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: MAY 13 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 (AAO) 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 states that he seeks employment performing "research in the field of physics, and specifically in the area of experimental particle physics (high-energy physics)." The record shows that the petitioner earned a doctorate at in 2010, and since then has pursued postdoctoral training in Philadelphia, Pennsylvania, at the first in the Department of Radiology and then in the Department of Radiation Oncology. 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 brief, copies of unpublished AAO decisions, and documentation of citation of his published work.

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 July 23, 2013. The petition included an introductory statement describing the petitioner's work and his supporting evidence. The statement reads, in part:

> [The petitioner] is a renowned physicist who has largely influenced his field and directly aided in the advancement in the application of particle physics to medical imaging technology. [The petitioner's] specific research, as detailed herein, has demonstrated a proven capability to generate invaluable impacts on the physics research field, and particularly in experimental particle physics (high-energy physics).
>
> . . . [H]e has an extensive professional background that includes conducting investigations as a Research Assistant at during which he focused on String Theory. In addition he carried out research searching for a new particle predicted beyond [the] Standard Model (SM) using proton-antiproton collision events at [the] at the . . . At present, [the petitioner] is a Postdoctoral Research Associate at the Department of Radiation Oncology at the and the largest and most advanced facility in the world for cancer radiation research. Here he has been working on the development of . Through his advanced education and research experiences, [the petitioner] has already been recognized as a leading expert in the field. (*See* Exhibit 6).

Exhibit 6 is a copy of the petitioner's own *curriculum vitae*, which is not evidence of recognition "as a leading expert in the field." 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)).

After describing the petitioner's research projects (addressed below in the context of witness letters), the introductory statement included the assertion that the petitioner "has authored one hundred and fourteen (114) internationally peer-reviewed articles. (See Exhibits 12-125). . . . [H]is research has been cited over 4,658 times by scientists worldwide."

Not all of the specified exhibits are peer-reviewed articles. Exhibits 77 and 117 are "publisher's notes," correcting errors or omissions in the articles reproduced as exhibits 75 and 113, respectively. The exhibit list, however, specifically and individually refers to exhibits 77 and 117 as "peer-reviewed publication[s] co-authored by" the petitioner.

Most of the petitioner's claimed articles report the work of "the ," comprised of hundreds of researchers at dozens of research institutions worldwide. Nearly all of these articles are credited to the entire listing the members in alphabetical order. The author credits show the petitioner's institutional affiliation as These articles date from 2009 and

2010, prior to the petitioner's departure from The record does not show, and the petitioner does not claim, that the petitioner remained involved in the after he completed his doctorate in 2010.

Exhibits 12 and 13 are credited to the petitioner "for the ' reporting presentations the petitioner made at "the ' held in Detroit, Michigan, in July 2009. The petitioner did not document any citations to these papers.

Exhibit 187, a printout of the petitioner's "My Citations" page on the Google Scholar search engine, lists 113 articles credited to the petitioner, with an h-index of 40 (*i.e.*, 40 of the listed articles have each been cited at least 40 times). The printout shows frequent citation of many of the 's articles. Those articles all date from 2007 to 2010, all but ten appearing in 2009 or 2010. The record does not show that each of the 's hundreds of members played an active and significant role in writing each of the articles, and the high number of articles issued within a relatively short period of time makes such a conclusion unlikely. The submitted evidence tends, instead, to support the conclusion that the members shared common author credit as a matter of custom or protocol rather than as a reflection of actual authorship duties.

Three of the submitted articles (exhibits 14, 15, and 17) post-date the petitioner's involvement in the The petitioner documented one citation of which the petitioner had submitted for publication in November 2011. The petitioner documented no citations to two other post- articles.

The exhibit list described exhibit 136 as "Articles of [the petitioner's] work in professional media." Exhibit 136 contains articles from two issues of respectively dated July 13, 2006 and July 16, 2009. From its title and content (which includes cafeteria menus), appears to be an internal newsletter for researchers at rather than "professional media" disseminated more widely throughout the field. In both issues, the petitioner is one of five researchers named in a column called ' These columns establish that small groups of researchers were responsible for individual ," even though all the members of the received author credit for the ensuing journal articles.

The petitioner submitted five letters, all from witnesses who had collaborated with the petitioner either in the or subsequently at Professor stated:

> I had the pleasure of supervising and working with [the petitioner] at during the time he earned his doctoral degree in physics. His research work specialized in experimental high-energy particle physics which directly attaches the questions that underlie the fundamental nature of particles and forces in nature. More importantly, his work in high-energy physics spoke to greater questions concerning what is matter and what is everything in the universe made of. His

> investigations into new particles were very impressive, surpassing any reservations or expectations I would have about the research abilities of doctoral candidates. As such, he revealed himself to be an exceptional researcher who has reached many important milestones in experimental particle physics.
>
> . . . Researchers believe that dark matter is made of neutral particles that were produced in the earliest moments after the Big Bang according to a theoretical model known as gauge mediated supersymmetry breaking ("GMSB"). This model posits that new particles, neutralinos, will be produced and then live for less than a few billionths of a second before decaying into a photon and another new particle, the gravitino, that escapes detection in our experiments. Because neutralinos are produced in pairs under the GMSB theory, [the petitioner] has tried to find definitive prove of their existence by using two photon, or diphoton, events. [The petitioner's] research produced several new techniques for separating unusual events where gravitinos might have escaped detection with real missing energy from events that mimic missing energy. His superb laboratory techniques made it possible for him to carry out the world's most sensitive search for short-lived neutralinos in the GMSB model.
>
> . . . Ultimately, [the petitioner's] work has helped him to acquire significant standing in physics. [The petitioner's] papers are acknowledged as leading studies on the search for neutralinos and the field recognizes [the petitioner] as a significant source of information on searches for these important new particles, in particular in the area of gauge mediated supersymmetry breaking. Without a doubt, [the petitioner] has made a deep impression on the direction of the physics' [*sic*] field's research on this subject.
>
> These evidences have showed his continuous success as a physicist. He has a clear reputation as a respected researcher who has absolutely influenced the field's work for the better. The accomplishments that I have described are characteristic of only top scientists, which [the petitioner] can claim to be without question.

Two other witnesses work at the home of the . Professor deputy director of , stated:

> The presence of a neutralino would be indicated by its decay into photons emitted several nanoseconds after the neutralino decay. [The petitioner] invented a new method to detect these delayed photons in proton-antiproton collisions, using a part of detector never previously used for such a purpose. Using his novel idea, [the petitioner] was able to establish a new lower limit on neutralino mass . . . [which] was the world's best limit at the time on the neutralino existence. In addition to this important experimental work, [the petitioner] extended the theoretical expectations of the supersymmetry model in particle physics for neutralino

> production and decay, to predict other decay modes of a neutralino, and then searched for these other decay modes. Again, he produced the best limits available at that time for such decays.

Dr. head of the Department at stated that the petitioner "played a significant role in conducting the first search for neutralinos using the and "also performed highly challenging research predicting the limits of neutralino mass and lifetime." With respect to the petitioner's published work, Dr. did not repeat the petitioner's stated figure of 4,658 citations. Rather, he stated: "Not only has [the petitioner's] research been published in two of the most important physics journals, but it has also been cited a total of 47 times," a figure 100 times lower than the total claimed elsewhere.

None of the witnesses from the claimed that the petitioner continues to be involved in the collaboration, or in the search for particles such as neutralinos and gravitinos. Therefore, they did not demonstrate that the petitioner's work in that area will prospectively benefit the United States.

The remaining two initial witnesses work with the petitioner at the , and described his work with medical imaging technology rather than his earlier experiments concerning neutralinos. Dr. research assistant professor, stated:

> Among [the petitioner's] most important works is his current research on positron emission tomography (PET) as a nuclear medical imaging technique. . . .
>
> [The petitioner] produced a number of improvements to PET scanners in the course of his research. To wit, [the petitioner] engaged in a study on the trade-offs involved in the use of thick, high light output scintillators for clinical whole-body PET imaging with long axial field-of-view (FOV) scanners. . . . This study resulted in greater flexibility that improves scanner sensitivity and imaging quality, and reduces scan time. In another study, [the petitioner] has worked on design study of a unique PET scanner developed specifically for detection of early breast tumors. The scanner, once constructed based on this study, will provide tomographic reconstructed images with very high resolution and sensitivity to detect, characterize, and monitor response in small tumors with low tracer uptake. Prior attempts to do so were not successful in multi-purpose clinical whole body PET scanners. [The petitioner's] research utilizes a clever solution to this medical imaging problem by optimizing limited angle scanner design with the flexibility to image to provide biopsy capabilities and the potential to work in combination with other imaging modalities like mammography.

Dr. assistant professor of radiation oncology, described the petitioner's efforts to reduce the risks inherent in proton therapy:

> These dangers can be mollified with the development of technology that measures proton beam ranges and changes to tissue on a daily basis without using any additional radiation.
>
> A proposed solution is to develop an in-vivo imaging system based on measurement of secondary gamma rays emitted during proton beam irradiation. In support of developing this system, [the petitioner] devoted his energies to characterizing prompt gamma (PG) rays emitted from patients after proton therapy. . . . [H]e could determine the relationship among optimal distance, detector size, and proton beam energy for detecting PG. As beam energy increased, detection efficiency would increase. Because it is the first study showing clinical implementation of PG imaging for proton range verification using detector response to patient CT data, it is a major finding for proton therapy. . . . Based on his work, the field is making excellent progress realizing a workable PG detector system prototype.
>
> Along with his research in PG detectors, [the petitioner] generated an outstanding breast TOF PET scanner device . . . that is much more effective at detecting and monitoring breast cancer tumors.

The director issued a request for evidence (RFE) on August 13, 2013. The director instructed the petitioner to submit evidence to meet the guidelines set forth in *NYSDOT*, and stated:

> The majority of the published articles that you submitted list more than 50 co-authors. Please submit evidence that documents your individual contributions to these articles, how these contributions have influenced the field as a whole, and how they serve the national interest.
>
> In addition, please provide documentation of your invented method to detect delayed photons, how this method has influenced the field as a whole, and how it will serve the national interest.
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> Finally, please provide documentation of the improvements you have made in the field of medical imaging, and their influence on the field.

In response to the RFE, the petitioner submitted a new Google Scholar printout, dated September 5, 2013, showing a total of 4,932 citations of his articles. The printout shows that all but one of the new citations correspond to articles by the from 2007 to 2010; citation of the petitioner's work since 2011 had increased from one citation to two.

The petitioner's response to the RFE identified new exhibit 141 as listing [the petitioner] as a main contributor and author." Exhibit 141 consists of two papers with five authors each, corresponding to the two "Results of the Week" described in The newly submitted material corroborates the

stories submitted previously, but they do not establish that the petitioner had any role in writing most of the 100+ journal articles collectively attributed to every member of the . The submitted Google Scholar printouts do not list the documents that the petitioner called and the petitioner did not otherwise establish that the "Internal Notes" corresponded or led to frequently cited articles.

The petitioner submitted two additional witness letters. A statement accompanying the RFE response referred to one of these letters as "an Independent Advisory Opinion from a scientist who has not worked with [the petitioner] or does not know [the petitioner] personally, but rather knows him through his publications and presentations. (*See* Exhibit 139)." Exhibit 139 is a letter from Dr. head of the Scientific Computing Division at In his letter, Dr. identified himself as a member of the as demonstrated by his author credits on most of the articles reproduced in the record. Dr. stated:

> Regarding [the petitioner], it is of [*sic*] my opinion that he possesses the requisite skills to be successful in this area of research. . . .
>
> [The petitioner] has made his presence known in a study that included the first search for a neutral, heavy long-lived particle called neutralino using newly installed EM-Timing (measuring arrival timing of photons) system on . . .
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> [The petitioner's] data analysis on the neutralino mass and lifetime were among the world's most sensitive. . . . [B]ecause the delayed photons were realized a few nanoseconds after SM calculations, [the petitioner] suggested that the presence of a neutralino with longer lifetime is most likely to be apparent by its decay into those delayed photons. This method of observation was developed by [the petitioner] to move closer to the novel identification of the neutralino particle. . . .
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> [The petitioner's] study is incredibly important to cosmology, because without dark matter, nothing makes sense. . . . Since dark matter has been approximated to be the predominant material in the undiscovered universe, it is imperative to fully understand what it is. Excitingly, [the petitioner] is closing in on an answer.
>
> The work discussed in this letter has been nothing short of extraordinary. The methods that [the petitioner] has employed toward detecting delayed photons in the collider detector at Firmilab [*sic*] have had a significant effect on how physicists are approaching their studies on dark matter. In understanding that dark matter is comprised of particles that don't radiate light or interact with ordinary matter, [the petitioner] is leading the charge toward predicting that the lightest supersymmetric particle – neutralino – could be an entrant to the elusive dark matter. . . .
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> [The petitioner] has exuded an excellence in his work that has essentially gone unmatched. Without him, the field will suffer a significant reduction in the

> generation of significant research results; thus, pushing our understanding of dark matter even further away.

The present-tense assertion that the petitioner "is closing in on an answer" to dark matter implies that the petitioner continues to conduct such research, but the petitioner makes no such claim, and the record contains no evidence to that effect. Rather, the petitioner's involvement with the began and ended with his doctoral studies at under a professor whose laboratory is part of the collaboration. The petitioner himself does not claim, and has not established, that the 'suffer[ed] a significant reduction in the generation of significant research results" after he left the project in 2010. The petitioner also does not claim that he has any intention, or prospects, of rejoining the in the future. The petitioner's post-doctoral work has not entailed the search for dark matter or particles such as neutralinos.

Dr. assistant professor of radiation oncology at the discussed the petitioner's more recent work:

> [The petitioner's] design study of a dedicated breast PET scanner has been a major improvement for accurately characterizing and monitoring the response of early breast tumors. . . . [T]he limited angle scanner design reduces the image quality because of . . . incomplete angular coverage. . . . A possible solution is to rotate the detector, but [the petitioner] believes that the design is much too complex, expensive, and timely [*sic*]. So he proved that using Time-of-flight (TOF) information, a partial ring design can provide good quality of tomographic images in addition to flexibility in imaging the entire breast including the chest wall to vary the detector separation for different breast sizes. . . .
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> By optimizing the scanner geometry, [the petitioner] found that with TOF imaging, artifacts were visibly reduced as timing resolution was improved. . . . In this study, [the petitioner] found that in most cases, the partial ring scanner with TOF performed as well as, or better than, the standard full ring non-TOF scanner. The conclusions here revealed that partial ring PET scanners using TOF are likely to be expanded into larger prototype scanners that will soon revolutionize the imaging of early breast tumors. . . .
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> In a separate study concerning medical imaging that he and I collaborated on, [the petitioner] performed patient-based study on a gamma imaging system during proton therapy. . . . [T]he power of proton therapy is that higher doses of radiation can be [used] to control and manage cancer while significantly reducing damage to health[y] tissue and vital organs. However, in this process, there is still uncertainty in determining the exact position at which the proton beam stops in the patient anatomy. . . . Therefore, [the petitioner's] new, novel methods of determining *in vivo* dose delivery have been acutely studied to measure the secondary radiation emitted from the patient during beam delivery. . . .

> [The petitioner] has largely contributed to understanding prompt gamma emission during proton therapy through this novel imaging system. . . . [D]octors now have more information on the result of protons' dose distribution characteristics; hence, oncologists can increase the dose to the tumor while reducing the dose to surrounding normal tissues. . . .
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> [The petitioner] has made tremendous strides and his achievements show that he is prepared to make more improvements to medical imaging in the very near future.

The assertion that the petitioner's is "likely" to result in "larger prototype scanners that will soon revolutionize the imaging of early breast tumors" amounts to speculation about the future impact of the petitioner's work, rather than verifiable information about its existing impact on his field.

The director denied the petition on October 23, 2013. The director quoted witness letters and described the materials the petitioner submitted in response to the RFE. The director acknowledged that the articles by the "have been widely cited," but found that "the record contains no objective evidence regarding the significance of the petitioner's contribution to these papers." The director also found minimal citation of the petitioner's later articles relating to medical imaging technology. The director found that, while the petitioner "has produced a number of improvements to PET scanners," the petitioner had not established eligibility for the waiver.

The petitioner's appellate brief repeats the assertion that his "work has been cited at least 4,932 times by scientists worldwide." The Google Scholar printout does not identify the citing authors or their institutional affiliations, and therefore the record does not directly support the petitioner's use of the term "worldwide." The appellate brief refers more than once to "an AAO Decision finding that 16 independent citations indicate 'widespread and lasting influence' on the field, and therefore warrant a waiver of a Labor Certification." The cited decision is not a published precedent. The petitioner provides no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Also, the cited decision did not indicate that the accumulation of 16 or more citations absolutely and invariably establishes eligibility for the waiver, without consideration of other case-specific factors.

The appeal includes a new printout of his "My Citations" page on Google Scholar. According to the appellate brief, the printout shows the results of "another Google Scholar search limiting [the petitioner's] publication and citation record do just these first-authored and corresponding-authored works and displaying a total of 134 citations to these works." The new printout shows eight articles with an h-index of 3. Three articles relating to the petitioner's work with the show 36, 42, and 54 citations respectively, accounting for 132 of the 134 reported citations. Two of the petitioner's articles from 2011, relating to his work with PET scanners, show one citation each. The remaining three articles show no citations.

The new Google Scholar printout is consistent with the director's finding that the petitioner's work has attracted substantially less attention since he left the . Furthermore, the new printout does not support the claim that it reflects "just [the petitioner's] first-authored and corresponding-authored works." The formatting of the page is the same as the earlier printouts, with no internal evidence that the petitioner had limited the search. Furthermore, the record contains printouts of the articles identified in the short list, and those printouts do not identify the petitioner as the first author (authors are listed alphabetically) or corresponding author of the respective articles. The claims in the appellate brief, therefore, do not account for the substantially reduced number of articles and citations shown in the latest Google Scholar printout.[1]

The s articles that remain in the shortened citation list all concern particles decay into photons, which was the petitioner's area of inquiry in the . It appears, therefore, that the new, shorter list reflects those publications that the petitioner actually played a significant role in creating. The record indicates that it is the as a whole, rather than the petitioner as an individual, whose "work has been cited at least 4,932 times."

The petitioner asserts, on appeal, that the director improperly "disregard[ed] all of [the petitioner's] publications listing more than 50 co-authors." The petitioner cites another unpublished appellate decision, indicating that collaboration does not presumptively diminish a researcher's role in a published research project. The director did not refuse to consider the petitioner's collaborative endeavors, but in the case of the , there is no evidence that every member of the collaboration had meaningful input on every published article, or on every individual project undertaken by collaboration members. The petitioner seeks credit for over 100 published articles, but when the director asked for evidence of the petitioner's participation in the 's work, the petitioner documented only two specific projects, supported by in-house publications that confirm, rather than refute, the conclusion that the members of the work in small groups rather than collectively.

In discussing his citation history, the petitioner does not acknowledge or address the director's observation that none of the petitioner's post- articles had been cited more than once. When weighing the claim that the impact of petitioner's past work is an indication of the potential impact of his future work, we cannot overlook the unambiguous evidence showing that, once the petitioner left the to research medical devices at there was an immediate decline in the citation rate of his published work.

Furthermore, while the benefits of the 's work are theoretical rather than practical in nature, testing theories about the fundamental nature of matter, the petitioner has stated that his later work at produces practical benefits relating to the detection and treatment of cancer. While the intrinsic merit of cancer research is not in dispute, the petitioner has not shown that his

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[1] On April 10, 2014, the AAO generated its own printout of the petitioner's Google Scholar page, using the web address shown on the printouts submitted with the petition and in response to the RFE: .

work since 2010 has yet had any discernible influence on the diagnosis or treatment of cancer. Instead, witnesses have claimed that the petitioner's work may eventually lead to the building of prototype machines to test whether the petitioner's suggested improvements will have the intended effects. The petitioner has left the and therefore his work will produce no further benefits in that area. His subsequent work has led only to speculation about possible benefits that, if proven, remain in the indeterminate future.

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. at 165.

The letters submitted in support of the petition show that the petitioner has been a valued member of various research teams, but the remainder of the record fails to corroborate the claims from some witnesses that the petitioner is recognized as a "top scientist" in the field of particle physics. The letters provide valuable information about the nature of the petitioner's work, but cannot serve in place of objective evidence with respect to basic claims of fact in this proceeding.

The record establishes that the petitioner, along with hundreds of other researches, participated in the important and influential until he completed his doctorate in 2010. Since that time, the petitioner has not continued pursuing the same line of research. Rather, the record shows that the petitioner has since conducted related but distinct research at Witnesses have stated that the petitioner's work addressed important challenges in the field of medical imaging, but have not established an impact beyond providing guidance to unidentified parties said to be working on prototypes of improved machines. The drop in the citation rate to the petitioner's published work, which corresponds to the change of research topic, does not show that his work continues to have significance or impact comparable to his earlier work as part of the .

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. 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 a plain reading of 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.

The AAO 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.