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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: FEB 20 2008

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The director treated the petitioner's untimely appeal as a motion, and again denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The petitioner seeks employment as an "Astronomer (Educator/Researcher)." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as an alien of exceptional ability, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

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

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The sole issue raised by the director is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the

[national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The Form I-140 petition includes this job description: “Freelance acquisition and dissipation of Astronomy knowledge; get insights from audience interaction, discuss the possibilities, explore the probable, and communicate to a greater audience.” In an addendum to the petition, the petitioner described his intended work in “astronomy education research” in greater detail:

I will create opportunities to promote astronomy to librar[y] goers, museum visitors, school students, boy scouts, girl guides, various clubs, and [a] variety of associations and institutions as astronomy interests one and all; despite the information explosion on the Internet, a viewpoint of the universe that I present is unique, and comes from my on-going research and theories about the universe. This I have done and still do for fun, for self-education, and now INTEND TO ESTABLISH as a profession with passion, here in the United States. The presentations are content driven, interactive, engrossing, and sophisticated computer animated graphical audiovisuals with live narration.

On Form ETA-750B, Statement of Qualifications, the petitioner indicated that he has worked since 2001 as a substitute teacher both at Sawanhaka Central High School District, Floral Park, New York (averaging 35

hours per week), and at Cedar Rapids Community Schools, Cedar Rapids, Iowa (averaging 7 hours per week). The petitioner did not claim any specialized formal training in astronomy. Rather, he claimed on his web site,¹ without elaboration, to have “[l]earnt Astronomy the ancient’s way.” The petitioner holds a bachelor’s degree in physics education, and stated that he has earned “27 masters’ credits out of 30 required for” a master’s degree in physics and earth science education. (The petitioner eventually received his master’s degree in spring 2006, nearly two years after he filed the petition.) The petitioner is licensed to teach physics, earth science, and general science to grades 7 through 12 in Iowa and New York.

The petitioner asserted that he founded the Cosmic Academy on December 7, 1980, operating from India until July 1993 except for “six months [in 1996] doing research and education on Halley’s comet and the opposition of planet Mars while in Australia, with the British Astronomy Association . . . and with the Sydney Observatory.” In addition to printouts from the Cosmic Academy’s web site, the petitioner submitted a copy of the inaugural issue of *Cosmic Odyssey*, described as a bimonthly publication for which the petitioner had served as editor and publisher. The only evidence of further issues of *Cosmic Odyssey* is a 1985 article in the *Journal of the Barbados Astronomical Society*, said to be reprinted from the second issue of *Cosmic Odyssey*.

The petitioner’s name, and/or the name of his Cosmic Academy appear in various clippings (mostly undated) from *The Times of India*. A number of these clippings are short promotional pieces, announcing upcoming Academy activities. Others quote the petitioner with regard to astronomical events such as lunar eclipses and comet sightings.

The petitioner also submitted copies of various educational materials he had prepared, and documentation of his work teaching classes, advising school astronomy clubs, and making presentations at churches, libraries, and other venues. Other materials, such as an amateur radio license and a cardiac care provider card, have no discernible relevance to astronomy education.

The petitioner submitted several letters with his initial submission. We will discuss examples of these letters here. One letter, from 1997, is from then-President Bill Clinton. The body of the letter reads, in full:

Thank you so much for taking the time to share your thoughts. Your words of encouragement and support mean a great deal to me.

As we continue our efforts to address the fundamental needs of the American people, my Administration remains committed to providing our children with a brighter future and empowering hardworking citizens with the tools they need to improve their lives.

I hope you will remain involved as we prepare our nation to face the challenges of the twenty-first century.

¹ The petitioner has submitted printouts from <http://www.cosmicacademy.net/>.

The letter contains no specific mention of astronomy or the petitioner's work, and appears to be a generic "form" letter of the type routinely sent in reply to letters to the president. It is clear from the wording that the letter is a reply to an earlier letter from the petitioner, rather than a spontaneous message from the president.

The remaining witnesses all have some demonstrable connection to astronomy. Like President Clinton's letter, many of these letters date from several years prior to the filing of the petition. In a 1993 letter, the late [REDACTED] a well-known astronomer and winner of the 1983 Nobel Prize in Physics, wrote to the petitioner:

This is just a line to say that I was enormously impressed with what you told me during your visit, about your efforts to stimulate interest in astronomy among [sic] the school-going students in Gujarat and in neighbouring cities and villages. It is an effort that is most praiseworthy and indeed noble. I am personally encouraged that there are persons like you bearing social responsibility.

I greatly hope that others in authority in India will be appreciative of your efforts in a concrete and in a substantial way.

While the tone of [REDACTED]'s letter was clearly positive and encouraging, the letter does not show that the petitioner stands out among science educators. The AAO does not dispute the assertion that "efforts to stimulate interest in astronomy" are "praise-worthy," but the petitioner's choice of occupation does not, by itself, entitle him to a national interest waiver.

Most of the remaining letters date from 1982-1986, and consist of comments regarding visits or presentations by the petitioner. These letters, like [REDACTED]'s letter, are complimentary but general in nature, portraying the petitioner as an astronomy enthusiast who was eager to learn and to share his knowledge. As stated by [REDACTED] of St. Michael, Barbados, the petitioner is "an avid student of astronomy, as well as an enterprising person."

Only one of the initial letters discusses the petitioner's work in any depth. [REDACTED] Director and CEO of the New York Hall of Science, stated:

My support for a waiver of the job offer requirement is based on my knowledge of the need in the US for science education entrepreneurs like [the petitioner]. There are large numbers of jobs available for certified science teachers, like [the petitioner], and he would have no trouble obtaining such a job, as he has demonstrated during his decade in this country. But we also have a crying need for entrepreneurial communicators, and they are rare. . . . [The petitioner] has demonstrated that he can fully support himself, and help meet ongoing but constantly changing US needs, by serving as a flexible science communicator in a variety of settings.

A shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the

issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification. *Matter of New York State Dept. of Transportation* at 215, 218.

continued:

I met [the petitioner] twenty-two years ago in India. On behalf of the Indo-US Subcommittee on Education and Culture, I was taking US-made science education equipment around and showing Indian educators how to use it. [The petitioner] was assigned to assist me and act as a translator. He did far more than that. He was soon operating the equipment (a Starlab portable planetarium) entirely on his own. He gave programs for literally thousands of children and adults. After my return to the US I received reports from Indian educators on the exceptional impact of [the petitioner's] presentations. Based on the success of the experience, the National Council of Science Museums in India obtained a license from the US company and manufactured one hundred of these planetariums for use throughout India.

. . . His deep, over two decade-long enhancement of his own education and that of Indian and American children he has worked with represents an achievement and demonstrated commitment far beyond the norm for US students or teachers, despite their often great advantages in environment and opportunity. . . .

He has written several popular articles on sky events for the lay person mostly in India, and has designed and conducted thousands of school level astronomy slide and telescope presentations. . . . His writings and course materials are accurate, charming, and enthusiastic.

. . .
This entrepreneurial spirit is not common among science teachers. [The petitioner] continues to discover specific needs for science education and create his own opportunities to meet those needs. Requiring him to be committed to a single employer would reduce his value for the US in meeting the constantly evolving national priorities we have for improving the public's understanding of astronomy and space sciences.

It is not clear to what extent [redacted] would be aware of the petitioner's work if the petitioner had not, at the age of 18, been asked to assist [redacted] in his demonstrations.

The petitioner's initial submission certainly portrays the petitioner as an active and avid popularizer of science in general and astronomy in particular. The initial submission does not, however, demonstrate that the petitioner has made specific, lasting contributions that set him apart from others in his field. Inspiring the enthusiasm of one's audience is the hallmark of a good educator, but success in one's field is not the threshold for the national interest waiver.

On May 27, 2005, the director issued a request for evidence, instructing the petitioner to demonstrate his impact on his field overall. In response, the petitioner asserted that because he has no employer, he would not

be displacing any United States workers, and labor certification would be not only “irrelevant” but impossible. The petitioner also asserted that labor certification is intended for the “minimally qualified individual . . . whose sole intention is to make a living” and therefore lacks “zeal and passion.” The petitioner also stated that, in an age of increasing reliance on computers, his “back to nature” trend is an important and age-old commonsense industry standard that helps the audience have a holistic picture of the Universe we all live in.” In terms of his impact on the field of astronomy, or astronomy education, the petitioner stated: “if the past is an indic[a]tion of the future to come, I have received standing ovation, and sustained applause, for my exceptional abilities.”

The petitioner concluded by stating that he is “not a hardcore researcher,” but rather “a one man institution” who operates at a “grassroots” level “that captivates hundreds of school going children.”

The petitioner submitted documentation, much of it promotional in nature, about his activities. The petitioner also submitted additional witness letters. Among the most prominent of these new witnesses is astrophysicist [REDACTED], Director of the Hayden Planetarium at the American Museum of Natural History in New York. [REDACTED] stated:

My knowledge of [the petitioner’s] skills as an astronomy educator flow not from any personal relationship with him – indeed, I have never met the man – but from his reputation on the web and from the countless students and educators that have been influenced by his work. When one has a reputation for innovation, and the enthusiasm to deliver it, one’s profile and pedigree spread rapidly, as is [the] case with [the petitioner]. . . .

Turns out, there is no shortage of science educators in America. But if you have ever spent time in their company you will see immediately that they, as a community, lack the singular enthusiasm that [the petitioner] expresses daily. . . . [W]e should be finding means to expand [the petitioner’s] influence, and not limit it, or reduce it.

The petitioner’s enthusiasm is a recurring theme in this group of letters. [REDACTED] of the University of California, Santa Barbara, stated that the petitioner “is very passionate about science education” and “will encourage more young people to pursue scientific careers.” [REDACTED], Director of Projects for The Planetary Society, stated that he “was struck by [the petitioner’s] drive and passion for what he is doing.” When the witnesses identify sources for their assertions, those sources are materials and figures provided by the petitioner himself.

The director denied the petition on November 1, 2005, stating that the petitioner had failed to establish that his work is of substantial intrinsic merit or national scope, and that the letters submitted by the petitioner “do not establish that his work is known and considered especially unique outside his immediate circle of colleagues.” The petitioner did not file an appeal within the thirty-day deadline established by 8 C.F.R. § 103.3(a)(2)(i). **The petitioner appealed the decision on March 3, 2006. The director considered the untimely appeal as a motion, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2), and reaffirmed the denial of the petition on September 14, 2006. The petitioner filed a timely appeal of this second decision.**

On appeal, the petitioner protests the director's use of "'canned' language" that applied poorly, or not at all, to specific aspects of the proceeding. The AAO concurs that portions of the director's decision were insufficiently specific, or even outright inaccurate. This error sometimes worked against the petitioner, but also worked in his favor (an issue we shall revisit later in this decision).

The petitioner requests oral argument on appeal. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner identified no unique factors or issues of law to be resolved. In fact, the petitioner set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

The petitioner asserts that he is an educator, not a researcher (although he described himself as both on his Form I-140 petition), and that science education possesses substantial intrinsic merit. We agree with this assertion and withdraw the director's finding to the contrary.

The director, in denying the petition, stated: "It appears that the alien petitioner is currently working as an Adjunct Professor of Astronomy at the City University of New York [CUNY]. It does not appear that he will be providing services to individuals outside the immediate geographic area." The director therefore concluded that the petitioner's activities lack national scope.

On appeal, the petitioner states that, although he was twice offered the adjunct professorship, he had to decline the offers "due to a lack of time to petition for an H-1B" nonimmigrant visa. The petitioner states: "I have *never* worked for the City University of New York as an adjunct professor" (emphasis in original). The petitioner states that he merely mentioned this job offer as evidence of his claimed exceptional ability (because a university offered him a teaching position even though he had only a bachelor's degree at the time). With this claim in mind, we turn to the petitioner's prior evidentiary submissions. The petitioner's response to the request for evidence included a June 28, 2005 letter from _____ Astronomy Coordinator for the College of Staten Island (a subdivision of CUNY), which stated, in part: "Hope you have a nice summer your current assignment for the Fall follows. . . . You have been assigned the following program for the upcoming term." The wording of the letter does not suggest a job offer; rather, it seems more consistent with an assignment letter for someone already working at CUNY. If the petitioner had not yet accepted the position, it is not clear why the college would have gone so far as to assign him specific courses for the coming semester. (It is possible that the petitioner had provisionally accepted the offer but then had to decline, owing to his visa situation, but this is only speculation, and the record sheds no light on the matter.)

We acknowledge that, on an exhibit list that accompanied this letter, the petitioner described the letter as a "College of Staten Island job offer, they do not sponsor Green Cards for Adjunct Professorship." Nevertheless, an approved H-1B petition allows an alien to work in the United States on a temporary basis. It is not a "green card."

On the same exhibit list, the petitioner listed his “Updated Resume.” Under “Work Experience,” the petitioner wrote: “Astronomy Adjunct Professor, City University of New York, College of Staten Island, 2005-Present.” If the petitioner never worked at CUNY, as he asserts on appeal, then it is problematic that he included this nonexistent work as “Work Experience” on his résumé. The petitioner’s contradictory claims in this matter illustrate our reluctance to accept the petitioner’s own unsubstantiated claims regarding the nature and extent of his past and present activities. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

Apart from contradicting his own previously submitted résumé, the petitioner asserts that his work has national scope because he has “written . . . for the popular national periodicals” and he can reach a national audience via the Internet. The petitioner also states that he is “in the process of writing a book,” something not previously mentioned in the record.

Virtually anyone can establish an Internet presence by setting up a web site, a web log, or a page on a social networking site. This does not mean that the content of such pages or sites actually reaches a national audience. By way of analogy, practically anyone with a telephone can reach almost anyone else with a telephone, but this does not give a telephone user national scope in any meaningful sense. The petitioner has operated his web site for several years, but he has provided no hard information regarding the frequency of “hits” or any geographic distribution of the sources thereof. The petitioner has not established any publication record in the United States. With respect to his presentations, the petitioner asserts that he *could* travel widely and perform such presentations throughout the United States, but there is little indication that he has heretofore done so beyond the vicinities of his various residences in the United States. It is unclear how the petitioner’s commitments to his H1-B employers would affect his mobility. Indeed, on appeal, the petitioner asserts that approval of the petition would grant him “the freedom to approach various groups in several states,” thereby implying that he has not yet had such opportunities.

Taking the above into account, the best that we can conclude is that the petitioner’s work may, at some point, take on national scope provided some conditions are met at some time in the future. We must, however, consider the conditions in place at the time of filing, rather than anticipated future conditions. The beneficiary of an immigrant visa petition must be eligible at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

We now turn to the issue of whether or not the petitioner, as an individual, merits a waiver of the job offer/labor certification requirement. With regard to witness letters, the petitioner asserts that the director erroneously attributed previously submitted letters to “colleagues or co-workers.” The AAO agrees with this assessment. The letters submitted in response to the request for evidence were not from individuals who have worked with the petitioner, and [REDACTED] specifically stated that he had never met the petitioner.

New letters accompany the appeal. [redacted] of the University of Florida states: "Highly learned individuals such as [the petitioner] are but few, especially when it comes to nurturing educational research and outreach efforts such as those by the Cosmic Academy." A professor of Civil and Coastal Engineering, [redacted] claims no professional credentials in astronomy, but states: "I was introduced to [the petitioner] and his academy years ago by my father, a chemical engineer from MIT and an astronomy enthusiast in India."

Senior Project Director of Public Understanding of Science and Technology at the American Association for the Advancement of Science, states:

Teachers that have both a detailed knowledge of the scientific field and clear, creative ways of communicating that knowledge are rarities and treasures that the country can not afford to discard. . . . I have confidence that [the petitioner's] actions in both the formal and informal education fields have impacted and will continue to impact American students in [a] manner which is national in scope

It is not clear how much of [redacted] knowledge of the petitioner's work is first-hand, as opposed to information provided by the petitioner himself when he requested her assistance. She states that the petitioner "worked in India as part of the Indo-US Subcommittee on Education and Culture," phrasing which implies that he was a member of the subcommittee, when in fact the petitioner was 18 years old with no high school diploma, acting as [redacted] assistant and translator. [redacted] letter appears to be based on the need for knowledgeable and creative teachers in general, rather than the particular achievements of this petitioner.

A number of the petitioner's prior witnesses offer new letters. Some of these letters are fairly brief, containing little more than requests for reconsideration of the denial and assertions that workers are scarce in the petitioner's field and that the petitioner will not displace any United States workers. [redacted] in his second letter, repeats the assertion that the United States is not doing all it can to promote scientific literacy, and that the petitioner benefits the United States with an "approach and style to the subject [that] is lucid and welcoming to students and lay people alike."

The new letters, like those submitted previously, appear to focus on the issue of science education rather than on the petitioner specifically, and the letters discuss what someone with the petitioner's skills and dedication might, in the abstract, accomplish, rather than offer specific details of what the petitioner has in fact accomplished in his first seven years in the United States.

The AAO does not in any way wish to downplay the vital importance of high-quality science education, which continues to grow in significance as science and technology reach ever deeper into the fabric of American life. Also, the AAO does not dispute the broad appeal of astronomy, through which many in the United States and the world are introduced to the sciences by which we learn about the world around us and worlds beyond, improving and enriching our lives.

At issue in this case is not the intrinsic merit of science education, or the cumulative national scope of the *combined* efforts of science educators, ranging from classroom instructors to mass-market popularizers of

science such as _____ or the late _____. At issue is the extent to which the petitioner, as an individual, has influenced and is likely to influence the course and quality of science education in the United States. In this respect, the petitioner's evidence comes up wanting.

The petitioner's enthusiasm and passion for his chosen subject are unquestioned, and his self-education in astronomy appears to far exceed his comparatively minimal formal academic training in the subject. Where the petitioner falls short is in demonstrating his impact on science education. The petitioner refers to the national problem of declining science education, and asserts that he merits a waiver because he can help to reverse this trend. Without exploring the extent to which one person can affect this national trend through a series of small-scale public presentations, the AAO notes that the petitioner has been in the United States since 1999, and the petitioner submits no evidence that his presence thus far has stemmed the decline in science education that he seeks to remedy.

The petitioner, on appeal, repeats the assertion that he "will be **working independently**" and "will therefore, **not displace a US worker**" (emphasis in original) and labor certification is inapplicable. It may be the case that there are no United States workers doing precisely what the petitioner is doing with respect to astronomical presentations, but the record contains no first-hand documentary evidence that such activities have been sufficient for the petitioner to support himself. (The petitioner claimed that the Cosmic Academy is "financially self-supporting," but this claim appears on the same résumé on which he claimed "Work Experience" at CUNY even though he now states he never worked there.) Rather, the petitioner has worked for several public schools as a substitute teacher. Such work is neither independent nor self-employment, and falls well within the scope of labor certification.

The petitioner seeks an employment-based immigrant classification, to which the national interest waiver attaches. It appears, from the available evidence, that he seeks a waiver based not on his occupation (*i.e.*, substitute teacher) but on an activity which he pursues, albeit passionately, as a sideline, an auxiliary activity. The petitioner himself refers to his "*primary task* of working for [his] H-1B employer and F-1 school" (emphasis added).

The record amply demonstrates that, while the petitioner may prefer to spend all of his time performing public presentations, he is also willing to teach science in a classroom environment, an avenue amenable to labor certification, through which immigrant classification would be available without the additional burden of establishing eligibility for a national interest waiver.

For the reasons discussed above, the AAO affirms the director's finding that the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States. This finding would, by itself, suffice to compel the AAO to dismiss the appeal. Review of the record, however, reveals additional disqualifying grounds, beyond the decision of the director. 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).

The director, in focusing on the national interest waiver, did not address the issue of the petitioner's eligibility for the underlying immigrant classification in any detail. The director simply stated: "The Service accepts that an advanced degree or exceptional ability is required by the occupation, and that the petitioner holds the requisite advanced degree or exceptional ability as required under Service law." The record does not support this generic finding.

The petitioner did not claim, at the time of filing, to be a member of the professions holding an advanced degree. 8 C.F.R. § 204.5(k)(2) defines a "profession" as one of the occupations listed in section 101(a)(32) of the Act (the petitioner's occupation is not listed there), as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. Schoolteachers are listed in section 101(a)(32) of the Act, but the petitioner did not predicate his petition on his work as a school teacher. We cannot call him a member of the professions based on his work in schools, and then consider his waiver request based on his work outside of schools.

The petitioner asserted that he began doing astronomy presentations in the early 1980s, many years before he earned his G.E.D. high school equivalency in 1993, so clearly no degree was required for him to begin that work. The petitioner summed it up by stating "there are NO MINIMUM QUALIFICATIONS for my kind of work" (emphasis in original). The petitioner has, thus, effectively stipulated that his independent educational work falls outside the regulatory definition of a profession.

The petitioner claimed only to be an alien of exceptional ability. Between the statutory categories of the arts, business, and the sciences, the petitioner's work appears to fit best within the sciences. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. We note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below. Qualifications possessed by all or most workers in a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every qualified physician has a college degree and a license or certification, but it defies logic to claim that every physician therefore shows "exceptional" traits.

There is some difficulty in arriving at a determination in this regard, because it is not clear that freelance astronomy education is well-established as an occupation or field in its own right, and therefore there is not much of a basis for comparison between the petitioner and other freelance astronomy educators. (If the petitioner is the *only* freelance astronomy educator, then he literally embodies the average and therefore, by definition, he *cannot* be exceptional.) If, on the other hand, we consider the petitioner broadly as a "science educator" or "astronomy educator," he falls well short of exceptional, because the broad category of "science educators" includes university professors holding doctorates, in addition to well-known figures such as Dr. [REDACTED] who, apart from having hosted his own television program, runs a planetarium that attracts visitors from around the world.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.

The petitioner possesses a degree in science education. Because the petitioner was performing similar work before he earned this degree, the degree is clearly not necessary for the position. Therefore, the degree appears to represent a qualification above what is necessary for the petitioner's freelance work.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.

The petitioner submitted a letter from the Cosmic Academy, stating that the petitioner "has worked continuously for his brainchild, the Cosmic Academy" from December 7, 1980 through July 7, 1993 in India and (for six months in 1986) Australia. Considering that the petitioner himself not only founded the Cosmic Academy, but also signed the letter, the letter cannot constitute independent evidence of qualifying experience. 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

Furthermore, the regulations require letters from "employers," regarding experience in an "occupation." Therefore, the petitioner must not merely demonstrate ten or more years of interest in astronomy education; he must establish ten years or more of full-time remunerative employment. The petitioner was 17 years old when he founded the Cosmic Academy. He asserted that he accumulated "12 years and 7 months" "paid service as a free-lance astronomy educator and researcher," but the record contains no documentary support for this claim. The petitioner provided only one monetary figure, claiming that he earned 75,000 rupees during the 1992-1993 school year. The record does not document such payment, nor does it establish what services the petitioner performed in exchange for it.

The petitioner has not submitted sufficient documentary evidence to support a finding that he has at least ten years of full-time experience in the occupation for which he now seeks classification.

A license to practice the profession or certification for a particular profession or occupation.

The petitioner cited his certification as a science teacher in New York and Iowa. Such certification is clearly not necessary in the petitioner's freelance work, as his work predates his certification. At the same time, this certification is not specific to astronomy, nor does it appear to require particular expertise in astronomy. Therefore, we cannot conclude that the petitioner's teaching certificates demonstrate a degree of expertise significantly above what is normally encountered among freelance astronomy educators.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.

As we have already noted, the petitioner has not submitted any documentary evidence of his earnings as a freelance astronomy educator. Furthermore, the petitioner has not established the typical salary or remuneration for a freelance astronomy educator, so even if the petitioner had documented his own compensation, there is no baseline to permit a meaningful comparison. The petitioner has not satisfied this criterion.

Evidence of membership in professional associations.

The petitioner claimed membership in the Planetary Society and the International Dark Sky association, but he did not submit the required *evidence* of such membership. Rather, he stated that the evidence “will be forwarded at a later date.” Furthermore, the petitioner did not establish the membership requirements of the named organizations. If membership is open to anyone who pays a membership fee or subscription, then there is nothing “exceptional” about such a membership, no matter how prestigious the organization.

Subsequently, in response to the request for evidence, the petitioner stated that the memberships mentioned above “are available for purchase to the general public.” The petitioner also stated that he had been “accepted as an Associate Member of the prestigious American Astronomical Society” and was “eligible for a membership [in] the International Astronomical Union.” The petitioner did not indicate that he already held these memberships; he simply claimed eligibility. A claim of eligibility is not “evidence of membership,” which is what the regulatory language demands.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

Under this criterion, the petitioner cited the witness letters discussed earlier in this decision. As already discussed, most of the letters are very general in nature, with the exception of [REDACTED]'s letter which was written specifically to support the petition. The record contains no evidence of any kind of formal recognition of the petitioner for specific achievements or significant contributions to astronomy education.

The above discussion supports the AAO's finding, beyond the director's decision, that the petitioner has not established that, as of the petition's filing date, he qualified for classification either as a member of the professions holding an advanced degree nor as an alien of exceptional ability. The AAO will dismiss the appeal for the above reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. **The petitioner has not sustained that burden.**

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.