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: DEC 05 2014 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. We will dismiss the appeal.

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 physician. At the time she filed the petition, the petitioner was a fellow in pulmonary medicine at affiliated with Her most recent documented employer is the also affiliated with The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a short statement, describing previously submitted evidence.

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 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 September 12, 2013. An accompanying introductory statement indicated that the benefit from the petitioner's work is national in scope because of her research, teaching, and peer review functions. The petitioner asserted that her teaching duties have national scope because they create "a ripple effect," propagating medical techniques throughout the field. The petitioner did not claim to have created

the techniques that she has taught, and she did not show that the number of students or residents taught by one fellow is significant at a national level.

The introductory statement addressed the labor certification issue:

> Please note that [the petitioner] has extensive responsibilities as both a clinician and as a medical researcher. However, her contractual services encompass clinical work only. This is customary in the profession. Virtually all academic researchers who are not yet permanent residents are not reimbursed contractually for any research work that they may perform. Furthermore, since the Department of Labor does not allow for a combination of occupations when filing a labor certification, such a combination is not possible. A very significant percentage of the patients that [the petitioner] treats receive Medicare Medicaid [*sic*]. Her outstanding diagnostic abilities allow her to diagnose these patients at earlier stages of their illness then [*sic*] the large majority of her colleagues would be able to. This saves the federal government a great amount of money because the need for later much more expensive and often invasive procedures is avoided. . . .
>
> [The petitioner] is very well-known for her diagnostic ability. She is also known for her ability to deal with tremendous efficiency and precision in emergency situations where there is literally no margin for error and not a minute to waste.

The petitioner submitted no evidence to support the above claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

There is no blanket waiver for physicians who treat patients on Medicaid and/or Medicare, and the petitioner has submitted no evidence to show that her work has resulted in nationally significant savings in Medicaid or Medicare costs. The assertion that other doctors would make poorer or later diagnoses, resulting in greater costs, amounts to unsupported speculation.

Regarding the claim that "the Department of Labor does not allow for a combination of occupations when filing a labor certification," the Department of Labor regulation at 20 C.F.R. § 656.17(h)(3) states:

> If the job opportunity involves a combination of occupations, the employer must document that it has normally employed persons for that combination of occupations, and/or workers customarily perform the combination of occupations in the area of intended employment, and/or the combination job opportunity is based on a business necessity. Combination occupations can be documented by position descriptions and relevant payroll records, and/or letters from other employers stating their workers normally perform the combination of occupations in the area of intended

> employment, and/or documentation that the combination occupation arises from a business necessity.

The quoted regulation shows that "a combination of occupations" is acceptable under certain specified conditions. Furthermore, the record indicates that a combination of clinical, teaching and research duties is customary for medical school faculty members. The petitioner has not shown that the Department of Labor will not approve labor certification applications for medical school faculty positions.

Furthermore, the introductory statement did not indicate that the petitioner's research and teaching functions would continue after she completed her university-affiliated three-year fellowship training, or that her peer review activity was part of her compensated employment. According to the petitioner's *curriculum vitae*, she worked for [redacted] from July 2011 to June 2012 after completing her internal medicine residency and before she began her fellowship. The petitioner's description of her duties there did not include research, teaching, or peer review. According to the petitioner, she performed those functions only in the context of temporary training. On Part 6, line 3 of Form I-140, the petitioner indicated that her duties as a physician would be to "diagnose and treat patients suffering from illness." This information indicates that the petitioner's employment outside of training has been, and will continue to be, clinical practice of medicine rather than teaching or research.

The petitioner's introductory statement indicated that the record includes "letters of support from independent experts nationwide . . . both from institutions at which [the petitioner] has worked and institutions at which she has not worked." Three of the four submitted letters do not include *curricula vitae* that might indicate whether or not the individuals had previously worked or studied with the petitioner.

Dr. [redacted] instructor at [redacted] called the petitioner "a physician of tremendous ability in pulmonology and critical care medicine," and "also a well-known research-scientist," but Dr. [redacted] letter contains no details about the petitioner's work or its significance.

Dr. [redacted] associate professor at [redacted] claimed that the petitioner "is one of the very few who has mastered sub-specialties in both pulmonary and critical care medicine," but the record contains no evidence to show that this pairing of subspecialties is rare rather than routine. Dr. [redacted] called the petitioner "an accomplished researcher" but did not discuss the petitioner's research work. Dr. [redacted] stated that the petitioner "excels in the management of idiopathic pulmonary fibrosis" but did not elaborate. Dr. [redacted] did not claim to specialize in pulmonary or critical care medicine; her stated specialties are "Heart Failure, Mechanical Circulatory Support and Cardiac Transplantation."

The other two letters are from [redacted] faculty members. Dr. [redacted] asserted that the petitioner "is unique in that she is highly respected as a physician and research-scientist," and that "[h]er superior clinical expertise and high-profile research background make her an invaluable asset

to our country." Dr identified one of the petitioner's published articles but did not establish its significance or demonstrate its claimed high profile. Dr. *curriculum vitae* identifies him as "Program Director, Pulmonary/Critical Care fellowship program, ' The existence of a fellowship program that combines pulmonary and critical care medicine appears to contradict Dr. claim that the combination of subspecialties is rare.

Dr. title, as Chief of Pulmonary/Critical Care Medicine at , is a further indication that association between the two specialties is routine. Dr. claimed that the petitioner "is a nationally recognized physician," but cited no evidence of this claimed recognition. Instead, he listed medical procedures that the petitioner is qualified to perform, but did not show that these skills are unusual among pulmonary/critical care physicians.

The petitioner submitted documentation of her research work, but no evidence to establish its significance or impact. Other materials concerned an asserted shortage of pulmonary/critical care physicians. Such a shortage is not grounds for the national interest waiver under *NYSDOT*, because the labor certification process takes the unavailability of United States workers into account. *See id.* at 218. Section 203(b)(2)(B)(ii) of the Act contains separate national interest waiver provisions for physicians in designated shortage areas, but to qualify for the waiver under those provisions, the petitioner must meet several conditions described in the regulations at 8 C.F.R. § 204.12. The petitioner has not addressed, or claimed to have met, those provisions. Therefore, the assertion of a shortage in her specialty is without effect in this proceeding.

The director issued a request for evidence (RFE) on November 18, 2013. The director quoted from the submitted letters, but found that the petitioner had not submitted evidence to support the claim that her "work elevates [her] above the majority of [her] colleagues in the field." In response, the petitioner submitted a statement listing several past achievements, including conference presentations, published abstracts, and peer review work. The statement also listed medical procedures that she is qualified to perform, with the claim that few physicians possess such expertise. The submitted evidence established the existence of her published and presented work, but not its impact on the field.

Regarding the petitioner's peer review work, the petitioner showed that peer review is part of an essential quality control process for scholarly publications, but she did not show that her peer review work distinguishes her from others who have also conducted peer review, or that the ability to perform peer review is a privilege reserved for an accomplished few rather than a relatively routine process for peer-reviewed scholarly work.

The petitioner submitted new letters from past and present employers. Dr. , professor at stated that the petitioner's "clinical research work . . . as well as her Case Reports are very significant." Dr. did not elaborate on this point.

Dr. chief of the Medical Intensive Care Unit (ICU) at praised the petitioner's "highly valuable skills in bronchoscopy and ventilator management." Dr. discussed the petitioner's research work, but did not show that it has had any impact on the field. Rather, he predicted future impact. He stated that he collaborated with the petitioner on an article on the "management of severe Babesiosis infection" which "is in review at [the] Journal of When published it will enlighten on the treatment challenges of this uncommon but lethal disease." He described a potential future project "for a study, which aims at improving the early diagnosis of sepsis and reduction of unnecessary antibiotic usage," but he did not indicate that the study had begun. Rather, he stated: "we are working to get 'Institution[al] Review Board' approval for [the] study."

Dr. director of the Medical ICU and Stroke Center at stated that he is the petitioner's "mentor working on . . . a large study that examines the characteristics of pulmonary function tests (PFT's) among minority New Yorkers with Obstructive Lung Disease." Like Dr. Dr. spoke in terms of unrealized future contributions, stating: "I anticipate that she would be able to present several abstracts at various national meetings and complete a project that would significantly add to our understanding of obstructive lung diseases among Hispanics and African-Americans."

Under the heading "evidence of implementation of research work and appreciation of work by colleagues and students," the petitioner submitted copies of letters and electronic mail messages from individuals who had worked directly with her, concerning her work at various institutions. These communications do not show wider impact or influence on the field. Another message, from Dr. of stated that the petitioner "did a wonderful job" on a presentation but provided no further details.

Under the heading "evidence of frequent Internet references of published articles," the petitioner submitted printouts showing that two of her poster presentations are listed on the web site. The petitioner did not establish the criteria for listing on that site. A disclaimer on the site reads: "most posters on this site present work that is preliminary in nature and has not been peer reviewed."

A printout from an unidentified web site indicates that the petitioner had set up a profile page showing "3 publications," "3 downloads" and "19 views." The petitioner did not establish the significance of this listing or the figures shown.

As "evidence of sustained acclaim within the medical community," the petitioner submitted a copy of a letter confirming that she was an "Assistant Professor in the department of General Medicine from 16.04.2007 to 21.05.2008" at during which time "her conduct and character were found to be good." This letter is evidence of employment, but not evidence of "sustained acclaim within the medical community."

As further claimed evidence of acclaim, the petitioner submitted two certificates from the [redacted] One certificate identified her as a "Poster Session Participant," the other as a [redacted] The petitioner did not establish the significance of these certificates. Also, the certificates are dated January 31, 2014, indicating that the petitioner did not receive them until more than four months after 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). Therefore, even if the petitioner had shown that these certificates somehow distinguished her in her field, they would not show that distinction as of the September 2013 filing date.

The director denied the petition on June 3, 2014. The director quoted from several of the witness letters, but found: "The record does not demonstrate that the [petitioner's] work has resulted in findings of major significance to her field which has [*sic*] been widely implemented or that the [petitioner] is more skilled than others who perform the same or similar type of work." The director noted the absence of citation data for the petitioner's published work.

On appeal, the petitioner submitted the same list of accomplishments previously found in the response to the RFE. The appellate statement referred to "significant . . . citation" of the petitioner's published work, but the petitioner neither identified nor submitted evidence of citation on appeal.

The appellate statement refers to "numerous testimonies submitted with the original application as well as with the response to the request for evidence." The director acknowledged and discussed these letters. The petitioner, on appeal, identified no error in the director's description or discussion of these materials.

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. 165.

The letters considered above primarily contain very general assertions regarding the importance of the petitioner's work, without specifically identifying contributions and explaining how those contributions have influenced the field. The petitioner also failed to submit independent evidence to corroborate the claims in the letters. The general reference, on appeal, to the submitted letters does not overcome the denial of the petition.

The appellate statement ends with the assertion that the petitioner "has practiced at numerous top institutions in the state of NY" and has the "ability to utilize the most advanced clinical technology in the most difficult situations." The reputation of the petitioner's employers is not a factor in granting the waiver, nor is the petitioner's mastery of tools of her trade; these factors do not establish or imply impact and influence on the field at the level contemplated by *NYSDOT*.

The petitioner's appellate statement repeats earlier assertions and makes general claims about the quality of the previously submitted evidence, but does not address the director's specific findings or otherwise establish that the director erred in denying the petition.

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 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 the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States 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 profession, 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 labor certification will be in the national interest of the United States.

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.