

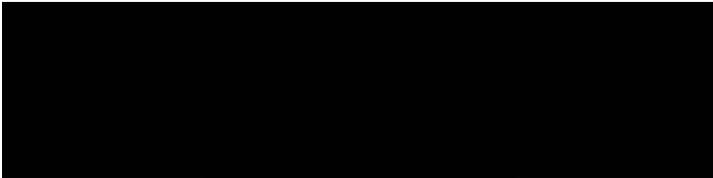
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 03 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:



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 to classify the beneficiary 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 to employ the beneficiary as a conductor. 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 had 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 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.

The director did not contest that the beneficiary qualifies as an alien of exceptional ability. The evidence of record adequately demonstrates that the beneficiary meets three of the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii). The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is 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), 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.*

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 field is so important that any alien qualified to work in that field must also qualify for a national interest waiver. At issue is whether this beneficiary's contributions in the field are of such unusual significance that he merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate that the beneficiary has a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

Information printed from the petitioner's internet site states:

American Music Festivals (AMF) is a U.S. not-for-profit corporation founded in 1997. The mission of American Music Festivals is to promote cultural exchange and create a greater awareness of American classical music.

AMF has sponsored several critically acclaimed Festivals of American music in the former Soviet Union, and has participated in orchestral concerts in the Chicago area which celebrate the city's ethnic diversity. . . . In the spirit of cultural exchange, American Music Festivals intends to bring performers and ensembles from other nations to the United States.

* * *

It is the goal of American Music Festivals to facilitate programming which allows people to come together from various backgrounds and to appreciate the fine arts, and experience what is affectionately referred to as “Americana.”

According to the beneficiary's Form ETA-750B, Statement of Qualifications of Alien, he has been employed by American Music Festivals as an Associate Conductor since January 2002. The petitioner submitted

evidence of the beneficiary's activities in Illinois with the Community Players Orchestra of Chicago, the Lincolnwood Chamber Orchestra, the Glenview Symphony Orchestra, the North Shore Chamber Orchestra, the Skokie Valley Symphony, the Tutti Chamber Orchestra, and the Sinfonietta Arts Chamber Orchestra. We find that the beneficiary works in an area of intrinsic merit conducting classical symphony orchestras and chamber orchestras in Illinois.

A January 11, 2005 letter from [REDACTED], Artistic Director and President, American Music Festivals, states:

As Associate Conductor, [the beneficiary] is an important member of our organization. Over the last few years he has provided significant artistic and administrative support. He is a talented conductor and a very versatile musician.

[The beneficiary's] international profile has helped us fulfill our mission. The high caliber of his artistic education and experience in the former Soviet Union (graduate of Moscow Conservatory, first prize in Belarusian Youth Orchestra Competition, guest conductor of the Moscow Symphony Orchestra, etc.) has greatly benefited our program here in Chicago.

* * *

He has a unique perspective on music, as is evidenced by his arrangement for orchestra of Shostakovich's Prelude and Fugue No. 24, originally written for piano. Shostakovich is perhaps the most important composer of the 20th century, and this composition is one of the greatest polyphonic compositions ever written for piano. This important arrangement by [the beneficiary] was premiered by the Glenview Symphony under his baton in 2003, to great success. American Symphony Orchestra League President Henry Fogel in the article "For Pleasure's Sake" (in the May-June 2004 edition of *Symphony Magazine*) discussed that one of the problems facing American orchestras is a stagnant repertoire and a lack of new, exciting transcriptions and arrangements for orchestra. [The beneficiary's] sensitivity to this need demonstrates his ingenuity and how his work directly benefits American orchestras, musicians, and the listening public.

[REDACTED] asserts that the beneficiary's arrangement of Shostakovich's Prelude and Fugue No. 24 was premiered by the Glenview Symphony in 2003 to "great success," but there is no evidence to support the claim. Nor is there any specific mention of the beneficiary in the "For Pleasure's Sake" article written by [REDACTED] for *Symphony Magazine*. With regard to the reputation of the Glenview Symphony, the petitioner submitted a 2003 article appearing in the *Journal*, a local newspaper serving the northwestern Chicago suburbs, stating:

About sixty Glenview residents treated their neighbors to a winter concert this past Sunday, as the Glenview Symphony Orchestra held its second performance of the season.

* * *

The orchestra debuted last May. In addition to its "North Shore Concert Series," a joint effort with the Lincolnwood Chamber Orchestra with eight performances scheduled for the 2002-2003 season, the group is already planning an exchange program with Eastern European artists and possible expansion to another North Shore community next year.

The only problem: "A lot of people don't know we exist," Simmons says.

Still, he's optimistic that the orchestra's place in the cultural life of Glenview will continue to gather momentum through its active outreach program and subscription series.

A wide variety of Glenview residents make up the group. Seniors, young people, professionals, and musicians right out of college all rehearse together once a week at Springman Jr. High School.

"For an amateur group, think it's the best in the state of Illinois," Simmons says. That may be pride of ownership – Simmons founded the group.

* * *

There's less pressure in this group, Simmons says. If that also means the quality of musicianship is more novice, then so be it.

"A lot of people can't play every note, but they can enjoy playing what they can."

* * *

So the group rehearses slowly and works its way up to performance tempos. Those who are struggling are encouraged to call the concertmaster and take lessons.

The trick, then, is to interest audiences who are used to only the best, and attend only the Chicago Symphony Orchestra and the Lyric Opera.

Simmons says it all comes back to community. "Having an orchestra in Glenview is special to people who live in Glenview," he says.

The premier of the beneficiary's arrangement of Shostakovich's Prelude and Fugue No. 24 by the Glenview Symphony Orchestra demonstrates his capabilities in working with an amateur group of musicians in his community and perhaps a small measure of local exposure, but there is no indication that the beneficiary's arrangement had a significant national impact or influenced the work of music professionals throughout his field.

President of the American Symphony Orchestra League, states:

The American Symphony Orchestra League is an organization . . . which provides leadership, information, and services to nearly 1,000 symphony, chamber, youth, and collegiate

orchestras. A principal goal of my organization is to communicate to the public the value and importance of orchestras and the music performed by orchestras. Membership in the American Symphony Orchestra League is open to orchestras, individuals, music students, and others.

* * *

I met [the beneficiary] in person in 2001 at an American Symphony Orchestra League workshop. . . . He has made a distinctive impression upon me through his conducting ability, unique approach to his profession, his outstanding classical music background, his broad repertoire and knowledge of classical composers and more recent composers of the former Soviet Union, and his exceptional record of working with some of the leading orchestras in the world.

* * *

I can state, without qualification, that [the beneficiary's] admission to the United States is in the national interests [sic]. His musical talents and originality will directly benefit classical music audiences and American orchestras. His versatility and broad repertoire are virtually unmatched. In an article that was published in *Symphony Magazine* in May-June 2004, I had expressed the opinion, which I deeply hold, that the major problem facing American orchestras is the lack of innovative transcriptions and arrangements for orchestra.

[The beneficiary] will provide the infusion of talent and creativity that is needed by American orchestras. I am most impressed with his astounding arrangement for orchestra of one of the greatest works composed for the piano. This work was the Prelude and Fugue 24 of Dmitri Shostakovich, who is regarded by many to be one of the most important classical music composers of the 20th century. [The beneficiary] is one of the foremost experts on the music of Shostakovich and other composers of the former Soviet Union of the 20th century. His expertise in Russian folklore instruments and music will also be beneficial to American audiences.

Objective qualifications and experience necessary for the performance of a position can be articulated in an application for alien labor certification. Pursuant to *Matter of New York State Dept. of Transportation*, 22 I&N Dec. at 215, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training, education, or experience that could be articulated on an application for a labor certification. Moreover, it cannot suffice to state that the alien possesses useful skills, or a unique background. 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 221.

While the petitioner submitted ample evidence that cultural exchange and the promotion of classical music is in the national interest, the petitioner has not established that the impact of the beneficiary's position as a local orchestra conductor will be more than negligible at the national level. *Id.* at 217 n.3 (while pro bono legal services, education and nutrition are in the national interest, the impact of a single lawyer, teacher or

cook is so attenuated at the national level as to be negligible.) For example, a letter of support from a concert pianist who has resided in the Chicago area since 1995, states: “I believe that [the beneficiary] is an invaluable part of the music and cultural community in the Chicago area. . . . It has been a great honor for me to be a part of several performances . . . in which [the beneficiary] conducted. Many of my friends and I were in attendance for . . . performances of the North Shore Orchestra.”

[REDACTED], Senior Lecturer in Music and Instructor, Department of Music, University of Chicago, states: “[The beneficiary] is gaining recognition and importance as an orchestral conductor. He quickly became an invaluable asset in the Chicago area musical community guest-conducting such orchestras as Community Players and Skokie Valley Symphony among others.”

[REDACTED], President, Chicago Cello Society, Inc., states;

I recently had the pleasure and privilege of performing, as a member of the cello section, in a concert of the Sinfonietta Arts Chamber Orchestra in Skokie, Illinois, conducted by [the beneficiary]. I found [the beneficiary] to be an extremely competent conductor who excelled in all aspects of his profession. . . . I am prepared to recommend [the beneficiary] to other orchestras in the area and I am confident he will find many more opportunities to use his consummate skills as a conductor in the Chicago area.

Director of Bands at District 19 – Niles West High School in Skokie, Illinois, states: “[The beneficiary] has generously offered his talents and his skills to assist the Niles West Band Program. He has deftly arranged a Shostakovitch piece for our band to perform. It has been a wonderful experience for our students, who have actually met, worked and performed with [the beneficiary].”

[REDACTED], Senior Financial Economist and Economic Adviser, Federal Reserve Bank of Chicago, states:

I have known [the beneficiary] since May 2002, when I met him in his role of conductor of the North Shore Chamber Orchestra, a community orchestra based in Evanston, Illinois. . . . While I no longer play professionally, I continue to be active as an amateur musician. [The beneficiary] is one of the finest conductors I have ever worked with.

* * *

[The beneficiary] is rapidly becoming a key contributor to the musical life of northern Chicago and its suburbs, both as a conductor and as a teacher.

With regard to the reputation of the North Shore Chamber Orchestra, the petitioner submitted a November 2004 article appearing in the *Skokie Review*, a local newspaper serving Skokie, Illinois, stating:

The North Shore Chamber Orchestra, which begins its 25th season on Sunday, includes musicians from many lines of work.

“We have players from all professions – jazz musicians, lawyers, cab drivers, dentists, nannies and we even have a U.S. Court of Appeals judge,” says founder [REDACTED] of Evanston.

* * *

When he founded the orchestra, he said, “The goal was to have classical music concerts and programs of music education for a small, affordable admission charge.”

But the 30-member orchestra is not just any other volunteer musical ensemble. It has distinguished itself by working with Northwestern University.

Five years after the orchestra was founded, [REDACTED] approached NU’s director of orchestras, Victor Yampolsky, with an idea.

“I thought that we could both benefit from an affiliation,” he said. “His conducting students could get practical experience conducting us, and we could use Northwestern’s music library.”

[REDACTED] concurred and the connection has last for 20 years, with student conductors earning credit toward advanced degrees for the work with the orchestra.

* * *

The North Shore Chamber Orchestra begins its season Sunday in Evanston with a program titled “Slavonic Souvenirs,” conducted by [the beneficiary] . . .

* * * •

“All of this on a budget of less than \$4,000 a year,” Treger said.

[REDACTED], President, North Shore Chamber Orchestra (NSCO), states:

The NSCO is a Community Orchestra associated with Northwestern University School of Music. The Orchestra provides opportunity for student conductors, soloists, and composers. [The beneficiary] has been Principal Conductor for the Orchestra Summer Concerts since 2003.

* * *

[The beneficiary’s] concerts enhance the performance level of the Orchestra and contribute to the culture of our community.

Thus, while the beneficiary's work as a conductor contributes to the culture of the Illinois communities in which his orchestras perform, we cannot conclude that the proposed benefit of his employment will be national in scope.

The director requested further evidence that the beneficiary had met the guidelines published in *Matter of New York State Dep't. of Transp.* In response, the petitioner submitted additional letters of support, articles, awards, memberships, educational credentials, and background materials.

With regard to the evidence of the beneficiary's awards, memberships, and music degrees submitted by the petitioner, we note that recognition for achievements, professional memberships, and academic records are the regulatory criteria for classification as an alien of exceptional ability, a classification that normally requires an approved labor certification. We cannot conclude that meeting the requisite three regulatory criteria for classification as an alien of exceptional ability warrants a waiver of the labor certification requirement in the national interest. By law, aliens of exceptional ability are generally required to have a job offer and a labor certification. With regard to Congressional intent, a statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule. The national interest waiver is not merely an option to be exercised at the discretion of the alien or his employer. Rather, it is a special, added benefit that necessarily carries with it the additional burden of demonstrating that the alien's admission will serve the national interest of the United States.

In his second letter dated June 1, 2006, [REDACTED] states:

[The beneficiary] has premiered several highly acclaimed works in the United States, which include his brilliant arrangement for the orchestra of Dmitry Dmitrievich Shostakovich's *Prelude and Fugue No. 24*, his rendition of Sviridov's *The Blizzard*, and his presentation with the North Shore Chamber Orchestra of Russian and Jewish folk music called *Slavonic Souvenirs*.

* * *

The introduction of novel arrangements of classical music compositions, including music of contemporary Belarusian composers (whose works have not been performed before in the U.S.), 20th century Soviet composers whose works are not performed as often as their artistic and cultural significance merits, and Russian and Jewish folk music traditions are of critical importance to today's American audiences. [The beneficiary's] approach in programming these "new" works is eliminating stagnation, and helping to create a sense of renewal for U.S. orchestras. His arrangements and performances of these works are a vital and profound contribution to the Chicago musical community as they entertain and educate what continues to become a more ethnically and culturally diverse audience.

[REDACTED] states that the beneficiary premiered works that were "highly acclaimed . . . in the United States," but there is no supporting documentary evidence establishing that the beneficiary's musical arrangements have garnered significant attention beyond his circle of professional acquaintances, the local

orchestras with which he is affiliated, or the local communities where he performed in Illinois. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

further states:

Community-based orchestras, such as the Tutti Chamber Orchestra and the Sinfonietta Arts Orchestra, play a vital role in bringing together talented musicians for exhilarating live performances of classical music compositions to audiences in the U.S., who might not otherwise be able to hear them. They enrich the community, and provide a musical outlet for people who cannot afford subscriptions to performances by larger orchestras, such as the Chicago Symphony Orchestra or New York Philharmonic Orchestra. Chamber orchestras are also the leaders in innovation and in introducing and performing music that is outside of the narrow repertoire of composers and musical works adhered to by the larger orchestras.

Pursuant to *Matter of New York State Dept. of Transportation*, 22 I&N Dec. at 215, the overall importance of an alien's area of expertise is insufficient to demonstrate eligibility for the national interest waiver. While Citizenship and Immigration Services (CIS) recognizes the importance of community-based orchestras and their associated benefits, eligibility for the waiver must rest with the beneficiary'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.

Distinguished Professor in Music Performance and Director of Orchestras, Northwestern University School of Music, states:

I have known [the beneficiary] personally since 2000, when he came to the United States.

* * *

[The beneficiary's] ability to create new arrangements of compositions for the orchestra and the broad repertoire of music that he performs with expertise are overwhelming. I find his arrangements and renditions of Shostakovich, whose compositions are among the most complex in interpreting and performing, to be very satisfying. I believe [the beneficiary] perfectly conveys the complex human feelings and ideas of the work of this great composer. His arrangement of Shostakovich's "Prelude and Fugue" . . . will be performed by the Northwestern University Symphony Orchestra in October of 2006, under my direction, as part of a concert dedicated to the 100th anniversary of Shostakovich's birth.

On appeal, the petitioner submits a September/October 2006 Music Calendar from Northwestern University's School of Music reflecting that the Northwestern University Symphony Orchestra performed the beneficiary's arrangement of Dmitri Shostakovich's "Prelude and Fugue" on October 21, 2006. This performance occurred subsequent to the petition's filing date. A petitioner, however, must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, while this evidence shows that the Northwestern University Symphony Orchestra, which is associated with the North Shore Chamber Orchestra, performed the beneficiary's arrangement, it does not show that his work has been recognized in the field beyond his affiliated organizations or outside the state of Illinois.

The petitioner's response to the director's request for evidence also included a May 22, 2006 letter from [REDACTED] Belarusian State Music Academy, stating: "[The beneficiary] . . . was referred to work at the Belarusian State Conservatory, where he was teaching from 1985 to 2000. . . . Many of his students work successfully in various spheres of musical art in Belarus and abroad." [REDACTED]'s letter does not specifically identify the music students under the beneficiary's direct tutelage who achieved national success in their professional music careers. The record also lacks evidence that the beneficiary has influenced the field of music instruction. For example, there is no evidence that the beneficiary has authored influential articles in the same manner as [REDACTED]. While musical education is in the national interest, the impact of a single music teacher would generally be so attenuated at the national level as to be negligible, and therefore, would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. The analysis we follow in "national interest" cases under section 203(b)(2)(B) of the Act differs from that for standard "exceptional ability" cases under section 203(b)(2)(A) of the Act. In the latter type of case, the local labor market is considered through the labor certification process and the activity performed by the alien need not have a national effect. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 217, n.3. In the present case, there is no evidence that the beneficiary's teaching has had a national effect.

[REDACTED], People's Artist of Belarus, states:

A musician and conductor of a vibrant energy who has always been receptive to all new in the art, [the beneficiary] works a lot with my works, adapting my music for symphony, chamber, Belarusian and Russian folk orchestras. His performing the music of Belarusian composers in the USA is a great contribution to mutual enrichment of both American and Belarusian music cultures and promotion of friendly ties between our countries.

On appeal, counsel argues that the beneficiary's experience in "the performance and presentation of novel arrangements of the of Dmitry Dmitrievich Shostakovich, folk music traditions, and the compositions of contemporary Belarusian composers" (such as [REDACTED]) warrants eligibility for the national interest waiver. That the beneficiary is adept at offering "culturally distinct and enriching performances" to local communities in Illinois is not, in and of itself, sufficient to warrant a waiver of the labor certification requirement. Eligibility for the waiver must rest with the alien's own qualifications rather than with the origin of the music that his community orchestras sometimes perform. As discussed previously, the beneficiary must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 219, n. 6. The record simply contains no evidence that the beneficiary has influenced his field. There is no evidence that orchestras not affiliated in some way with the petitioning entity or the beneficiary have adopted his work or been influenced by it. Further, since coming to the United States, the beneficiary's work as a conductor has been limited to local orchestras in Illinois.

Counsel asserts that "American Music Festivals is a not-for-profit organization which cannot file a permanent labor certification application for [the beneficiary]" and that "the requirement of labor certification through a single employer will limit the orchestras and musical ensembles that [the beneficiary] will be able to perform

with.” The availability of the labor certification process, however, does not automatically warrant a waiver of the process; rather it is simply one factor to be considered. *Id.* at 218, note 5.

In this case, the record lacks evidence that the beneficiary has successfully trained accomplished professional musicians in Belarus or the United States or that he has influenced his field to any discernible degree. The petitioner submitted letters from experts in the field and evidence that the beneficiary has performed as a “guest conductor” or “associate conductor” for various orchestras, but mostly at local events that received only local press coverage.¹ On appeal, counsel cites a non-precedent decision by this office for the proposition that letters of recommendation from outside of the state where the alien worked were sufficient for “demonstrating a reputation and impact that is not limited to” that particular state. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. 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.

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 skill and talent are less persuasive than letters that provide specific examples of how the beneficiary has influenced the field. With regard to the letters from those who have interacted with the beneficiary, while such letters are important in providing details about the his activities as a conductor, they cannot by themselves establish the beneficiary’s influence over his field as a whole.

As the evidence of record does not show that the beneficiary’s work has had a discernable impact on his field, it has not been established that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. Further, as discussed previously, the petitioner has not shown that the proposed benefit of the beneficiary’s work as a conductor for local community orchestras in Illinois will be national in scope. While we acknowledge that the petitioner need not demonstrate the beneficiary’s notoriety on the scale of national acclaim, the national interest waiver contemplates that the beneficiary’s influence be national in scope. *Matter of New York State Dep’t. of Transp.*, 22 I&N Dec. at 217 n.3. More specifically, the beneficiary “must clearly present a significant benefit to the field of endeavor.” *Id.* at 218. *See also id.* at 219 n.6 (the alien must have “a past history of demonstrable achievement with some degree of influence on the field as a whole.”)

¹ For example, the petitioner submitted two articles about the beneficiary appearing in [REDACTED], but this publication is a Russian-language weekly newspaper distributed only in Chicago, Illinois and its suburbs to a limited segment of that local population who are able to read and comprehend Russian. *See* [REDACTED] accessed on February 13, 2008.

As is clear from a plain reading of the statute, it was not the intent of Congress that every alien of exceptional ability 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 occupation, 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. Accordingly, the decision of the director denying the petition will be affirmed.

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.