection a letter addressed to the petitioner as a randomly selected member of the American Thoracic Society's Critical

Care Assembly inviting the petitioner to comment on specific clinical situations. No other evidence is labeled as relating to this criterion and despite our review of all of the voluminous evidence submitted,⁴ we were unable to discover other evidence relating to this criterion.

The director requested documentary evidence to support this criterion. Noting the voluminous materials submitted, the director requested that all evidence be organized and labeled as to which criteria it supported. In response, prior counsel asserted that because the petitioner has mastered advanced procedures that few others perform, he is "constantly called upon to teach and evaluate the performance of advanced procedures." Prior counsel further asserted that the petitioner served as a reviewer for a major pulmonary journal and referenced the original evidence submitted.

The director concluded that performing and teaching procedures and peer review cannot serve to meet this criterion. On appeal, counsel reiterates that the petitioner reviewed manuscripts prior to publication and asserts that the director disregarded this evidence as well as testimony regarding the significance of these requests.

We acknowledge the prior assertions of both prior counsel and current counsel that the petitioner has reviewed manuscripts for publications and the petitioner's own self-serving statements on his curriculum vitae. **The unsupported assertions of counsel do not constitute evidence.** *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Similarly, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). While we acknowledge that the record contains voluminous materials, we were unable to locate confirmation of the petitioner's role as a peer reviewer or attestations of the significance of peer review.

Even assuming the petitioner has performed peer review, we are not persuaded that such peer review would serve to meet this criterion. The evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with sustained national or international acclaim. *Accord Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005). We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field and, by itself, is not indicative of or consistent with sustained national or international acclaim. The petitioner must submit evidence that sets him apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small, elite group of referees, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal.

⁴ A notable amount of the documentation, for example the significant amount of documentation relating to a shortage of doctors, is not relevant to the issue of whether the petitioner enjoys sustained national or international acclaim.

Regarding the other claims under this criterion, internal review of student work is not indicative of or consistent with national or international acclaim and, thus, cannot serve to meet this criterion. *Kazarian v. USCIS*, __ F. 3d __, 2009 WL 2836453, *5 (9th Cir. 2009). Similarly, we are not persuaded that participation in the normal practice of sharing unusual cases within one's institution or an internal journal club is indicative of or consistent with national or international acclaim.

In light of the above, even if the petitioner had documented his claimed judging experience, we could not conclude that the petitioner meets this criterion.

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

Prior counsel relied on letters from the petitioner's colleagues as evidence that the petitioner has made both clinical and research contributions of major significance. The director requested more specific examples of how the petitioner had impacted the field. In response, the petitioner submitted additional letters characterized by prior counsel as establishing that the petitioner's work has been practical, important and has improved the abilities of other members of the field. The director concluded that while the petitioner had established the importance of his work to his employer, he had not established that his work constituted an original contribution of major significance. On appeal, counsel characterizes the petitioner as pioneering with a reputation as a remarkable physician who has accomplished numerous outstanding achievements. Counsel does not, however, specifically address this criterion.

We do not contest that the petitioner, as a clinical researcher, has published or presented original case studies and other original research results that have added to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), however, an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.

Moreover, the regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. *See also Kazarian v. USCIS*, __ F. 3d __, 2009 WL 2836453, *6 (9th Cir. 2009) (publications and presentations are insufficient under this criterion, 8 C.F.R. § 204.5(h)(3)(v), absent evidence that they constitute contributions of *major* significance).

We will consider the petitioner's reference letters below. The opinions of experts in the field, however, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information, or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his/*her reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. Vague, solicited letters from local colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field are insufficient. *Kazarian*, 2009 WL 2836453 at *5.

The petitioner obtained his medical degree at the Khyber Medical College in Pakistan and performed postgraduate training at that institution's hospital and the Lady Reading Hospital in Pakistan. In 2003, the petitioner joined the staff of Drexel University in Philadelphia and in 2006 he joined the staff of the Albert Einstein Medical Center in Philadelphia where he remained as of the date of filing.

██████████ a supervising and consulting physician at Khyber Medical College, confirms that the petitioner served as a clinical student and, subsequently, a senior House Physician in ██████████ unit, all within a residency capacity. ██████████ praises the petitioner's clinical knowledge and skills but does not identify any specific contributions that have impacted the field. Other physicians at this institution provide similar letters. ██████████ a professor at Khyber Medical College, adds that the petitioner was part of the epidemiological survey team that visited different areas of the province and presented the results of a survey and participated in a case control study on Traditional Birth Attendants which compared their services with those provided at hospitals. ██████████ does not, however, explain how these projects have impacted the field. ██████████ a professor at Lady Reading Hospital, confirms the petitioner's residency at this institution. While Dr. ██████████ praises the petitioner's professionalism, rapport with patients and intelligence, ██████████

does not identify any specific contributions that have impacted the field. Other faculty at Lady Reading Hospital provide similar information.

██████████, an assistant professor of medicine at Drexel University, discusses the shortage of physicians trained to provide critical care medicine. The petitioner has also submitted a large amount of documentation to support this assertion. The issue of whether similarly-trained workers are available in the United States, however, is an issue under the jurisdiction of the Department of Labor. *New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r. 1998). ██████████ goes on to assert that the petitioner "has led groundbreaking research that has had a direct impact on the future of the field throughout the world." Her one example of such research is the petitioner's study on the use of infliximab for refractory sarcoidosis, a devastating and potentially fatal inflammatory disease. ██████████ explains that patients suffering from multi-drug resistant sarcoidosis have limited therapeutic options and asserts that the petitioner was the first scientist to demonstrate that infliximab showed minimal side effects and enormous benefits for these patients. ██████████ speculates that because of the petitioner's prior success in the research arena, "it is highly anticipated that this research will be vital in FDA approval of this drug to treat sarcoidosis."

A review of the FDC Reports article on the seminar where the petitioner presented the results of his study, however, reveals that other physicians were already using infliximab to treat sarcoidosis, that these physicians confirmed the petitioner's observations and that the seminar included a "lively debate" on whether it was necessary to include methotrexate with infliximab. This article reveals that using infliximab off-label for sarcoidosis was nothing new at the time of the petitioner's small-scale study. While ██████████ asserts that the petitioner's research is "continuously cited in the research studies of other physicians," the record contains no evidence of any citations, such as citing articles or the results of a search on a citation tracking database. Significantly, the record contains no evidence that the petitioner's abstract of his infliximab study, which appeared in *Chest* has been cited and the record contains no letters from FDA officials confirming their interest in the petitioner's research or even that they are considering amending their approval of infliximab to include treatment of sarcoidosis. Finally, ██████████ notes the prestigious journals that have carried the petitioner's research and concludes that only those studies that "will have a dramatic impact on the international medical community" are published in such journals. We will not presume the significance of an article from the journal in which it appeared. Rather, it is the petitioner's burden to demonstrate that his individual articles have impacted the field, such as through the submission of citation indices or other comparable evidence.

██████████ claims no personal knowledge of the petitioner, but is a clinical Assistant Professor at an affiliate site of Drexel University. Thus, ██████████ letter does not establish the petitioner's recognition beyond Drexel University where he worked. ██████████ notes that the petitioner has presented and published his work and received travel awards. ██████████ further asserts that the petitioner is able to perform the highly complex and difficult pericardiocentesis procedure to detect fluid in the pericardium. ██████████ does not explain how an ability to perform a procedure developed by someone else, regardless of its complexity, constitutes an original contribution.

██████████ of the Medical Intensive Care unit at Albert Einstein Medical Center, discusses the petitioner's work with ventilator associated pneumonia (VAP), which is defined by required ventilation for at least 48 hours. The petitioner's study at Drexel University "assessed the diagnostic and prognostic value of the Clinical Pulmonary Infection Score (CPIS), which is a scoring system established to identify factors related with higher mortality in VAP patients." According to ██████████ the study demonstrated that antibiotics were not appropriately modified in VAP patients using the CPIS. ██████████ explains that the study "has numerous practical implications; it not only addresses the appropriate initial use of antibiotics but also the modification of antibiotics and their impact on mortality and length of hospital stay." ██████████ does not provide examples of how this work is being applied at a national or international level. ██████████, a hospitalist at the University of Pittsburgh, asserts that this work "directly led to improvements in treatment modalities" but provides no examples of where these improvements were adopted. ██████████ letter does not provide any evidence of the petitioner's recognition outside of Pennsylvania where he works. In his second letter, ██████████ asserts that the petitioner is distinguished by the fact that he is a top physician scientist. This circular assertion, unsupported by examples of the petitioner's impact in the field, is not persuasive evidence of the petitioner's sustained national or international acclaim in the field of medicine.

██████████ an assistant professor at the Warren Albert Medical School of Brown University, does not explain how he became aware of the petitioner or his work. ██████████ asserts that the petitioner's selection to work at Drexel University and the Albert Einstein Medical Center demonstrates his tremendous reputation. We will discuss the nature of the petitioner's roles below as they relate to the criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii). We will not presume that being hired at a prestigious hospital creates a presumption that the physician has made an original contribution of major significance in the field. Rather, it is the petitioner's burden to identify any contribution and document its impact in the field. ██████████ also asserts that the petitioner's reputation is apparent from his memberships and presentations. The petitioner's membership have been discussed above pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii) and found insufficient to meet that criterion. The petitioner's presentations will be considered below pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

In a second letter, ██████████ concludes that the petitioner's research could not have been performed by any other practicing researcher simply because it was not performed by any other practicing researcher. This statement, however, applies to any clinical researcher publishing original work. We note that it would serve no purpose to publish work that is not original; thus, the vast majority of published work is original and was not performed by any other researcher previously. As stated above, mere publication is insufficient to meet this criterion. *See Kazarian*, 2009 WL 2836453 at *6.

██████████ of the Sleep Center at the Albert Einstein Medical Center, lists several procedures that the petitioner has mastered and discusses a single complex patient that the petitioner was able to diagnose and treat. As stated above, the ability to perform procedures developed by others is not an original contribution. Moreover, we are not persuaded that the petitioner's successful

diagnosis and treatment of a critical care patient separates him from other critical care physicians. As stated above, a shortage of workers with the petitioner's specialized skills falls under the jurisdiction of the Department of Labor and can be enumerated on an application for alien employment certification, Form 9089. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 220-21.

asserts that the petitioner demonstrated, for the first time, that outpatient pleural catheters are a safe, less invasive and cost effective modality for achieving palliation and pleurodesis in patients with Malignant Pleural Effusion (MPE). [REDACTED] notes that the petitioner presented this work in 2006 at a conference attended by over 14,000 individuals. [REDACTED] concludes that this study "has truly improved on a national level the ability of our field to deal with and treats [*sic*] this very serious disease." [REDACTED] does not assert that his hospital, the University of Massachusetts Medical School, has changed its guidelines on treating MPE based on the petitioner's study and provides no examples of independent hospitals that have done so. Rather, he speculates: "I'm sure many of my peers have been able to utilize [the petitioner's study] in their own clinical practices in [a] very practical way." It is not even clear that [REDACTED] knew of the petitioner or his work prior to being contacted for a reference letter.

[REDACTED] a physician with Penobscot Respiratory, P.A. in Maine, asserts that he has been able to utilize several of the petitioner's findings to improve his own clinical practice and to further his own research. [REDACTED] provides no examples of changes he has made to his practice based on the petitioner's work and the record lacks evidence that [REDACTED] has published research that cites the petitioner's work as a foundation of the new research or otherwise.

[REDACTED] a professor of medicine at the State University of New York at Stony Brook, asserts that the petitioner is distinguished from his peers because of the wide ranging impact of his research. While [REDACTED] explains that the petitioner's work is "very practical in nature" and lists several pulmonary diseases investigated by the petitioner, [REDACTED] provides no examples of how the petitioner's work is being implemented at independent hospitals, including his own.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. The record demonstrates that the petitioner has earned the respect of his immediate circle of colleagues and has possibly gained some recognition in the Pennsylvania-New England region. The record, however, lacks evidence of the petitioner's demonstrable impact on the practice of medicine, such as widespread citation or official hospital guidelines adopting procedures based on his results. Thus, the petitioner has not established that he meets 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 petitioner initially submitted several articles, a book chapter entitled "Chest Drains" allegedly "in press" in an Oxford Handbook and conference presentations. No authors are listed on the "Chest Drains" chapter. In response to the director's request for additional evidence, the petitioner submitted articles and a different book chapter published after the date of filing. While several references attest to the significance of the textbooks containing the petitioner's chapters, it remains that neither chapter predates the filing of the petition. Thus, the book chapters cannot be considered evidence of the petitioner's eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 4 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

We reiterate that the evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim. As discussed above, while two of the petitioner's references assert that the petitioner is continuously cited, the record contains no evidence of citation or other evidence of the impact of the petitioner's articles. Even if we accept the assertion advanced by several references that the publication of research is unusual for a physician, the petitioner would meet only this single criterion, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3). For the reasons discussed above and below, the petitioner falls far short of meeting any other criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Prior counsel initially stated that the petitioner plays a leading or critical role in the lives of his patients and his profession. While we do not discount the importance of patient care, a patient is not an organization or establishment and, thus, the petitioner's role with his patients cannot serve to meet the plain language of this criterion. Prior counsel also referenced the petitioner's "supervisory roles" and asserted that he is able to perform the most advanced and difficult diagnostic and clinical procedures, enabling and facilitating the widespread performance of these innovative procedures. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The exhibit labeled "Leading and Critical Roles" includes a lengthy self-serving description of all of the petitioner's physician duties, a list of Procedural Skill Documentation forms signed by the petitioner as the supervising physician and internet materials about the Albert Einstein Medical Center and Drexel University. Several references, including coauthor [REDACTED] of Drexel University, attest to the petitioner's leading role on various research projects. [REDACTED], an attending physician at the Robert Wood Johnson University Hospital in Hamilton, New Jersey, asserts that the petitioner has served in leading roles at prominent institutions such as the Albert Einstein Medical Center but provides no job title to support this assertion. The record contains the petitioner's actual employment

contract for his position with the Albert Einstein Medical Center indicating that the petitioner was hired as and serves in a graduate training position.

The director did not address this criterion. On appeal, counsel asserts that the director disregarded evidence that the petitioner was appointed to selective leading and critical roles at top institutions in Pakistan and the United States.

We have already considered the petitioner's research contributions above. At issue for this criterion are the nature of the job the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the nature of the job must be such that the selection of the petitioner to fill this role is indicative of or consistent with national or international acclaim. While the petitioner submitted no evidence as to the reputation of the Pakistani institutions where he worked, we do not contest the distinguished reputation of the U.S. institutions that have hired him. At issue in this matter, then, is the nature of the positions the petitioner was hired to fill.

The letters from the Pakistani institutions state that the petitioner worked in a residency position at those institutions. We are not persuaded that a training position is a leading or critical role for the institution. Similarly, while the petitioner may have had some supervisory responsibilities in the United States, he was hired into a primarily training position according to his contract. The record lacks an organizational chart or other evidence establishing how his job positions fit within the hierarchy of the institutions where he has worked.

As the petitioner appears to have worked only as a medical resident, we are not persuaded that he meets this criterion, which contemplates a job title beyond graduate training.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a physician to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a physician, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.