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 28 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 petitioner filed a motion to reopen the proceeding, which the director dismissed. 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 in the field of strategic management and business development. When he filed the petition, the petitioner was a global product marketing manager for [redacted] Georgia. He has since asserted that he seeks to work as an independent consultant. 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 and copies of previously submitted materials.

Prior to the filing of the appeal, attorney [redacted] represented the petitioner. The appeal, however, includes no evidence of Mr. [redacted] continued involvement, and the appeal does not include a newly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, as required by the regulation at 8 C.F.R. § 292.4(a). We therefore consider the petitioner to be self-represented.

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 July 2, 2012. The petitioner's electronic filing of the petition included no supporting evidence, and therefore the

director issued a request for evidence (RFE) on November 2, 2012, instructing the petitioner to "submit evidence to establish that [his] past record justifies projections of future benefit to the nation."

The petitioner's response to the RFE included an introductory letter that reads, in part:

> Petitioner . . . is an expert with exceptional abilities in the field of Strategic Management and Marketing. . . . [The petitioner has experience] only shared by a handful of people in visual communications which incorporates interactive Whiteboarding, Large surface Touch technology and Collaboration. [The petitioner] was one of the original experts/pioneer[s] on defining not only the market requirements, the standards, [and] the overall solution for corporate customers but so defin[ing] and develop[ing] the corporate market itself. . . .

The same letter indicated that the petitioner "qualifies for National Interest waiver because . . . there would be a substantial disruption to the efforts, if he were not able to perform the services" for his employers and clients.

The petitioner submitted documentation of his educational credentials and compensation, as well as past performance evaluations indicating that he "Fully Meets Expectations" or "Exceeds Expectations." These materials are from prior employers such as rather than from The employers also gave the petitioner awards for his roles in completing specific projects such as "trouble-shooting and providing solutions for the world's first and "teamwork on resolving the

Academic degrees, high compensation, and recognition within the field are all factors that can support a finding of exceptional ability in the sciences, the arts, or business under 8 C.F.R. § 204.5(k)(3)(ii)(A), (D) and (F), respectively. Even if these exhibits show that the petitioner qualifies as an alien of exceptional ability, section 203(b)(2)(A) of the Act states that aliens of exceptional ability are generally subject to the job offer requirement.

The petitioner submitted two unsigned letters, attributed to former colleagues. The letter attributed to , vice president of marketing at , reads, in part:

> [The petitioner] is one of the very few exceptional individuals who understand the corporate workplace for Interactive Technology / Visual Communications and the effort it takes for a company to successfully build and sell its products in this market segment. I was there when he first evangelized the interactive touch technology and its benefit to the corporate world. At that time very few, if any, corporate customers even knew what an interactive whiteboard is let alone its benefits and how to use it. He is truly a pioneer in this rapidly growing and popular field, since touch phones, touch tablets and touch flat panels are becoming commonplace.

> [The petitioner] and I were colleagues together at is the global leader in Interactive Whiteboard solutions and invented the world's first interactive whiteboard. I was the Manager of Experiential Marketing responsible for putting together global marketing collateral, tradeshows and events. [The petitioner] was part of the small Product Management team that was responsible for bringing new products to the market. . . .
>
> During my tenure at there was a particular product that . . . went through three project managers, three product managers and $3 million in cost getting to market – and still had not successfully launched. [The petitioner] took over the product and brought it to market in less than a year. He sold enough of the product to break even on the investment and then – based on customer feedback – recommended the changes to be put in for the next version. This product – one of the interactive whiteboard lines – was the first standalone, market-focused product produced for the corporate market. It was simple and easy to use (just as his research had showed) and helped finally penetrate the corporate market.
>
> Another part of [the petitioner's] work experience and effort I would like to highlight is the work he did with At the time had bought a company called which provided web conferencing services to its customers. [The petitioner] . . . led the integration effort with . Since collaboration / conferencing were WebEx's strength and interactive whiteboarding was strength, the goal was to marry these products together to find the best of breed solution. . . . The result is the seamless integration which provides board users ease of use and simplicity when they are using the product on a or on a desktop computer. . . .
>
> Almost all of the customers [the petitioner] researched on and worked with are enterprises found in the Fortune 50 or 100 and Global 100 companies. . . . His research and his interactions with Fortune and Global 500 customers help define the market requirements and the corporate white boarding standards that are being used today.

The second letter, attributed to , computer systems analyst at reads, in part

> I have known [the petitioner] since we both worked at several years ago. . . .
>
> He really has the play book for corporate whiteboarding and collaboration and can benefit a number of organizations if he's given a chance to work and live here permanently.
>
> [The petitioner's] combination of technical expertise and technology insight earned during his career in the telecommunications industry and his natural business savvy

were strong assets used to help lead the new Corporate Market Development group at that time at [redacted]. He helped move [redacted] towards new customers and industries not previously explored as it continued to expand into the corporate market. . . . To this day, much of [redacted] underlying business plan, direction and strategy to expand into the corporate and other vertical market[s] can be traced back to [the petitioner's] personal interest and passion to effect this change at [redacted]

To give you an idea of [the petitioner's] knowledge and expertise I would like to provide you with two concrete examples . . . of many projects and companies he's worked with to help define business use cases and the customer collaboration needs. . . .

[redacted]

. . . [The petitioner] was the main point of contact from [redacted] and worked with [redacted] Senior Director to define the requirements for the World's first Management Consulting meeting space using Interactive Whiteboards . . . branded [redacted] by the company. The first [redacted] opened in [redacted] UK. Soon other European cities followed before [redacted] configurations were developed in the US, Brazil, Singapore and South Africa. [The petitioner] then worked [with] other Management Consulting companies in developing similar models for their meeting spaces. . . . [T]hese companies because of their size and influence became not only the standard for collaboration but also helped influence and shape the future of [redacted]

[redacted] alliance:

. . . [The petitioner] knew that large flat panels would play a significant role in interactive technology solutions going forward. He reached out to [redacted] to embed one of his products [redacted] into the panel. . . . [The petitioner] had left to join [redacted] by then but [redacted] came out with the integrated flat panels that [the petitioner] had envisioned and worked on – the [redacted] integrated panel that is being sold today.

The petitioner submitted no documentary evidence to support the claims in the two unsigned letters. He also submitted no evidence from [redacted] to establish that his then-current work was of comparable significance to what he claimed regarding his former employment at other companies.

The director denied the petition on April 29, 2013, stating that the petitioner had satisfied only the first prong of the *NYSDOT* national interest test, concerning substantial intrinsic merit. The director concluded that the petitioner's "work and his contributions will be primarily limited to a certain geographic region." The director listed the petitioner's evidentiary exhibits and quoted from the two submitted letters, and concluded that "the documentation submitted does not substantiate that the

petitioner's technological innovation has been significantly implemented or widely adopted as a tool in the business sector on a national level."

The petitioner filed a motion to reopen the petition on May 30, 2013. The petitioner stated that: "we may not have highlighted my main achievements properly that satisfy the NIW [national interest waiver] requirements, even though the evidence was there." The petitioner asserted:

> [T]he business methodology within that I developed with a very few colleagues of mine . . . at . . . is very unique and is of significant value both at the national and international level. We developed not only a completely new way [of] working but one that provides benefits nationally and specially to people and company employees who work in different locations in the US and all over the world.
>
> I and my colleagues developed and perfected this methodology and solution for the corporate market, which is now being used by and hundreds of their customers across the US and the world. They are now calling this solution 'freestorm solutions' and have branded the overall methodology as . . .
>
> This methodology when adopted by companies has provided numerous benefits including the following:
>
> - Increased Productivity
> - Reduced Costs
> - Enhanced collaboration among dispersed employe[es] across the US or globally
>
> . . . Our team actually developed the that clearly showed improvement in all three phases. Because of the confidentiality agreement . . . that I signed when I worked for I can't disclose the actual information or the to you but have attached actual customer comments and statements that discuss the above three features. . . .
>
> The work I did and the business methodology I developed with my team has changed the way meetings and collaboration take place today. . . . [T]he Interactive Whiteboarding and methodology has inspired others to offer similar products and solutions. . . .

The petitioner submitted a "Quick facts and stats" page from web site, claiming that "[m]ore than 175 Fortune 1000 organizations in North America have adopted " and that "[m]ore than 125 blue-chip (Fortune 500) companies in over 50 countries around the world are using Promotional materials discuss the solutions that provided to individual clients. This information does not establish the extent to which the petitioner is

responsible for the company's success, because it does not show what role the petitioner played in the clients' adoption of the solutions.

Before the denial of the petition, the petitioner's evidence did not address his employment at On motion, the petitioner stated:

> biggest competitor, decided to hire me to help them penetrate the corporate market ***was purely an education market player prior to my hiring)***.
>
> hired me because of the business solution I had developed and my skills and expertise in the Meeting Room/ space in the US and global basis. They hired me for the sole purpose of helping them enter the corporate market utilizing and leveraging this solution I had developed, my knowledge of the industry and my contacts in the Fortune 500 and global 1000 customers. . . .
>
> I . . . was responsible for the entire success of the corporate group and the corporate market entry from helping develop corporate products to marketing them to training the sales team to forming alliances and developing the overall strategy.

(Emphasis in original.) The petitioner submitted an unsigned letter attributed to president of Global Business and Government Division. The letter reads, in part:

> [The petitioner] was initially responsible for the Product Management role and was subsequently promoted to our Strategic Alliances Team.
>
> [The petitioner] was highly sought after by for his outstanding background and skill sets. He provided invaluable insight into our product positioning and overall direction for the Business & Government Division. Additionally he brought with him the knowledge of the market but also key alliances and contacts within the consulting and complementary solutions provider arena.

The petitioner states that, owing to confidentiality agreements, his employers cannot give him credit for what he has developed, and he is limited in his ability to describe the solutions that he developed for those employers. He claims, nevertheless, that hired him so that he could put into place "the solution [he] had developed" for a direct competitor, for whom the petitioner had signed such a confidentiality agreement. Owing to the petitioner's claims of confidentiality, the record offers few specifics about what the petitioner actually did for except that it involved whiteboards and visual conferencing.

The petition rests predominantly on what the petitioner accomplished while at even though, when he filed the petition, he had already left that company for On motion, the petitioner indicated that he had since left to become an independent consultant. The petitioner claimed to have clients throughout the United States, all of

whom "would suffer setback if [the petitioner] was not able to share and help them with their product and strategic management plans."

The director dismissed the petitioner's motion on September 20, 2013. The director described the petitioner's claims and the evidence he had submitted, and concluded:

> [T]he petitioner failed to submit corroborating evidence, such as letters from corporations that have implemented this innovative [redacted] to substantiate his claim. The evidence does not substantiate that the petitioner's developed unique business methodology was widely adopted by other companies in the United States and globally.

The director further concluded that the petitioner had not submitted evidence to establish his role in developing the [redacted], or to show the results that it has achieved for clients who adopted it.

The petitioner appealed the director's decision on October 18, 2013, stating that he had learned about the decision but had not received a copy of it. As a result, the appeal addressed elements of the director's first decision from April 2013, rather than the second decision from September 2013. The petitioner submitted copies of previously submitted materials, and a statement which essentially repeated the statement that had accompanied the earlier motion to reopen.

On September 26, 2014, we sent the petitioner a copy of the director's second decision, so that he could meaningfully appeal that decision rather than repeat his response to the first decision. The petitioner has responded by asserting that he has "provided enough evidence," including his résumé, letters, and information about [redacted] to meet the requirements spelled out in *NYSDOT*. The petitioner states:

> The work and business methodology [that I] developed and teach others is now gaining momentum. The use and benefits of this are now well recorded in the [redacted] space. Panel Manufacturers such as [redacted] [and] [redacted] have all jumped on this bandwagon and are producing Interactive Displays of their own. Because of this a whole suite of compl[e]mentary products have been developed by other companies as well. [redacted] can now connect and show content wirelessly from a cell phone or tablet onto the Interactive Whiteboard and Interactive Display. This already has had a huge impact on the national interest of the U.S. by developing new products that have created more jobs on a national scale.

Whatever the impact of interactive whiteboard software and related technology, the petitioner has not established that he is responsible for that impact. He does not claim to have played any role in inventing or developing the technology. His self-described specialty is marketing and sales. The petitioner's claimed success in selling this technology has been of benefit to his employers, but the petitioner has not shown that he has been, to any significant extent, responsible for the wider success of the interactive display industry (for example, by producing documentary evidence that the

products sold poorly until the petitioner conceived new marketing strategies to create new demand). Identifying past clients does not show that the petitioner played a significant role in the success of those clients.

The petitioner has provided little information about his specific contributions and the methodology that he claims to have pioneered. The petitioner's claims of confidentiality do not relieve him of the burden of proof in this proceeding. 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 has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole").

As is clear from 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.