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U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER  
LIN 07 254 53055

Date: JUN 24 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:

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 matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

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 a member of the professions holding an advanced degree. When he filed the petition, the petitioner was a health services coordinator for 900 North Michigan Surgical Center,<sup>1</sup> Chicago, Illinois. Documents submitted with the petition indicated that the Surgery Center at 900 North Michigan Avenue sought to employ the petitioner as a research associate. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and documentation, some of which duplicates prior submissions.

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

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

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<sup>1</sup> Promotional brochures identify the employer as "900 North Michigan Surgical Center." We note, however, that the employer's printed letterhead uses the name "The Surgery Center at 900 North Michigan Avenue, LLC." Further confusing matters, the center's street address is not 900 North Michigan Avenue.

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 U.S. 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 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 also note that 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 petition on July 30, 2007. In a statement accompanying the initial filing of the petition, counsel stated that the petitioner “has made original scientific contributions in the field of maternal health including postpartum hemorrhage. [The petitioner] has been offered a prestigious

research associate position with his current employer based on his outstanding contributions to the maternal health field.”

The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Throughout this proceeding, counsel has made statements which are either unsupported, exaggerated, or simply not true. On the Form I-140 petition, asked “Has any immigrant visa petition ever been filed by or on behalf of this person?,” counsel (who prepared the petition form) answered “no.” At that time, however, two immigrant visa petitions on the petitioner’s behalf were pending at the Nebraska Service Center.<sup>2</sup>

Several witness letters accompanied the initial filing. [REDACTED] of Tehran University of Medical Sciences, Iran, stated:

I first became acquainted with [the petitioner’s] work during 2000 and 2001 when he served as an intern in Tehran’s Shariati Hospital. . . . At that time we were conducting a clinical trial of the effects of vaginal misoprostol on the induction of vaginal delivery and due to his interest in research activities he played a major role in the data gathering part of this study. . . .

After he graduated from the medical school . . . he began to work closely with the “Maternal Health Unit” of “Iran’s Ministry of Health & Medical Education” where I was a board member. . . . During 1996 and 2000 [the Maternal Health Unit] developed a Reproductive Age Mortality Survey (RAMOS) which proved to be inaccurate and had lots of shortcomings. . . . [The petitioner] was among those researchers who were involved in dealing with shortcomings and to provide solutions.

In January 2006, [the petitioner] asked me if I could help him with a chapter about postpartum hemorrhage in Iran. . . . The final results of our efforts were reflected in . . . chapter 51 of “A Textbook of Postpartum Hemorrhage.” . . .

[The petitioner] is currently working on projects about placental abnormalities with [REDACTED] of Northwestern University. . . .

[The petitioner’s] reputation continues to grow. His exceptional abilities and outstanding work continue to impress those who come into contact with him.

[REDACTED], also of Tehran University of Medical Sciences, stated:

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<sup>2</sup> The petitioner’s mother, [REDACTED], filed a Form I-130 immediate relative petition (receipt number LIN 04 251 51698) in September 2004. The director approved the petition in May 2008. The petitioner’s father, [REDACTED] filed another Form I-130 petition (receipt number WAC 07 129 50793) in March 2007. That petition is still pending.

I first met [the petitioner] in January of 2006 when he was gathering some data about postpartum hemorrhage in Iran. . . . With a strong presence in the field of health services organization, [the petitioner] star[t]ed to work with me as a research associate to obtain more data on the real picture of postpartum hemorrhage in Iran as a problem which could have been potentially addressed by planning and providing proper health services. . . . [The petitioner] obtained results that could have made some significant changes to the current system of health care providing to pregnant/delivering women.

Another major contribution was [the] dedication of a chapter of the first ever textbook about postpartum hemorrhage to Iran. We had the opportunity to include many of our findings in a chapter which was the result of extensive discussions and investigations.

now a Postdoctoral Fellow at Johns Hopkins Medical Institution, Baltimore, Maryland, described his past collaboration with the petitioner in technical detail. Like many other witnesses, [redacted] also praised the petitioner's contribution to *A Textbook of Postpartum Hemorrhage*. Portions of [redacted] letter are identical to passages in [redacted] letter.

[redacted] of the Department of Obstetrics and Gynecology at Northwestern University, Chicago, stated:

I first become acquainted with [the petitioner's] research abilities in January of 2006 when I was in the midst of preparing the first ever textbook on Post Partum Hemorrhage. . . . After a suitable electronic introduction from one of the Iranian professors with whom I have regular contact, [the petitioner] was requested to obtain information about postpartum hemorrhage in Iran and prepare a chapter about Iran's response capabilities to this devastating condition. . . . What he accomplished was more or less a Meta analysis research of the situation in Tehran. . . .

I have followed [the petitioner's subsequent] career with great interest. . . . [The petitioner's] work led to the recognition of the most important risk factors and the most preventable methods to reduce the maternal mortality rate in Iran which can be applied to many regions of the world. . . .

[The petitioner's] current project with me involves an investigation of placental abnormalities as one of the most common and most preventable causes of maternal mortality/morbidity.

The petitioner's *curriculum vitae* (CV) includes a section labeled "Publications and Research." The petitioner identified only one publication, specifically the aforementioned chapter in *A Textbook of Postpartum Hemorrhage*. The other entries identified research projects, but did not name any resulting publications.

President and Chief Executive Officer of 900 North Michigan Surgical Center, mentioned the petitioner's work with postpartum hemorrhage but did not focus on such work. Dr. Bozorgi instead devoted much of his letter to "the Lap-Band System . . . the safest surgical weight loss option available." He stated:

In 2006 a newly revised version of the Lap-Band System was approved by FDA in the United States. . . . DayOne/900 N Michigan Surgical Center was chosen by the manufacturer to be one of the centers participating in this multi-center, prospective randomized trial. In this regard, we are looking for a research associate and we found [the petitioner] an appropriate candidate for this position. . . .

At this point, I would like to mention . . . some of the recent and past research activities by [the petitioner]:

(1) An investigation of nephrolithiasis frequency in the siblings and parents of children with Calyceal Microlithiasis (CM) . . . from July 2002 to July 2003. It was concluded that nephrolithiasis is of high prevalence among the siblings of patients with CM as are the metabolic abnormalities.

(2) An investigation of esophageal ultrasound in the diagnostic evaluation of gastroesophageal reflux disease (GERD) in the pediatric population in Tehran's Children's Medical Hospital during 2004 and 2005. . . . Based on the obtained results, it was concluded that while transabdominal ultrasound is not a gold standard for the detection of GERD, it can be utilized . . . as a screening tool for GERD and as a tool for the monitoring of treatment.

(3) Serving as the main author of the 51<sup>st</sup> chapter for . . . "A Textbook of Postpartum Hemorrhage" which is quite impressive. . . .

(4) Working with [REDACTED] from Northwestern University on an investigation of placental abnormalities as one of the most common and preventable causes of maternal mortality/morbidity. . . .

Based upon his novel achievements, I would consider that he is in the top 10-15% of those in his field of expertise at his stage of career development.

The documents in the record do not indicate that 900 North Michigan Surgical Center is a research facility. It is, rather, an outpatient surgical clinic. The research associate position appears, therefore, to relate specifically to the short-term clinical trial of the Lap-Band System. [REDACTED] did not explain why this trial requires the petitioner's permanent presence in the United States, or why it is in the national interest for the petitioner, rather than another qualified professional, to serve as a research associate on the trial.

On July 23, 2008, the director issued a request for evidence (RFE), instructing the petitioner to provide additional information regarding his work at 900 North Michigan Surgical Center and his collaboration with [REDACTED]. Regarding the petitioner's much-discussed textbook chapter, the director asked the petitioner to explain whether he "conduct[ed] any new research," or simply provided statistics from "previous studies."

In response, counsel stated:

Petitioner is no longer employed with The Surgery Center. He is now employed at Northwestern University as a Clinical Research Associate in the Department of Radiology. However, during his time at The Surgery Center, he did not perform work in research. He was, however, offered a position in research which he had intended to take if his I-140/I-485 were approved.

Three new letters accompanied the petitioner's response to the RFE. [REDACTED]  
[REDACTED] of the Department of Radiology at Northwestern University stated:

[The petitioner] started working as a volunteer in the radiology department of Northwestern University under the supervision of [REDACTED] on the radioembolization of unresectable liver malignancies by Yttrium-90. . . . He also started working with me voluntarily on a project that researched detection of active hemorrhage from ruptured brain aneurysms by computed tomography (CT). . . .

[The petitioner] subsequently applied for an industry sponsored CT research fellowship at Northwestern and was selected from a large group of very qualified candidates. He started at this position under my supervision on August 25, 2008. The main focus of this post-doctoral fellowship is cutting edge research on applications of Multi-Detector row Computed Tomography (MDCT).

The beneficiary of an immigrant visa petition must be eligible at the time of filing; a new set of facts cannot cause the beneficiary to become eligible at a later date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Here, the petitioner did not begin working for [REDACTED] until a month after the director issued the request for evidence, and more than a year after the filing date. Work that the petitioner did not begin until August 2008 cannot qualify him for benefits under a petition filed in July 2007.

Apparently anticipating this objection, counsel stated: "This is not a new field because he is still working in the hemorrhage field which includes postpartum hemorrhage." "Hemorrhage" is not a "field." The record identifies the petitioner's new research specialty as radiology. The initial submission contained no evidence that the petitioner had significant experience in radiology before he filed the petition. His transcript from Tehran University of Medical Sciences shows one course called "Radiology Training," but this one course does not establish prior specialization in radiology. The same

transcript also shows courses in such diverse medical areas as orthopedics, psychiatry, nutrition and ophthalmology.

Counsel identified the next witness, [REDACTED], as “a researcher in Brazil” and states that she “is aware of [the petitioner] based on his research and reputation.” The record shows that, while [REDACTED] is from Brazil, her current address is in Chicago. The petitioner’s updated CV shows that the petitioner and [REDACTED] have collaborated on eight unpublished papers. [REDACTED] stated:

[The petitioner] is conducting research on the evaluation of new imaging techniques to evaluate liver tumors. . . .

I am a radiologist from Brazil and I have been conducting research in medical image post-processing techniques recently. I heard about [the petitioner’s] research and this is how I got to know him.

Computerized tomography (CT) is one of the most widely available imaging techniques in Radiology. Recently, commercial volumetric segmentation software for computed tomography has been approved for clinical application by FDA. . . . However, this is a new technology in the inception of clinical application and the indications [are] still not clearly defined in many areas.

[The petitioner] has done a phantom study on quantification of tumor necrosis on multi-detector CT scan and has validated the software’s ability for this specific indication. He is currently working on the segmentation of hepatic and pancreatic lesions. The main goal of this research is to show the clinical applications of new imaging technologies in the quantification of the response to treatment of solid tumors.

[REDACTED] did not mention hemorrhage, postpartum or otherwise. Instead, she discussed the petitioner’s work in CT image processing, a subject that never appeared in the petitioner’s initial submission.

[REDACTED] Staff Scientist at Siemens Medical Solutions USA, Inc., provided no address, but [REDACTED] telephone number has a Chicago area code (312). Counsel stated that [REDACTED] “works independent[ly] from [the petitioner] and they have never worked together before,” and [REDACTED] asserted that he and the petitioner “have never worked together,” but the petitioner’s revised CV identifies [REDACTED] as a co-author of two of the petitioner’s unpublished papers. [REDACTED] stated:

One of my fields of interest is medical image processing. I closely follow the new achievements in this field. [The petitioner] has also been conducting research on medical image processing and this is how I heard about him. . . .

I first became acquainted with [the petitioner’s] scientific activities when I read his abstract on the imaging of aneurysm phantom. A phantom is a device or test pattern that



. . . is used to calibrate a detector that measures radiation emanating from within or absorbed by the body. . . . In this project, he first made two identical aneurysm phantoms, filled them with contrast material and connected them to a blower pump to circulate the contrast material. Image acquisition was done before and after aneurysm was punctured manually. . . . The usefulness of this imaging technique was evaluated.

With a strong background and experience with phantom studies, [the petitioner] then started working on designing phantoms of solid tumors. . . . He is currently working on segmentation of hepatic and pancreatic lesions before and after patients undergo treatment.

As with letter, described projects that the petitioner never mentioned in his initial submission. While the petitioner's volunteer work with radiographic imaging of ruptured aneurysm phantoms relates to hemorrhage, it appears to do so in a completely different way than the petitioner's previous work. The petitioner's textbook chapter consists of four pages of statistics, rather than discussion of CT imaging. The work that Northwestern University hired the petitioner to do has no demonstrated direct relation to hemorrhage, and certainly not specifically to postpartum hemorrhage, which was the cornerstone of the petitioner's initial claim.

In response to the director's request for documentation of citations of the petitioner's published work, the petitioner submitted copies of five articles that cite *A Textbook of Postpartum Hemorrhage*. The textbook is more than 460 pages long. The petitioner's chapter, one of 53 chapters, accounts for four of those pages. Therefore, we cannot reasonably presume that a given citation of the textbook is a citation of the petitioner's work, unless the citing articles specifically mention Iran (the subject of the petitioner's chapter). One research group cited the book in two different articles, without specifying chapter or page references, but the group's articles relate specifically and exclusively to Malawi rather than Iran. The remaining three citing articles specifically referred to other chapters in the textbook, rather than to the petitioner's chapter. Thus, there is no evidence that any researchers have cited the petitioner's textbook chapter.

The director denied the petition on November 7, 2008, stating that the petitioner failed to support several key claims. Regarding the citation evidence, the director noted that "no connection was found between the citations and the chapter co-authored by the petitioner." The director also found that the petitioner's recent employment at Northwestern University cannot be considered because it commenced after the petition's filing date.

On appeal, the petitioner, referring to himself in the third person, states: "The denial letter indicates that the petitioner has been a 'postpartum hemorrhage research associate' and continues working in the 'hemorrhage field' which is not a true statement." The petitioner, thus, contradicts counsel's earlier assertion that the petitioner "is still working in the hemorrhage field."

Regarding the lack of citation of his work, the petitioner stated: "unlike citations to journal articles, there is no way to search for citations to textbooks in medical search-engines." Thus, the petitioner

appears to imply that the problem is not the lack of citations, but the lack of a means to locate those citations. The petitioner was clearly able to locate the five citations he submitted previously. More broadly, however, the problem is not simply a lack of citations, so much as a general lack of independent evidence to establish the influence and impact of the petitioner's prior research work.

The petitioner asserts that "writing a chapter in a major, highly accredited textbook . . . is much more challenging and of more scientific value than publishing in most journals." This appears to be a subjective opinion rather than a demonstrable fact. Certainly, the record contains no objective documentation or other evidence to show that independent witnesses consider the petitioner's book chapter to be more important than journal articles.

The petitioner asserts: "Since April 2007, I have been participating in a multi-center, prospective randomized clinical trial . . . involving a new gastric band." This description matches earlier discussion of the Lap-Band System, although new documents on appeal refer to the device as "Easy Band." The device may simply have been renamed, but this is not important here. The petitioner does not explain why it is in the national interest that he, in particular, participate in this trial instead of another qualified researcher. The petitioner does not claim to have invented the product, or to have designed or coordinated the clinical trial; indeed, he does not appear to have defined his role in the project at all. He is simply one of an unspecified number of individuals at numerous locations who have been involved in some way. The petitioner also does not explain how he remains involved in the project, considering that his involvement was supposed to stem from his now-terminated employment at 900 North Michigan Surgical Center .

Regarding the director's finding that the petitioner's work at Northwestern University began after the filing date, the petitioner asserts that he was already "working with that department as a volunteer since months before" the filing date. Elsewhere on appeal, the petitioner claims that he began working at Northwestern's Radiology Department as a volunteer in May 2007. When the petitioner filed the petition, the record reflected only that the petitioner worked with Northwestern's Department of Obstetrics and Gynecology. The petitioner's RFE response, more than a year after the filing date, included references to volunteer work in the Radiology Department, with no reference to the starting date.

Also, the petitioner has not established the significance of the work he claims to have performed at Northwestern's Radiology Department between May 2007 and the filing date two months later. The petitioner shows that he was to present his work at a professional gathering in March 2009, the better part of two years after the filing date, but he has not shown that the work being presented took place prior to the filing date. He has also failed to support his claim that a ten-minute presentation at a conference is a mark of particular distinction.

Even if we presume that the petitioner was already working at Northwestern's Department of Radiology as of the filing date, it remains that the petitioner and counsel did not see fit to mention or document this work at the time of filing. Rather, the petition was grounded in the petitioner's "contributions in the field of maternal health including postpartum hemorrhage." Only later did the petitioner attempt to shift

the focus almost entirely to radiology research. 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 USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998); *see also Matter of Katigbak* at 49. The petitioner cannot repeatedly change the fundamental focus of his work, and declare that his overall track record means that he should receive a waiver in order to continue whatever project engages him at any given time. The petitioner's pattern of short-term involvement in disparate projects suggests ongoing and unfinished professional training, rather than an established and consistently productive research career.

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 decision 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. Likewise, this decision is without prejudice to any proceeding arising from the approval of the immediate relative petition filed by the petitioner's mother.

**ORDER:** The appeal is dismissed.