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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
LIN 04 231 50552

Office: NEBRASKA SERVICE CENTER

Date: JAN 06 2009

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The director treated the petitioner's untimely appeal as a motion, and again denied the petition. The Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion is granted. The AAO will reaffirm the denial of the petition.

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 seeks employment as an "Astronomer (Educator/Researcher)." 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 an alien of exceptional ability, 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. The AAO affirmed the director's finding that the petitioner does not qualify for a national interest waiver. The AAO also reversed the director's finding that the petitioner qualifies for classification as an alien of exceptional ability.

In dismissing the petitioner's appeal, the AAO denied the petitioner's request for oral argument, noting that U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 103.3(b) require that oral argument shall be granted only if the petitioner has explained why oral argument is necessary. The AAO added that the AAO will grant oral argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing, which the petitioner did not demonstrate in this proceeding. On motion, the petitioner again requests oral argument, stating: "The basic instinct is 'speech' – writing is an acquired instinct." The petitioner's point appears to be that some concepts are more readily expressed through the spoken rather than written word. This, however, is a general proposition rather than a specific showing that oral argument is necessary in this particular instance. The AAO did not, as the petitioner now claims, assert "that everything can be achieved in writing." That being said, the burden is on the petitioner to establish that oral argument is necessary; the AAO is under no obligation to provide a detailed defense of its denial of the petitioner's request. The petitioner appears to assert, in essence, that he believes he could set forth his arguments more clearly and persuasively through speech rather than in writing.¹ This claim is not sufficient to compel the AAO to approve the petitioner's renewed request for oral argument. Therefore, the AAO once again denies the petitioner's request.

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

¹ The AAO notes, here, the petitioner's submission of a 50-page brief on motion.

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 Form I-140 petition includes this job description: "Freelance acquisition and dissipation of Astronomy knowledge; get insights from audience interaction, discuss the possibilities, explore the probable, and communicate to a greater audience." In an addendum to the petition, the petitioner described his intended work in "astronomy education research" in greater detail:

I will create opportunities to promote astronomy to librar[y] goers, museum visitors, school students, boy scouts, girl guides, various clubs, and [a] variety of associations and institutions as astronomy interests one and all; despite the information explosion on the Internet, a viewpoint of the universe that I present is unique, and comes from my on-going research and theories about the universe. This I have done and still do for fun, for self-education, and now INTEND TO ESTABLISH as a profession with passion, here in the United States. The presentations are content driven, interactive, engrossing, and sophisticated computer animated graphical audiovisuals with live narration.

In considering the present motion, the AAO first turns its attention to the question of whether the petitioner is eligible for classification as an alien of exceptional ability in the sciences.

In its prior decision, the dismissal notice of February 20, 2008, the AAO noted that the director simply declared that the petitioner qualified for classification under section 203(b)(2) of the Act, with no further explanation or discussion. The AAO also noted that the petitioner's own description of his work ruled out a finding that the petitioner is a member of the professions. The petitioner, on motion, has not contested this finding. The petitioner instead disputes the AAO's finding that he has not established eligibility as an alien of exceptional ability.

On motion, the petitioner states: "Exceptional Ability" is what it is, and it does NOT need a stamp, by a university." Elsewhere on motion, the petitioner asserts: "Something that can be quantified, is not exceptional, as a value can be placed; exceptional is priceless, invaluable, and 'second to none.'" The petitioner, here, appears to offer a philosophical or semantic argument over the meaning of "exceptional." In this proceeding, the petitioner seeks a government benefit, eligibility for which is defined by certain requirements specified in the statute and regulations. For the purposes of this

proceeding, the AAO is constrained the regulatory definition of “exceptional ability” and has no discretion to substitute a different definition that may be more favorable to the petitioner.

In a similar vein, the petitioner argues:

Clearly, it is difficult to understand that the AAO does not see the towering achievements that of an individual who build the Cosmic Academy as a portfolio; If the AAO cannot adjudicate such petitions, one of a kind, second to none, than perhaps, a “jury of experts” who knows the countries needs, is needed; again, such provisions may exist in the law, or not, I am not sure.

(*Sic.*) The petitioner seems to argue, here, that his “towering achievements” are so obvious that anyone who fails to recognize them is not qualified to judge the petition. Nevertheless, jurisdiction over this motion rests with the AAO; there exists no provision for a “jury of experts” of the type the petitioner requests.

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. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) states:

To show that the alien is an alien of exceptional ability in the sciences, arts, or business, the petition must be accompanied by at least three of the following:

- (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
- (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
- (C) A license to practice the profession or certification for a particular profession or occupation;
- (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
- (E) Evidence of membership in professional associations; or
- (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

In its dismissal notice, the AAO weighed the petitioner's evidence with regard to each of the above six criteria, and found that the petitioner had satisfied criterion (A) above by virtue of his "degree in science education," because it does not appear that any degree is required to work as a freelance astronomy educator. The AAO found that the petitioner had not submitted sufficient evidence to meet any of the other five criteria.

On motion, the petitioner offers arguments regarding all six of the specified regulatory criteria listed above. The AAO considers these arguments here.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.

On motion, the petitioner states: "The degree in science education does not diminish my exceptional ability." The AAO did not state that this degree had such an effect. Rather, the AAO stated that the petitioner's "degree appears to represent a qualification above what is necessary for the petitioner's freelance work." This was a finding in the petitioner's favor.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.

The AAO, in its dismissal notice, noted that the petitioner had claimed more than ten years of experience at the Cosmic Academy, which the petitioner founded in December 1980. The AAO found, however, that a letter from the petitioner, attesting to his own experience, "cannot constitute independent evidence of qualifying experience." The AAO also stated: "Furthermore, the regulations require letters from "employers," regarding experience in an "occupation." Therefore, the petitioner must not merely demonstrate ten or more years of interest in astronomy education; he must establish ten years or more of full-time remunerative employment." Finding that the record lacked such evidence, the AAO concluded: "The petitioner has not submitted sufficient documentary evidence to support a finding that he has at least ten years of full-time experience in the occupation for which he now seeks classification."

On motion, the petitioner protests that he has not had the opportunity to "literally, collect affidavits from hundreds of schools and scores of non-school groups" to establish how he earned his living "14 to 26 years in the past from today." The AAO is not responsible for the petitioner's failure to maintain accurate and objective records, such that the petitioner's only means of establishing past employment is to "collect affidavits." The petitioner's claim that payment records are impossible or difficult to obtain does not entitle him to a lower evidentiary standard. The regulation at 8 C.F.R. § 103.2(b)(2)(i) states:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does

not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

We note that the reference to “a birth or marriage certificate” is only an illustrative example; the regulation is not limited to birth and marriage certificates.

The petitioner, on motion, claims to “have an excellent income” and submits a photocopy of his bank passbook. The petitioner offers to submit the original passbook for carbon-14 dating to verify its age. The passbook shows activity in the petitioner’s bank account, but does not establish the source of the deposited funds. It remains that, while the Cosmic Academy has existed since 1980, the available evidence of its activities is fragmentary and disjointed. The submitted materials do not establish at least ten years of full-time employment with the Cosmic Academy.

The petitioner submits materials regarding his recent work as a substitute teacher in various public schools in the United States. The petitioner, when he filed the petition, did not seek classification based on his work as a substitute teacher. The regulatory language does not merely call for evidence of ten years of experience; the experience must be “in the occupation” related to the petition. The petitioner’s work as a substitute teacher in the United States does not satisfy the experience requirement; it shows, instead, that the petitioner has supported himself through means other than the Cosmic Academy while in the United States.

The AAO reaffirms its prior finding that the petitioner has not satisfied this criterion.

A license to practice the profession or certification for a particular profession or occupation.

The AAO, in its dismissal notice, noted the petitioner’s certification as a science teacher in New York and Iowa, but also observed “this certification is not specific to astronomy, nor does it appear to require particular expertise in astronomy. Therefore, we cannot conclude that the petitioner’s teaching certificates demonstrate a degree of expertise significantly above what is normally encountered among freelance astronomy educators.”

On motion, the petitioner states: “The certification as a science teacher does not diminish my exceptional ability.” The petitioner asserts that the AAO “may not dismiss this ‘value addition’ and it should be included as a weighted preponderance of evidence.” The precise meaning of this passage is not clear, but the AAO will not reverse its prior finding simply because the petitioner,

without elaboration, expresses disagreement therewith. The AAO reaffirms its prior finding that the petitioner's possession of what appears to be a basic teaching credential does not establish exceptional ability as a science educator.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.

The AAO, in its dismissal notice, stated:

[T]he petitioner has not submitted any documentary evidence of his earnings as a freelance astronomy educator. Furthermore, the petitioner has not established the typical salary or remuneration for a freelance astronomy educator, so even if the petitioner had documented his own compensation, there is no baseline to permit a meaningful comparison. The petitioner has not satisfied this criterion.

On motion, the petitioner cites three studies of teacher compensation in India. One 1994 study concerns teachers throughout India; a second, also from 1994, focuses on "the salary of a primary school teacher in Gujarat," while the third provides figures for "a northern state of Rajasthan, a poor state, for 2004." These studies concern the compensation of school teachers, and the petitioner has repeatedly indicated that he does not seek to work as a school teacher. Even on motion, the petitioner asserts that employment at a scientific institution – even the most respected – would require him to "teach astronomy, *their* way, and in *their* premises," an accommodation the petitioner says he is not prepared to make. (The record is silent as to whether the petitioner has in fact refused offers of employment from such institutions.) The petitioner thus attempts to compare his earnings to those of individuals working in a related but different occupation. Even then, the figure the petitioner cites for comparison is a sum he claims to have earned over a particular ten-month period; there is no evidence that the petitioner's earnings during that period are typical for his earnings throughout his career. The AAO reaffirms its finding that the petitioner has not satisfied this criterion.

Evidence of membership in professional associations.

In its prior decision, the AAO stated:

The petitioner claimed membership in the Planetary Society and the International Dark Sky association, but he did not submit the required *evidence* of such membership. Rather, he stated that the evidence "will be forwarded at a later date." Furthermore, the petitioner did not establish the membership requirements of the named organizations. If membership is open to anyone who pays a membership fee or subscription, then there is nothing "exceptional" about such a membership, no matter how prestigious the organization.

Subsequently, in response to the request for evidence, the petitioner stated that the memberships mentioned above “are available for purchase to the general public.” The petitioner also stated that he had been “accepted as an Associate Member of the prestigious American Astronomical Society” and was “eligible for a membership [in] the International Astronomical Union.” The petitioner did not indicate that he already held these memberships; he simply claimed eligibility. A claim of eligibility is not “evidence of membership,” which is what the regulatory language demands.

On motion, the petitioner states: “American Astronomical Society membership is by “nomination only” and I was nominated by three individuals, and this membership was part of the submission of August 18, 2005. . . . I have thus, overcome this bar.” In the submission thus mentioned, the petitioner had included a letter from astronomer [REDACTED] who stated that he had recommended the petitioner for membership in the American Astronomical Society (AAS). Attestation of nomination is not evidence of membership, nor does it establish when the petitioner became a member of the organization. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. The petitioner filed his petition in August 2004. Nearly a year later, in July 2005, [REDACTED] stated not that the petitioner was a member of the AAS, but that [REDACTED] had “recommended him for membership.” A membership application filed after the filing date cannot convey eligibility, whether or not that application was filed for the express purpose of strengthening the petitioner’s claim of exceptional ability.

Finally, even if the AAO assumes without evidence that the petitioner achieved his AAS membership before the filing date, the petitioner claims to be an “associate member” of the AAS. The petitioner has not established that associate membership is restricted to individuals who could be deemed “exceptional” under the regulatory standards. The AAO reaffirms its prior finding that the petitioner has not met this criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The AAO, in its dismissal notice, acknowledged the petitioner’s submission of several witness letters, but found that “[t]he record contains no evidence of any kind of formal recognition of the petitioner for specific achievements or significant contributions to astronomy education.” On motion, the petitioner lists previously submitted exhibits and asserts that these materials constitute evidence of recognition for achievements and significant contributions. The AAO had already considered these materials in its prior adjudication, and the petitioner, on motion, does not demonstrate that the AAO’s conclusions at that time were incorrect. (Elsewhere on motion, the petitioner does go into more detail regarding some of this evidence, in the context of the national interest waiver.)

The petitioner submits a copy of a letter from the India International Friendship Society, inviting the petitioner to an “international conference” and “Friendship Banquet” which “will be marked by the presentation of the ‘*GLORY OF INDIA AWARD*.’” The letter is dated March 5, 2007, more than two and a half years after the petition’s filing date, and the record contains no objective documentation about the society or its award. The letter indicates that the petitioner’s “name is under consideration [sic] for this Award.”² The award was to have been presented in June 2007, several months before the motion was filed; the record does not identify who received the award.

The AAO reaffirms its prior finding that the petitioner has not established recognition for achievements and significant contributions as set forth in the above regulatory language.

For the reasons set forth above, the AAO reaffirms its finding that the petitioner has not established that he qualifies for classification as an alien of exceptional ability in the sciences.

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. The issue is arguably moot, because the petitioner cannot qualify for the waiver if he has not shown eligibility for the underlying immigrant classification, but we shall address this issue in the interest of thorough consideration of the motion.

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 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] 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 Dept. of Transportation, 22 I&N Dec. 215 (Commr. 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

² The one-page letter contains at least six grammatical and spelling errors (including the petitioner’s name).

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.

The AAO discussed the petitioner's waiver claim at length in its prior decision. Rather than repeat this discussion in full, the AAO incorporates its prior decision by reference, revisiting certain points in relation to the petitioner's new arguments on motion.

On the Form I-140 petition, the petitioner described his intended occupation as "Freelance acquisition and dissipation of Astronomy knowledge; get insights from audience interaction, discuss the possibilities, explore the probable, and communicate to a greater audience." In an addendum to the petition, the petitioner described his intended work in "astronomy education research" in greater detail:

I will create opportunities to promote astronomy to librar[y] goers, museum visitors, school students, boy scouts, girl guides, various clubs, and [a] variety of associations and institutions as astronomy interests one and all; despite the information explosion on the Internet, a viewpoint of the universe that I present is unique, and comes from my on-going research and theories about the universe. This I have done and still do for fun, for self-education, and now INTEND TO ESTABLISH as a profession with passion, here in the United States. The presentations are content driven, interactive, engrossing, and sophisticated computer animated graphical audiovisuals with live narration.

(Emphasis in original.) Since arriving in the United States, the petitioner has worked as a substitute teacher in New York, Iowa and, more recently, Maryland. (The petitioner, on motion, asserts that he "was forced into" substitute teaching, and that it is a mistake to characterize him as "willing to teach science in a classroom setting.") The petitioner did not claim any specialized formal training in astronomy. The petitioner asserted that he founded the Cosmic Academy at age 17 in 1980, and submitted news clippings from *The Times of India* promoting then-upcoming Academy activities.

In its dismissal notice, the AAO noted that much of the evidence relating to the Cosmic Academy dates from 20 years ago or more, and that the petitioner had not produced objective, documentary evidence to establish the impact that his work has had on astronomy education specifically, or science education in general. The AAO noted that the petitioner described the Cosmic Academy as a "one man" endeavor operating at the "grassroots" level. The AAO stated that the petitioner's

evidence establishes his sincere enthusiasm for what he does, but it “does not, however, demonstrate that the petitioner has made specific, lasting contributions that set him apart from others in his field. Inspiring the enthusiasm of one’s audience is the hallmark of a good educator, but success in one’s field is not the threshold for the national interest waiver.”

On motion, the petitioner continues his established pattern of unsupported claims regarding the importance and significance of his work; he claims, for instance, that his “Cosmic Academy got world wide recognition” in 1986 after he “was invited to Australia, to study the Halley’s Comet.” Rather than produce persuasive documentary (rather than anecdotal) evidence of his claimed influence, the petitioner asserts that the “national scope” clause of *Matter of New York State Dept. of Transportation* is “unattainable” because no one can truly affect every member of the United States population. By way of example, the petitioner observes that Henry Ford’s introduction of affordable automobiles was not “national in scope” because it “does not help the Amish sect” that generally shuns modern technology.

The petitioner’s argument relies on an arbitrary and untenable definition of “national scope” as meaning “it affects . . . all the US persons,” which is not the sense embodied in *Matter of New York State Dept. of Transportation*. The flaw in the petitioner’s argument is apparent considering that when he himself claims that the “Cosmic Academy got world wide recognition,” he is not claiming recognition by every living human being on earth. Also, national interest waiver petitions have been and continue to be approved both by the Service Centers and by the AAO, following the standards set forth in *Matter of New York State Dept. of Transportation*. The petitioner’s failure to establish his own eligibility is not evidence that the waiver is unattainable or that the standards are unreasonable.

In any event, *Matter of New York State Dept. of Transportation* is a published precedent decision and, therefore, binding case law under 8 C.F.R. § 103.3(c). The AAO’s mandatory adherence to precedent cannot realistically constitute adjudicative error.

In response to the AAO’s observation that the petitioner appears to lack formal training in astronomy, the petitioner states: “That’s the beauty of all this. No one taught Sir Isaac Newton about Calculus, and Albert Einstein about Relativity.” The point of this analogy is not entirely clear. Newton essentially created calculus, and Einstein did the same for relativity theory, and therefore no formal training yet existed in those disciplines, and both men made their discoveries with the benefit of a university education. The petitioner has not shown that he is the creator of a new or greatly improved scientific concept comparable to calculus or relativity. The petitioner has not established that he has made any significant contributions to the science of astronomy. He seeks, instead, to be an itinerant educator in already-existing concepts of astronomy, his work aimed at non-scientists rather than professional astronomers.

The petitioner, on motion, argues that the AAO did not give sufficient weight to numerous witness letters in the record. The body of a 1997 letter from then-President Bill Clinton reads, in full:

Thank you so much for taking the time to share your thoughts. Your words of encouragement and support mean a great deal to me.

As we continue our efforts to address the fundamental needs of the American people, my Administration remains committed to providing our children with a brighter future and empowering hardworking citizens with the tools they need to improve their lives.

I hope you will remain involved as we prepare our nation to face the challenges of the twenty-first century.

Discussing President Clinton's letter, the AAO stated:

The letter contains no specific mention of astronomy or the petitioner's work, and appears to be a generic "form" letter of the type routinely sent in reply to letters to the president. It is clear from the wording that the letter is a reply to an earlier letter from the petitioner, rather than a spontaneous message from the president.

On motion, the petitioner states:

I regret the dismissal of the US Presidential letter (I read it as an honor and a US Presidential Mandate, for me to continue my onerous task here). . . .

I am not aware of what the White House policy is to respond to every piece of correspondence as they get it in bulk, but, I think, this was an exception, for an "exceptional ability" freelance astronomer. . . . The AAO may please not water-down a significant letter of hope and encouragement.

The petitioner, who bears the burden of proof in this proceeding pursuant to section 291 of the Act, has not shown that the AAO was incorrect in its reading of the President's letter. He admits that he does not know "White House policy" regarding correspondence, but asserts that he has chosen to see the letter as a personalized and specific expression of encouragement. The petitioner's decision to see the letter in this light does not compel the AAO to do likewise.

The petitioner had submitted several other letters from figures in astronomy and related fields, among the most prominent being the late [REDACTED] and the late [REDACTED]. The petitioner contends that the AAO misread some of these letters and wholly disregarded others. It is true that, for reasons of space, the AAO did not quote the letters in full or present a detailed discussion of each individual exhibit in the record, but this does not mean that the AAO ignored the petitioner's submissions. (For the same reason, it would not be feasible for the AAO to attempt a paragraph-by-paragraph discussion of the petitioner's 50-page brief on motion.) The petitioner, on motion, has not refuted the AAO's finding that, while the petitioner has garnered occasional encouragement from prominent astronomers, the

letters do not establish that the petitioner has had any lasting or large-scale impact on astronomy education in the United States or elsewhere. ██████████, for example, praised the petitioner's "singular enthusiasm" but he did not indicate that the petitioner had had a significant impact on astronomy education, either on his own or through others emulating his efforts. Rather, he stated "we should be finding means to expand [the petitioner's] influence," indicating that the petitioner's influence needs expanding. (The granting of a waiver would provide the petitioner with an avenue for immigration, but it would not automatically or inherently expand the petitioner's influence. The petitioner has already spent much of the past decade in the United States, and has been unable to present persuasive evidence of impact after that time.) The AAO shares the sentiments of these astronomers that science education is a laudable effort in a society that is increasingly dependent on technology and at risk from scientific illiteracy, but this does not translate into automatic waivers for science educators.

On motion, the petitioner submits a new letter from ██████████ a doctoral student at Ohio University, who states:

The Cosmic Academy has been a memorable part of my life. My association with the Cosmic Academy began in 1990 at the age of ten, when in the fi[f]th grade. I recall [the petitioner] coming to our school that year, taking us through an hour long slide show followed by an in-depth question-answer session. The slide show had images of stars and galaxies that had a deep impact on me and my friends. . . .

I have found that [the petitioner] is a wonderful astronomy popularizer and an educator with a passion and a mission. . . . [The petitioner], as the founder of the Cosmic Academy is known to have had a very positive impact on spreading astronomy related ideas to children, students, and families across India.

Regarding his impact, the petitioner states: "Lasting contributions is [*sic*] a tall order, nearly impossible to attain." The petitioner claims, reasonably, that very few individuals will have the influence of "a Newton, an Einstein, a Gandhi, a Lincoln, or another historical notable person." The AAO did not state that one's contributions must reach that level of importance for one to qualify for a waiver. It was the petitioner, not the AAO, who evoked Newton and Einstein in comparison to his own work. The AAO does not demand that waiver applicants be world-renowned household names. At the same time, the petitioner does not merely seek classification under section 203(b)(2) of the Act – he also seeks an additional immigration benefit in the form of a national interest waiver. The job offer requirement embedded in section 203(b)(2)(A) would be meaningless if we did not require something to distinguish waiver-eligible aliens from aliens who qualify for the classification but not the waiver. The petitioner has attempted to distinguish himself through the way he teaches about astronomy, through informal gatherings rather than through traditional academic channels. The petitioner has not, however, shown his method to represent a substantial improvement over existing teaching methods that can be readily implemented at a national level. He has produced only self-serving anecdotal evidence.

The petitioner protests that he is, in his words, in a “Chicken or Egg first” situation, in that he will not be able to fully implement his plans in the United States until after he becomes a permanent resident, and yet he cannot receive a national interest waiver without first implementing those plans. Certainly, the petitioner’s employment opportunities are limited while he holds a nonimmigrant visa, but it does not follow that we are obligated to approve the waiver request now, in the hopes that the waiver will later prove to have been justified. Also, from his arguments, it is clear that the petitioner is aware that other avenues of immigration exist, but the petitioner dismisses these out of hand because he is convinced that no employer will permit him to teach astronomy in the manner he prefers. It seems that the petitioner rejects the option of pursuing labor certification not because it is unattainable, but because he does not wish to engage, even temporarily, in employment that would be more conducive to labor certification.

The AAO reaffirms its prior finding that the petitioner has not established that, as of the petition’s filing date, he qualified for classification either as a member of the professions holding an advanced degree nor as an alien of exceptional ability. The AAO also reaffirms its separate and independent finding that the petitioner has not established eligibility for the national interest waiver, which is a separate benefit over and above the immigrant classification sought. The AAO will therefore reaffirm its prior dismissal of the appeal. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely 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 AAO reaffirms its decision of February 20, 2008. The petition remains denied.