(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: DEC 2 3 2013 Office: TEXAS SERVICE CENTER FILE:

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner seeks employment as a physician. At the time of filing, the petitioner was working as Chief Fellow in the 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 a member of the professions holding an advanced degree, 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.

On appeal, the petitioner submits an April 30, 2013 letter from counsel contesting the director's decision, information about , and a November 30, 2009 letter from Dr. Co-Editor-in-Chief, that was previously submitted in response to the director's request for evidence. Counsel asserts correctly that the standard of proof in this matter is preponderance of the evidence. In most administrative immigration proceedings, the petitioner must prove by a preponderance of the evidence that he or she is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The truth is to be determined not by the quantity of evidence alone but by its quality. *Id. at* 376. In the present matter, the documentation submitted by the petitioner fails to demonstrate by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will 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. –
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> > (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.
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> > (B) Waiver of Job Offer –
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> > > (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 record reflects that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention 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).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 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.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (NYSDOT), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that he seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he 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.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish his past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that he 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 petitioner, rather than to facilitate the entry of an individual with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The petitioner has established that his work is in an area of intrinsic merit and that the proposed benefits of his work as a physician researcher in cardiology would be national in scope. 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.

Eligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner's area of expertise cannot suffice to establish eligibility for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 220. At issue is whether this petitioner's contributions in the field are of such significance that he merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification he seeks. 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, 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 petitioner filed the Form I-140 petition on July 27, 2012. In support of his petition, the petitioner submitted academic records, employment verification letters, professional certifications, professional memberships, and awards. Academic records, occupational experience, professional certifications, professional memberships, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C), (E) and (F), respectively. Exceptional ability, in turn, is not, by itself, grounds for the waiver. *See* section 203(b)(2)(A) of the Act. The USCIS 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 individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his field of expertise.

Along with copies of his published and presented work, the petitioner submitted letters of support discussing his activities in the field. As some of the letters contain similar claims addressed in other letters, this decision will not quote every letter. Instead, this decision will only discuss selected examples to illustrate the nature of the references' claims.

Dr. , Director of Non-Invasive Cardiology at and President of the , stated:

> [The petitioner] is part of multiple leadership committees at the His role as a crucial member of the is invaluable. He is also a member of the transfusion, graduate medical education and health information services advisory committees, to name a few. His expertise is such that [the petitioner] has been tasked with drafting several protocols and policies for the hospital. Such high confidence placed on him is a true testament of his expertise and leadership. Even the most senior faculty at look up to [the petitioner] for his expertise and opinion regarding various heart disease[s] and

> particularly the cutting edge diagnostic tests such as three dimensional echocardiography. [The petitioner] has immense clinical aptitude and exceptional working knowledge of echocardiography. He has taught various new technologies in cardiology such as three dimensional echocardiography, speckle tracking and contrast echocardiography to junior physicians and senior faculty who are unfamiliar with new technology. He is also leading various new diagnostic testing programs in such as supine bicycle stress testing.

Dr. comments on the petitioner's activities with the and but does not indicate how the petitioner's work has impacted or influenced the field beyond the patients and staff at those institutions. In addition, Dr. praises the petitioner's clinical aptitude, expertise in diagnostic testing, knowledge of echocardiography, and ability to teach new technologies. However, it cannot suffice to state that the petitioner 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. *NYSDOT*, 22 I&N Dec. at 221. Moreover, innovation of a new method is of greater importance than training in that method. *Id.* at 221, n.2.

Dr. Director of Medical Education and Research, stated:

> [The petitioner] is an outstanding young physician in our cardiology department. As the Director of Medical Education and Research, I have worked with many physicians in the past two decades. [The petitioner] truly is one of the best I have encountered.
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> [The petitioner] was recognized for his meritorious scholarly activity at the with an abstract entitled: "." [The petitioner] also received another award of commendation and 1st prize for his original work on the "]" [and] again at the at , CT. There are only 3 awards for this type of scientific work. Original scientific work is carefully chosen for this science symposium. About 30-40 original research presentations will be selected. These selected research presentations will be judged by several qualified peer reviewers. Based on scientific merit these presentations are ranked and the first three presentations receive the prestigious award.
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> [The petitioner] was also the recipient of the prestigious M.D. Award in 2010. Each year one physician out of 135 house staff physicians in all medical specialties, is chosen

> by peer residents and faculty members for this recognition of outstanding clinical skills and teaching.

Dr. indicates that the petitioner's work was recognized by his colleagues at but there is no documentary evidence showing that his work has influenced the field as a whole. Again, recognition for achievements is an element that relates to a finding of exceptional ability, but exceptional ability is not sufficient to establish eligibility for the national interest waiver. The plain language of section 203(b)(2)(A) of the Act indicates that aliens of exceptional ability are subject to the job offer requirement (including alien employment certification). Particularly significant awards may serve as evidence of the petitioner's impact and influence on his field, but the petitioner has failed to demonstrate that the awards he received from his employer have more than institutional significance. There is no documentary evidence showing that the awards received by the petitioner are indicative of his influence on the field of cardiology at the national level.

Dr. Clinical Professor of Medicine at and Director of the Cardiovascular Medicine Fellowship Training Program at stated:

> [The petitioner] is presently serving as the Chief fellow in Cardiology, in which capacity he is assisting with the running of our very busy Cardiology Clinic. [The petitioner] has drafted several cardiology protocols which are used in day to day patient care. The fact that [the petitioner] has been placed in such positions of leadership, where he must judge the work of others, demonstrates the confidence that his peers and colleagues place in his exceptional abilities. Such extraordinary responsibilities have been given to [the petitioner] because he has distinguished himself as being at the top of his peer group throughout his career. [The petitioner] has consistently demonstrated excellence in traditional aspects of patient care while also exhibiting mastery of the newest breakthroughs in medical technology such as three dimensional echocardiography, contrast echocardiography and interrogation and programming of sophisticated devices such as implantable cardioverter defibrillators.

Dr. comments on the petitioner's duties and responsibilities as a participant in the However, any objective qualifications which are necessary for the performance of the duties and responsibilities involved in the occupation are amenable to articulation in an application for alien employment certification. *NYSDOT*, 22 I&N Dec. at 220-221. In addition, Dr. asserts that the petitioner has mastered skills in three dimensional echocardiography, contrast echocardiography, and interrogation and programming of sophisticated devices, but as previously discussed, assuming the petitioner's qualifications are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. *Id* at 221.

Dr. further stated:

> [The petitioner] is not only a master clinician, he is also a gifted researcher. . . . In 2009 national guidelines were published regarding the interpretation of the electrocardiogram. [The petitioner] lead a research team that evaluated aspects of these guidelines. He identified some errors in the published material and derived a simpler, yet equally effective, approach for interpreting some electrocardiographic criteria. Using his sophisticated computer programming skills, [the petitioner] was able to link data stored in the hospital electrocardiogram and echocardiogram databases to allow correlation between the two types of cardiovascular studies. No one had ever done this before at Through these efforts, [the petitioner] has collected data from over 12,000 patients. This really was a breakthrough in our research efforts. Without his expertise, this task would likely never have been accomplished.
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> [The petitioner's] research efforts have already begun to bear fruit. His first analysis involved diagnosing left ventricular hypertrophy (increased heart muscle) in the presence of a specific electrocardiographic heart conduction disorder. This seminal work was so ground-breaking that it was selected for presentation at several international scientific meetings, including the annual session of the most prestigious annual cardiovascular meeting in the world. This work has been published in a leading Cardiology journal. [The petitioner's] successful efforts in this area will very likely lead to revision and modifications in the guidelines for electrocardiogram interpretation when they are next published. . . . We anticipate that [the petitioner's] continuing work in this area will improve how physicians diagnose left ventricular hypertrophy and lead to improved, more cost-effective patient care.

Dr. asserts that the petitioner "derived a simpler, yet equally effective, approach for interpreting some electrocardiographic criteria," but the petitioner did not submit any documentary evidence to show that his research findings have, in fact, led to widespread changes in diagnostic guidelines, with corresponding improvement in diagnostic outcomes. In addition, Dr. states that the petitioner's work "was selected for presentation at several international scientific meetings, including the annual session of " Many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. These meetings and conferences are promoted and sponsored by professional associations, health organizations, businesses, educational institutions, and government agencies. While presentation of the petitioner's work demonstrates that his findings were shared with others and may be acknowledged as original based on their selection to be presented, there is no documentary evidence showing that his presented work has specifically impacted how physicians diagnose left ventricular hypertrophy throughout the United States, that his work is frequently cited by independent researchers, or that his findings have otherwise influenced the cardiology field as a whole.

Dr. Instructor in Medicine, stated:

> An example of [the petitioner's] important research is his work entitled " ," which was honored with selection for presentation at the scientific sessions meeting . . . . In this particular study, [the petitioner] discovered that simpler left ventricular hypertrophy (thickened heart muscle) criteria on electrocardiogram, in [the] presence of specific conduction abnormality in the heart, have [the] same or better ability to diagnose left ventricular hypertrophy than complex and cumbersome criteria. Prior to this study, national multi society guidelines have suggested that simpler criteria may not be used in presence of specific conduction abnormality. [The petitioner's] findings may change the next set of national guidelines. It is a testament to his pioneering work that one of the elite journals, [the] has requested his work to be published in their journal promising expedited publication.

In support of Dr. comments, the petitioner submitted a November 30, 2009 letter from Dr. Co-Editor-in-Chief, stating: "I followed with great interest your presentation (2557) earlier this month at the conference in Orlando. The readers of our Annals would find your work to be very interesting. If you wish to submit your study to our Journal, I can promise you a fast reviewing process, and if accepted, the publishing will be expedient."

With regard to the petitioner's work entitled " ," this article was not published in the until January 2013, almost six months after the petition's July 27, 2012 filing date. Research work published after the date of filing does not constitute evidence that the petitioner's findings were already influential as of that date. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. In this matter, that means that the petitioner must demonstrate his track record of success with some degree of influence on the field as a whole as of that date. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. Consistent with the preceding precedent decisions, a petitioner may not secure a priority date in the hope that his unpublished research at the time of filing will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey,* 541 F.3d 257, 261 (4th Cir. 2008). Accordingly, the petitioner's research study that was not yet published as

of the date of filing and, thus, had not been widely disseminated in the field as of that date, does not establish his eligibility for the waiver as of the date of filing. To hold otherwise would have the result of a petitioner securing a priority date based on the speculation that his work might prove influential while the petition is pending.

While the letters from Dr. and Dr. offer their opinions regarding the potential impact of the petitioner's work, they fail to provide specific examples of how the petitioner's past work has already influenced the cardiology field as a whole. For instance, Dr. asserts that "[the petitioner's] findings may change the next set of national guidelines" and Dr. comments that "[t]he readers of our Annals would find your work to be very interesting." A petitioner, however, may not file a petition under this classification based solely on the expectation of future eligibility. *Matter of Katigbak,* 14 I&N Dec. at 49.

Dr. Professor of Medicine, and Director of Clinical and Interventional Cardiology of the , indicates that his letter is based on no personal knowledge of the petitioner, but, rather, a review of his credentials, academic accomplishments and "stellar reputation." Dr. does not suggest that he was aware of the petitioner's work prior to being requested to provide a letter in support of the petition. Dr. stated:

> [The petitioner's] research findings on left ventricular hypertrophy (heart muscle thickening) were so revolutionary, his work was selected to be presented in scientific sessions in 2009. . . . His work was so novel and ground breaking he was invited to publish his work in [the] . His current research on detecting left ventricular hypertrophy using inexpensive and simple electrocardiographic criteria could revolutionize the way physicians diagnose left ventricular hypertrophy. Diagnosing left ventricular hypertrophy in its earlier stages not only saves lives and morbidity but also saves millions of dollars particularly if this can be diagnosed using inexpensive tests. [The petitioner's] work in this area is truly ground breaking in this area.

In the same manner that Dr. and Dr. offered their opinions regarding the potential impact of the petitioner's work, Dr. asserts that the petitioner's research "could revolutionize the way physicians diagnose left ventricular hypertrophy." In addition, Dr. states that the petitioner's work "is truly ground breaking," but fails to provide specific examples of how the petitioner's work has already influenced the cardiology field as a whole.

The record establishes that the petitioner is a capable cardiology fellow who has made a favorable impression on his collaborators, supervisors, and mentors. The intrinsic merit and national scope of cardiology research are not in dispute. Nevertheless, the evidence submitted does not show that the petitioner's work stands out from that of his peers at a level sufficient to justify a waiver of the job offer requirement. There is no documentary evidence showing that the petitioner's articles and conference presentations are frequently cited by independent researchers or that his findings have otherwise influenced the field as a whole. Various references have asserted that the petitioner's

work may affect the way physicians diagnose left ventricular hypertrophy, but the record does not show that the petitioner's work has yet had those effects on a national level. Speculation about the possible future impact of the petitioner's work does not establish eligibility for the national interest waiver.

The director denied the petition on April 1, 2013, stating: "[T]he petitioner has not shown that [his] contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver." The director further stated: "The impact that the [petitioner's] published articles, research findings, and presentations have had on the field is not demonstrated in the record." The director concluded: "[T]he record is not supported by evidence demonstrating how the petitioner will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications."

On appeal, counsel asserts that the petitioner failed to give sufficient weight to the letters from medical experts who discussed the petitioner's achievements. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a petitioner's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's professional contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by a petitioner in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a cardiologist or physician researcher who has influenced the field as a whole.

Counsel argues that a lack of independent cites to the petitioner's published and presented work should not preclude his eligibility for the national interest waiver. Counsel points to examples of two "landmark trials in clinical medicine" authored by others and published in the in 2010 and 2011. Counsel asserts that the two trials in the preceding journal have "not been cited yet in guidelines." The director's decision, however, did not state that the petitioner must demonstrate that organizations such as the or must cite the petitioner's work. Instead, the director stated that the petitioner had failed to

show that his work "has been cited by independent researchers in the field." While the or "guidelines may not cite the two trials counsel identifies in the , there is no evidence indicating that independent researchers have also not cited to this work.[1] Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534, n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3, n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Citations are not the only means by which to show the petitioner's impact on his field. Independent reference letters can play a significant role in this respect. Here, however, the petitioner has submitted only a few such letters, which collectively fail to establish the depth or extent of his influence on the field as whole. Simply listing the petitioner's novel findings and speculating on their potential future impact cannot suffice in this regard, because all research fellows are expected to produce original work. Not every cardiology researcher who performs original investigations or studies that add to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

With regard to the issue of prospective benefit, counsel states:

> The Denial Decision is inconsistent regarding the issue of [the petitioner's] prospective benefit to the national interest of the United States. On the one hand, the Denial correctly states that an applicant for a National Interest Waiver must prove prospective national benefit. . . . But then the Denial dismisses the expert letters supporting this petition by stating that the "letter writers primarily attest to the potential of the beneficiary's future contributions to the field."

The director's decision indicated on page 3 that the benefits of the petitioner's "proposed employment will be national in scope." While the letters attesting to the potential of the petitioner's future contributions helped demonstrate that he meets the second prong of the *NYSDOT* test, those same letters were not sufficient to demonstrate that he meets the third prong of the *NYSDOT* test by establishing that he will serve the national interest to a substantially greater degree than would an

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[1] According to Google Scholar search results for the two articles in ' has been cited to by others 353 times and has been cited to by others 1,470 times. *See* accessed on November 14, 2013, copy incorporated into the record of proceeding.

available U.S. worker having the same minimum qualifications. As previously discussed, a petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *NYSDOT*, 22 I&N Dec. at 219, n. 6. Pages 4 through 7 of the director's decision address the third prong of the *NYSDOT* test and are consistent with the precedent decision's guidelines.

Counsel asserts that requiring labor certification for the petitioner is "harmful to the national interest." Counsel states:

> The Labor Certification process may be appropriate if this position merely involved enumerating certain skills or technologies that would qualify an individual to perform the job. However, in this case we are evaluating the position of Cardiologist at a premier research and teaching hospital, where the most complex cases present for diagnosis and treatment. Having these desperately ill patients treated by a physician who may meet the "minimum" qualifications to perform these functions, rather than a renowned clinician and researcher whose skills and abilities are widely praised by other leading cardiologists, is decidedly contrary to the national interest of the United States.
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> And <u>any</u> U.S. applicant who was <u>minimally proficient</u> with these procedures and technologies would then prevent from retaining [the petitioner's] outstanding talents and abilities as a permanent resident.

Counsel does not explain how the petitioner's diagnosis and treatment of ill patients limited to one hospital benefits the national interest of the United States. Regardless, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that he will serve the national interest to a substantially greater degree than do others in the same field. *NYSDOT*, 22 I&N Dec. at 218, n.5. Without documentary evidence showing that the petitioner's work as a cardiology fellow at has already had some degree of influence on diagnostic protocols at medical centers throughout the United States or has otherwise influenced the field as whole, the petitioner has not established that he will serve the national interest to an extent that would justify a waiver of the job offer requirement.

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. The petitioner has not established that his past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *Id.* at 217, n.3. More specifically, the petitioner "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"). On the basis of

the evidence submitted, 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.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.