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: NOV 0 4 2014 OFFICE: TEXAS SERVICE CENTER

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:

SELF-REPRESENTED

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,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner filed a motion to reopen and reconsider, and the director affirmed the denial of the 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 with progressive post-baccalaureate experience equivalent to an advanced degree, and as an alien of exceptional ability in the sciences, the arts, or business. The petitioner seeks employment as a facilities team lead, gas area, for 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 the equivalent of 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, a personal statement, and a copy of a previously submitted letter from a third party. Attorney represented the petitioner at the time he filed the appeal on February 7, 2014. Later, on March 26, 2014, the Executive Office for Immigration Review (EOIR) suspended Mr. from practicing before the Department of Homeland Security. The EOIR later reinstated Mr. but the October 14, 2014 reinstatement order reads, in part: "If the respondent wishes to represent a party before the [Department of Homeland Security], he must file a Notice of Appearance (Form G-28 . . .), including any case in which he was formerly counsel, prior to his suspension." The record includes no new Form G-28 from Mr. to renew his representation of the petitioner. Therefore, we cannot recognize Mr. as the petitioner's attorney of record at this time. The appellate brief will receive due consideration, but we consider the petitioner to be self-represented in this proceeding.

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 the defined equivalent of an advanced degree. Many of the petitioner's initial exhibits were intended to establish exceptional ability in the sciences, the arts or business. Because the petitioner readily qualifies for the parallel classification of a member of the professions holding an advanced degree or its equivalent, we need not discuss these exhibits in detail.

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 January 28, 2013. An accompanying statement set forth the petitioner's arguments in favor of granting the national interest waiver:

> What [the petitioner] does is highly complex. In brief he is an expert in all phases of petroleum/natural gas projects, both "upstream" (prior to recovery) and "downstream" (after recovery[)]. . . . He is currently working for the Chevron company in Texas, and has worked for nearly [a] dozen different companies and consortiums all over the world during his long career. . . .
>
> [The petitioner] intends to provide his expertise nationally . . . and the petroleum and gas industry is inherently national in nature.
>
> As to the third prong [of the *NYSDOT* national interest test] it is important to note that a somewhat different test applies to aliens who will be self-employed.
>
> NYSDOT at page 218 footnote 5 says in relevant part:
>
> "The Service acknowledges that there are certain occupations wherein individuals are essentially self-employed, and thus would have no U.S. employer to apply for a labor certification. While this fact will be given due consideration in appropriate cases, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien **will serve the national interest to a substantially greater degree than do (sic) others in the same field.**"
>
> The **sole** standard for self-employed aliens is that stated in bold text above. Thus any discussion of balancing the desirability of labor certification against the [petitioner]'s qualifications, although normally part of an NIW [national interest waiver] analysis, would be irrelevant. . . .
>
> [T]he mere fact that [the petitioner] has 28 years of experience and critical, leading roles almost throughout such period shows that he is substantially more qualified than others in the field. . . .

> In determining the issue of whether a person will contribute to the national interest if the waiver is granted, NYSDOT requires a showing that:
>
> "it is [*sic*] must clearly be established that the alien's past record justifies projections of future benefit to the national interest. The inclusion of the term 'prospective' is used . . . 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 at 219.
>
> NYSDOT clarifies the point in a footnote to that page that academic performance alone cannot be the basis of an NIW, rather an applicant must show a history of demonstrable achievement with **some** degree of influence on the field as a whole.
>
> "Some" degree of influence is certainly less than "major" or even "significant" influence. . . .
>
> By virtue of mentoring such a large group of professionals from so many different countries on high level technical matters, [the petitioner] necessarily has had "some" impact on the field. . . .
>
> The clear meaning of the portion of NYSDOT having to do with the words "some influence on the field as a whole" is to preclude persons who have graduated with an advanced degree but have done nothing else. It is not designed to exclude any other category of applicant.

(Emphasis in original.) In his own separate statement, the petitioner stated:

> With more than 28 years of professional experience in upstream and downstream oil and gas related operations, mostly in the field of Project Management, I have pioneered turnkey ventures involving the design, construction, and start-up of countless oil and gas Production, Refining and Distribution facilities, onshore and offshore; worldwide. . . .
>
> I have an unparalleled professional success in engineering design, procurement/ contracting and construction of facilities for the oil & gas sector. More specifically, I have amassed a wealth of knowledge in the construction and start-up of cross-country pipelines, extra heavy oil Upgrades, Natural Gas Treatment and Distribution Plants, Liquefied Natural Gas (LNG), and Liquefied Petroleum Gas (LPG) Processing Plants, Onshore/Offshore platforms and deep water production and storage vessels; as well as technology development and confidential technology developments, feasibility studies, alternative evaluation and selection.
>
> Furthermore, I have a string of accomplishments in the successful design of operational models based on constrains [*sic*], sustainability, as well as environmental

> and social impact. In addition to the foregoing, I have led countless contract negotiations, ranging from the implementation of bidding processes for suppliers, trading laws standardization and compliance, to the design and execution of risk assessment strategies, just to name a few. . . .
>
> Throughout the whole length of my professional career I have occupied key positions within some of the leading global corporations in the energy industry. . . . The foregoing has furnished me with an unmatchable competitive edge in my field of expertise. This successful combination of knowledge is highly regarded and [in] soaring demand by professional associations and multi-lateral organizations. . . .
>
> In December 2012, I was promoted to the High-Ranking Position of Mid-Continent Engineering Team Lead – Gas Area, at [redacted] – Mid-Continent Business Unit. This new post requires . . . me to provide expert facilities engineering and project management support to the development, operations and maintenance projects for the Oklahoma Field Management Team. In addition, I am in charge of supervising and mentoring a team of engineers; all while working closely with the Gas Area multifunctional teams to execute the Business Plan. Additionally, I am responsible for properly executing the following tasks:
>
> - Leading FE team to support local Operations team to fulfill business plan commitments;
> - Provide direct supervision and mentoring of team of Facilities Engineers and Construction Reps;
> - Support the Business Unit strategic direction and execution;
> - Provide expertise in design, construction and production activities for oil, gas and waterflood production systems;
> - Become role model and effectively utilize Project Management tools and processes in the management of projects; hence guaranteeing compliance with design standards and utilization of the management of change process; and
> - Support safe field operations and safe design processes.

(Emphasis in original; footnotes and references omitted.) The intrinsic merit of the petitioner's occupation is not in dispute in this proceeding. With regard to the national scope of the benefit from the petitioner's work, the petitioner cited statistics regarding worldwide demand and consumption of oil and gas products and the need to improve efficiency in extracting these resources, and showing that the United States consumes disproportionate amounts of those resources in relation to population size and availability of domestic reserves. The petitioner stated: "I have a unique set of tools and knowledge that allow me to design and implement methodologies that exclusively focus on the cost-effective optimization of [redacted] operations" (emphasis in original), thereby benefiting the economy and environment of the United States. The petitioner did not, at that point, identify specific examples of methodologies that he had designed and implemented; he simply asserted that he possessed the necessary expertise.

With respect to the third prong of the *NYSDOT* national interest test, the petitioner stated:

> All of the above-mentioned US Economy-related concerns should be addressed by a handful of experts in the world like me. . . .
>
> My unique expertise in oil producing regions . . . allows me to rapidly analyze unfolding events and estimate the behavior of key market indicators . . . and to create independency [from] foreign oil. . . .
>
> Currently, there are two major natural gas developments on the US Government Agenda, one is the and the other is the . . .
>
> Some experts have suggested the may be the largest producible reserves of any onshore natural gas field in the United States. . . . [Should] further development of this field continue, my level of expertise . . . will undoubtedly be sought out to properly carry on this milestone. . . .
>
> To sum up, only a handful of experts in the world, such as myself, have the skills, abilities, and knowledge to ultimately close this steadily growing energy gap, and to start optimizing the nation's own resources; thus avoiding [serious] consequences to the nation's economy.

Six letters, all from individuals who had worked with the petitioner in some capacity, accompanied the initial filing of the petition. director of international operations for the consulting firm was the petitioner's direct supervisor at that company. Mr. listed several projects that the petitioner undertook in the 1980s and early 1990s, such as "[t]he flawless management of the whole permits, commissioning and start-up operations, involving the 1989 construction of the " Mr. asserted that the petitioner was "the force behind the successful start-up of a Gas Lift Facility, part of Project, where he single-handedly led the entire engineering, procurement and construction operations of this Compression Module." Mr. concluded that the successful outcome of these projects "made [the petitioner] one of the most sought after experts in Oil and Gas Project Management."

now Latin America service director for Project Management, stated:

> [The petitioner's] unparalleled expertise in the planning, managing, organizing and controlling of some of the largest Capital Projects, in the oil and gas sector, worldwide, has made him a walking wealth of knowledge. . . .
>
> [A]s Project Coordinator at . . . [the petitioner] displayed an unparallel[ed] degree of professional excellence while leading the Design Engineering, Procurement and Construction of a Compression Package, fully modularized, and to be

> installed offshore. . . [H]is work was considered pioneering, due to the fact that it was the first successful attempt at building modularized gas compression plants to boost crude oil production in Venezuela.

Mr. added that the petitioner "was working in the Production MPR 2 Expansion Plant. . . . Orimulsion is a liquid fuel . . . [which] represents an economically attractive alternative for new power generation . . . [as] a substitute for coal." Mr. did not indicate the petitioner's role in the creation or production of except to state that the petitioner held the title of "Materials Manager" at the plant.

Three of those who wrote in support of the petitioner worked with the petitioner at a joint venture between now a project manager for stated:

> [M]y tenure at brought me to experience [the petitioner's] unparalleled skills as Manager of the Project, a US $45 Million-Dollar [*sic*] venture, where he was solely responsible for the Engineering, Procurement and Construction phases involving the design and installation of a 50-mile long Gas Pipeline and a 55-Mile long Diluents Crude Pipeline, both connecting to the Hamaca Upstream Production Facilities.
>
> As a leader of the project, [the petitioner] brilliantly managed all the engineering, procurement and construction stages, which demanded the use of unique methodological tools and well-established management principles; all leading to a successful completion of his job, under budget, and with zero loss time incidents.

Somewhat similar wording appears in a letter from , project manager at : "As Upstream Project Manager, [the petitioner] brilliantly conducted the last phase of the construction process, with zero loss time injuries, and under budget." Mr. also asserted that the petitioner "brilliantly executed all tasks [in] a timely manner; and . . . achieved unprecedented cost savings in excess of US $2 Billion Dollars" when he was "Transport Facilities Leader . . . in charge of the . . . Conceptual Engineering Studies" for "the Project."

senior project manager for , stated:

> [In 2001] I held the position of Engineering and Construction Manager for the Project, directly reporting to [the petitioner].
>
> Since then, we have maintained close personal contact while I have followed [the petitioner's] career. . . . [A]s Latin America Business Unit Project Management Advisor [for] . . . , he was considered the highest authority in Capital Stewardship Organizational Capability (CSOC) deployment. In this capacity, he oversaw all of the training of Project Management Professionals in Business Units in Argentina, Brazil, Colombia and Venezuela. Worthy of

> mentioning, under his leadership, all of these units achieved 'Gold Standard' Status, recognizing their professional excellence in conducting operations.
>
> Another project worthy of being highlighted was his assignment as Topsides Manager for Project Resource Company, seconded to . . . a US $2.2 billion oil, gas and capital project, where [the petitioner] led the preliminary engineering work. He managed the project through to the flawless execution of a US $2 million engineering contract which was completed below budget and ahead of schedule. . . . [H]is extensive experience in the construction and start-up of offshore facilities played a key role in the successful outcome of this project.

who claimed the title "business manager" but did not identify his current employer, previously worked with the petitioner while Mr. was a manager for various construction companies. He stated that the petitioner "has proven to be a highly respected Subject Matter Expert (SME) in the field of project management in domestic and international work locations. . . . Only a handful of talented individuals have such a long display of accomplishments working for some of the world's largest oil companies." Mr. discussed various projects where he worked with the petitioner, but for the most part described the petitioner's work in general terms. The most detailed discussion was as follows:

> In 2007 . . . I was aware that had hand-picked [the petitioner] to participate from a technical project management basis in the Engineering Department for Company's plants assigned under his leadership. . . . [The petitioner] was the force behind the successful implementation of the Front-End-Loading Foundation for the project.

The writers identified above provided varying degrees of detail about the petitioner's past work, but the petitioner did not submit primary documentary evidence to allow for an objective determination that the petitioner's contributions have influenced the field as a whole, or otherwise stand out to an extent that would warrant a waiver of the job offer requirement.

The director issued a request for evidence (RFE) on May 7, 2013, stating that the petitioner's initial submission did not establish eligibility under the *NYSDOT* national interest test. The director requested "evidence that the [petitioner] has a past record of specific prior achievement with some degree of influence on the field as a whole."

The RFE response repeats the prior assertion that any influence is more than "no influence" and, therefore, "some influence." Not all influence is "influence on the field as a whole," which is the phrase found in *NYSDOT* at 219, n.6. In discussing the paragraph that yielded the quoted footnote, the petitioner's response included this assertion:

> It must be remembered that the criterion of having to show some influence on the field **is a footnote to** a paragraph stating that zero accomplishment outside of academic studies disqualified an applicant for NIW consideration. A footnote cannot

> assume more power than the paragraph it is attached to, i.e., entirely change the criterion of the paragraph itself. The paragraph in question is not designed to exclude any other category of applicant other than persons with absolutely no accomplishments. . . . The footnote is not designed to create a quasi extraordinary abilities standard.

(Emphasis in original.) The footnote in question relates to this paragraph from *NYSDOT*:

> The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. While the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. [The quoted footnote appears at this point.] The inclusion of the term "prospective" is used 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. at 219. The footnote does not appear after the reference to "no . . . prior achievements." Rather, it appears at the end of the second sentence in the paragraph, referring to "the alien's past record." In this context, it is evident that *NYSDOT* should not be construed to mean that the only people ineligible for the waiver are recent graduates "with no demonstrable prior achievements." The reference to "no demonstrable prior achievements" relates not to eligibility for the waiver, but rather to the sense of the word "prospective" as it derives from section 203(b)(2)(A) of the Act. That is, the petitioner cannot simply promise that his future work will benefit the United States and serve the national interest; he must substantiate this assertion with a record of prior achievements. The alternative construction proposed in the petitioner's response to the RFE, that any and all post-collegiate experience qualifies one for the waiver, is untenable in the fuller context of *NYSDOT* as a whole.

In a separate letter (much of which repeats or paraphrases his earlier introductory letter), the petitioner stated that his "implementation of new and/or improved processes/ methodologies . . . [is] intrinsically national in scope because their use is similar in any location of the country and their results directly affect the wellbeing of any American" (emphasis in original). The petitioner repeated his claim of "extensive technical experience" in the "Exploration & Production of Unconventional Oil," "Production of Synthetic Crude Oil," "Optimization of Gas Production and Processing" and "Production of mature oil fields using secondary recovery techniques" (emphasis in original). The petitioner does not claim to have created or improved the processes and methods, only to have experience in implementing them. Job-related training in a new method, whatever its importance, cannot be considered to be an achievement or contribution comparable to the innovation of that new method. *NYSDOT*, 22 I&N Dec. at 221 n.7. The petitioner does not influence his field simply through familiarity with techniques developed by others; he must establish the impact and significance of what he has accomplished using those techniques.

The petitioner cited statistics regarding the reliance of the United States on foreign sources of petroleum, and stated that "U.S. production should increase 50% to fulfill energy needs. . . . The only way to handle this additional production and meet energy requirements is to build new facilities and improve those in service," for which "specialized project managers are top priority. No project is feasible without Project Managers. . . . Time is of the essence and Labor Certification is time consuming." This assertion does not distinguish the petitioner from other project managers. Rather, the petitioner argues, in effect, that project managers such as himself should be exempt from labor certification because they are project managers. This assertion addresses the intrinsic merit of the occupation, but Congress has not established any blanket waiver for project managers as it did for certain physicians under section 203(b)(2)(B)(ii) of the Act. Without such express congressional action, USCIS will not establish blanket waivers for workers in a given occupation. *See NYSDOT*, 22 I&N Dec. at 217. The assertion that qualified project managers are in short supply would tend to indicate that an employer would be able to secure labor certification. *See id.* at 218.

The petitioner submitted a second set of letters from the same individuals who had signed the letters submitted previously. Some of the letters are simply photocopies of the letters submitted previously; others are revisions of the earlier letters.

[redacted] in his first letter, had claimed that the petitioner "quickly became the most sought after authority in [redacted] Latin America Business Units, when it came to the subject of Teaching [redacted]" His second letter, dated July 20, 2013, added a description of [redacted] as "the company methodology to formulate, select and manage projects sustaining a solid system for the corporation budget in exploration and production ventures." Mr. [redacted] asserted that the petitioner had to pass "a strict selection process" and was, for a time, "the only [official] qualified to provide the required training for other [redacted] employees in the business unit." There is no evidence that the petitioner developed the [redacted], only that he is qualified to train others in the process. Teaching a pre-existing method, however complex, is not influence on the field.

In a passage added to her previous letter, [redacted] provided further details about the petitioner's involvement in the [redacted]. In the second version of the letter, Ms. [redacted] provided two very different figures for the cost of the project. She first repeated her original claim that the project cost $45 million, but in the next paragraph she referred to the same project as "a 3 billion US$ endeavor," a figure nearly 67 times greater than the original claim.

> The assignment to build the gas and diluent pipelines for the Hamaca Project . . . was one of the most critical components of the infrastructure development. . . .
>
> [The petitioner's] execution strategy was to implement two parallel project schedules: one prepared by the major engineering and construction contractor, and a second one prepared . . . from the company owner's perspective (Ameriven). . . . At the time, this approach was strongly criticized within the company; however . . . [t]he result was clear; not only the completion of the pipelines was achieved on time and under budget

> but it was the only project in the program that achieved such results, while others had budget deviation of 300%!

In his first letter, had discussed some of the petitioner's projects. In his revised letter, bearing the same digitally reproduced signature, he added passages to two paragraphs:

> [T]he project proved capabilities of Venezuelan engineering companies and fabrication yards to fully design and build complex modularized oil production systems and paved the road to the rest of the modularization projects in the entire nation and for other Latin-American oil producing countries. . . .

Regarding the petitioner's previously discussed role in the project, Mr. stated: "This initiative became pivotal, and was true evidence of [the petitioner's] vision and holistic knowledge for all aspects of the project management discipline."

stated that the petitioner's "successful start-up of a Gas Lift Facility," described in his earlier letter, is one of the petitioner's "most outstanding contributions to the oil and gas sector." Mr. provided technical details about the advantages of the gas lift technique, in which gas is injected into a mature well "to reduce oil density to a point in which reservoir pressure is able to push up oil and the well returns into production."

Mr. then provided technical details about the Project, stating that the "project ranked first in the country in many aspects." He continued:

> One of the most important milestones achieved by [the petitioner] was avoiding the production decline in areas with more than 50 years of operations, successfully guaranteeing the stability and increase of its run life.
>
> engineering team led by [the petitioner] was key element [*sic*] in the implementation of the integrated design. . . . Also, the engineering team was pivotal in transferring the expertise required to the local shops to build the entire structure, the module equipment and control systems and most important to collect the lessons generated from the completion of the first module and quickly transfer those lessons on the fly to the design and construction of the other three modules.

Mr. restated his opinion that the petitioner "is among the most brilliant and diversified Project Management Experts in the field" that Mr. had encountered.

The writers described the petitioner's work on several projects and portrayed the petitioner as a highly skilled project manager. They did not, however, demonstrate the petitioner's influence on his field (for example, through the introduction of new procedures or methods that others have subsequently adopted). The assertion that the petitioner is more highly skilled than others in his field is not sufficient to qualify for the national interest waiver, because, by statute, aliens of exceptional ability (with "a degree of expertise significantly above that ordinarily encountered")

remain subject to the job offer requirement. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(k)(2).

The director denied the petition on September 5, 2013, stating that the petitioner had established the intrinsic merit of his occupation, but not that the benefit from his employment would be national in scope or that he has a past history of achievement with some degree of influence on the field as a whole. The director quoted several of the letters in the record, but found that these letters do not establish eligibility for the waiver. The director also stated: "a waiver of the labor certification process cannot be granted because it is 'time consuming' and something of an inconvenience to the beneficiary, as is argued in the evidence." *See NYSDOT*, 22 I&N Dec. at 223.

The petitioner filed a motion to reopen and reconsider on October 7, 2013, including a legal brief and copies of two letters. One letter is a copy of s July 20, 2013 letter, already discussed above. The other letter is from president of Mr. stated:

> is the second largest exploration and producing company in our industry. Like all industries the oil and gas upstream sector has certain companies that innovate and set practices that quickly become adopted throughout the industry. . . . is a pacesetter in heavy oil operations and most companies in our industry have adapted practices that were originated by A topic of great concern in our industry is that of maximizing recovery of hydrocarbons from the reservoir, which may be improved in heavy oil reservoirs through the use of new technology. This is exceptionally important due to the lack of experienced engineers in heavy oil for our industry. This is an area where [the petitioner] has had a great deal of individual input benefiting that has been adopted throughout our industry. . . . Due to s prominence and [the petitioner's] accomplishments . . . , it is my professional opinion that he has had influence on the field of engineering in a more than nominal way. Since early in his career, he has always held Leadership Positions in very important . . . industries. . . . Additionally [the petitioner] successfully developed one of the industry's leading technical developments the to increase the quantity of heavy oil in gasoline.

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.

In this instance, Mr. made claims of fact (rather than expert opinion) that the record does not corroborate. He asserted, for instance, that "the project . . . has been widely written about in our industry," but the record contains no writings on the subject. The record shows that the petitioner has been involved with the project, but it does not show the extent to which the petitioner has developed or shaped the process, as opposed to putting to use procedures and methods developed by others. The "lack of experienced engineers" is a shortage issue that does not qualify for the waiver under *NYSDOT*.

In the legal brief submitted on motion, the petitioner contested that director's use of "concepts such as 'significant benefit to the field of endeavor' and contributions of 'unusual significance,'" stating that these criteria relate to the more stringent immigrant classification for aliens of extraordinary ability at section 203(b)(1)(A) of the Act. The petitioner repeated the assertion that "he is substantially more qualified than the majority of his peers with the same minimum qualification."

The director affirmed the denial of the petition on January 7, 2014, stating: "USCIS cannot accept the petitioner's assertion that the proposed benefit of his presence in the United States will inherently be national in scope simply because he works in the petroleum industry." The director also concluded that the petitioner relied on "a narrow interpretation of NYSDOT" and an "evidentiary standard . . . [that] would clearly defeat the purpose of waiving the labor certification process for only those whose benefit to the national interest decisively outweighs the inherent national interest in protecting U.S. workers through the labor certification process." The director stated that it would be "unacceptable" to approve waivers for every foreign worker with any "kind of experience . . . other than nothing at all."

On appeal, the petitioner submits a copy of s letter, a new letter from the petitioner, and a legal brief. The petitioner, in the brief, argues that the director erred in finding that the benefit from the petitioner's work will not be national in scope under the *NYSDOT* standard. The relevant portion of the precedent decision reads as follows:

> While the alien's employment may be limited to a particular geographic area, New York's bridges and roads connect the state to the national transportation system. The proper maintenance and operation of these bridges and roads therefore serve the interests of other regions of the country. Moreover, nothing in the record indicates that proper maintenance of New York's transportation infrastructure would have an adverse impact on the interests of other regions. We therefore conclude that the occupation in this case serves the national interest.

Id. at 217 (footnotes omitted). The "national scope" standard applies to the occupation, rather than to the petitioner's demonstrated accomplishments within that occupation. An oil field in Oklahoma, for instance, does not produce oil exclusively for use in Oklahoma, and the record indicates that the petitioner plays a significant role in operations onsite. By this standard, the petitioner has established that the benefit from his occupation is national in scope. This benefit arises from the work performed, and any worker qualified for the position would produce benefits in this way. Therefore, the nature of the petitioner's occupation satisfies the "national scope" test but does not

establish that the petitioner qualifies for benefits beyond those available to other foreign workers in the same occupation.

Regarding the third and final prong of the *NYSDOT* national interest test, the petitioner, via the legal brief, asserts that he "was required only to show he was substantially more qualified, not that he is substantially more qualified because of contributions of significant benefit or unusual significance." All aliens of exceptional ability must "substantially benefit prospectively . . . the United States." Section 203(b)(2)(A) of the Act. Evidence of recognition for achievements and significant contributions to the industry or field can provide partial support for a finding of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(F). Therefore, "significant contributions" are not sufficient, by themselves, to establish exceptional ability; and the "substantial benefit" expected of all aliens of exceptional ability does not warrant a waiver of the job offer requirement. The preamble to the implementing regulations addressed this issue:

> Some commenters also asked that the phrase "in the national interest" be defined. One commenter suggested that the phrase should apply to any alien who would substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States. The Act itself requires this showing of all aliens seeking to qualify as "exceptional," but adds the "national interest" test to permit a job offer waiver for certain aliens who have already satisfied the "prospective national benefit" test. The Service, therefore, cannot equate the two standards. Congress has not provided a more particular definition of the phrase in the national interest. The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the standard must make a showing significantly above that necessary to prove "prospective national benefit." 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 will be judged on its own merits.

56 Fed. Reg. 60897, 60900 (November 29, 1991). It is plain from the above sources that the petitioner cannot qualify for the national interest waiver simply by claiming that his qualifications or credentials exceed those of minimally qualified United States workers.

The brief includes a repetition of the discussion that *NYSDOT* excludes "an alien with no demonstrable prior achievements," and that the petitioner "clearly has many demonstrable prior achievements." The petitioner has taken a short section of *NYSDOT* out of context to imply, incorrectly, that any level of achievement above "no demonstrable prior achievements" is the threshold for the waiver, and that therefore the accumulation of past experience necessarily qualifies a foreign worker for the waiver. As explained previously, the phrase "no demonstrable prior achievements" refers to the sense of the adverb "prospectively," not to the bar that a petitioner seeking the waiver must clear.

In his own statement on appeal, the petitioner asserts that his "specific knowledge, skills and professional background have led to important contributions and a legacy within the field." The

petitioner asserts that he has successfully managed past projects and is well placed to succeed in new endeavors, described for the first time on appeal. The director did not dispute that the petitioner, with the title "project manager," is able to manage projects for his employer, sometimes of considerable size. The petitioner, however, has not established that he has achieved results beyond the capabilities of other qualified project managers. Details about his projects, in isolation, allow no such comparison. Furthermore, assertions about the importance of the tools of his trade, such as and the gas lift technique, do not establish the petitioner's influence on his field as a whole. Mastery of tools invented elsewhere is not influence, and the petitioner has not shown that he invented, developed, or significantly improved these tools and methods.

The petitioner has contended that his successful experience with a major oil company is, virtually by definition, influence on the field as a whole. The record does not support this claim. The petitioner has described his past work, but has not submitted objective evidence of its importance or influence relative to what other competent and qualified project managers have achieved in the same field.

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. 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.