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

(b)(6)

[redacted]

Date: APR 0 9 2014 Office: NEBRASKA SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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, Nebraska 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 Scientist." At the time of filing, the petitioner was working as a 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 pursuant to section 203(b)(2)(B)(i) of the Act.

On appeal, the petitioner submits a brief and copies of documents that were previously submitted. In addition, the petitioner submits documentation indicating that she has filed a subsequent I-140 petition, seeking a national interest waiver pursuant to section 203(b)(2)(B)(ii) of the Act.

The petitioner 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.

I. LAW

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

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –

> (i) Subject to clause (ii), 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.
>
> (ii) The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if –
>
> > (I) (aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and
> >
> > (bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

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.

II. SECTION 203(b)(2)(B)(i) OF THE ACT

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 she 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 she 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.

The petitioner has established that her work as a physician scientist is in an area of substantial intrinsic merit. With regard to the second prong of the national interest waiver test, the director found that the proposed benefits of the petitioner's work as a physician scientist would not be national in scope. The petitioner, however, performs research involving smoking induced chronic obstructive pulmonary disease (COPD). Improving treatment methods for COPD would substantially benefit the U.S. healthcare system. As the documentation submitted by the petitioner is sufficient to demonstrate that the proposed benefits of her pulmonary research are national in scope, the director's finding is withdrawn. 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.

Although the national interest waiver hinges on prospective national benefit, the petitioner must establish her past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that she 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.*

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. *Id.* at 220. At issue is whether this petitioner's contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she 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 November 16, 2012. In addition to documentation of her published and presented work, two travel awards, and a research grant, the petitioner submitted letters of support discussing her activities in the field. The petitioner also submitted citation information from [redacted] reflecting one independent cite to her body of published and presented work. The director denied the petition on July 3, 2013. The director determined that the petitioner had not demonstrated that she "will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications." The director's decision stated:

> Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little or no evidence that other researchers have relied upon the petitioner's findings. Frequent citation by independent researchers, on the other hand, would demonstrate more widespread interest in, and reliance on, the petitioner's work.

The director further stated that the citation evidence submitted by the petitioner did not reflect a "level of interest as to distinguish her from her peers." With regard to the petitioner's presentations at medical conferences, the director determined that the submitted evidence did not show "that the petitioner's presentations have influenced others in her field." The director also found that the witness letters from the petitioner's colleagues and coworkers were not sufficient to demonstrate the petitioner's "impact on the field" beyond "the circle of her personal acquaintances." The director therefore concluded that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States.

The petitioner's appellate brief states:

> The Service did not consider or even mention: the 2009 Travel Award of the [redacted] Award to the petitioner; the petitioner's numerous presentations at prestigious conferences before international scientific audiences; the strong statements of renown [sic] experts in the field of pulmonary medicine that the area is understudied but very important. In addition, USCIS [U.S. Citizenship and Immigration Services] committed factual errors in claiming that all experts supporting the petition personally knew the petitioner even though two of the experts specifically stated that they did not know her personally.

The petitioner's travel awards, research grant, conference presentations, publications, and letters of support from experts in the field will be considered below.

[redacted] and

> [The petitioner] was a key team member in my research group on several projects. In her first project using human airway epithelial cultured cells, [the petitioner] optimized gene delivery into this cell line model. She demonstrated an augmented uptake of plasmids - a DNA material - encapsulated into nanoparticles when they were co-treated with liposomes, a phospholipid-based reagent. . . . [The petitioner's] experiments showed that the proteins encoded by the DNA delivered from our naposomes (the liposome-nanoparticle-DNA complex) could be expressed 24-48 hours after administration, and were functionally active. This important discovery opened a new ground for further investigations. . . . In 2009 [the petitioner] co-authored an abstract which describes this work. The abstract received a high priority score and an ATS [redacted] that allowed

[the petitioner] to present her findings at the prestigious

asserts that the petitioner's abstract "

Award that allowed [the petitioner] to present her findings at the 2009 in San Diego, but there is no evidence showing that once disseminated the petitioner's work has been frequently cited by independent researchers or that her findings have otherwise influenced the field as a whole. In addition does not explain how a travel award limited to medical residents in the training phase of their career is indicative of influence on the field of pulmonary medicine as a whole.

further stated:

> [The petitioner] has significantly contributed in a second project about the role of IL-10 and lovastatin in the inhibition of smooth muscle cell function in *in vitro* and *in vivo* models of airway remodeling and asthma. . . . Our lab was the first to demonstrate the beneficial effect of IL-10 and lovastatin treatment on airway smooth muscle cells, a breakthrough discovery that ultimately could serve and support asthmatic patient care. [The petitioner] performed the genotyping and plethysmography (pulmonary function testing) in our anesthetized mice. These are indeed very meticulous techniques which became precise and flawless in [the petitioner's] hands. . . . By using a variety of comprehensive laboratory techniques like cell fractionation, cytosolic and nuclear extract preparation, protein quantification and analysis by western blotting, [the petitioner] acquired strong data that were the basis for our clinical trial on the potential therapeutic use of lovastatin in severe asthmatics. . . . Indeed, our findings using human airway smooth muscle cells confirmed that lovastatin inhibits expression of contractile proteins and restored IL-10 levels, which may explain a potential decrease of hyper-reactivity and improved lung function in patients with asthma. In the future, treatment with lovastatin alone or with other medications might obviate the need for invasive procedures like bronchial thermoplasty to target the overabundant smooth muscle found in asthmatics. The obvious clinical relevance of [the petitioner's] research studies is reflected in the numerous presentations at professional conferences (2009, 2010, and 2012) and the publications in highly regarded peer-reviewed articles in Medicine.

mentions the petitioner's skill in performing various laboratory techniques, but special or unusual knowledge or training does not inherently meet the national interest threshold. *NYSDOT* at 221. Any claim that the petitioner possesses useful skills, or a "unique background" relates to whether similarly-trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. In addition, comments on the potential future impact of her work with the petitioner, asserting that their findings "could serve and support asthmatic patient care," "may explain a

potential decrease of hyper-reactivity and improved lung function," and "might obviate the need for invasive procedures like bronchial thermoplasty." Speculation about the possible future impact of the petitioner's work is not evidence, and cannot establish eligibility for the third prong of the national interest waiver test. 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). Dr. Camoretti-Mercado fails to provide specific examples of how the petitioner's research findings have already been applied by others in the medical field beyond the University of Chicago or have otherwise affected the field as a whole. Lastly, comments on the petitioner's multiple presentations at ATS conferences and published articles, but the petitioner has not established that the number of independent cites per article for her work is indicative of influence on the field as a whole. For instance, in response to the director's request for evidence, the petitioner submitted citation evidence from Google Scholar showing that her article in garnered only one citation.

In the same manner as , points to the petitioner's presentations at conferences and states that the petitioner "won the and 2010." The petitioner submitted two certificates and online material from the demonstrating her receipt of the two travel awards. Recognition for achievements is an element that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii). Exceptional ability, in turn, is not a self-evident ground for the national interest 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 her field of expertise. Particularly significant awards may serve as evidence of the petitioner's impact and influence on her field, but the petitioner has failed to demonstrate that the two awards she received (which provide financial assistance to facilitate the presentation of research) are indicative of her influence on the field as a whole.

further stated:

> [The petitioner's] experiments demonstrate beautifully how non-invasive treatment concepts (over-expression of the anti-proliferative IL10 gene) are born in the lab and then translate to patient care. In clinical practice, [the petitioner's] discoveries may obviate the need for invasive procedures such as bronchial thermoplasty. [The petitioner's] bench findings are being tested in an ongoing clinical trial (where patients with uncontrolled asthma receive lovastatin, a treatment that increases the IL10 levels in the lung. [The petitioner] has coauthored a manuscript published with Dr.

group in the prestigious medical journal American Journal of Physiology.

comments on the petitioner's IL10 gene experiments under the supervision of Dr. but fails to provide specific examples of how the petitioner's research findings are being implemented beyond the university or have otherwise influenced the field as a whole.

continued:

> Currently [the petitioner] is working as a in the Division of Pulmonary and Critical Care at . She has chosen to pursue a Research Pathway that allows her 18 months of protected research time during training. She joined Dr. 's lab more than 1 year ago and has greatly expanded on her initial project that looks at the effect of alpha 1 antitrypsin on cigarette smoke exposed macrophages in a cell culture system. [The petitioner] is the first author of an abstract presented at the Conference in May 2012. The abstract illustrates the rescuing effect alpha 1 antitrypsin has on alveolar macrophages scavenging functions when they are exposed to cigarette smoke. This work contributes to the already expanding body of literature that alpha 1 antitrypsin has novel effects that extended beyond elastase inhibition. [The petitioner's] research is a valuable effort in reviving an old therapy . . . .

mentions the petitioner's research experience and training at but any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for labor certification. *NYSDOT* at 220-221. Additionally, comments on the petitioner's published and presented work, but there is no documentary evidence showing that her articles and abstracts are frequently cited or have otherwise affected the field as a whole. Although the petitioner's research studies have value, any research must be original and likely to present some benefit if it is to receive funding and attention from the medical or scientific community. In order for a university, publisher or grantor to accept any research for graduation, publication or funding, the research must offer new and useful information to the pool of knowledge. Not every physician scientist who performs original research that adds to the general pool of knowledge in the field inherently serves the national interest to an extent that is sufficient to waive the job offer requirement.

> I came to know [the petitioner] in 2010 when we successfully recruited her to enter our . Over the last several years I had multiple opportunities to interact with [the petitioner] in various circumstances.

> During her fellowship, [the petitioner] worked with an internationally renowned and well-funded emphysema/COPD physician. [The petitioner's] research projects focuses [sic] on the interactions between cigarette smoke, cells undergoing programed cell death in the smoking lung, and the first-line immune cells in the lung-alveolar macrophages. . . . [The petitioner] has designed a cell culture model to study these events in vitro. Furthermore, she has written an IRB [Institutional Review Board] approved protocol that allows her to enroll smokers and patients with COPD in translational studies. . . . Our Pulmonary Department has a special interest in caring, counseling and following closely patients with COPD, smoking related interstitial lung diseases, and lung cancer. [The petitioner] has made an oral presentation at the 2012 American Thoracic Society International conference, a manuscript published in the journal and the successful acquisition of an young investigator award with her newest project: "Functional significance of a novel interaction of Alpha-1 Antitrypsin with circulating microparticles in COPD."

points to the petitioner's design of a cell culture model, her internal protocol for enrolling subjects with COPD, her oral presentation at the 2012 conference, and her article in , but there is no documentary evidence showing that the petitioner's work has impacted the field as a whole. With regard to the petitioner's young investigator award, a substantial amount of scientific research is funded by grants from a variety of public and private sources. The past achievements of the principal investigator are a factor in grant proposals because the funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, the ability to secure funding for a research project does not differentiate the petitioner from other capable medical researchers, or demonstrate that her work has already influenced the field as a whole.

and

> I witnessed [the petitioner] journey from a brilliant medical student to an exceptional pulmonary fellow, and finally to an outstanding and leading Junior Assistant Professor in Pulmonary Medicine at [The petitioner's] clinical and translational research projects accomplished while working at have significantly enhanced the care we deliver to patients with chronic obstructive airway diseases in our community.

* * *

> Firstly, she has designed and wrote an educational booklet for asthmatic patients, "The Asthma guideline for patients," published for internal use only by . . . By using these various educational materials [the petitioner] assured that the asthmatic patients referred to our Institute understand their disease and have good compliance with the medications prescribed before the physicians labeled them with

uncontrolled, severe asthma. Secondly, [the petitioner] has developed a clinical algorithm to diagnose and treat different medical conditions which can masquerade the clinical presentation of patients diagnosed with severe asthma, like vocal cord dysfunction, aspirin intolerance, allergic broncho-pulmonary aspergillosis (ABPA), and Churg-Strauss syndrome. [The petitioner] has presented the results of her work at the most prestigious meeting in Pulmonary Medicine, the in

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[The petitioner] has been a key team member who designed, implemented and performed the metacholine challenge and induced sputum protocols at of Pulmonary Disease, the only medical institution in Romania equipped to bring research methods within daily clinical practice. [The petitioner] has co-authored several abstracts describing our research findings presented at (Munich, 2005) and (Munich, 2006). [The petitioner's] protocols have provided clinicians with more objective, yet non-invasive measurements of airway inflammation and hyper-reactivity. They continue to have daily applicability at bedside to better characterize patients with chronic cough, suspected asthma or COPD diagnosis.

* * *

While still in Romania, [the petitioner] has significantly contributed to the development of a clinical algorithm to screen for latent or active TB [tuberculosis] infection to help reduce the risk of the active disease before the initiation of immune-suppressed treatment. Our results were presented at the

mentions the petitioner's selection as Junior Assistant Professor in Pulmonary Medicine at However, it is not unusual that an employer would seek a well-qualified applicant for a given position. Successfully applying for a physician-in-training opportunity is not intrinsic proof of eligibility for the national interest waiver. In addition, comments that the petitioner wrote an educational booklet for asthmatic patients, and developed the metacholine challenge and induced sputum protocols while at points to the petitioner's conference presentations in Europe and her development of clinical algorithms for diagnosing vocal cord dysfunction, aspirin intolerance, ABPA, Churg-Strauss syndrome, and TB. The petitioner, however, has not submitted evidence showing that her educational booklet, medical protocols, and clinical algorithms were utilized at a number of hospitals or have otherwise influenced the field as a whole. With regard to the petitioner's presentations at international medical conferences, many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, healthcare organizations, employers, and government agencies promote and sponsor these meetings and conferences. Although presentation of the petitioner's work demonstrates that she shared her

original findings with others, there is no documentary evidence showing, for instance, frequent independent citation of her work, or that her findings have otherwise affected the field as a whole.

stated:

> Since 2010 I have worked directly with [the petitioner] in the outpatient Pulmonary Clinic at campus.
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> * * *
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> I am familiar with [the petitioner's] research projects since she has joined lab, a cutting-edge physician-scientist in emphysema and COPD patho-biology. By using complex and technically challenging molecular biology and immunology methods, [the petitioner] investigates the role of cigarette smoke and alpha 1 antitrypsin in a newly described mechanism in COPD pathogenesis called efferocytosis, or macrophages[,] ability to scavenge dying cells. She has designed and set up a macrophages exposed to cigarette smoke cell culture model which is astutely ingenious, and probably as close as one can mimic in a Petri dish what happens in the lungs of patients with COPD. . . . Because of her innovative investigative methods and techniques, I fully supported her application for 2012 I was exceptionally pleased to see the selection committee has identified [the petitioner] as the most worthy junior physician-scientist in this very complex and competitive field. [The petitioner's] grant was one of only a handful awarded in this national grant opportunity. This award gives [the petitioner] the support and recognition that her research in COPD pathogenesis and novel functions of alpha 1 antitrypsin are of major interest in the field of Pulmonary Medicine . . . .

mentions the petitioner's skill in using "complex and technically challenging molecular biology and immunology methods," but special or unusual knowledge or training does not inherently meet the national interest threshold. *NYSDOT* at 221. In addition, comments on the petitioner's receipt of a " for a "junior physician-scientist" who conducts clinical research concerning COPD and Alpha 1 Antitrypsin deficiency with the goal of improving the health of those living with the deficiency. The petitioner's receipt of the preceding research grant demonstrates that she is capable of acquiring funding for her future medical research, but it is not an indication that the work for which she received funding has already resulted in improved treatment protocols or has otherwise influenced the field as a whole. A petitioner cannot establish eligibility based solely on the expectation of future eligibility. *Matter of Katigbak*, 14 I&N Dec. at 49.

Assistant Professor of Medicine, Division of Pulmonary, Allergy, Critical Care, Occupational and Sleep Medicine, stated:

> [The petitioner] created a quality improvement project implemented at and that educates COPD patients about the nature of their

condition, how to recognize warning signs and how to correctly self-administer inhaled medicines. [The petitioner] will teach interactive sessions to a group of COPD patients about inhaled medicine technique, and she will also teach important COPD facts to the general public. She will follow them prospectively and assess the effect of her intervention on patients' quality of life, knowledge about COPD facts, and compliance with inhaled medication. . . . [The petitioner's] project is the pilot study to confirm that COPD patients' education ("COPD School") is an easy to implement and low-cost intervention which can be extended to other medical facilities in our community.

* * *

[The petitioner] has previously shown in a cell culture model she developed by herself that cigarette smoke inhibits the ability of macrophages to scavenge dying cells and that alpha 1 antitrypsin, an anti-inflammatory protein, rescues the macrophages[']s scavenging capacity. This discovery represents a novel mechanism that can explain the damages we see in the lung and airways of COPD patients.

* * *

In her funded research project, [the petitioner] will study whether there is a potential beneficial effect of alpha 1 antitrypsin on the scavenging function of blood macrophages and their ability to clear the excess microparticles released by the COPD lung. . . . She presented results of her work at the in May 2012, the most prestigious meeting in Pulmonary Medicine, where each year only the most innovative and influential research and clinical projects are selected for presentation.... She also co-authored a manuscript published in which concluded another translational project she has contributed to about the interaction between cigarette smoke, alpha-1 antitrypsin, and caspases.

comments on the petitioner's quality improvement project at and University Hospital in that educates COPD patients, but there is no documentary evidence showing that the intervention methods from the petitioner's pilot project have affected practices at a number of other medical centers or have otherwise influenced the field as a whole. In addition, asserts that the petitioner's findings concerning macrophages' ability to scavenge dying cells and alpha 1 antitrypsin's ability to rescue macrophages' scavenging capacity "represents a novel mechanism that can explain the damages we see in the lung and airways of COPD patients." however, fails to provide specific examples of how the petitioner's findings are being applied by others throughout the field or have otherwise influenced the field as a whole. Furthermore, mentions that the petitioner presented the results of her work at the in May 2012 and co-authored a manuscript published in but there is no documentary evidence showing that the petitioner's published and presented work is frequently cited by independent researchers or has otherwise affected the field as a whole.

In her April 2, 2013 letter, and Biochemistry and Molecular Biology, Division of Pulmonary, Allergy, Critical Care and Occupational Medicine, stated:

> An early recognition of the key steps [the petitioner] took towards a successful and nationally recognized physician-scientist career is her selection in 2013 as a member of the internationally renowned to support physician-scientists and young investigators in Respiratory Medicine. . . . In this capacity she will serve the by enhancing career development opportunities of other young trainees and junior faculty members like herself through example and by bringing original ideas to improve their training.
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> Secondly, [the petitioner] has tremendously contributed in creating, drafting, and writing biomedical research literature. She was the junior author of the online chapter on Pleurodynia . . . . This on-line reference is an authoritative and accessible point-of-care medical reference for physicians, other health care professionals, and patients. In December 2012, we finalized the "Emphysema" chapter for the on-line that will be published on-line in 2014. . . . [The petitioner] was again the only junior author of this chapter. I think these two examples define the extraordinary ability of [the petitioner] to be actively involved in clinical and translational teaching because this work is largely used by medical students, residents, fellows, and research trainees at national and international levels.
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> Lastly, but maybe the most important supporting evidence that [the petitioner's] research expertise, experimental models, and results have broad, innovative, and national application both in the clinical and research aspect of Pulmonary Medicine, is the 2012 grant. . . . Very encouraging results of this on-going project have been selected for presentation at a prestigious, exceptionally selective meeting, the 2013 to be held in Chicago, Illinois in April 2013.

comments on the petitioner's "selection in 2013 as a member of the working group." Although membership in a professional association is an element that can contribute to a finding of exceptional ability, exceptional ability is not sufficient to establish eligibility for the national interest waiver. Again, 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 labor certification). Regardless, the petitioner's selection for membership on the in 2013, the (posted online on November 20, 2013), the 2014 online publication date of the

Mechanisms textbook, and the petitioner's presentation at the meeting in April 2013 postdate the filing of the petition. Again, 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. 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. Accordingly, the preceding evidence cannot be considered as documentation to establish the petitioner's eligibility for this petition. Regardless, there is no supporting documentation demonstrating that the preceding evidence is indicative of the petitioner's influence on the field as a whole.

With regard to the petitioner's 2012 the objective of the grant is to support a physician who conducts clinical research relating to COPD and alpha 1 antitrypsin deficiency that will lead to improving the health of those afflicted with the condition. fails to provide specific examples of how the petitioner's results from the "on-going project" have already impacted the field as whole. Again, a petitioner cannot establish eligibility based solely on the expectation of future eligibility. *Matter of Katigbak*, 14 I&N Dec. at 49.

, Associate Professor of Medicine, Division of Pulmonary, Allergy, Critical Care and Sleep Medicine, stated:

> I want to call attention to the significance of [the petitioner] on-going research project on the interaction between AAT [alpha 1 antitrypsin] and circulating endothelial microparticles. In 2012 the rewarded [the petitioner's] project with a 1-year grant support because it aligns with the strategic research agenda that a wide range of national and international AAT experts identified as major areas in scientific knowledge needed to be further addressed.
>
> [The petitioner's] project tackles important gaps in our knowledge about early markers of cigarette smoke-induced lung and systemic disease and about novel anti-inflammatory functions of alpha-1 antitrypsin. [The petitioner] will approach this hypothesis in a translational fashion, by analyzing plasma samples from active-smoking individuals with and without COPD and studying the interaction between AAT and circulating microparticles, a promising novel biomarker of systemic dysfunction in COPD. There are only several other groups of investigators investigating circulating microparticles derived from endothelial cells in cigarette smoke-induced lung disease, however it is for the first time that the interaction between AAT and circulating microparticles is being studied, in [the petitioner's] project. The promising results of [the petitioner's] hypothesis are not limited to the patients included in her study. Her results advance the scarce current medical knowledge in the area of biomarkers of systemic endothelial dysfunction in cigarette smoke-induced lung disease and the protective effect of AAT in this deleterious process. [The petitioner's] findings are

> already influencing the entire Respiratory Medicine professional community as she presents her on-going work in several international scientific meetings such as 2013 Conference, 2013
>
> [The petitioner's] translational research project was awarded not only because of the intriguing and innovative research hypothesis but also because it takes place in a nurturing and highly stimulating academic environment. Firstly, [the petitioner] is an outstanding young physician-scientist. Every past step in her professional carrier [sic] has been a solid building block that supports her future career as an academic clinician and researcher in Respiratory Medicine. I am well aware of the nationwide shortage of young MD-trained physicians interested in pursuing a combined clinical and research career, the base for the future of medicine. Secondly, [the petitioner] is already benefiting from the support of Indiana University, ensuring she gets protected time dedicated exclusively in research endeavors. This type of support is crucial in the early stages of a physician-scientist's career. [The petitioner] also has a very motivating and supportive mentor. is a brilliant researcher and a true role model. She has been mentoring other successful young physician-scientists and she has already invested great educational time and provided constructive mentoring for [the petitioner's] career.

comments on the petitioner's on-going research project regarding the interaction between AAT and circulating endothelial microparticles, and the importance of the petitioner's research, but there is no documentary evidence showing that the petitioner's findings have already been utilized in the field to improve COPD treatment, or that her research has otherwise affected the field as a whole. As previously discussed, general arguments or information regarding the importance of a given field of endeavor, or the urgency of advancing medical knowledge in a particular field, cannot by themselves establish that an individual benefits the national interest by virtue of engaging in the field. *NYSDOT* at 217. Such assertions and information address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. In addition, while asserts that the petitioner's "findings are already influencing the entire Respiratory Medicine professional community as she presents her on-going work in several international scientific meetings," there is no documentary evidence showing that her presented work has been frequently cited by independent researchers or has otherwise influenced the field of respiratory medicine as a whole. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

also comments on the training and mentoring support received by the petitioner at as a "young physician-scientist" in "the early stages" of her medical career. With regard to the petitioner's advanced medical training as clinician and researcher, any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for labor certification. *NYSDOT* at 220-221. Additionally, points to the "shortage of young MD-trained physicians interested in pursuing a combined clinical and research career." The unavailability of qualified U.S. workers or the amelioration of local labor shortages, however, are not considerations in national interest waiver determinations because the labor certification process is already in place to address such shortages. *NYSDOT* at 218. Again, the issue

of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *Id.* at 221. With regard to physicians in underserved areas, Section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), specifically amended the Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians in medically underserved areas or Veterans Administration facilities. This exception is limited to physicians who follow specific requirements set forth in the regulation at 8 C.F.R. § 204.12 and will be discussed later in this decision.

Assistant Professor, Pulmonary and Critical Care Medicine, , stated:

> Under exquisite mentorship at the [the petitioner] has developed and completed research projects that have proven to be novel and exciting. As a result, [the petitioner] has attended and presented her projects at several important national and international conferences: She has successfully met the two major academic productivity benchmarks: published papers and grant writing. A large survey of fellowship trainees and junior faculty in adult and pediatric pulmonary medicine published in 2006 showed that junior faculty members published, on average, 1.5 articles/year; about half of those were research papers. In the same survey the physician-scientists at the trainee level published from zero to 1 article/year. In this regards [the petitioner] has published medical and research articles yearly since 2009 and has submitted a successful grant application in 2012. I think these are quite superb accomplishments for a physician-scientist in training.
>
> Now it is the time to support [the petitioner] transition from trainee to a junior faculty position. . . . Physicians and physician-scientists on temporary visa do not qualify for governmental or NIH-sponsored programs developed to overcome some of the aforementioned barriers: loan repayment, and assisting institutional salary support. For many hiring institution [sic], including supporting the research career of young faculty members can be financially challenging. . . . This makes very difficult for the hiring hospital to file for labor certification for foreign physician-scientists, because the work and salary are spread among several entities.

comments on the petitioner's publications, presentations, and research grant, but he fails to provide specific examples of how the petitioner's research findings have impacted the field as a whole. In addition, mentions the difficulty associated with the labor certification process. The inapplicability or unavailability of a labor certification, however, cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that she will serve the national interest to a substantially greater degree than do others in the same field. *NYSDOT* at 218, n.5.

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 and [redacted] 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 physician scientist who has influenced the field as a whole.

The petitioner's appellate brief states:

> The Service erred in ignoring the fact that [the petitioner's] petition has received strong support by highly regarded experts in the field, including scientists who do not know her personally, a fact, that the USCIS got wrong. Instead, the Service concentrates on the number of citations in its decision to deny the petition. . . . Moreover, the AAO has sustained appeals with few citations where other evidence is probative and reliable. For example, in *In Re*, 2002 WL 32075913 (INS), 4 the AAO sustained the appeal because of a letter "involving a conference in Italy, in which the organizers comment on the petitioner's "well known expertise in the field of liquid crystal physics." The AAO noted that "this evidence shows that the petitioner's work has attracted attention around the world, influencing researchers well outside of his own circle of collaborators and superiors." *Id.*

The petitioner's appellate brief points to a non-precedent decision in which the AAO sustained an appeal for a physics researcher. The petitioner has not established that the facts of the instant petition are similar to those in the unpublished decision. Each petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). While AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished AAO decisions are not similarly binding. *See* 8 C.F.R. § 103.3(c). Regardless, there is no benchmark number of citations that is decisive in all fields irrespective of the other

evidence of record. Thus, the fact that the AAO has sustained an appeal for an alien seeking the same benefit but who had few citations is not determinative.

Citation by others is not the only means by which to show the petitioner's impact on her field. Independent reference letters can play a significant role in this respect. The petitioner's appellate brief points to the letters from as having been prepared by individuals who did not know the petitioner personally. however, states that he became aware of the petitioner through his "discussions with ," his "previous mentee," who is currently the petitioner's supervisor at previously authored a journal article with The letters from Dr. discuss the importance of the petitioner's work and its potential value. The references' claims support the finding that the petitioner seeks employment in an area of substantial intrinsic merit and that the proposed benefits of her work will be national in scope. However, as it relates to the third prong of *NYSDOT*, the preceding letters fail to establish the depth or extent of her influence on the field as whole. Descriptions of the petitioner's novel findings and speculation about their potential future impact in the medical field are not sufficient to establish that she will serve the national interest to a substantially greater degree than other similarly qualified workers.

III. SECTION 203(b)(2)(B)(ii) OF THE ACT

The appellate brief states: "[The petitioner] has provided evidence that during the last 6 years she has worked full time as a physician in two medically underserved areas. This provides an alternative ground to the Service to approve [the petitioner's] request for a national interest waiver." The November 9, 2012 cover letter accompanying the petition and the April 16, 2013 letter responding to the director's request for evidence, however, did not request a national interest waiver pursuant to section 203(b)(2)(B)(ii) of the Act.[1] In the November 9, 2012 letter, the petitioner asserted that she "qualifies for a national interest waiver of the job offer/labor certification requirement under the criteria established in *Matter of NYSDOT*." Furthermore, the April 16, 2013 letter specifically stated that the petitioner "is seeking a National Interest Waiver as a physician-*scientist* pursuant to INA [Immigration and Nationality Act] 203(b)(2)(B)(i)." (Emphasis in original.)

Based on the correspondence submitted with the petition, the director properly adjudicated the petition pursuant to section 203(b)(2)(B)(i) of the Act. The Ninth Circuit has determined that once USCIS concludes that an alien is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the alien is eligible for an alternate classification. *Cf. Brazil Quality Stones, Inc., v. Chertoff*, 286 Fed. Appx. 963 (9th Cir. July 10, 2008). The record reflects that the petitioner filed a separate Form I-140 petition, LIN1390899428, on July 31, 2013, specifically requesting a national interest waiver pursuant to section 203(b)(2)(B)(ii) of the Act. The subsequent Form I-140 petition is currently pending adjudication by the Nebraska Service Center.

[1] This waiver is limited to certain physicians who follow specific requirements set forth in the regulation at 8 C.F.R. § 204.12.

Furthermore, the regulation at 8 C.F.R. § 204.12(c)(3) specifically requires "[a] letter (issued and dated within 6 months prior to the date on which the petition is filed) from a Federal agency or from the department of public health (or equivalent) of a State or territory of the United States or the District of Columbia, attesting that the alien physician's work is or will be in the public interest." In this matter, although the petitioner's appellate submission included a July 25, 2013 letter from the nd a July 22, 2013 letter from the Health stating that the petitioner's work is in the public interest, the departments did not issue and date their letters within six months of the instant petition's November 16, 2012 filing date. As the evidence submitted on appeal does not satisfy the regulation at 8 C.F.R. § 204.12(c)(3), the petitioner has not established her eligibility pursuant to section 203(b)(2)(B)(ii) of the Act in this proceeding.

IV. CONCLUSION

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 shown that her past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. While the petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that her influence be national in scope. *NYSDOT* 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.