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: JUN 18 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 matter is now before us at 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. At the time the petitioner filed the petition, she was a geographic information systems (GIS) coordinator for the [redacted] 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 legal brief and supporting documents. A supplement to the appeal includes evidence regarding the petitioner's new consulting venture.

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 June 26, 2013. The petition included a legal statement that reads, in part:

> The [redacted] [the petitioner's] ongoing services as Geographic Information System (GIS) Coordinator

> in its Storm Water Drainage and Infrastructure unit. [The petitioner's] non-immigrant worker status is scheduled to expire in September 2013, and she is not eligible for an extension. Since there is insufficient time to obtain a labor certification, we are requesting a national interest waiver for [the petitioner] on account of her critical role in work of public importance, recognized by the EPA as having a national environmental impact. As will be shown, her job literally impacts the health and safety of millions of people in the Ohio River basin and downstream to the Gulf of Mexico. . . .
>
> County is in the middle of a multi-year project, Phase II of the National Pollutant Discharge Elimination System (NPDES) permit process, to create complete and reliable storm sewer system maps. Accurate mapping is crucial for detecting and reducing combined sewer overflows (CSO's), which occur when storm water exceeds the capacity of sewage systems. The County area is particularly vulnerable to NPS and CSO pollution because its primary waterway, the Ohio River, has been ranked as the most polluted in the United States. . . . Almost 10% of the entire population of the United States lives in the . . .
>
> It was [the petitioner] who in 2009 created the initial GIS database for the non-incorporated and selected incorporated areas of County. She is now engaged in the difficult task of integrating her database with the existing Cincinnati Area GIS and then collating the results with other databases. . . . In an interlocking project of this scale, it would be counterproductive to replace [the petitioner] with a GIS specialist, howsoever well-qualified, who had no hand in creating the relevant databases and who did not develop the working relationships essential to a local endeavor, albeit a local endeavor with regional and national implications. . . .
>
> County was issued an NPDES permit [in] 2006 and was supposed to complete its storm water map within five years of that date . . . [but] received permission to complete the mapping system by 2016. . . . County engineers and other public officials have written detailed letters to USCIS stating that [the petitioner] has been a crucial asset and an innovative contributor to this ten-year project. . . . [T]he NPDES mapping operations will be delayed if County is forced against its better judgment to replace [the petitioner] with a minimally qualified U.S. worker. Dispensing with the labor certification requirement in this special instance is not too high a price to pay for keeping County on schedule to meet its obligations under the Clean Water Act.

The assertion that "there is insufficient time to obtain a labor certification" because the petitioner's nonimmigrant status was about to expire is not, itself, a persuasive point. The statute, regulations, and *NYSDOT* do not contain any provision to grant the national interest waiver based on the imminent expiration of nonimmigrant status. The outcome of the waiver must rest on the merits, rather than the timing, of the petition.

The petitioner submitted various background materials, including printouts of an electronic slide presentation attributed to the petitioner and two engineers, "Creating Efficiencies Involving Storm Sewer Mapping and Monitoring." These materials provide information about what the petitioner does, but they do not demonstrate that it is in the national interest for the petitioner, rather than a qualified U.S. worker, to be the one fulfilling her particular role on the project.

The petitioner submitted several letters to support the petition, all from witnesses who have worked with the petitioner in some capacity. project engineering manager for Storm Water and Infrastructure, stated:

> [The petitioner] has made several significant contributions to the GIS field, as it relates to storm water mapping in County. . . .
>
> In 2010, when County initiated the storm water system mapping, [the petitioner] designed a new database to store the new captured infrastructure data. However, since 1998 our office had been maintaining an existing database for the unincorporated areas of the County. . . . [The petitioner] created an innovative methodology to migrate the existing data into the recently created database. . . . Another successful story that I would want to mention is [the petitioner's] work effort towards the creation of desktop tools for the editors' team. Due to the extensive amount of data collected in the field, processing this data in the office was very time consuming and cumbersome at times. [The petitioner], in conjunction with worked to increase the speed of data processing while maintaining the accuracy of the storm network generated. . . . These custom tools improved the office team's performance by 50% and, therefore, the cost for the communities had been reduced considerably. . . .
>
> I am deeply concerned that, if [the petitioner] is forced to leave the United States as a result of her inability to extend her lawful status, County will experience a significant setback in the implementation of its NPDES program . . . , and in its efforts to create a cleaner watershed.

program director of the County Storm Water District (HCSWD), stated:

> County . . . was required to obtain permit coverage for the discharge of storm water. One resulting requirement of this permit coverage is the necessity to produce a storm water infrastructure map of the municipal separate storm sewer area. This mapping effort is an important function which assists the infrastructure owner in determining the source of any illicit discharges to the storm sewer system. . . .
>
> [The petitioner] has made several significant contributions to the field of GIS as it relates to storm water mapping in County. As an example, by the end of

2009 the HCSWD began working towards the creation of the County storm sewer system map. . . . [The petitioner] proposed a new database design that not only incorporated industry standards for infrastructure information but also allows for the incorporation of the requirements of the NPDES permit.

. . . The innovative solution was designed to be simple enough to facilitate data transfer and interoperability but extensive enough to accommodate information storage requirements. This database is currently used as a template by several other agencies including the County Public Health District and the County Park District.

Another example of how [the petitioner's] expertise has advanced the County GIS field stems from the development of an application for field collection of the necessary storm sewer infrastructure information. . . . [The petitioner] diligently worked with and the County Engineer's Office to produce a unique field asset collection application that integrated seamlessly with the existing office application. . . . It has been four years since the application was developed, and it continues to be used daily, leading to my confidence that it is the proven solution developed at the lowest cost adding value to the citizens of our County.

, now a GIS specialist for County, stated:

I was the GIS Coordinator for County, Indiana, in 2006, when I had the privilege of working with [the petitioner]. . . .

Within the space of three months in County, [the petitioner] was able to complete a zoning map and an update of the property data for the City of The city was unable to afford the expertise of a GIS professional so she stepped up to the plate to bring them to the digital world. . . .

She was also active in the County Historic Structures Database update by design data collection protocol using professional grade GPS points. She used the methodology to create a Geodatabase of all the historic structures in Indiana. . . .

Recently I approached [the petitioner] with some questions on how to design a stormwater database for Great Parks. Not surprisingly [the petitioner] had already designed and had implemented a detailed data model that she promptly shared with Great Parks.

Other witnesses described the petitioner's various projects in less detail. Of the witnesses providing shorter letters, senior computer programmer analyst for CAGIS, and GIS manager at CAGIS, each signed separate copies of the same letter, stating that the petitioner "has shown dedication and willingness to take on complex projects such as the storm water mapping

part of the National Pollutant Discharge Elimination System." former database administrator for signed a letter that varied only slightly from this same template.

The director issued a request for evidence on August 30, 2013, instructing the petitioner to "submit documentary evidence to establish . . . a past record of specific prior achievement that justifies projections of future benefit to the national interest" and the petitioner's influence on her field as a whole. The director also requested evidence to show that the benefit from the petitioner's work would be national in scope.

In response, the petitioner submitted documentation showing that the federal government has an interest in "geospatial data-management," and that local governments have contributed to national collections of GIS data. The petitioner highlighted the following passage from "A Local Government Perspective of Spatial Data Management" by GIS Coordinator in County, Alabama:

> Although the authoritative geospatial data at the local level exists to serve the local governments, as GIS managers, we should be conscious of a bigger picture. We maintain a piece of a puzzle defined by the Federal Geographic Data Committee (FGDC) as the National Spatial Data Infrastructure (NSDI). The NSDI initiative is promoted at the national level, but support from local government has to exist for it to be as effective as possible.

The quoted passage indicates that GIS data collectively supports the NSDI, but the work of individual GIS workers "exists to serve the local governments."

The petitioner's response to the request for evidence included this assertion:

> The Administrative Appeals Office has granted national interest waivers in cases analogous to [the petitioner's]. For instance, a research associate investigating non-point source pollution mitigation from urban runoff, was granted a national interest waiver. In sustaining the appeal and granting the waiver, the AAU[1] noted, "The petitioner has established that her work has had a significant and measurable effect on water pollution . . . and this research is broadly applicable rather than limited to the region in which the research was conducted." . . . In another case, the development of innovative mapping techniques to predict the impact of hurricanes on coastal regions was deemed sufficient to merit a national interest waiver.

The petitioner referred to these appellate decisions as "relevant legal precedent." Neither of the cited decisions, however, are published precedent decisions that are binding on USCIS employees under 8 C.F.R. § 103.3(c). The first cited appellate decision dates from April 1998, before the publication of *NYSDOT* as a precedent decision. The current record of proceeding does not contain the evidence

[1] At the time of the cited decision, our office was called the Administrative Appeals Unit.

from the two cited cases, and therefore we cannot determine that the cited cases are similar enough to the present proceeding to warrant similar outcomes. Even if the cited cases had precedential weight, at most they would establish that the particular occupations in question are amenable, in principle, to the national interest waiver. The cited decisions did not establish a blanket waiver for every alien whose work involves water pollution and mapping techniques.

As evidence that the petitioner's "innovative work in the GIS field has . . . attracted the attention of GIS professionals in other regions," the petitioner submitted a printout of an electronic mail message from a GIS technician in Florida. The body of Mr. message reads:

> The City of is currently trying to revamp the stormwater database. The database was created almost 15 years ago from several engineering firms along with data entry by different groups resulting in a broken database. I have just recently come on here and have been tasked with building the database from the ground up. I would like to inquire on how you decided the attributes for the different structures. If you had a small write up on this and could forward it to me that would be appreciated!

Mr. message shows that the petitioner's efforts somehow came to Mr. attention (the record does not show how). It does not establish adoption of the petitioner's work outside of County. Mr. message dates from February 2012, more than 16 months before the petition's filing date in June 2013. The record does not contain any follow-up information to show how much information the petitioner provided to Mr. and how much of that information Mr. implemented in Lakeland.

Other evidence submitted in response to the request for evidence establishes the petitioner's advanced training in GIS, and her past leadership positions on the Committee. These materials help to establish the petitioner's expertise in GIS, but expertise alone does not establish eligibility for the waiver. The statutory job offer requirement applies to aliens of exceptional ability.

The director denied the petition on December 11, 2013, stating: "the work of a GIS Coordinator in one geographic area would be so attenuated at the national level to be negligible. The evidence does not demo[n]strate that the primary focus would be national in scope." The director also stated that the nature and degree of the petitioner's training do not warrant a waiver, and that the petitioner had not "shown why the labor certification process would be inappropriate in this case."

The petitioner appealed the decision, stating that the December 2013 decision "was insufficient as a matter of law" and "was not based on substantial evidence in the record." The petitioner indicated that an appellate brief would follow within 30 days.

The director issued a superseding decision dated January 8, 2014, which appears to have crossed the appeal in the mail. The second decision is a revision of the first version rather than an entirely new

decision. In both versions of the decision, the director acknowledged the submission of "letters, primarily written by the petitioner's acquaintances and colleagues," but found that the petitioner had not established that the benefit of her work would be national in scope or that her work had influenced the field as a whole. The petitioner's subsequent appellate brief addresses both versions of the denial notice.

In the appellate brief, the petitioner contests the director's conclusion that "[t]he evidence does not demo[n]strate that the primary focus [of the petitioner's work] would be national in scope." The petitioner contended that the director based this conclusion on the petitioner's employment "with a local government entity." The petitioner also asserted: "USCIS did not engage in any analysis of the claims of county representatives to the effect that [the petitioner's] work has significant implications for the success of national environmental and geospatial data gathering policies." The petitioner claimed that the director did not "address the evidence tending to show that [the petitioner's] innovative design of a computer application for stormwater mapping had been copied by other local governmental entities and was thus not confined to the locality of County."

The petitioner does not identify a jurisdiction outside of County that has copied her "design of a computer application for stormwater mapping." electronic mail message includes a question about the petitioner's methods, but it does not show that GIS specialists in have adopted the petitioner's techniques. The record does not establish that the petitioner's work has had any discernible impact outside of County.

The petitioner states: "USCIS's conclusion employed a legal standard that is without basis in the law. There is no requirement that the 'primary focus' of the proposed employment be national in scope." Upon review, the petitioner has satisfied the "national scope" prong of the *NYSDOT* national interest test, because the waterways affected by her efforts are not a closed, local system. We withdraw this particular finding by the director. Nevertheless, national scope is not the same as national impact, and a finding that the benefit from the petitioner's occupation is national in scope does not imply that the petitioner's work within that occupation qualifies her for the national interest waiver.

The petitioner asserts that witness letters received insufficient consideration. The director acknowledged and discussed the letters, identifying several of the witnesses and summarizing the contents of the letters. The petitioner, on appeal, states: "USCIS takes no notice of the fact that several of the authors occupy positions of considerable public trust," which "militates against the inference that they would exercise undue partiality in [the petitioner's] favor and for her sole benefit." The issue is not whether the letters are credible. Rather, the letters do not facially establish that the petitioner's work has had a significant impact beyond the local level.

The petitioner asserts: "What the evidence does establish is that [the petitioner] has designed innovative computer applications for stormwater mapping, applications that are not only helping to ameliorate discharge pollution in a major U.S. waterway, but also are being shared with the wider GIS field at state-wide Conferences . . . and as far away as local government entities in

Florida." The record does not establish national involvement in the "state-wide Conferences," and Mr. message does not establish implementation or usage of the petitioner's ideas beyond County; the petitioner has documented an inquiry, nothing more. Furthermore, Mr. inquiry was a technical question about database management. The record does not establish the extent, if any, to which the petitioner's work has reduced discharge pollution into the Ohio River or other major waterways.

The petitioner states:

> The supporting letters have established that, due to her personal design of the innovative GIS applications being used by County, her prominent standing in the field as a whole, and her unique familiarity with an important, long-term stormwater mapping project, she cannot be replaced by a minimally qualified GIS technician, even one with multi-disciplinary training.

The witnesses described the petitioner's technical expertise, and specific improvements that the petitioner has made to s computer systems to simplify data management. The record does not establish the petitioner's "prominent standing in the field as a whole." Her familiarity with County's systems is an asset for that local employer, but the threshold for the waiver is the national interest, rather than a given local employer's desire to retain an experienced worker and, thus, her useful institutional knowledge.

The petitioner submits additional exhibits on appeal, including several letters. Most of the letters are new, except for a copy of a letter from December 2003. The older letter is a recommendation letter from, an architect in Uruguay, written to help the petitioner get into graduate school at the Mr. stated that the petitioner has "strong qualities to pursue a graduate degree."

administrator stated "it would be very difficult to find a professional with the skills and personal aptitudes that [the petitioner] possesses," and that the petitioner "has been instrumental in improving the quality of the data maintained for the region and has developed innovative projects critical for environmental planning."

stated that the petitioner "possesses a skillset and well groomed project management skills that are second to none. It would be devastating for the citizens of County and the County Storm Water District program to lose [the petitioner],"whom he called "an unparalleled asset for accomplishing the goals of the National Pollutant Discharge Elimination Program and ultimately for improving the water quality of the streams, creeks, and rivers of our country."

In addition to the above letters, written specifically to support the petition, the petitioner submits a copy of a 2014 memorandum from an environmental specialist in the at the Ohio Environmental Protection Agency. The appellate brief

indicates that this letter "reflect[s] the importance of [the petitioner's] work to environmental policy." The memorandum, "Storm Water Program Evaluation," indicates that "mapping of the entire MS4 [municipal separate storm sewer system] cannot be completed until 2019 or 2020." The memorandum indicates that, even with the petitioner's participation, the mapping effort is still years behind schedule (the petitioner's initial submission indicated that the project was supposed to be complete in 2011, and County obtained an extension to 2016.)

The petitioner has established that values her services, and that her work is part of a larger system that, collectively, serves the national interest. The petitioner has not, however, shown that her individual impact on the GIS field, or on national efforts to curb water pollution, has warranted a waiver of the job offer requirement that normally applies to foreign workers in her occupation.

The petitioner cites "a letter from the nominating [the petitioner] Woman of the Year for 2012." The record contains no other information about the or its "Woman of the Year" title. The organization's letter states that the petitioner is "among our women of the year for 2012," but it does not show how many other women received this designation or the criteria by which the organization chose them. The record does not establish the significance of the title or the reputation of the entity awarding it.

The appellate brief describes "several other projects of national importance" that the petitioner has recently undertaken. The record does not show that the petitioner was involved in these projects at the time she filed the petition, and the petitioner did not mention them prior to the appeal. The new projects do not establish eligibility for the waiver, and even if they did, 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 brief contains the following information about one of the newly discussed projects: "[the petitioner] assessed and evaluated potential site locations for the location of a manufacturing plant in County, Indiana. She utilized the OKI Travel Mode, a nationally recognized, state-of-the-art, computer-based analytical tool used to predict future travel patterns on roads throughout the region." The record contains no evidence that the petitioner developed or improved the OKI Travel Mode. Her familiarity with existing tools, however advanced, is not grounds for a national interest waiver. *See NYSDOT*, 22 I&N Dec. at 221 n.7.

Apart from the project relating to the location of a manufacturing plant, other newly described projects involve "the acquisition of . . . flood-prone buildings in County," the Department of Labor's , and the United States Geological Survey's creation of "America's Natural and Cultural Resources Map." The brief contains no explanation as to how the newly described projects relate to water pollution prevention, which was the initial basis for the waiver request. The evidence illustrates the versatility of the petitioner's expertise in GIS, but this versatility appears to be an inherent trait of GIS. The petitioner's involvement in such a

broad variety of projects indicates that the petitioner's work does not focus solely on storm water pollution, even though that issue received heavy emphasis in the initial submission. The new evidence suggests that [redacted] County's GIS technicians work on a series of temporary projects, rather than being permanently assigned to issues such as storm water contamination.

A supplement to the appeal, dated May 1, 2014, indicates that the petitioner "promptly left her public service employment with [redacted] County, Ohio, upon the denial of her application for adjustment of status" and "has now started her own consulting company, through which she hopes to provide the benefits of her expertise to the federal government as well as multiple government entities."

Documents submitted with the supplement show that the petitioner filed articles of organization for [redacted] on March 13, 2014. The materials show that the petitioner registered [redacted] with the Small Business Administration and the [redacted] making the entity "eligible for contracts, assistance awards, and to do business with the federal government" according to an electronic mail message from [redacted] The record does not show that [redacted] has actually transacted any business with the federal government. The petitioner shows that [redacted] prepared proposals in April 2014 in response to public requests for proposals from the [redacted] County Department of Information Technology and the [redacted] County Department of Administrative Services. The petitioner also prepared an abstract for the 2014 Ohio GIS Conference, scheduled for September 22-24 of that year, in response to a call for abstracts. The abstract is marked "Proposal – 04/18/2014," with no evidence that the conference accepted the proposal. The record, therefore, does not show that [redacted] has transacted any business or had any impact on the GIS field.

Furthermore, the petitioner's establishment of [redacted] after filing the appeal cannot retroactively demonstrate that USCIS should have approved the petition at the time of filing, at a time when the petitioner was a government employee and her waiver application related specifically to that government employment. For most of this proceeding, the petitioner based the waiver application specifically on [redacted] County's need for her ongoing services. The new assertion that the petitioner will serve multiple clients as an independent consultant is a significant change in her intended employment. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49.

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. 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.