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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: MAR 0 5 2014 Office: NEBRASKA SERVICE CENTER FILE: [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. At the time of filing, the petitioner was a Physician at The petitioner was also working as a research scientist at the 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 July 10, 2013 letter from counsel repeating information about the petitioner that appeared in correspondence submitted at the time of filing and in response to the director's request for evidence (RFE). Counsel's statements acknowledge the denial of the petition, but offer no new facts and make no specific allegation of error in the director's decision.

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

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (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 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.

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 intrinsic merit and that the proposed benefits of her gastroenterology research would be national in scope. It remains, then, to determine whether the petitioner has presented "a national benefit so great as to outweigh the national interest inherent in the labor certification process." *Id.* at 218. However, subjective assurances of the petitioner's future contributions will not establish eligibility for the third prong of the national interest waiver test. Although the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that her past record justifies projections of future benefit to the national interest. *Id.* at 219. The inclusion of the term "prospective" relates to 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 director denied the petition on June 24, 2013. The director acknowledged the petitioner's submission of her published and presented work, but indicated that her work had "garnered only a very small number of independent . . . citations" and had not specifically influenced the field as a whole. In addition, the director stated that the petitioner's presented work did "not persuasively distinguish [her] from other competent physicians and researchers." Furthermore, the director found that there was no documentation demonstrating that the petitioner's "work was influential" or that her particular findings were being applied in the medical field. 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.

On appeal, counsel asserts that the petitioner "has made significant contributions to the field, that her work has impacted the national interest, . . . and that she has distinguished herself from her peers, thereby justifying the waiver of labor certification." Counsel repeats various claims from earlier correspondence submitted with the petition and in response to the RFE, but does not contest any specific findings by the director or raise any issues of fact or law regarding the director's decision.

Counsel states: "[The petitioner] has personally been cited 11 times. The projects at her lab in which she has played a significant role have been cited nearly 10,000 times." Although counsel asserts that the petitioner's work has been cited to eleven times, the search results submitted by the petitioner from Google Scholar in response to the RFE do not support the claim. Specifically, the submitted Google Scholar printout reflects search results for the terms '[redacted]' and does not list any research articles authored by the petitioner or publications that specifically cite to her work. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534, n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3, n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, although other projects at the petitioner's laboratory may "have been cited nearly 10,000 times" as claimed by counsel, there is no documentary evidence showing that the petitioner herself has coauthored frequently cited research articles or medical studies. Again, eligibility for the national interest waiver must rest with the petitioner's own qualifications rather than with the position sought. The petitioner has not established that the level of independent citation to her body of research work is an indication that her specific findings have influenced the field as a whole.

Counsel contends that federal funding of the petitioner's work by the National Institutes of Health "is certainly indicative of the national impact of her work." However, a substantial amount of scientific research is funded by grants from a variety of public and private sources. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. 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 federal funding for a research project does not differentiate the petitioner from other capable researchers, or demonstrate that her federally-funded research has already influenced the field as a whole.

Counsel points to the petitioner's "significant publication and presentation before prominent national forums." The director, however, addressed the petitioner's published and presented work in the denial decision. Specifically, the director stated that the petitioner's published work had "been cited a very small number of times by independent researchers," and that the record lacked documentation showing that the petitioner's presentations were "influential" and differentiated her from others in the field. Counsel offers no arguments or documentary evidence on appeal alleging error in the director's findings.

Counsel states that the petitioner "serves as Assistant Professor of at the The petitioner's appointment as an Assistant Professor of however, post-dates the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, the petitioner's appointment as an Assistant Professor in 2013 cannot be considered as evidence to establish her eligibility for the instant petition.

Counsel points to the petitioner's "unique clinical skills" in treating and diagnosing "very difficult and complex cases referred from around the country and around the world." However, it cannot suffice to state that the petitioner possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor through the labor certification process. *NYSDOT* at 221.

The petitioner has failed to identify specifically any erroneous conclusion of law or statement of fact in the director's decision, and not provided any additional evidence to overcome the director's findings.

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. *Id.* 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.