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 18 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:

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 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 researcher in energy conservation and environmental sustainability. 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.

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 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. *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.

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 Form I-140, Petition for Immigrant Worker, on July 18, 2013. In a seven-page decision, dated December 4, 2013, the director acknowledged the intrinsic merit and national scope of the petitioner's intended occupation, but found that the petitioner had not established his past impact on his field. The director quoted several letters submitted in support of the petition, and then cited case law to explain why such letters have limited weight as evidence. The director also noted that many of these letters concerned a particular project linked to the petitioner's postdoctoral training.

The director also acknowledged the petitioner's authorship of scholarly papers, but found: "The evidence furnished with the petition fails to establish or even claim that any of the [petitioner's] authored or co-authored articles have ever been professionally published, much less officially cited by colleagues in [other] publications." The director found, therefore, that the petitioner has not established influence on the field that would warrant approval of the waiver.

On appeal, the petitioner contests only one specific finding in the director's decision. The petitioner identifies two journal articles which, he claims, cite his earlier work. The petitioner does not submit these articles. 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)).

The petitioner maintains that "the decision was incorrect based on the evidence of record at the time of the decision." In order for this assertion to be correct, the petitioner must show that he had previously submitted evidence of the claimed citations of his work. If he had not previously documented those citations, then the citations were not part of "the evidence of record at the time of the decision."

The petitioner's initial submission included a list of exhibits submitted with the petition. The exhibit list identified exhibit 10 as "[c]opies of numerous research publications co-authored by [the petitioner]"; the list did not mention citations of the petitioner's claimed published work. Exhibit 10 does not include copies of articles in published journal format. Instead, the petitioner submitted manuscript copies of several papers, along with a page from his employer's web site listing the papers under the heading "Research Papers." The initial submission did not include evidence of citations, and the petitioner, at that time, did not claim that it did include that evidence.

On August 27, 2013, the director issued a request for evidence, informing the petitioner that the initial evidence was not sufficient to establish eligibility for the benefit sought. Among other things, the director specifically requested "evidence that [the petitioner's] articles have been officially cited by

others in their professionally published articles." The petitioner's response to that notice included a detailed list of accompanying exhibits. The exhibit list does not mention the claimed citations of the petitioner's work, and review of the accompanying documents does not show evidence of the claimed citations. The exhibits included one manuscript marked as having been accepted for publication, and a second marked as having been submitted for publication, but no evidence of existing publications or of citations of such publications. The response to the request for evidence did not include evidence of citations, and the petitioner, at that time, did not claim that it did include that evidence.

For the above reasons, the record does not support the petitioner's only factual claim on appeal, specifically that "the evidence of record at the time of the decision" showed citation of his published work. Because the record does not support the only claim of fact on appeal, we must dismiss the appeal.

The petitioner stated: "Further details will be submitted in . . . a brief that will follow this notice." Subsequently, on February 3, 2014, the petitioner stated that health problems have delayed his preparation of an appellate brief. The petitioner requested "an additional 30 days to submit [the] brief." We responded to the petitioner on February 5, 2014, allowing the petitioner "until March 7, 2014 to file a brief or otherwise supplement the appeal." To date, seven months after the extended deadline has passed, the record contains no further submission from the petitioner. Therefore, we consider the record to be complete and hereby render this decision based on the record as it now stands.

We note that the director did not assert that the lack of citations was the only ground for denial of the petition. The petitioner did not address any of the director's other findings. When an appellant fails to offer an argument on an issue, the petitioner abandons that issue. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885, at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims abandoned when not raised on appeal to the AAO).

The director discussed the record in considerable detail in the denial notice. The petitioner, on appeal, made only one claim of fact, which the record contradicts. 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.