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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JAN 09 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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and 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. The petitioner seeks employment as a "Research Associate II" (biological researcher). At the time of filing, the petitioner was working as a "research technician" in the laboratory of 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, counsel asserts that the petitioner "has a past record of accomplishments that demonstrate a future benefit to the national interest" and that the petitioner "plays a significant role in her field, beyond any U.S. worker with similar qualifications." The petitioner submits a brief with additional evidence. For the reasons discussed below, the AAO will uphold the director's decision.

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.
> >
> > (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 petitoner received a Master of Science degree in Biology from in 2009. The director found 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).

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

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] 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 (*NYSDOT*), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 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, the petitioner must show 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.*

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, "exceptional ability" is not, by itself sufficient cause for a national interest waiver. *Id.* at 218. Thus, the *benefit* which the alien presents to her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated for that classification. *Id; see also id.* at 222. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that

alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The AAO concurs with the director's determination that the petitioner's work is in an area of intrinsic merit and finds that the proposed benefits of her work 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 alien's own qualifications rather than with the position sought. In other words, the AAO generally does 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. *Id.* at 218. 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.

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 burden 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, the AAO notes 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.

Along with an article being drafted for publication in and copies of her presentations at various symposiums and conferences, the petitioner submitted letters of support discussing her work and research qualifications.

states:

> Because and I have worked closely together I have first-hand knowledge of her abilities. . . . [The petitioner's] graduate school training in chemistry and biochemistry, and her experience in clinical research as well as biotechnology has been a very good fit for our research program. [The petitioner] also showed herself to be incredibly adept at mastering new techniques in biochemistry and molecular biology, and a degree of expertise significantly above that ordinarily encountered in the life science field at her level. [The petitioner] has tackled a very difficult problem and nevertheless because of her technical expertise, intellectual prowess and sheer determination she successfully carried out a new line of investigation both technically and topically in which we are looking for new fat cell genes that are candidates for treating obesity. Her work has great potential benefits for our country if we can develop therapies for obesity.

comments on the petitioner's educational training, research experience, and mastery of biochemistry and molecular biology techniques. Simple exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an application for an alien employment certification. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221. In addition, asserts that the petitioner's work "has great potential benefits for our country if we can develop therapies for obesity," but there is no documentary evidence that the petitioner's specific research findings have already resulted in improved treatment methodologies or have otherwise influenced the field as a whole. 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.

states that the petitioner worked in his laboratory during her graduate studies at further states:

> [The petitioner's] research is of significant national interest because the damage of nematodes in agricultural products is a serious problem. In the U.S., there is a $10 billion to $100 billion loss worldwide caused annually by pathogenic nematodes. . . . Therefore, an urgent necessity rises to investigate a new method of nematode management to solve these problems. [The petitioner's] research can provide effective and environmentally friendly nematode control by developing the transgenic plants to which programmed cell death pathway genes and the RNA interference based technique have been introduced.
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> [The petitioner] is an exceptional scientist with extraordinary multiple disciplinary expertise. Since joining my laboratory, [the petitioner] has achieved an impressive array of accomplishments requiring multidiscipline expertise. As a molecular analysis expert, she performed tremendous times of RT-PCR and extraction of RNA from the transgenic plants. In addition, she maintained more than 1000 transgenic plants for three years, and developed a unique method to measure hatching ratios of nematode embryos. After her graduation, [the petitioner] joined laboratory to study the health effects of pesticides and the molecular impact towards breast cancer. She is an accomplished scientist who has unraveled the molecular basis of important food crop destruction by pests to understanding the disease impact of the very pesticides used to eradicate the problem – a truly extraordinary continuum of expertise.

comments about the importance of research devoted to controlling nematodes to prevent damage to agricultural products, but does not provide specific examples of how the petitioner's work has already been applied in the agricultural industry as an effective nematode control technique or has otherwise influenced the field as a whole at the time of filing. Assertions regarding the overall importance of the alien's area of expertise cannot

suffice to establish eligibility for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 220. As previously discussed, eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. USCIS does 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. *Id.* at 218.

states that he served as the petitioner's faculty advisor beginning in the Fall of 2007 and that she later worked in his laboratory in 2009. further states:

> [The petitioner] joined my laboratory after completing her advanced Master's degree to investigate the project of pesticide exposure in estrogen-negative and estrogen-positive cells, which is supported by National Institute of Health, because of her unique combination of expertise in molecular biology, microscopy, and clinical lab training. She was an integral part of my research group at
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> [The petitioner's] research is of significant national interest because it engages an under-served population at high risk for pesticide exposure as a critical health disparity – consistent with the mission of the NIMHD [National Institute on Minority Health and Health Disparities]. Furthermore, this work has ramifications on the biological effects of pesticide accumulation within the human body that affects every American. This work was presented at an international scientific meeting and is in the process of publication in an international cancer journal.

asserts that the petitioner has a "unique combination of expertise in molecular biology, microscopy, and clinical lab training." It cannot suffice, however, 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 U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221. also comments that the petitioner's work was presented at the but there is no documentary evidence indicating that the petitioner's presented work has been frequently cited by independent researchers or has otherwise impacted the field as a whole. also states that the petitioner's work "is in the process of publication" in an international cancer journal. The AAO notes, however, that any impact resulting from this publication post-dates the filing of the petition. As previously discussed, 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. at 49. 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. at 175.

states:

> In the department of Research and Development (R&D), we developed our own new diagnostic test for melanoma by using an assay of fluorescence in-situ hybridization (FISH). is a four-probe FISH assay on three loci to identify genetic mutations that may be present even before phenotypic changes.

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* * *

> Since joining my laboratory, [the petitioner] has achieved an impressive array of accomplishments requiring multidiscipline expertise. [The petitioner] had completely devoted her time and efforts on this new diagnostic test for melanoma. She has spent enormous amount of time at the laboratory to analyze data and determine the proper procedures to move forward. First, [the petitioner] optimized a new protocol for the diagnostic test of melanoma by manual and demonstrated reproducible results. Next, [the petitioner] analyzed the captured images and automated probe signal enumerations which were obtained with the Metafer Slide Scanning System (Metasystems). . . . The average signal counts of the individual probes and relative signal counts to centromere six for each cell were acquired by [the petitioner] and other clinical laboratory scientists. . . . Without [the petitioner's] excellent abilities and research contributions, the results would not have been able to be accomplished and the company's deadline would not have been met. . . . These accomplishments have been reported at the

While states that the petitioner evaluated data results for to optimize the diagnostic protocol, there is no documentary evidence showing that the petitioner authored or originated the discovery of this four-probe FISH assay tool for diagnosing melanoma. also comments that the results were reported at the but there is no documentary evidence demonstrating that the petitioner's specific work on the project has been frequently cited by independent researchers or has otherwise notably influenced the field as a whole.

In his initial letter dated May 12, 2011, , states that he was the petitioner's undergraduate academic advisor and instructor in several courses at goes on to discuss the petitioner's academic accomplishments while pursuing a baccalaureate degree at Academic performance, measured by such criteria as grade point average, however, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *NYSDOT*, 22 I&N Dec. at 219, n.6. In addition, states that the petitioner "possesses many skills that should continue to make her an asset in biological research: she has strong academic abilities in disciplines that combine conceptual and technical skills, she has excellent laboratory skills, and she is very hard-working and disciplined." However, 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 U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

states:

specific project involves the study of the novel role of beta-adrenergic receptors on adipose cells in fat tissue to regulate a growth-promoting process not normally associated with adrenaline action. Given the integral role of adipose tissue in the development of obesity and diabetes, this research project promotes basic understanding of the biology of the fat cell and could assist in identifying new targets for therapeutic intervention. [The petitioner's] research has national and international importance in that it is a critical step in the process of developing a greater understanding of the cause and treatment of obesity and diabetes. The NIH has approved a new grant for this project in the amount of approximately $500,000.00 because it recognizes the significant importance of this research project.

This research project is guided by and her specially selected team of specialists, each of whom forms a critical part of the research team. We understand that [the petitioner] is a part of this team and is responsible for performing the study of fundamental cellular and molecular mechanisms in adipocytes. . . . In lab, they identified a new splice variant of S6K1 in mice and humans called S6K1b and S6K1c. Importantly, S6K1c is structurally identical between mice and humans. It is hypothesized that S6K1c can act as kinase-dead due to lacking the catalytic domain, but may act as domain-inhibitors because it retains TOR signaling motif (TOS).

In addition, [the petitioner] has been working on other research to determine the role of beta-adrenergic receptors (βARs) and cAMP-stimulated S6K1 activity in adipocytes to selectivity stimulate the translation of a set of mRNAs that are distinct from those regulated by insulin. She has performed fractionation of poly-ribosomes, RNA isolations, and microarray profiling using 3T3-L1 adipocyte as a cell model. . . . Because of the high-level nature of this research, as well as its unique role in the understanding of regulation of cell fate between WAT and BAT by alternative splicing of the 56K1 gene, this may lead to drug discovery for controlling obesity in humans.

states that the NIH has approved a new grant for project in the amount of approximately $500,000.00 to continue her research. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher whose work is funded with a U.S. government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. The petitioner failed to submit supporting documentary evidence showing that her specific work represents groundbreaking advances that have significantly impacted the field at large. also asserts that the petitioner's work "may lead to drug discovery for controlling obesity in humans," but the record does not show that the petitioner's work has yet had that effect. Speculation about the possible future impact of the petitioner's work is conjecture, not evidence, and cannot establish eligibility for the national interest waiver. As previously discussed, 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. at 49.

states:

> I have known [the petitioner] as her advisor in completing the Biotechnology Certificate Program and as the Department Chair overseeing her work as a Biology graduate student.... For her degree thesis, [the petitioner] completed an extremely exciting research project under the guidance and mentorship of Professor of Biology, wherein she applied her skills as a recombinant DNA biotechnologist with new skills in the developmental biology and fluorescence cellular microscopy of nematodes (agricultural worm pests) to demonstrate the potential for genetic engineering of plants to protect them from devastation by nematode infection (a very costly agricultural problem in the U.S.). Her diligence and tenacity in conducting these lengthy research experiments led to seminal discoveries for this new field of crop genetic engineering to control of infectious agents.

asserts that the petitioner's work "has led to seminal discoveries for this new field of crop genetic engineering to control of infectious agents," but fails to provide specific examples of how the petitioner's original work has been successfully applied in the agricultural industry or has otherwise significantly influenced the field as a whole. While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

continues:

> Clinical Laboratory Scientists are in extremely short supply throughout the U.S. as reported by a variety of scientific and news organizations, e.g. a recent article appearing in the Twin Cities "Star Tribune", cited on "*i*seek", a Minnesota career resources website (http://www.iseek.org/news/fw/fw7815FutureWork.html) [The petitioner] initiated her post-graduate career with an where she was hired quickly after graduation because of her unique combination of both CLS and biotechnology lab skills.

As stated in *NYSDOT,* 22 I&N Dec. at 221, it cannot suffice to state that the alien possesses useful skills, or a "unique background." In addition, while asserts that there is a shortage of workers with the petitioner's skills, *NYSDOT* specifically rejects that argument. *Id.* at 221. When discussing claims that the alien in that case possessed specialized design techniques, the AAO asserted that such expertise:

> would appear to be a valid requirement for the petitioner to set forth on an application for a labor certification. [The] assertion of a labor shortage, therefore, should be tested through the labor certification process. . . . The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor.

Id. at 220-221.

, states:

> [The petitioner] pursued plant pathogen-related work in the lab of for her master's thesis, and she has been working at the on the regulation of body weight, specifically by performing an array of high-tech experimental techniques, including RNA analysis through the use of microarrays. In addition to her wide range of research interests, she has a wide range of technical experience, including transgenics, nematode culture, PCR, RT-PCR, microarrays, and a wide range of complex analytical techniques. [The petitioner's] thesis was one of the best two that I have read in 16 years at

discusses the petitioner's research experience, but as previously discussed, simple training in advanced technology or unusual knowledge, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221. also comments on the petitioner's master's thesis, but there is no documentary evidence showing that her thesis is frequently cited by independent researchers or has otherwise significantly influenced the field as a whole.

asserts that the petitioner "has a relatively unique combination of skills and training – substantial medical (clinical) training, a high level of expertise in molecular biology techniques, and substantial expertise in the molecular biology and cell biology of nematodes." Similarly, states: "[The petitioner] possesses a combination of unique skills. . . . She became the laboratory expert in RT-PCR and since then has developed multiple skills (RNAi, ELISA, MALDI-MS, western blot, atomic absorption Spectroscopy, flow cytometry, GCMS, etc.)." However, as previously discussed, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *Id.* at 221.

On February 29, 2012, the director issued a request for evidence. The director instructed the petitioner to submit further evidence to establish "a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, the petitioner submitted an article that she coauthored with and that was "published online" in on March 30, 2012. This article was published subsequent to the petition's July 5, 2011 filing date. Thus, any impact resulting from this publication post-dates the filing of the petition. As previously discussed, 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. at 49. 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. at 175.

In addition, the petitioner submitted additional letters of support focusing on her academic accomplishments. In his second letter dated April 13, 2012, again discusses the petitioner undergraduate academic achievements stating:

> [The petitioner] was a recipient of Biology Program honors. Program honors are restricted to two seniors and two juniors in each program, clearly placing her in strong position relative to her peers in science.
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> In addition, [the petitioner] was accepted into the national honors organization to which is a member: member schools are limited to selecting students with a minimum of 3.5gpa and may only nominate 10% of their student body. Faculty collectively vote upon the list of eligible students, so membership requires a student to sufficiently impress a significant number of faculty.

Similarly, in his second letter dated March 20, 2012, also comments on academic recognition received by the petitioner stating:

> [The petitioner] received an Outstanding Biology Graduate Student Award at our university in May of 2009. She was also nominated as the Dean's medalist. There were 5 candidates, and this award was given to one student in each department, once a year. The student nominated for this award should demonstrate distinguished scholarly and creative excellence in their discipline/field . . . .

As previously discussed, academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. Instead, the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *NYSDOT*, 22 I&N Dec. at 219, n.6. The petitioner also submitted a letter from the Director of International Student Services and Programs at stating that the petitioner received the and the The petitioner also submitted documentation showing that she received a to attend the Regarding the petitioner's student awards and membership, the AAO notes that recognition for achievement and memberships relate to the regulatory criteria for classification as an alien of exceptional ability, a classification that normally requires an alien employment certification. 8 C.F.R. § 204.5(k)(3)(ii). The AAO cannot conclude that meeting one, two, or even the requisite three criteria for classification as an alien of exceptional ability warrants a waiver of the employment certification requirement in the national interest. By statute, "exceptional ability" is not, by itself sufficient cause for a national interest waiver. *Id.* at 218. Thus, the *benefit* which the alien presents to his field of endeavor must greatly exceed the "achievements and significant contributions" contemplated for that classification. *Id.; see also id.* at 222. Regardless, there is no evidence showing that the petitioner's student membership in required demonstrating significant research advancements in her field. Further, with regard to the petitioner's other academic honors, the

AAO notes that university study is not a field of endeavor, but rather training for future employment in a field of endeavor. The petitioner's student honors are not an indication that she has influenced her field and they offer no meaningful comparison between the petitioner and others in the field outside of her universities who had already completed their graduate and undergraduate studies. Regarding the petitioner's there is no evidence from the showing the criteria for determining a recipient's eligibility for this award. Moreover, the AAO cannot conclude that the petitioner's receipt of funding to cover travel expenses to a scientific conference demonstrates a level of achievement consistent with influencing the field as a whole.

The petitioner's response also included a March 27, 2012 letter from discussing the petitioner's work in the beginning in October of 2011. The petitioner's work in laboratory at post-dates the petition's July 5, 2011 filing date. As previously discussed, 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. at 49. 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. at 175. Accordingly, the AAO will not consider research conducted by the petitioner after July 5, 2011 in this proceeding.

The director denied the petition finding that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director noted that while the petitioner submitted evidence of her student achievements, the submitted evidence did not show "a past record of documented accomplishments" in the field sufficient to "justify a future benefit to the national interest."

On appeal, the petitioner submits additional documentation pertaining to her student awards, scholarships, publications in preparation, and recent activities in the field. None of this documentation demonstrates that the petitioner's past research has significantly influenced the field as a whole. In addition, the petitioner submits additional letters of support.

states:

> [The petitioner's] unique knowledge and expertise in the field of molecular biology, genomics and proteomics performance of DNA/RNA makes her an indispensable scientist for the advancement of our field. Since she came to our laboratory, [the petitioner] has performed scientific functions as a Clinical Laboratory Scientist at the She is responsible for the development of clinical tests of HLA genotyping using high-throughput sequencing technologies, designing new primer sets for HLA genotyping for next generation sequencing and profiling drug resistance cytomegalovirus mutations causing kidney transplant failure. [The petitioner's] unique knowledge and expertise in these fields, makes her an

indispensable Clinical Laboratory Scientist not only at Stanford, but also to the national medical community.

comments on the petitioner's job functions and responsibilities in the but the petitioner's work there post-dates the petition's July 5, 2011 filing date. As previously discussed, 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. at 49. 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. at 175. Accordingly, the AAO will not consider the research conducted by the petitioner in the in this proceeding. also emphasizes the petitioner's "unique knowledge and expertise in the field." However, as previously noted, 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 U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221.

states:

> Our Laboratory conducts essential and critical tests to determine that donor organs/bone marrow are matched in order to achieve successful transplantation and long term graft and patient survival. . . . These tests are highly specialized, excellence is required, and there is zero tolerance for errors. Consequently, new methods being developed must pass very high standards and clinical validation before they can be routinely employed.
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> [The petitioner] brings this kind of excellence and specialized skill to this highly complex and unique field. She is skilled in all areas requisite to the success of the molecular biology testing performed and is uniquely trained to develop and validate the 'next generation' sequencing platforms that will determine compatibility and whether the bone marrow transplant has worked or not. Of the more than 50 members of the Laboratory, she is one of only two technologists who know how to perform the complex procedures involved and to design new methods and materials to define donor and recipient 'types' and compatibility with better precision than any existing method provides.
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> It is with great concern to me that despite several open positions advertised broadly for the past two years at our Laboratory for technologists with these skills, no applicants apart from [the petitioner] have met the educational and experiential criteria.

comments on the petitioner's specialized skills and the lack of qualified applicants for the laboratory technologist position. As previously discussed, training in advanced technology or unusual knowledge, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221. Further, given that the employment certification process was designed to address the issue of worker shortages, a shortage of qualified workers in a given field is not a persuasive argument for demonstrating eligibility for the national interest waiver.

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The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.*

In his second letter dated June 29, 2012, again comments on work performed by the petitioner after her arrival at in October 2011. states:

> In the relatively short time she has been in the laboratory, [the petitioner's] research has focused on designing strategies for sequencing the coding regions of clinically relevant HLA genes. This is no simple task, and many others before her have been unsuccessful. [The petitioner] has been successful in this effort, and she has now designed a sequencing strategy that takes advantage of novel microfluidic PCR technology to allow for many samples to be processed and sequenced simultaneously. In addition, she has single-handedly built the Disease Profiling area of the laboratory, overseeing the purchase, installation, and daily usage of complex sequencing and PCR equipment. In general, next-generation sequencing equipment has only been available in large academic genome centers and biotechnology companies. [The petitioner] is one of a handful of people in the United States who has knowledge and experience with this type of instrumentation in the clinical laboratory setting.
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> [The petitioner] has developed a next-generation sequencing protocol to analyze cytomegalovirus (CMV), an important viral pathogen for transplant patients. An abstract detailing her research on CMV was recently submitted for publication at the Association for Molecular Pathology annual meeting. She is also actively engaged in a research project to use next-generation sequencing to better define the role of BK virus in kidney transplantation.

As previously discussed, the petitioner's work in the including her cytomegalovirus and BK virus research, post-dates the petition's July 5, 2011 filing date. Eligibility, however, must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. 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. at 175. Accordingly, the AAO will not consider the recent work conducted by the petitioner in the , in this proceeding. also comments on the petitioner's knowledge and experience with PCR instrumentation. However, as previously noted, 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 U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221.

The petitioner's appellate submission includes letters of support from and The AAO notes that their letters contain language that is identical or virtually the same as in May 16, 2011 letter. This suggests that the language in

letters is not their own. While it is acknowledged that have both offered their support to this petition, it is apparent that they did not independently prepare significant portions of their letters. Accordingly, the AAO finds their duplicative comments to be of limited probative value. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits). While the preceding letters of support state that the petitioner evaluated data results for to optimize the diagnostic protocol, there is no documentary evidence showing that the petitioner authored or originated the discovery of this four-probe FISH assay tool for diagnosing melanoma. also comment that the results from the work were reported at the and published in but there is no documentary evidence demonstrating that the petitioner's specific findings have been frequently cited by independent researchers or have otherwise notably influenced the field as a whole.

' coauthored the article with the petitioner and others that was published in subsequent to the petition's filing date. states:

> [The petitioner] has left an indelible footprint in the field of Plant Biotechnology, specifically in developing nematode resistant transgenic plants. Her exceptional work in this field has yielded multiple publications, presentations and awards, demonstrating her exceptional research talents. It is clear that she has played a significant role in impacting U.S. agriculture, in light of her work on plant parasitic nematodes, which affect crops in the U.S. More recently, [the petitioner's] research endeavors have yielded a novel diagnostic test to detect early stages of melanoma (skin cancer).
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> [The petitioner's] research in biomedicine has been critical to understand the regulation of fat cell metabolism as well. This work was conducted at Her work has clear relevance to a current national obesity epidemic.

comments on the petitioner's published, presented, and ongoing work, but he fails to provide specific examples of how the petitioner's research findings are being applied by others in the field at a level that would justify a waiver of the job offer requirement. Further, there is no documentary evidence showing that the petitioner's work is frequently cited by independent researchers or has otherwise influenced the field as a whole.

The above letters are from the petitioner's professors, supervisors, coauthors, and individuals affiliated with institutions where the petitioner has worked. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's influence over the field as a whole. Moreover, simply listing the petitioner's novel research findings cannot suffice in this regard, because all research scientists are arguably expected to produce original work. In the absence of evidence of publication at the

time of filing, the record does not show that the petitioner's work has come to the attention of other researchers outside of her professional acquaintances.

The petitioner's appellate submission also includes a joint letter signed by more than fifty of her colleagues in stating:

> [The petitioner's] past accomplishments in agricultural and biomedical research demonstrates that her exceptional research talents have played a significant role in U.S. agriculture. Most notable [the petitioner's] research on nematodes to prevent cell death in crops would save the U.S. billions of dollars in crop destruction. This research was recently published in [The petitioner's] further research in biomedicine has led to the significant development of a new diagnostic test in the detection of the early stages of melanoma and in the discrimination between its non-cancerous and cancerous forms, which greatly affects this nation's health care, especially millions of Americans suffering from cancer.
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> Furthermore, [the petitioner's] research in biomedicine was a prerequisite to the understanding of the regulation of fat cell metabolism and the process by which calories stored in fat can be released and metabolized at Her work addresses the national health crisis of obesity and the consequent maladies that arise from it: diabetes, hypertension, cardiovascular diseases, and even certain cancers. In addition, [the petitioner's] specialized skill in polysome fractionations was adapted to identify abnormal patterns of regulation of certain non-coding RNA (noRNA) and microRNA genes to determine the aggressiveness of metastatic melanoma. This is a novel discovery with diagnosis and therapy applications in other types of cancers.
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> Currently, [the petitioner] is conducting research at which demonstrates her future benefit to the national interest. [The petitioner's] clinical research is currently focused on designing and validating novel diagnostic assays to determine pre-transplant organ compatibility and monitor antibody mediated organ rejection. This research is to develop and validate novel diagnostic test methods using new next generation DNA sequencing technology to improve patient care through more rapid and accurate sequencing of HLA genes.

The petitioner's colleagues state that she published an article in in As previously discussed, this article was published subsequent to the petition's July 5, 2011 filing date. Thus, any impact resulting from this publication post-dates the filing of the petition. 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. at 49. 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. at 175. The petitioner's colleagues also assert that the petitioner's work has "led to the significant development of a new diagnostic test in the detection of the early stages of melanoma and in the discrimination between its non-cancerous and cancerous forms," but there is no documentary evidence showing that the petitioner authored or originated the discovery of this four-probe FISH

assay tool for diagnosing melanoma. The petitioner's colleagues further state that the petitioner's "research in biomedicine was a prerequisite to the understanding of the regulation of fat cell metabolism and the process by which calories stored in fat" and that her work "to identify abnormal patterns of regulation of certain non-coding RNA (noRNA) and microRNA genes to determine the aggressiveness of metastatic melanoma" is "a novel discovery," but her colleagues fail to provide specific examples of how the petitioner work is being applied by others in the medical field. Further, there is no documentary evidence showing that the petitioner's work is frequently cited by independent researchers or has otherwise influenced the field as a whole. In addition, the petitioner's colleagues comment on her recent work at but the petitioner's work there post-dates the petition's July 5, 2011 filing date. As previously discussed, 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. at 49. 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. at 175. Accordingly, the AAO will not consider the research conducted by the petitioner in the HIDPL in this proceeding.

The opinions of experts in the field 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 an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *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 an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a biological researcher who has influenced the field as a whole.

While petitioner has performed admirably on the research projects to which she was assigned, she has not established that her 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 AAO notes that the petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYSDOT*, 22 I&N Dec. 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.")

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.

ORDER: The appeal is dismissed.