U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 02 274 50690 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to 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. 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 had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel asserts that the director erred in denying the petition without first issuing a request for additional evidence. Even if true, the appropriate remedy would be to consider on appeal any evidence that might have been submitted in response to such a request. We will consider the new evidence and counsel's more specific assertions below.

Section 203(b) of the Act states in pertinent part that:

> (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 requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Ph.D. in Inorganic Chemistry from Fudan University in China. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue 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 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 the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service 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.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. 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.

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

We concur with the director that the petitioner works in an area of intrinsic merit, molecular engineering. The director then concluded that the proposed benefits of the petitioner's work would not be national in scope. A proposed benefit of the petitioner's work is improved synthesis of metallacarboranes, metal and boron containing cluster compounds. According to one of the petitioner's references, metallacarboranes have important applications in the recovery of metal ions, in catalysis, and in medicine (cancer therapy). Thus, we find that the proposed benefits of the petitioner's work would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The director noted that most of the reference letters submitted were from the petitioner's immediate circle of colleagues and concluded that they did not demonstrate that the petitioner was recognized "as having advanced the field to a greater degree than others involved in similar pursuits by members by members of the greater scientific community." On appeal, counsel asserts that the director failed to consider the letter from an independent expert, the level of expertise of the petitioner's collaborators, and the petitioner's citation record, which has increased to 70 citations.

While non-precedent decisions are not binding on us, we reaffirm the language a decision quoted by counsel on appeal regarding attestations by collaborators. Specifically, we "must consider the content of the statement, the credential of the person making the statement, and other materials in the record that would tend to corroborate the details of the statement." As will be discussed below, however, while the letters submitted are clearly from

respected members of the field, they offer general praise and claims of contributions without identifying any specific contributions and explaining the petitioner's influence on the field as a whole.

In evaluating the reference letters, we must keep in mind that eligibility for the waiver rests with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

After obtaining his Ph.D. from Fudan University, the petitioner worked as a postdoctoral researcher in the laboratory of [redacted] the Institute for Inorganic Chemistry in Aachen, Germany. Subsequently, the petitioner came to work in the laboratory of Dr [redacted] the University of Virginia.

Professor [redacted] the petitioner's mentor at Fudan University, asserts that the petitioner initiated boron research in Professor [redacted] laboratory. Professor [redacted] asserts that the petitioner made two "significant discoveries" that solved "a research problem encountered by scientists in metallaborane synthesis" and contributed to macropolyhedral development. More generally, the petitioner "made substantial improvements to the preparative route that had resulted in streamlining the procedure, increasing product yields, or alternate improve preparative methods." Professo[redacted]sserts that this work resulted in 20 publications.

Professor [redacted] explains that the experimental skill and experience required to handle boron clusters is rare in the western world. He asserts that he hired the petitioner as a postdoctoral researcher based on the petitioner's "brilliant dissertation on metallaborane clusters, in collaboration with one of the best experts in this particular area of boron cluster chemistry, [redacted] from Leeds University in England." At the Institute for Inorganic Chemistry, the petitioner developed the necessary skills to handle azaboranes. The results of his work, focusing on halogenation of icosahedral NB_{11} clusters, was "a finding a of principal importance."

Dr. [redacted] asserts that at the University of Virginia, the petitioner is "synthesizing progressively larger and more complex metal-containing assemblies that are taking the work to a truly exciting level." Dr [redacted] sserts that this work, resulting in four articles still in press at the time of filing, is in collaboration with other laboratories. Finally, Dr [redacted] all of the technical procedures in which the petitioner is trained. Simple training in advanced technology or unusual knowledge, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221. Another professor at the University of Virginia, Dr [redacted] merely attests to the prestige of being accepted into Dr. [redacted] laboratory and the petitioner's publication record. We will not presume an influence on the field from the distinction of one's supervisor.

Dr [redacted] a professor at Northern Illinois University, asserts that he has known the petitioner in an unidentified capacity for two years. Dr. [redacted] provides information similar to that discussed above.

Dr. [redacted] professor at the University of Missouri at St. Louis, asserts that he has coauthored an article with the petitioner. Dr [redacted] rther asserts that few Americans enter the physical sciences, making it in the national interest for United States to let in such scientists from other countries. The issue of whether

similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

Finally, Dr. [redacted] Head of Laboratory at the Institute of Inorganic Chemistry in Russia, notes the petitioner's publication record and lists his projects. Dr [redacted] asserts that the petitioner's work with globular borane-based cluster architectures "has drawn much attention." He opines that the petitioner will continue to make key contributions to the field.

In addition, counsel asserts that the petitioner is a member of professional organizations "which require prospective members to demonstrate a history of outstanding achievements." The assertions of counsel do not constitute evidence. *Matter of* Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez*-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner submitted evidence of his membership in the American Chemical Society, but no evidence of the society's membership requirements.

The petitioner also submitted evidence of awards from Fudan University for service as an outstanding advisor and excellent performance during his studies. In addition, the petitioner received the "In Memory of Maochengsi Prize" from the university. Dr [redacted] asserts that this final prize was in recognition for the petitioner's "excellent performance in our university." The record lacks evidence of the criteria used for this award. Recognition for serving as an advisor while studying for his Master's degree cannot demonstrate that his subsequent research has influenced the field. Further, academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 219, n.6.

Regardless, professional memberships and recognition from one's peers are merely criteria for aliens of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that meeting two, or even the requisite three criteria for this classification warrants a waiver of that requirement. *See generally id.* at 222.

The petitioner also submits letters confirming that he has reviewed articles for *Acta Chimica Sinica* and *Thin Solid Films*. The letter confirming this information for the latter publication is on Fudan University letterhead. The director acknowledged these letters, but implied that reviewing articles did not set the petitioner apart from other researchers in the field.

On appeal, counsel cites *Buletini v. INS,* 860 F. Supp. 1222 (E.D. Mich. 1994), for the proposition that we cannot look at the requirements for participating as a judge of the work of others. First, this case deals with a different classification than the one sought. Second, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Finally, while the court was concerned that the particular analysis in that case was circular, it did not state that we could not analyze the evidence at all. We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer has influenced the field to some degree.

The petitioner also submitted his articles and citation record. In his initial brief, counsel noted that 13 of the petitioner's articles had been cited 52 times. The list includes only 51 citations. Regardless, consideration of the total number of citations, without further inquiry, does not provide an accurate picture of the petitioner's influence. For example, since many of the citing articles cite more than one of the petitioner's articles, the list of citations contains only 25 different articles total. An examination of the citations for the most frequently cited article, which received 13 citations total, reveals that *all* of those citations are self-citations or citations by one of the petitioner's collaborators, [redacted] In fact, of the 25 articles citing the petitioner's work, only *two* are authored by independent research groups. Two independent citations are not indicative of any notable influence in the field as a whole.

On appeal, the petitioner submits more citations and evidence that *Angewandte Chemie* designed one of his post-filing articles was designated as a "hot paper." This evidence does not relate to the petitioner's eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The record establishes that the petitioner is respected by his colleagues and has made useful contributions in his field of endeavor. Most research, however, in order to receive funding, must present some benefit to the general pool of scientific knowledge. The petitioner must demonstrate an influence on the field as a whole. Significantly, none of the petitioner's references provide examples of independent laboratories that have applied the petitioner's work. The only independent reference does not claim to have applied any of the petitioner's results. Moreover, the record does not corroborate the general claims of the petitioner's influence, as all but two of the citations are either by the petitioner himself or his immediate circle of colleagues. While self-citation is a normal and expected process, it cannot demonstrate the petitioner's influence beyond his immediate circle of colleagues.

As is clear from a plain reading of 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 burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.