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 7 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:

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 seeks employment as a physician specializing in cardiology. At the time he filed the petition, the petitioner was a fellow at the U.S. Citizenship and Immigration Services (USCIS) records indicate that he now works for Public Hospital District. 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 states that his "very impressive and extensive track record of national contributions to the scientific community" warrants approval of the national interest waiver.

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, P.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 September 13, 2012. He indicated, on Part 6, line 7 of the petition form, that his position was not permanent. This is consistent with the inherently temporary nature of a medical fellowship, which provides training in a given medical specialty.

The petitioner submitted several letters in support of the petition. Dr. [redacted] program director of the Cardiology Fellowship at the [redacted] stated

that the petitioner "is a celebrated cardiologist who is renowned for his extraordinary abilities" and "is well-known for his research contributions."

Dr. , co-director of the at the Pennsylvania, called the petitioner "an extraordinary Physician at the top of his field," whose "reputation as an exceptional cardiologist" led to "an invitation to review the research of his peers for some of the nation's top medicine journals." The petitioner submitted no evidence from the editors or publishers of those journals to confirm that the petitioner's involvement in peer review is the result if his reputation in the field of cardiology.

Dr. chairman of , asserted that the petitioner "is a superb cardiologist who is able to perform highly advanced diagnostic cardiology procedures . . . [and] is also nationally recognized for his research in the field of cardiology." Dr. provided no further details except to identify the topics of some of the petitioner's research papers and techniques in which the petitioner is "also being trained," the completion of which "will make him among a select few cardiologist[s] who will be able to perform such complex procedures."

Simple exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an application for a labor certification. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *See NYSDOT*, 22 I&N Dec. at 221. 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. *Id.* at 221 n.7.

Furthermore, the petitioner had not completed the training in question when he filed the petition. Rather, Dr. stated that the training was ongoing, and that the petitioner would be well-qualified at some future point when the training was complete. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Therefore, even if the training in question qualified the petitioner for the waiver, he filed the petition at a time when he did not possess that qualification.

Dr. of the asserted that the petitioner "conducts award-winning research on cardiovascular diseases," and that the petitioner's "research paved the way for government agencies to fund anti-retroviral drugs free of cost to patients in the State [of Assam in India]."

Dr. called the petitioner "a cardiologist with rare expertise in the treatment of heart failure, coronary heart disease and cardiac arrhythmia." Dr. asserted that the petitioner "is being trained to perform the most complicated and sophisticated procedures," and that the petitioner "provides medical care to medically underserved patients and veterans." Dr. , a

gastroenterologist for claimed no training or expertise in the petitioner's specialty of cardiology.

Another witness outside the field of cardiology is Dr. an instructor in the Department of Radiology at the who asserted that the petitioner "is among the top 5-10% of the cardiology house staff in the nation," who "has conducted landmark research in the field." Dr. attended at the same time as the petitioner.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The letters considered above primarily contain bare assertions regarding the petitioner's claimed reputation and recognition, but they do not show how the petitioner's work has influenced his field. The record fails to substantiate the claims in the letters, beyond the basic showing that the petitioner has written published articles and participated in peer review.

The petitioner submitted a list of 23 "Publications/Presentations/Poster Sessions." His *curriculum vitae* includes this same list, with a 24th paper erroneously identified as a "citation." Nine of the items are identified as journal articles, two of which had not yet been accepted for publication (one was awaiting review, a second had been returned for revision). The petitioner submitted copies of his poster presentations, published abstracts from conference presentations, and some of his journal articles. The petitioner, in his initial submission, did not submit any evidence that other researchers have cited his published work.

The petitioner submitted copies of electronic mail messages from recruiters, seeking cardiologists, internists, and hospitalists in various parts of the country. These messages establish general demand

for physicians in primary care and certain specialties, but do not show that the petitioner, in particular, has drawn special attention from these recruiters.

The director issued a request for evidence on August 5, 2013. The director spelled out various requirements that the petitioner would need to fulfill in order to qualify for the waiver as a physician in a medically underserved area or , as described at section 203(b)(2)(B)(ii) of the Act. In the alternative, the director also stated that, to qualify for the waiver under *NYSDOT*, the petitioner "must establish . . . a past record of specific prior achievement with some degree of influence on the field as a whole." In response, the petitioner stated that he seeks the waiver under *NYSDOT*, and not as a physician in a medically underserved area. Nevertheless, in an accompanying statement, the petitioner stated that he is "fortunate to serve the veterans suffering from cardiovascular disease," there is "a shortage of . . . cardiologists nationally," and that Pennsylvania, where he was training at the time, is "a Health Professional Shortage Area." The shortage designation is relevant only for petitioners seeking classification under section 203(b)(2)(B)(ii) of the Act, which requires a five-year commitment. The petitioner has stated that he does not seek the waiver under that provision, and he relocated to Washington, less than a year after he submitted this statement. A local worker shortage is not a basis for approving the waiver under *NYSDOT*. *See id.* at 218. Similarly, *NYSDOT* contains no provision granting the waiver based on temporary employment at a In the petitioner's case, the record shows that his work at the was part of his residency training.

The petitioner described issues of concern in cardiology, including radiation exposure in catheterization laboratories and shortening hospital stays after cardiac catheterization, and stated that he is "currently working on a number of projects" in these areas, but he did not elaborate or establish that his work to date has had a significant impact on those problems. The petitioner's research work was tied to his temporary employment in which he has since left.

The petitioner submitted an updated list of publications and presentations, but establishing their existence does not establish their influence or significance. The petitioner stated that his work had been "[p]ublished 24 times in . . . major journals" and "[c]ited 17 times in major journals since 2008." The petitioner had previously claimed a total of 24 articles, oral presentations, and poster presentations combined, and provided a list showing that most of the papers were presentations rather than full journal articles. Nine of the listed items were poster presentations at one of two conferences in 2012 (one in Chicago, the other in Miami). The petitioner did not identify any new articles that would have brought his total number of journal publications up to 24 as claimed.

The petitioner, in his response to the August 2013 request for evidence, also did not submit or identify any citing articles. Therefore, the record contains no evidence to support the above statement. Also, assuming that the claimed citation figure is correct, the petitioner failed to establish that this number of citations is significantly high in his specialty.

The director denied the petition on January 9, 2014, stating that the petitioner had established the intrinsic merit of his occupation, but not its national scope. The director stated that the petitioner had not documented a pattern of widely cited published work, and that clinical medicine has an

inherently local impact. The director quoted from the submitted letters, but found the letters to be "general in nature" and lacking corroboration.

On appeal, the petitioner asserts that his "initial submission . . . [included] substantial evidence demonstrating and establishing that he has distinguished himself from his peers." Specifically, the petitioner stated that his work has been "[p]ublished 24 times in major journals" and "[c]ited 17 times in major journals since 2008." The petitioner did not submit evidence to support this claim, or to demonstrate that this claimed rate of citation, averaging less than 0.71 citations per article, establishes significant impact and influence in the field of cardiology.

The petitioner added that he has written or co-written 17 abstracts for "major cardiology conferences," and has been "[i]nvited [to serve] as a peer reviewer for [five] journals." The petitioner has sought to portray peer review as an activity reserved for relatively few ranking figures in the field, but the record does not support this characterization.

The petitioner asserts that he "is highly respected for his clinical abilities in the field of cardiology which of course cannot easily be objectively documented on a labor certification." The unsupported claim that the petitioner would have difficulty obtaining an approved labor certification does not establish that it is in the national interest to waive the job offer requirement. The petitioner's assertion of a significant shortage of cardiologists (consistent with the many submitted inquiries from recruiters) would tend to indicate reduced competition for jobs, which, in turn, would generally be a favorable factor in the labor certification process.

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.

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.