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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: AUG 0 1 2014 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to us at the Administrative Appeals Office on appeal. We summarily dismissed the appeal, but subsequently moved to reopen the proceeding. We will dismiss the appeal on its merits.

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 mining engineer at , which operates a copper mine in Arizona. 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.

The petitioner's latest submission consists of a legal brief, third-party letters, and information regarding the petitioner's receipt of a scholarship award in 2009. The brief is a slight revision of a brief submitted previously.

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) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute 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, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 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 Dep't 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 the alien 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 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.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included 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 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 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 petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on December 3, 2012. In a personal statement, the petitioner stated:

> I spent two-years of my masters' program as a research assistant on a multimillion dollar, multidisciplinary research project. The project aimed at the effect of long term stability of rock piles that was aimed at predicting the potential for mine rock piles to

> fail using engineering, microbiology, mineralogy, geological and geophysical data and methods. . . . I was among the geotechnical engineers responsible for calculating the engineering geotechnical index parameters below which failure may occur.
>
> The tremendous amount of work completed and published on this project is in the interest of the nation because it will help the mining industry nationwide and worldwide to predict and prevent recurrence of catastrophic rock pile failures. . . . Also this research has revealed more data about how the design and construction of mine rock piles could be improved to reduce the risk of rock pile failure and pollutant discharge into the environment.

Various background materials address the nature of the petitioner's work. There is no dispute regarding the intrinsic merit of the petitioner's occupation, or the national scope of the benefit from that occupation. At issue is the third prong of the *NYSDOT* national interest test, concerning the question of whether the benefit from the petitioner's continued employment outweighs the national interest inherent in the labor certification process.

The petitioner submitted photocopied pages from his master's thesis from the [redacted] subsequently published in book form by [redacted], a print-to-order publishing house specializing in "academic research papers, Bachelor's Theses, Master's Theses, Dissertations or Scientific Monographs." The petitioner also submitted a letter confirming that he presented a paper "at the [redacted]" The petitioner submitted no evidence to establish the impact of these works on the field as a whole.

The petitioner submitted nine third-party letters in support of the petition. Four of the writers are either faculty or graduates of [redacted] Professor [redacted] described the project underlying the petitioner's master's thesis:

> [The petitioner] worked alongside renowned geologists, scientists, geotechnical and mining engineers, and geochemists on a large and extensive research project to characterize six (6) mine waste rock piles created by the [redacted] mine between 1969 and 1982. . . . The ultimate goal of the project was [to] design a modality to ensure the stability of the mine waste rock piles and to curb acid mine drainage from mine waste rock piles.

Prof. [redacted] stated that the petitioner's "contributions to this project were very valuable," but did not specify what those contributions were or describe the outcome of the project.

Professor [redacted] stated that the petitioner's "academic research and his professional work have contributed, and will continue to contribute, to the understanding of the physical parameters of rock support and rock failure in mining operations," but, like Prof. [redacted] he provided no details about those contributions and no explanation as to how those contributions stand out in the field.

Professor of the provided further information about the petitioner's graduate research:

> [The petitioner] has conducted substantial research at the mine in New Mexico. This research focused on the geomechanical stability of massive rock piles which surround most surface metal mines in the U.S. Stability of these large rock piles is of concern for safety and environmental reasons. The rock piles at are among the largest in the world. His work focused on the problem of how slow shear deformation of a rock pile can affect its shear strength properties.

Prof. stated that the petitioner's research led to a presentation at "a highly competitive meeting," and "an open file report for the . . . This is an archival report which will be used by geotechnical researchers and mining companies around the U.S."

is now a mine operation manager for According to his *curriculum vitae*, Mr. like the petitioner, earned his master's degree at conducting "research on shear strength and slope stability of rock piles" at the Mr. praised the petitioner's "immense contribution to help curb the trend of negative impacts of mining waste product on the environment. . . . The originality of his work and its substantial importance to the minerals industry is outstanding." He did not elaborate, stating instead that the petitioner is well-qualified for productive employment in the mining industry.

Dr. an environmental health and safety manager for (a fertilizer manufacturer), earned his doctorate in geochemistry at in 2008, when the petitioner began his graduate studies at the same institution. Dr. stated that the petitioner's "research on effect of deformation rate on shear strength of rock pile materials provided an in-depth understanding on long term stability of rock piles on dry and wet conditions to people inside and outside the mining industry. . . . [The petitioner's] work provided understanding of mine stockpiles behavior and how safe it is to work around them."

Two of the writers are officials. chief mine engineer at s stated:

> [The petitioner] has demonstrated superior skills in the field of mine stockpile design and planning. Most of the copper produced from the United States comes from low grade, open pit operations where milling is not feasible due to both mineralogy and economic considerations. As a result, leach stockpiles have become the only feasible processing method for most copper operations. However, the risk associate[d] with leach stockpiles could be very high if they are not designed and planned well. The two main concerns of leach stockpiles are slope failure and uncontrolled spillage of acid solution.

> [The petitioner's] knowledge [of] slope stability of stockpiles is very important in controlling both of these hazards. His paper presented at the , IL in June of this year [2012], is an eye-opener for engineers who design stockpiles and those engaged in the remediation of old stockpiles. [The petitioner] provided a new way of using existing test methods to predict the long term stability of rock piles at a low cost. This method will be very attractive to mining companies, and geotechnical and environmental consultants alike because it is cheap and provides results quickly.

The petitioner documented his presentation of the paper, but submitted no evidence to show that it attracted significant attention in the mining community, or that others have adopted his methods.

Mr. also asserted that "the mining industry is . . . lacking the skilled manpower it needs to keep up with the demand [for] various metals and minerals around the world."

The labor certification process exists to address worker shortages. *See NYSDOT*, 22 I&N Dec. at 218. Given the asserted shortage of qualified engineers with the requisite training, and the evident existence of an offer of permanent employment, the situation appears to correspond closely to the very situation that the labor certification process was designed to address. *Id.* at 222.

, a mine engineer in offered general observations about the economic importance of the mining industry, and asserted that the petitioner is a "highly talented engineer" who "is committed to integrating social, environmental, and economic principles in the mining industry from exploration through development, operation and reclamation."

quality assurance coordinator at stated: "[the petitioner] has become an apt user of our software that is widely used in the mining industry. The training courses and field work used with software add an important positive note to [the petitioner's] personal experience."

Dr. senior project engineer at stated that the petitioner's "academic credentials and professional experience are unique and in demand here in the United States." Dr. did not discuss the petitioner's work in any detail. Also, Dr. is an electrical engineer who claims no training, experience, or expertise in the petitioner's field of mining engineering.

The director issued a request for evidence on March 14, 2013. The director instructed the petitioner to submit additional documentation of his impact and influence on his field, such as evidence of citation of his research work. In response, the petitioner submitted a royalty statement from showing the sale of one copy of his book between January 2011 and April 2013. A printout from the *Google Scholar* search engine shows one citation of the book during that same period. The printout does not identify the citing author(s).

The petitioner also submitted letters from six writers, one of whom appears to be the citing author mentioned above. a research engineer at as evidence of how his work has influenced others in the field. Mr. stated:

> I first became familiar with [the petitioner's] research work when researching on articles on mine slope stability and the behavior of soils/rocks under different conditions. . . . [The petitioner's] paper not only involves prediction and prevention of future mine rock pile and slope failure, but also demonstrates examples of differen[t] soil behaviors under different environmental conditions which was a key component in my research work. Due to the high quality of this research work, the article served as a good reference for the thesis of my Master of Science degree in Mining Engineering.

A single citation of a research work does not establish influence over the field as a whole, or demonstrate that the mining industry has widely applied the petitioner's method.

Four of the remaining five letters include variations on the sentence: "It is my professional opinion that [the petitioner] has had a degree of influence on his field that distinguishes him from other professionals with comparable academic/professional credentials." One of these four letters is from senior engineer at who stated:

> [The petitioner] has not only come up with difficult conceptual problems in mining engineering research, but he also designed and built a wooden slope monitoring device to measure tension cracks when he was in charge of slope engineering here in mine. His contribution has help[ed] prevent a lot slope failure in a timely manner. [The petitioner] has a top [*sic*] of specific prior achievement which justifies projections of future benefit to the U.S. national interest. Identifying and monitoring safety hazards are very crucial in the field of mining and civil engineering.

The remaining writers all provided earlier letters with the initial submission. second letter includes a chronology of significant slope failure incidents that matches, almost word for word, the chronology in the petitioner's own initial statement. Mr. also stated:

> [The petitioner's] knowledge on Mine slope stability is very crucial to the national interest. [The petitioner] played a successful role for the success of the five-year project which . . . [took place] on mine rock piles at mine in NM. He analyzed the geotechnical properties of the rock pile material. In his research paper, he conclude that due to everyday mining activities and everyday movement of heavy and light vehicles around the mine the stockpiles would actually be compacted and will take a longer time for the stockpile to fail, but continual monitoring is necessary. He also concluded that environmental conditions such [as] rainfall is a primary contributor [*sic*] of slope failure and therefore dams

must be built around the stockpile to prevent the creep movement of the stockpile to the environment.

Mr. indicated that the petitioner's findings could also apply to "highway slopes," affecting "highway structures and . . . the traveling public," but the record does not include any evidence that any highway authority has adopted the petitioner's methods.

stated that the petitioner's "research into the relationship between deformation rate and the shear strength of rock piles provides a more affordable method of assessing the stability of rock piles. This is [a] tool that the mining industry can use to provide answers to slope stability questions on existing and future planned stockpiles at less cost in [a] more timely fashion." Although Mr. asserted that "the mining industry can use" the petitioner's research, the petitioner has not provided evidence that the industry has begun to do so.

Professor stated that the petitioner's "research focused on how the rate of deformation of a rock mass, particularly slow deformation, impacts the overall stability of the rock mass as evidenced by the friction angle and cohesion variables. . . . [The petitioner's] work influences the way engineers look at rock mass stability."

s second letter is mostly identical to his first, apart from some added passages such as: "It is . . . my professional opinion that [the petitioner] has a record of specific prior achievement which justifies projections of future benefit to the US national interest" and "He is truly an exceptional mining engineer, who has made real and unprecedented advancements in the field."

The director denied the petition on August 8, 2013. The director acknowledged the letters, but stated that "they do not indicate that the beneficiary's contributions have enjoyed widespread implementation in the field."

The petitioner's appellate brief consists primarily of quotations from previously submitted letters. The brief asserts that the petitioner relied heavily on letters because he "is a working professional and not a professor at a university, [and therefore] the type of evidence that can be submitted . . . is different than that of a typical researcher."

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 experts in the field are not without weight and have received consideration 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, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Many of the writers stated that the petitioner's work changes the way the mining industry measures shear deformation, but the letters often lacked details, and the petitioner submitted no independent evidence to show that the industry has, in fact, implemented his work in the manner claimed. Documentation of this implementation need not take the form of citation of published articles, but the petitioner has submitted no alternative evidence. Furthermore, witnesses have asserted that the petitioner's published and presented research contained important contributions to the field and attracted significant industry interest, but the documentary evidence does not reflect such attention. The petitioner documented one citation of his published work, and the sale of one copy of his book. These figures do not establish significant industry interest or otherwise corroborate the letters. In the absence of corroboration, the writers' letters express confidence in the potential impact of the petitioner's work, without establishing that the potential has been realized.

Following the reopening of the appeal, the petitioner has submitted two further letters and one other exhibit. A printout of an electronic mail message from April 2009 shows that the petitioner, a graduate student at the time, received a scholarship from the . The petitioner has not established the significance of the award. The message, addressed to five recipients, begins: "Congratulations. You have each been awarded an scholarship," thus indicating multiple recipients within the one chapter of the organization.

The two new letters bear the signatures of engineers who claim no direct knowledge of the petitioner. vice president of , "a consulting firm specializing in the stability of slopes of large open pit mines and the stability of underground mines," stated:

> I was asked to review a technical paper and resume of [the petitioner] to provide an opinion regarding his professional credentials. It should be stated that I have not met [the petitioner] and that this letter is based on my review of his curriculum vitae and his published professional paper.

The signer of the second new letter, Albert Adu-Acheampong, is currently a consulting engineer at Previously, he conducted research for the same gold mines in where the petitioner would later work. Mr. states that he based his letter on his "review of [the petitioner's] published professional paper . . . [from] 2012." Both letters, however, contain nearly identical passages. The similarities suggest that the petitioner is the source of the shared language. *Cf. Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007)

(concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). As a result, the similarities undermine the claim that Mr relied only on the beneficiary's *curriculum vitae* and his paper, and that Mr. based his letter on the paper alone. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Both new letters claim wider use of the petitioner's work. Mr. letter states:

> [I]n order to avoid [slope failures], mining companies are benefiting from [the petitioner's] research concerning the shear strength of geologic materials and the impact of strain rate on the strength of the materials. Mining company professionals and their consultants are using the results provided by [the petitioner] in their designs of these large excavations and spoil piles.

Mr. does not identify any mining companies or consulting firms that use the petitioner's results. Therefore, Mr. s letter, like those that preceded it, makes a general claim of wider use of the petitioner's work but does not support that claim. *See Matter of Soffici*, 22 I&N Dec. at 165.

Mr. states:

> As an underground mine consulting engineer, I have used this concept of strain rate effect in designing a safe working environment for mine workers. To design and safely operate large earthworks, a lot of mining companies use [the petitioner's] research work as a guideline to prevent future fatalities. Most highway construction companies use the understanding of landslide or creep effect (strain rate) on highway slopes to design embankment when necessary.

Neither writer explains how they know the petitioner's work to be in widespread use, if their comments were purportedly based solely on the petitioner's paper and *curriculum vitae*.

In wording that closely resembles the wording of Mr. letter, Mr. states that the petitioner's "paper provides a greater insight into the shear strength of spoil pile materials that are directly applicable to geotechnical engineering professionals" and the companies that employ them. The record does not show any published citations of the petitioner's research work (the only acknowledged citation appearing in a graduate thesis), and the petitioner has not submitted other evidence such as trade publications showing that others have disseminated the petitioner's methods or advocated for their adoption.

The submitted evidence does not corroborate the assertion that the petitioner's work has influenced the field as a whole. The assertion that the petitioner's work could eventually have significant impact does not establish eligibility as of the petition's filing date. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request.

8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. 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"). The petitioner is a member of the professions holding an advanced degree, but he has not established that he qualifies for a national interest waiver of the job offer requirement inherent in the immigrant classification he seeks.

We will dismiss the appeal for the above stated reasons. 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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.