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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JAN 04 2008
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IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

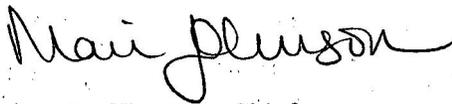
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

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, which 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 or a member of the professions holding an advanced degree. According to Part 6 of the Form I-140 petition, the petitioner seeks employment as “management support,” SOC Code 15-1070.00. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner does not qualify for classification as either an alien of exceptional ability or as a member of the professions holding an advanced degree, and that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel requests oral argument “to further explain and clarify the significant arguments in the attached brief and for purposes of providing further understanding of the original I-140 petition.” The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services (CIS) 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, counsel identified no unique factors or issues of law to be resolved. Moreover, the written record of proceeding fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

With the appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director’s findings that the petitioner is not a member of the professions holding an advanced degree, does not seek employment in a professional position, is not an alien of exceptional ability and has not established that a waiver of the alien employment certification is warranted in the national interest. Rather, the petitioner is a member of the Information Technology (IT) field, whose skills and experience, while perhaps desirable to a U.S. employer, suggest no national benefit to the IT industry as a whole and seem amenable to articulation on an application for alien employment certification.

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

(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.

A Member of the Professions Holding an Advanced Degree

In order to demonstrate eligibility as a member of the professions holding an advanced degree, the petitioner must demonstrate both that he holds an advanced degree as defined at 8 C.F.R. § 204.5(k)(2) and that the job requires a member of the professions holding an advanced degree. 8 C.F.R. § 204.5(k)(4). We will address first whether the petitioner himself holds an advanced degree as defined at 8 C.F.R. § 204.5(k)(2). An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2).

The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.* The petitioner claims to hold an advanced degree through the combination of a baccalaureate degree plus five years of post-baccalaureate progressive experience. The director concluded that the beneficiary's post-baccalaureate experience was not sufficiently progressive because it was not in a position that requires a baccalaureate. On appeal, counsel references CIS memoranda that discuss the issue of "progressive experience."

The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience *in the professions*." (Emphasis added.) H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at *6786 (Oct. 26, 1990).

As defined at section 101(a)(32) of the Act, profession "shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The regulation at 8 C.F.R. § 204.5(k)(2), in pertinent part, defines "profession" as follows:

[O]ne of the occupations listed in section 101(a)(32) of the Act, 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.

While the regulation at 8 C.F.R. § 204.5(k)(2) requires the five years of post-baccalaureate experience to be “in the specialty,” it is clear from the legislative history quoted above that Congress intended the experience to be “in the professions,” which requires a baccalaureate for entry into the occupation. Thus, we concur with the director that the post-baccalaureate experience must be in an occupation that requires a baccalaureate for entry into that occupation in order to qualify towards an advanced degree. Since we derive our conclusion from the use of the phrase “in the professions” in the legislative history and not the use of the word “progressive,” the memoranda cited by counsel on appeal are not on point.

The petitioner submitted his “Licenciado en Informatica” from Universidad Catolica Santo Domingo, issued June 18, 1997. The degree is translated as a Bachelor of Science in Computer Science. The accompanying transcript reflects 11 semesters and 192 credits. The director did not contest that the petitioner’s degree is equivalent to a baccalaureate issued by a regionally accredited institution of higher education in the United States.¹ The director concluded that the petitioner’s post-baccalaureate experience involved duties within the area of computer support and as a systems administrator, implying a position that did not require a baccalaureate.

On appeal, counsel asserts that the director failed to consider the design and supervisory duties the petitioner had with employers in Santo Domingo. Counsel further asserts that the director failed to consider the expert evaluations of the petitioner’s experience submitted in response to the director’s request for additional evidence. We will consider all of the evidence below.

The President of [REDACTED], asserts that the petitioner worked there from January 1996 through June 1998 during which time he “made up” their accounting system and

¹ While counsel refers to two letters in the record as evaluations of the petitioner’s “credentials,” they are only evaluating the petitioner’s post-degree experience. Moreover, neither author professes any expertise in evaluating foreign degrees. While it is the petitioner’s burden to establish that his foreign degree is equivalent to a baccalaureate issued by a regionally accredited institution of higher learning in the United States, we have reviewed the Electronic Database for Global Education (EDGE), which confirms that the petitioner’s Licenciado is equivalent to a U.S. baccalaureate. EDGE was created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). AACRAO, according to its website, www.aacrao.org, is “a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries.” Its mission “is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services.” According to the registration page for EDGE, <http://aacraoedge.aacrao.org>, EDGE is “a web-based resource for the evaluation of foreign educational credentials.”

maintained their information systems. He also served as branch manager, "simultaneously taking care of two departments."

The petitioner submitted a certification from the Dominican Supreme Court of Justice confirming the petitioner's employment as a "representative of the technology division" from June 1998 through February 2006. In a separate certification, the court confirmed:

Part of his achievement in the Judiciary have been: the design, implementation, support, and maintenance of Data Networks; the design and management of the Judiciary servers, technical responsibility of Windows 2000 Early Adopter Project, technical support of preparation for year 2000, teaching Windows 2000 to the personnel both in the capital city as well as other cities, wireless interconnection between the Court of Justice of Ciudad Nueva and the Supreme Court of Justice, between the National School of the Judicature and the Supreme Court of Justice and other sites of the Judiciary.

[The petitioner] won the contracting for the supervision of the Data and Voice making into a cable on IP (VOIP) in all the country, of the Modernization Project for the Lands Court, having been chosen among other professionals due to his outstanding abilities and experience.

The petitioner also submitted a contract between the petitioner and the Program of Modernization of the Land Jurisdiction (PMJT) of the Supreme Court of Justice defining the petitioner's position as the Supervisor of Data, Video and Voice Network. The contract is dated July 7, 2004. In this position, the petitioner oversaw and tested the installation of a network.

██████████, the petitioner's supervisor at the Supreme Court of Justice, asserted that the petitioner eventually took charge of the Technological Division of the Judiciary where he managed 50 employees throughout the country, interconnecting the main courts of justice through wire and wireless netting.

In response to the director's request for additional evidence, the petitioner submitted a letter from ██████████ who asserts that he is providing his letter at the request of Mr. ██████████ an "excellent friend." Mr. ██████████ confirms that the petitioner designed, installed and configured a network and many computer stations through the whole country, "designing and implementing multiple technologies to be used by the Judiciary Power as Network LAN/Wan, Operating Systems, Switches, firewalls, Information security, etc." Mr. ██████████ concludes that the petitioner's skills are "beyond a graduate or master degree diploma."

The director did not consider the above letters; rather, the director relied solely on the petitioner's description of his job duties on the Form ETA 750B and his curriculum vitae. We concur with counsel that the letters establish significant design and supervisory duties beyond the "computer support

specialists.” According to the Outlook Handbook (OOH) 113-114 (2006-07 ed.), however, Systems Administrators do design and install networks. The OOH specifically indicates that for Systems Administrators, “many employers seek applicants with bachelor’s degrees, although not necessarily in a computer-related field.” Moreover, O*NET, available online at www.online.onetcenter.org, indicates that a Systems Administrator is a Job Zone 4 position requiring a “minimum of two to four years of work-related skill, knowledge, or experience.” Significantly, only 51 percent of system administrators have a bachelor’s degree or higher, suggesting that this degree is not *required* for entry into the field. As a system administrator is not a profession, the petitioner does not have five years of progressive experience “in the professions” as contemplated by Congress.

Next we examine whether the proposed employment requires a member of the professions. The regulation at 8 C.F.R. § 204.5(k)(4) provides the following:

(i) *General.* Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation (if applicable), or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor’s Labor Market Information Pilot Program. To apply for Schedule A designation or to establish that the alien’s occupation is within the Labor Market Information Program, a fully executed uncertified Form ETA-750 in duplicate must accompany the petition. **The job offer portion of the individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability.**

(Bold emphasis added.) Thus, even if we concluded that the petitioner’s past experience qualified him as a member of the professions holding an advanced degree, the petitioner would need to demonstrate that the proposed employment must require a member of the professions holding an advanced degree.

On the Form I-140, Part 6, the petitioner listed the SOC code as 15-1070.00. The petitioner indicated on the ETA 750B that the occupation in which the petitioner was seeking work was “IT Systems Admin.” The petitioner submitted a form letter by the petitioner presenting his interest in a job to potential U.S. employers. The letter notes the petitioner’s “management and organizational skills” and his background “ranking from planning, deployment, and support of a company’s entire network infrastructure. Such as, designed, deployed, administered and troubleshoot network in a Windows 2003 and 2000 domain environment, and reliable experience in desktop support.”

In response to the director’s request for additional evidence, the petitioner submitted a letter from [REDACTED], Senior [REDACTED] Ministries expressing an interest in hiring the petitioner in one of their “IS sub-teams, not just as a subordinate, but also as a team leader or manager.”

The director concluded that the petitioner's prospective employment falls under "computer support specialists and systems administrators." The director then concluded that these occupations are not professions.

On appeal, counsel provides charts comparing various information technology positions and their duties, concluding that the petitioner intends to work as a computer information systems manager (CISM).

As noted above, the petitioner indicated on the Form I-140, Part 6, that the SOC job code of the prospective employment was 15-1070.00. The OOH identifies SOC code 15-1071.00 as relating to Systems Administrators. On the Form ETA 750B, the petitioner indicated that the proposed employment was an IT Systems Administrator. Thus, it is clear that, at the time of filing, the petitioner sought employment as a Systems Administrator, SOC code 15-1701.00. Thus, the director did not err in analyzing whether Systems Administrators fall within the professions. As discussed above, these positions do not require a baccalaureate for entry into the occupation. Thus, we concur with the director that they are not professional positions.

The petitioner may not now amend the petition to seek employment in a different occupation. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998).

In light of the above, we concur with the director that the petitioner has not established that he is a member of the professions holding an advanced degree or that the proposed employment requires a member of the professions holding an advanced degree.

Exceptional Ability

The petitioner also seeks classification as an alien of exceptional ability. 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. These criteria follow below.

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered." 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 every member of a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." The petitioner claims to meet the following criteria.

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

Section 203(b)(2)(C) of the Act provides that the possession of a degree, diploma, certificate or similar award from a college, university school or other institution of learning shall not by itself be considered sufficient evidence of exceptional ability. Thus, we must determine whether the petitioner's degree is indicative of or consistent with a degree of expertise significantly above that ordinarily encountered.

As stated above, the petitioner has a foreign equivalent degree to a U.S. baccalaureate. As also stated above, 51 percent of systems administrators have the same or higher education. Thus, we are not persuaded that the petitioner's education represents a degree of expertise significantly above that ordinarily encountered in the field.

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 evidence that he resigned from the Supreme Court of Justice's PMJT program on March 7, 2005, although the certification from the court purports to confirm the petitioner's employment from 1998 through 2006. We note that the petitioner entered the United States on March 15, 2005. While he may have provided some remote services to the Supreme Court of Justice after that date, it would appear that he ceased working there full-time in March 2005.

The petitioner also lists employment for [REDACTED] from 1996 through 1998. The petitioner submitted a letter from Mr. [REDACTED] confirming the petitioner's employment at [REDACTED] from January 15, 1996 through June 20, 1998. The director noted that Mr. [REDACTED] did not indicate whether the petitioner worked there full-time and notes that the petitioner was pursuing his degree at the time. On appeal, the petitioner asserts that he worked for Detexca **full-time while pursuing his degree**. The petitioner submitted an electronic e-mail message from Mr. [REDACTED] asserting that the petitioner supervised 10 employees and listing U.S. businesses with which [REDACTED] does business.

Even if the petitioner worked full-time in the occupation in which he now seeks to work with [REDACTED] he did not begin employment there until January 15, 1996. The petitioner has not demonstrated full-time employment in his occupation after March 15, 2005. Thus, the petitioner has not demonstrated the necessary 10 years of employment.

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

Section 203(b)(2)(C) of the Act provides that the possession of a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of

exceptional ability. Thus, we must determine whether the petitioner's license is indicative of or consistent with a degree of expertise significantly above that ordinarily encountered.

The petitioner submitted evidence that he successfully completed several Microsoft certification courses. The petitioner has not demonstrated that this coursework is indicative of a degree of expertise significantly above that ordinarily encountered in the field.

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

The director concluded that while the petitioner submitted some evidence of his remuneration, he had not demonstrated how those wages compared with other members of the field. On appeal, counsel considers the petitioner's wages from various sources and compares them with the wages of his superiors, concluding that the petitioner's income was "closing in on the earnings received by his superiors." More persuasive evidence would be national data of the average wages of systems administrators in the Dominican Republic. Even if we concluded that the petitioner meets this criterion based on his wages nearing the income of his superiors, for the reasons discussed above and below, he would meet only a single criterion.

Evidence of membership in professional associations

In response to the director's request for additional evidence, the petitioner submitted evidence of the petitioner's membership in the Institute of Electrical and Electronics Engineers (IEEE) in 2006. The record contains no evidence that the petitioner was a member of this institute in March 2006 when the petition was filed. The petitioner also submitted a June 2006 letter from [REDACTED] of the IEEE asserting that the petitioner "recently" participated in a training workshop for the IEEE's "Teacher In-Service Program." Once again, the record lacks evidence that the petitioner had participated in this program as of the date of filing.

The petitioner must establish his eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. The record is absent evidence that the petitioner was a member of IEEE at that time. Regardless, the record lacks evidence that IEEE membership is even minimally exclusive such that membership is indicative of a degree of expertise significantly above that ordinarily encountered in the field. Training for a volunteer service provided by IEEE is not relevant to the significance of the membership itself.

In light of the above, the petitioner has not demonstrated that he met this criterion as of the date of filing.

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

Initially, counsel asserted that the petitioner had received “lesser nationally or internationally recognized prizes or award for excellence in the field of endeavor.” Counsel stated:

[The petitioner] was awarded the Dominican Republic’s Supreme Court Employee of the Year Award in 1999 and again on two other occasions thereafter. In 1998, the Supreme Court certified him in the areas of Human Relations and Customer Service; in 2000 in the area of Protocols and Human Development. [The petitioner] received seven (7) honors and certificates of achievement from Microsoft between 2002 and 2004.

The record contains the petitioner’s Employee of the Year certificate for 1999, untranslated certificates relating to “Relaciones Humanas y Atencion al Cliente” and “Protocolo y Desarrollo Humano” and certificates confirming the petitioner’s completion of Microsoft certification courses.

While counsel’s initial assertion that these documents represent awards that are nationally or internationally recognized cannot be credibly entertained, the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F) does not require recognition on that scale. We will consider this evidence under the proper standard.

The regulation at 8 C.F.R. § 103.2(b)(3) provides that all foreign language documents must be accompanied by complete certified translations. Without such the translations for the certificates for human relations and protocol, we cannot determine whether they are certifications for training or recognition for achievements in these areas. Course completion is not an achievement or significant contribution such that the certificates documenting the completion of these courses can be considered recognition to meet this criterion.

Finally, the petitioner has not demonstrated that recognition for service to one’s employer as “Employee of the Year,” represents an achievement or significant contribution to the industry or field as a whole.

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

As the petitioner has not demonstrated that he is a member of the professions holding an advanced degree or an alien of exceptional ability, the issue of whether waiving the job offer requirement is in the national interest is moot.

Even if we concluded that the petitioner did qualify for the classification sought either as a member of the professions holding an advanced degree or as an alien of exceptional ability, the petitioner would still have to demonstrate that the alien employment certification, normally required for the classification sought, should be waived in the national interest.

Neither the statute nor pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of the phrase, “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).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

The Service 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 Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Commr. 1998)(hereinafter “NYSDOT”), 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. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* 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. *Id.* at 217-18.

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. *Id.* at 219. 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. *Id.*

On appeal, counsel asserts that the director’s failure to address whether the petitioner worked in an area of intrinsic merit is reversible error. Rather than ignore this factor, we find that the director simply did not contest that the petitioner works in an area of intrinsic merit, systems administration. We find that this work does have intrinsic merit.

Next, the director concluded that the proposed benefits of the petitioner’s work would not be national in scope. On appeal, counsel relies on a non-precedent decision by this office concluding that the benefits of a data mining specialist would be national in scope. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act,

unpublished decisions are not similarly binding. Regardless, the alien in this matter is not a data mining specialist.

Counsel then asserts that the director erred in concluding that the petitioner would continue with the same employers with which he is now volunteering his services. Counsel then, however, argues that one of the employers, Grand Valley State University (GVSU), would allow the petitioner to benefit the national interest because it has students from out of state and students from GVSU often find employment out of state upon graduation. Counsel further asserts that the other employer, RBC, broadcasts internationally. Finally, counsel asserts that the KForce job announcements in the record represent jobs for which the petitioner might be eligible and are for national associations or companies with multiple sites nationwide. Counsel asserts that, according to *NYS DOT*, 22 I&N Dec. at 217, the prospective employment need only have a "nexus" with a geographic area beyond where the alien is working.

Counsel is not persuasive. Even assuming the petitioner is technically qualified for the KForce jobs, his qualifications do not create a presumption that he would necessarily be hired for these jobs. The record contains no letters of interest from these employers. Rather, the only U.S. employers expressing interest in hiring the petitioner are GVSU and RBC. Regardless, *NYS DOT*, 22 I&N Dec. at 217 n.3, provides several examples of positions where the proposed benefits would not be national in scope. That footnote states that the alien's activities must have a national effect and continues:

For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

We concur with the director that serving as a systems administrator for a university, radio station or company would be so attenuated at the national level as to be negligible. The petitioner has not proposed designing novel network solutions that might benefit the industry as a whole. Similarly, the petitioner has not proposed writing books or articles that will allow the field of systems technology to progress. The assertion that GVSU has students that will work out of state is immaterial as the petitioner has not proposed to teach those students. Regardless, as quoted above, the impact of a teacher in a single school is not sufficiently in the national interest for purposes of the waiver of the job offer requirement. The petitioner has not proposed how he might impact IT curricula at multiple schools nationwide that would have more of a national impact. In addition, providing systems administrator services for a radio station that broadcasts internationally does not suggest that the petitioner's services will benefit the IT industry internationally or even nationally. The record does not suggest that RBC would broadcast the petitioner's techniques and

methodologies as part of a systems administrator radio workshop that might have the potential for a national impact in the IT industry.

Further, the fact that the petitioner might work for an employer with multiple sites is highly speculative. Even if he did secure such employment, he would remain one systems administrator benefiting his employer with little impact on the IT field as a whole. Finally, the petitioner seeks an employment-based visa classification. The petitioner's proposed volunteer services for an IEEE project are not relevant to the proposed benefits of his *employment* in the United States. Similarly, the record contains a letter from an Army recruiter requesting that the waiver be granted so that the petitioner may enlist. We are not persuaded that the national interest waiver was intended as a blanket waiver for aliens professing an interest in joining the U.S. military, which they might or might not act upon once receiving lawful permanent resident status.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. In addressing this issue on appeal, counsel addresses the regulations relating to aliens of exceptional ability, discussed above, and concludes that it "cannot be denied that the record satisfactorily establishes that the petitioner-beneficiary has made an impact on the field of CISM." Even if the petitioner had demonstrated that he is an alien of exceptional ability, exceptional ability alone does not mandate a waiver of the alien employment certification in the national interest. By statute, "exceptional ability" is not, by itself sufficient cause for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218; *see also id.* at 222.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." *Id.* at 221. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.*

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra element of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The record contains several letters from the petitioner's employers, friends of the petitioner's employers and coworkers praising the petitioner's experience and skills. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS 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; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of industry interest and positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his 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.

The letters in the record describe the petitioner's accomplishment in designing a network system for the Dominican Supreme Court of Justice. The record lacks evidence that the system he designed for the Dominican Supreme Court of Justice has been noted in trade journals for its innovation or that it is serving as a model for other employers. None of the reference letters explain how the petitioner's work has impacted the IT field as a whole. The petitioner holds no patents, has not authored any articles in the field, has not presented his work at conferences or otherwise impacted those working in the field beyond his immediate circle of colleagues. Even if such evidence was in the record, we would still need to evaluate each innovation on a case-by-case basis. *NYSDOT*, 22 I&N Dec. at 221 n. 7. The record contains no evidence that independent members of the field are aware of the petitioner's work and are implementing his methods in their own projects.

Ultimately and most significantly, as was the case in *NYSDOT*, the record does not demonstrate why the alien's skills and experience could not be articulated on an application for alien employment certification. *See id.* at 220-221. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely 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 an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.