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

[redacted]

DATE: NOV 0 4 2014 OFFICE: TEXAS SERVICE CENTER [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, 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 pediatric hematologist/oncologist. At the time she filed the petition, the petitioner was training as a fellow at the Washington, D.C., and also studying for a master's degree in health science at 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 statement, asserting that she has submitted sufficient evidence to establish eligibility for the benefit she seeks.

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 August 22, 2013. An accompanying statement included the assertion that the petitioner has met all three prongs of the *NYSDOT* national interest test, through "vital research projects that have already influenced the field of [redacted]" and that "[s]he is very well-known for her diagnostic ability."

The petitioner submitted an 82-page statement, providing technical details about her work and studies. The petitioner's own assessment of the significance of her work cannot meet her burden of proof. 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)). Therefore, the outcome of the petition depends on the evidence that the petitioner has submitted to support her claims.

The petitioner asserted that "letters . . . from experts in the field from around the country both at institutions at which [the petitioner] has worked and institutions at which she has not worked" show that the petitioner's "expertise and leadership in the field of [redacted] have set her apart from others."

Dr. [redacted] chief of the Divisions of Hematology and Oncology at [redacted] stated that the petitioner "serves in an important role performing epidemiological and clinical research on a trial" at the [redacted] and that she "is continually recognized as an expert in her field based on her original research contributions." Dr. [redacted] did not describe those contributions or their impact on the field.

Dr. [redacted] associate member of the Department of Pediatrics at [redacted] praised the petitioner's superior "ability to diagnose," marked by her mastery of "advanced diagnostic tests." Dr. [redacted] also states that "the most prestigious institutions and universities in the country will only employ the best physicians in their respective fields," and that the petitioner "has been selected for important roles" at one of those institutions [redacted]

Dr. [redacted] associate professor at [redacted] stated that the petitioner "has distinguished herself in the field through performing innovative research," and that the petitioner:

> has already significantly advanced pediatric hematology [and] oncology research as she produced a landmark study concluding that oral leukoplakia develops at a very young age in [redacted] patients, and also her findings that the presence of oral leukoplakia was also associated with more severe forms of bone marrow failure.

Dr. [redacted] asserted that the petitioner "has consistently been recognized internationally for her work," but did not describe this recognition except to claim that the petitioner's conference presentations were "very well-received" and "garnered significant interest from the international hematology community. Few of her peers have had such an influence on scientific research and clinical practice."

Dr. [redacted] clinical professor at the [redacted] stated that the petitioner "has produced outstanding research innovations that have

influenced how pediatric hematologists and oncologists practice and treat patients nationwide," but Dr. provided no details about this claimed influence.

Dr. chief of the stated that the petitioner's involvement in an -funded research project comprised "not only . . . clinical responsibilities of assisting in recruitment of patients and performing syndrome-specific detailed histories and physical examinations on them; but also . . . the generation of path-breaking and innovative research that have garnered significant national and international interest and earned her accolades."

In a section of the record headed "Publications," the petitioner submitted copies of three abstracts of conference presentations. The petitioner did not submit any full published articles or documentation to show the impact of her presentations. The petitioner submitted a copy of an article from which included a citation to one of the petitioner's presentations, but this was a self-citation. was a co-author of the presentation and of the review article in which the citation appeared.

The director issued a request for evidence on September 26, 2013, instructing the petitioner to "establish . . . a past record of specific prior achievement with some degree of influence on the field as a whole." The director instructed the petitioner to submit evidence to establish the significance and impact of her past work, such as citations of any published work, and background information about claimed awards.

The petitioner responded with a statement discussing "her expertise, research advancements and leadership in the field of ' The phrase " ' appears seven times in the response statement, but the petitioner does not claim to be an endocrinologist.

The petitioner claimed: "the Department of Labor has recently held in several prevailing wage requests that where a physician will provide patient care, education, and research, that this constitutes a combination of occupations, which is deemed inappropriate for labor certification." The petitioner submitted no evidence and cited no sources to support this claim, and did not show that the Department of Labor had denied labor certification applications (as opposed to and as distinct from prevailing wage requests) for the reason identified.

In an accompanying personal statement, the petitioner asserts that "is a designated . . . Primary Health Care Professional Shortage Area and a Medically Underserved Area." Section 203(b)(2)(B)(ii) of the Act defines a separate national interest waiver procedure for physicians who seek to practice in such shortage areas. To qualify for that waiver, however, it is not sufficient to assert an intention to practice in a shortage area. Rather, the statute and 8 C.F.R. § 204.12 spell out the various requirements for the waiver. The petitioner has not met those requirements, and she cannot qualify for the waiver under *NYSDOT* based on an asserted intention to work in a shortage area. A local worker shortage is not grounds for approving the waiver under *NYSDOT*. *See id.* at 218.

The petitioner discussed her research activities and her "extensive teaching activities through work as a senior housestaff." A house staff appointment is, by definition, a temporary training position. The *curricula vitae* of the letter writers show that such appointments generally last three years. The temporary duties of house staff, therefore, are not grounds for permanent immigration benefits. Also, the petitioner's assertion that the labor certification process cannot take teaching duties into account is irrelevant because the petitioner has not shown that her teaching or research duties will continue after she has completed her fellowship at

The petitioner documented developments that occurred after the petition's filing date, such as receipt of a $500 grant to defray travel costs to a conference, and her authorship of an article published in the October 2013 issue of These materials demonstrate that she continued to participate in research in the months following the filing of the petition, but they are not evidence of impact on the field as a whole. A section of the petitioner's response bears the heading "Acknowledgement by Others at National and International Talks." The exhibits in this section include one of the petitioner's own poster presentations, and electronic slide presentations by collaborator identifying the petitioner as a member of her research team or as one of several physicians who, in the course of patient treatment, gathered data for various studies.

The petitioner stated that she was submitting documentation of grant funding. The submitted materials show that the petitioner or her collaborators had applied for such funding. Grant funding, when approved, provides the means to conduct research, but it cannot establish the impact or influence of that research, because the funding necessarily comes at the beginning of the research, before the results are known.

The director denied the petition on January 7, 2014. The director found that the petitioner's occupation has substantial intrinsic merit, but that the petitioner's "evidence fails to show that the [petitioner's] proposed employment will be national in scope" because the petitioner has not established that her past research "has had significant and widespread implications beyond [the] particular facilit[ies where the research occurred] or for anyone aside from the specific patients she has treated." This is not the correct standard for the "national scope" prong of the *NYSDOT* national interest test; that prong concerns the occupation, rather than the petitioner's individual impact within that occupation. The benefit from medical research is inherently national in scope, provided the results of that research are made available to the national research community, for example through publication. The question of the petitioner's individual impact as a researcher is an issue for the third prong of the *NYSDOT* national interest test.

The director quoted from several of the letters submitted in support of the petition, but found that the record does not corroborate the claims in those letters regarding the significance of the petitioner's work. The director noted the lack of evidence of citation of the petitioner's published work.

On appeal, the petitioner states that she "has demonstrated her remarkable abilities as a medical researcher through her influential publications that have been instrumental in educating other

clinicians," and that her "important work has been featured in prominent forums" at which "[o]nly the foremost members of her field have had their work presented."

The director, in the denial notice, had stated that the petitioner had not established that her publications were influential as claimed. The director specifically pointed to the lack of citation of the petitioner's work. The petitioner cannot overcome this finding on appeal by calling her publications "influential" without further elaboration or evidence. *See Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner asks us to "take into consideration the opinions of [her] peers" and "her unique roles within major academic teaching hospitals." 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 in the record describe the nature of the petitioner's research, in varying degrees of detail, but the record does not corroborate claims regarding the known significance of that research or various assertions of fact that should be verifiable beyond the assertions of individual writers.

The petitioner, on appeal, does not explain how her roles have been "unique" rather than typical of residents and fellows whose medical training is ongoing. Similarly, the petitioner asserts that she has had "leading roles at prominent medical institutions," but she does not elaborate. The petitioner has not explained how it is a "leading role" to be a medical student, resident, fellow, or subordinate contributor to a research project.

The petitioner asserts that her "peer-review activities for nationally and internationally circulated journals are national in scope." Above, we have reversed the director's finding that the petitioner's work lacks national scope (provided that the petitioner continues to conduct research; the director is correct in finding that clinical patient treatment produces local benefits). However, the record does not support the assumption that peer review is an activity reserved for the relatively few exceptionally qualified figures in the field.

Overall, the record shows that the petitioner has engaged in teaching, research, and clinical duties that appear to be typical for house staff receiving training at teaching hospitals. The petitioner has not demonstrated that she stands out from other such individuals to an extent that would warrant the special benefit of a waiver of the statutory job offer requirement.

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.