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: OCT 10 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, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before us at 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 an alien of exceptional ability in the sciences, the arts, or business. At the time she filed the petition, the petitioner was an unconventional gas footprint reduction lead for [redacted] Subsequently, in response to the director's notice of intent to revoke the approval of the petition, the petitioner stated that she is an "independent consultant working for a specific oil producer now." 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 did not dispute that the petitioner qualifies for the classification sought, but found 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. Attorney [redacted] represented the petitioner at the time she filed the appeal on February 7, 2014, and prepared the appellate brief that we received on March 10, 2014. Later, on March 26, 2014, the Executive Office for Immigration Review suspended Mr. [redacted] from practicing before the Department of Homeland Security. Therefore, we cannot recognize Mr. [redacted] 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 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 589.

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, in the revocation notice, stated that the petitioner qualifies for classification as a member of the professions holding an advanced degree. In terms of available immigration benefits, there is no functional difference between that classification and the classification that the petitioner sought as an alien of exceptional ability. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly

> an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dep't of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on August 2, 2012. An introductory statement set forth the claim of eligibility for the national interest waiver:

> [The petitioner] has developed a highly specialized yet broad spectrum niche within the energy development field, specifically not just petroleum recovery but Unconventional Oil Recovery (UOR) methods. . . .
>
> A review of her résumé shows that she has had senior leadership responsibilities since at least 1996. . . .
>
> The attached materials indicate [that the petitioner] has many demonstrable achievements in her field. . . .

> NYSDOT . . . [requires that] 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.
>
> In any event the clear meaning of this portion of NYSDOT 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. . . . The Service in this regard is respectfully requested to take into account applicant's accomplishments . . . [which] have had some effect on the field individually but also in sum. . . . [T]he conclusion is inescapable that this applicant has had some degree of influence on the field based on the clear tenor of the testimonials submitted. . . . It is respectfully submitted that the requirement of "some influence" means more than "no influence" and is not comparable to the significant contribution standard of an EB1 extraordinary ability case.
>
> . . . NYSDOT excludes persons fresh out of graduate school and allows flexibility as to all other applicants. Applicant has had some as opposed to no influence on the field and thus is not subject to denial on that ground. Applicant has shown that his [*sic*] work will have intrinsic merit, will be national in scope and that he [*sic*] is substantially more qualified than the majority of his [*sic*] peers.

(Emphasis in original.) The above assertions concern a footnote in *NYSDOT*, which reads, in part:

> The alien . . . clearly must have established, in some capacity, the ability to serve the national interest to a substantially greater extent than the majority of his or her colleagues. The Service [now USCIS] here does not seek a quantified threshold of experience or education, but rather a past history of demonstrable achievement with some degree of influence on the field as a whole. . . . In all cases the petitioner must demonstrate specific prior achievements which establish the alien's ability to benefit the national interest.

Id. at 219 n.6. *NYSDOT* elsewhere states: "Because, by statute, 'exceptional ability' is not by itself sufficient cause for a national interest waiver, the benefit which the alien presents to his or her field of endeavor must greatly exceed the 'achievements and significant contributions' contemplated in the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F)." *Id.* at 219. Taken as a whole, the *NYSDOT* decision does not indicate that minuscule influence on the field, however limited, always necessarily suffices to establish eligibility for the national interest waiver. Furthermore, the first quoted passage from *NYSDOT* specifies that the influence must be "on the field as a whole." Therefore, influence on a particular group or within one corporation does not meet the standard of "influence on the field as a whole."

The initial submission included a 24-page statement, dated May 1, 2012, with the petitioner's digitally reproduced signature. The petitioner stated:

> I . . . qualify for permanent residence as a foreign national of Exceptional Ability in Oil and Natural Gas Production Optimization, with emphasis on "Unconventional Oil Recovery" (UOR) Methods in Extra Heavy Oil Fields. I also have extensive experience in Well Design/Completion/Optimization/Stimulation, Drilling & Workover operations. . . .
>
> I have 20+ years of professional experience at the service of the hydrocarbons industry . . . , working at the helm of many critical projects in the oil and natural gas sector, worldwide. I am widely recognized for my creativity, technical ability and unique talent to significantly increase oil well productivity levels of any organization in the energy industry. . . .
>
> Throughout the whole length of my professional career, I have always been at the forefront of key projects, mostly at the service of – the second largest private sector energy corporation in the world, and third largest overall. . . .
>
> Presently, I occupy the high-ranking position of Unconventional Gas Footprint Reduction Lead for , responsible to promote best practice sharing of engineering solutions to reduce project footprints for shale/tight-gas and light-tight oil ventures. In addition, I advise on unconventional gas for newly available technology aiding in better environmental protection. . . .
>
> In my prior position as Grosmont Development Leader, I was responsible for developing and maintaining the Asset Development Plan for the Grosmont Carbonate resource, which cover [*sic*] the integration of research and development and technical design information from the Production and Technology organization. I was also in charge of overseeing the development of the commercial scenario business model and establishing the economic framing of the opportunity. . . .
>
> I am internationally recognized as an Oil & Gas Production Optimization Expert with renowned expertise in groundbreaking Oil & Natural Gas Well Development Techniques. . . .
>
> Likewise, I am also recognized as a **Pioneer in the planning and development of technology pilots for de-risking "Unconventional Oil Recovery" (UOR) Methods**. . . .
>
> As one of the few experts in the field of Well Development Methodologies, and with such . . . extensive experience in the optimization of oil production operations, and the capacity to take on all structural aspects involved in the oil and gas arena; I have

> accurately led turnkey engineering projects that have reached acclaimed levels of productivity and effective profit turn-around, domestically and internationally.

(Emphasis in original; footnotes omitted.) The petitioner claimed authorship of "several Technical Papers," and identified two "samples of [her] written work." The word "samples" implies that other papers exist, but the petitioner did not identify or submit them. The two identified conference papers both date from 2002; there is no evidence that the petitioner continues to produce published or presented works. In terms of citation of her work, the petitioner identified two conference papers (both from 2004) and two patents, but she did not submit copies of the papers or other evidence of the claimed citations. 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)).

Six letters accompanied the petition. Five of the writers are current or former officials of various entities within . The sixth, is a senior finance manager at , part of the . Ms. stated:

> I have known [the petitioner] in a professional capacity since she was appointed as Senior Subsurface Advisor in Non-Operated Joint Ventures for . . . back in [the] year 2002.
>
> In this role, [the petitioner] was the primary technical liaison between and . . . for matters pertaining to reservoir management, production enhancement, completion design, well intervention and well work-over projects. . . .
>
> [The petitioner] was instrumental in promoting within the organization many [of] best practices bringing about spectacular business performance in this Joint Venture. . . . Her expertise . . . enabled the joint venture to enhance total daily oil production from the nine mature, offshore oil fields where had a shareholder interest, by an average [of] 25%. This success was propelled even further by [the petitioner's] capability to provide strong technical, subsurface advice and support in identifying opportunities for infill drilling in fields such as and , all of which would ultimately lead to increase development reserves by up to 10%. . . .
>
> [The petitioner] spearheaded a number of other technology initiatives for production enhancement within this venture such as introducing the use of a sonic stimulation tool for cleaning down-hole gravel-pack completions, through-tubing perforating, gas-lift optimization, and well re-completions using hydraulic work-over units.

, senior staff production engineer for Shell Upstream Americas, stated:

> I can confirm that [the petitioner] is one of the best talents that has witnessed in the past 20 years. I personally consider her an outstanding Senior Production Engineer with highly specialized skills in production technology, completion design, well performance modeling both in conventional oil and gas production, as well as unconventional hydrocarbon resource development.
>
> [The petitioner] started out as a well-site petroleum engineer working on offshore rigs where her role was to provide subsurface expertise to the drilling crew while simultaneously supervising drilling fluids engineers, mud loggers, logging engineers and directional drilling engineers on-board the rig. She was the first woman petroleum engineer ever to be entrusted with this responsibility in her native country of Malaysia following which she advanced into the role of Assistant Drilling Supervisor. . . .
>
> While working in the Netherlands, [the petitioner] designed, planned and flawlessly executed fracture stimulation jobs in an effort to boost gas production from wells with declining productivity. Her most notable success was the implementation of a multiple, fracture stimulation design in a horizontal gas well which resulted in production rates 300% higher than what had been traditionally obtained from a vertical well.

Mr. described various projects in which the petitioner has participated. He asserted, for example, that the petitioner "pioneer[ed] the implementation of 'Solid Expandable Tubulars' [SET] to increase production from carbonate gas fields by an unprecedented 30%," and claimed that one of the petitioner's 2002 conference papers "has since become a 'Go-To' Technical reference for countless . . . engineers in her same field of work. It is worth mentioning that presently 'SET' is a widely sought after equipment applied in Well Design for drilling deep wells, well integrity maintenance and production enhancement." Mr. concluded that the petitioner "is a true genius in her field of work" and "a member of a privileged group with rarely seen talents and invaluable skills."

Dr. former vice president of Research and Engineering and now a senior consultant for stated that the petitioner "rapidly gained . . . recognition among her peers for her unique expertise, not only in well completion design, but also in managing research and development technology pilots and projects."

value improvement and risk manager for Colorado and Canadian projects at asserted that the petitioner "pioneered several conceptual designs for heater wells, steam injectors, production wells and observation wells," and "has received industry recognition in her lead roles."

manager of human resources process, remuneration, and benefits at stated that the petitioner "has consistently excelled in planning and executing field activities aimed at maximizing well productivity. Her expertise in selecting well perforating techniques and equipment for specialized operations such as fracture stimulation and additional perforating campaigns have led to unprecedented levels of production enhancement in mature gas fields." Ms. asserted that the petitioner "has successfully published a myriad of technical journals," but she identified only the same two papers named in the petitioner's own statement. She also identified three papers and/or patents that, she claimed, cited the petitioner's work, but her statement does not confirm the existence of the citations or show that the petitioner has written more than two papers.

now vice president of technical services at was formerly the research and development production technology manager for He stated that the petitioner "proved to be in great demand whereby multiple project managers would request [the petitioner] to work on their respective teams."

The director approved the petition on November 5, 2012. Subsequently, on October 30, 2013, the director issued a notice of intent to revoke the approval of the petition. The director acknowledged the intrinsic merit and national scope of the petitioner's occupation, but found that she had not demonstrated "a past history of achievement with some degree of influence on the field as a whole."

The director stated that a search using the Google Scholar search engine showed three citations of one of the petitioner's identified papers, and no citations of the other. The director stated that the low number of citations "lessens credibility regarding the impact of her work in the field at large, aside from the petitioner's employer." The director described the letters submitted with the petition, and noted that all of the writers "directly worked with the petitioner," such that their knowledge of her work is not evidence of wider influence. The director concluded: "The evidence of record does not establish (i) how the petitioner has influenced the field as a whole aside from her employer; (ii) how she has been primarily responsible for the success of the projects she worked on; and (iii) how she impacted the field to a greater extent than others in the field."

In response to the notice, the petitioner submitted a statement that repeated the assertion that the petitioner need only show "more than 'no influence,'" and that the citation of one of her papers is, by itself, sufficient to show that she "has had some, more than zero, influence." As discussed above, *NYSDOT*'s reference to "some influence," out of context from the rest of the decision, does not compel the approval of every petition wherein the foreign worker has had "more than 'no influence.'"

The petitioner also submitted background materials regarding hydraulic fracturing, or "fracking," including a published column from the executive director of the calling for tighter regulation to minimize environmental impact. These materials establish the importance of the issue and the controversy surrounding fracking, but they do not mention the petitioner's work or show how she has influenced the field. The petitioner claimed to be among "[o]nly a handful of

experts in the world . . . [who] have the skills, abilities, and knowledge to ultimately help Energy Corporations to successfully design oil and gas production procedures and facilities to tackle the . . . challenging tasks [described in the background materials], while optimizing the nation's own resources."

The petitioner submitted an advisory letter from president of Mr. stated that innovations by personnel "become adopted throughout the industry," but this is a general assertion rather than a specific showing of widespread adoption of the petitioner's work. Regarding the petitioner, Mr. stated:

> One of the areas in which [the petitioner] is a leader is Solid Expandable Tubulars (SET) design engineering which has great importance to the industry. This is a new technology that allows the industry to drill and complete wells that were previously not possible. . . . Additionally [the petitioner] is an innovating pacesetter in Unconventional Gas Footprint Reduction design. A topic of great concern in our industry is that of recovery of hydrocarbons from the reservoir, with the least environmental impact. . . . This is an area where [the petitioner] has had a great deal of individual input benefiting her employers and our industry. It is my professional opinion that she has had influence on the field of Unconventional Gas Footprint Reduction design in a more than nominal way.

Mr. asserted that it is misguided to judge the importance and influence of technical papers by their citation figures, because such papers influence the field in other ways. Mr. discussed the same two papers that Ms. and the petitioner herself had previously identified. He did not claim to know about additional papers. Regarding citation figures, the petitioner had originally implied that her papers were heavily cited. Following the issuance of the notice of intent to revoke, the petitioner has retreated from that claim, with Mr. asserting that citations are not particularly important in her field.

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. letter does not directly address the issues raised in the notice of intent to revoke. Mr. made claims of fact (rather than expert opinion) that the record does not corroborate. Furthermore, to establish the petitioner's influence directly, Mr. stated first,

that is a leading company; second, that leading companies are influential; and third, that the petitioner is an innovator for and, therefore, influential. Mr. discussed the petitioner's "wide acceptance as an expert" as a given, rather than establishing that acceptance.

The director revoked the approval of the petition on January 23, 2014, stating that the petitioner had "not submitted evidence as to [the] fact of [her] previous documented achievements" or corroborated the factual claims in the submitted letters. The director found that the petitioner had not established eligibility by a preponderance of the evidence, and that therefore the petition should not have been approved.

The appellate brief includes the contention that the director revoked the approval of the petition "[f]or no apparent reason" even though the petitioner "submitted substantial evidence in the form of letters from persons familiar with her work as well as independent objective evidence from an expert in the petroleum field." The director explained the shortcomings of the letters, and the appellate brief does not address or rebut the director's discussion on that issue.

The brief includes the claim that "[r]evocation must be based on gross and material errors. . . . Gross and material error would require that there be no evidence as to the appellant having some influence." The brief includes no citation to statute, regulation, or binding case law to support these claims. The only citation is to an unpublished AAO appellate decision from 2006. That decision did not involve a revocation; it dismissed the appeal from the denial of a petition. Moreover, the decision did not establish "gross and material error" as a requirement for revocation. Rather, the decision referred to the approval of an earlier nonimmigrant petition, stating:

> . . . if the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. Due to the lack of required initial evidence in the present record, the AAO finds that the director was justified in departing from the previous nonimmigrant approval by denying the present immigrant visa petition.

The assertion that an earlier "approval would constitute material and gross error" does not mean or imply that "material and gross error" is the minimum standard for revocation. Furthermore, the petitioner cites no authority to support the claim that revocation is only warranted in the complete absence of supporting evidence.

The brief includes the following passage:

> The Service cited Sussex Engineering Ltd V Montgomery 825 F2d 1084 (6th Circ, Matter of Ho, 19 I &N, and Matter of Estime, 19 I & N Dec 450 (BIA 1987) for the proposition that there is good and sufficient cause to revoke when the evidence of record at the time of visa issuance would warrant a denial of the visa petition. Sussex says no such thing, has nothing to do with revocation and is inapposite. In any event,

> that standard, wherever it came from would not apply to this case for the reasons stated [in this brief.]
>
> Matter of Estime involved discrepancies in an interview regarding a visa based on a marriage, i.e. suspected fraud. Although the decision articulates the standard cited by the service, such standard is in fact dictum, as the matter was remanded to review additional evidence and no revocation occurred. In any event, as noted above this is not a case where the evidence of record at the time of visa issuance would categorically require denial. Compare this case to Matter of Ho in which revocation occurred because a Consulate General informed the District Director of concrete facts and law which clearly and beyond doubt showed the beneficiary's ineligibility. This is in stark contrast to this case which is based on subjective opinion and illegal post hoc rulemaking.

(Emphasis in original.) The petitioner's comments regarding the director's reliance on *Sussex* have some merit, but this does not undermine the decision. *Estime* does, as noted, include the following passage:

> In determining what is "good and sufficient cause" for the issuance of a notice of intention to revoke, we ask whether the evidence of record at the time the notice was issued, if unexplained and unrebutted, would have warranted a denial based on the petitioner's failure to meet his or her burden of proof.

Id. at 451. That *Estime* took the form of a remand order does not make the above passage "dictum" as asserted. Rather, it is a key finding, so central to the decision that the Board of Immigration Appeals (BIA) incorporated it into a headnote. The BIA remanded the decision because the revocation order was deficient. The BIA had to explain the standards of a proper revocation in order to show how the appealed decision did not meet those standards. As a published precedent decision, *Estime* is binding on all USCIS employees in their administration of the Act. *See* 8 C.F.R. § 103.3(c). The same is not true of the unpublished appellate decision cited in the brief.

Ho cited and thus reaffirmed *Estime*; it did not establish or imply that revocation is limited to instances of confirmed fraud comparable to the fact pattern in *Ho*. The BIA stated:

> At the outset, we reject the petitioner's contention that mere error in judgment on the part of the district director in initially approving the visa petition cannot, in and of itself, be a proper basis for revoking the approval. The petitioner cites no authority for that proposition and we are unaware of any such authority. We believe that the realization by the district director that he erred in approving the petition, however arrived at, may be good and sufficient cause for revoking his approval, provided the district director's revised opinion is supported by the record.

Id. at 590. Both *Ho* and *Estime* established that an improperly approved petition is subject to revocation on that basis alone. Differences in case-specific fact patterns do not diminish or nullify the precedent decisions' applicability to the present case. The director's determination that the petitioner failed to meet her burden of proof is good and sufficient cause for revocation, and the petitioner cannot overcome the grounds for revocation solely by disagreeing with that determination.

The next assertion in the brief is that the revocation "is a retroactive decision," which "is not favored in the law," because the director "applied retroactively a higher standard overall than whatever standard the original adjudicator used." As the above discussion shows, the determination that the original adjudicator relied on too low a standard is, by itself, sufficient grounds for revocation. The statute, at section 205 of the Act, and regulations, at 8 C.F.R. § 205.2, both permit revocation of previously approved petitions, and neither the statute nor the regulations limit revocation to instances of fraud or deliberate malfeasance by the petitioner.

In an effort to establish that the petition had been properly approved, the brief includes a discussion of some of the letters submitted with the petition, highlighting instances of the petitioner's claimed impact within her field:

> The letter of stated that applicant was the ever to be entrusted with the responsibility of her native country of Malaysia of providing certain expertise while supervising drilling fluids engineers etc.
>
> Malaysia is after all a Moslem country and appellant's breakthrough in obtaining such position implicitly has influence on her field – which carries out activities in Moslem countries all over the world.
>
> The same author . . . stated that a technical paper appellant authored has become a "Go-To" technical reference for countless engineers and that the made a significant contribution to the filed [*sic*] with her design of a ,

Mr. stated that the petitioner "was ever to be entrusted with [the] responsibility" of supervising certain engineers on a Malaysian drilling rig, but the record does not establish that conditions in Malaysia were, up to that time, hostile toward the employment of women in that role. Furthermore, the petitioner has not shown that her employment influenced employment practices in Malaysia, and even if she had shown this, it would not demonstrate influence on the field as a whole. She seeks employment in the United States, where the record does not establish or imply gender barriers of the type claimed in Malaysia on appeal.

The record does not support the assertion that one of the petitioner's papers "has . . . become a 'Go-To' Technical reference for countless . . . engineers in her same field of work." *See Matter of Soffici*, 22 I&N Dec. at 165.

Following passages indicating that both had stated that the petitioner received industry recognition, the brief set forth the assertion: " One cannot be recognized without having has [*sic*] at least some influence." The petitioner provides no support for the assertion that recognition presupposes influence. Recognition by the industry can be part of a claim of exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii)(F), and by statute, the threshold is lower for exceptional ability than for the waiver; section 203(b)(2)(A) of the Act subjects aliens of exceptional ability to the job offer requirement. Furthermore, as the director noted, the writers of the first letters have all worked with the petitioner and therefore they do not show her work has received wider recognition.

The next contention on appeal concerns letter:

> This letter not only concludes that appellant has had more than nominal influence and the reasons for so concluding but that the Service . . . made an error of fact about whether applicant's technical writings had as [*sic*] least some influence. The SPE organization [the Society of Professional Engineers] . . . was influenced enough to put her writings on their database, an act that is NOT routinely done for anyone who submits a paper, see letter of

Mr. had stated: "The SPE only publishes papers that it believes have technical merit to our industry." He also mentioned "the SPE data base" in a separate context. The record contains nothing from the SPE to establish the society's editorial standards, but "technical merit," like "recognition," is not the same thing as influence, and not all influence is influence on the field as a whole.

The petitioner, via the appellate brief, contends that Mr. assertion corroborates "other evidence" in the record. There is no elaboration on this assertion to identify the "other evidence" in question.

The remainder of the brief concerns the question of whether the petitioner had met her burden of proof, establishing eligibility through a preponderance of evidence. The chief contention is that, because the director did not show that the petitioner's evidence is not credible, the weight of the evidence supports approval of the petition. This assertion disregards the necessity of corroboration for claims of fact. The petitioner established the existence of two conference papers, but produced no direct evidence of their influence, relying instead on letters from colleagues, referring to the papers as influential.

Furthermore, the petitioner has not established the credibility of the statements in the letters. asserted that the petitioner "has successfully published a myriad of technical journals." *Webster's II New College Dictionary* (2001) defines "myriad" as "an extremely large, indefinite number" or "a great number." *Id.* at 724. The record identifies only two such papers. The petitioner herself implied the existence of others by referring to the two papers as "samples," but the record provides no evidence that other papers exist. The petitioner also implied a high number of citations of her work. The approval of the petition rested on this claimed fact pattern, which further inquiry

has failed to substantiate. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. If the approval rested in part on a mistaken finding that the petitioner had produced a large body of written work, then such a finding would amount to a material error of fact, warranting revocation of the erroneous approval.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYSDOT*, 22 I&N Dec. 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole").

The petitioner has established that she has had a productive and successful career at and that she has earned the respect of her colleagues at that company. The petitioner has not, however, shown the impact and influence on the field that would qualify her for the national interest waiver. The record identifies some of her contributions to her field, but does not substantiate claims as to the importance and influence of those contributions. 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 petition was approved in error, and that approval was properly revoked.

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.