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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



U.S. Citizenship  
and Immigration  
Services

B5

DATE: **APR 22 2011** Office: [REDACTED] FILE: [REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, [REDACTED] Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

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 or a member of the professions holding an advanced degree. The petitioner seeks employment as a postdoctoral associate. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment 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 raised improper concerns in the request for additional evidence, such as the level of the petitioner's wages. Counsel raised this objection in response to that notice and the director did not raise these specific concerns again in the final decision. Thus, those concerns are no longer at issue. Counsel further asserts that the director failed to properly consider the letters from distinguished members of the petitioner's field, including members of the National Academy of Sciences, and the petitioner's extensive citation record. For the reasons discussed below, the petitioner has established her eligibility for the benefit sought.

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.

The petitioner received a Ph.D. in Chemistry from the [REDACTED] in August 2000. 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 an alien employment 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).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

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, 217-18 (Comm'r. 1998) (hereinafter “NYSDOT”), has set forth several factors that U.S. Citizenship and Immigration Services (USCIS) must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show 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.

It must be noted that, 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 subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term “prospective” requires future contributions and does not 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 AAO concurs with the director that the petitioner works in an area of intrinsic merit, theoretical chemistry, and that the proposed benefits of her work, improvements to materials science and drug development, 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.

Eligibility for the waiver must rest with the alien’s own qualifications rather than with the position sought. In other words, 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 is not persuasive. *NYSDOT*,

22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a “unique background.” Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

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 she 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. In evaluating the petitioner’s achievements, the AAO notes that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

As of the date of filing the petitioner had authored more than 20 published articles and a book chapter. She has consistently published throughout her doctoral studies and subsequently while working for ██████████ University and ██████████ University. While publication demonstrates that the petitioner had disseminated her work in the field, at issue is the influential nature of that work once disseminated. The petitioner submitted evidence that her articles have garnered hundreds of citations. Moreover, several of the petitioner’s articles throughout her career have consistently garnered moderate citation individually. Finally, the nature of the citations is significant. For example, an article by authors in the ██████████ and ██████████ extensively cites the petitioner’s work, including reproducing figures from the petitioner’s work and concludes with an acknowledgement recognizing the petitioner (and others) as an individual whose “pioneering work” contributed to knowledge in the field. In addition, South African authors cite the petitioner’s work as an example of “[e]xciting developments within the field.”

██████████, a professor at ██████████ University and a member of the National Academy of Sciences, confirms that the petitioner worked in his department. ██████████ coauthored articles with the petitioner. ██████████ explains that while at ██████████ University, the petitioner focused on formulating theoretical routes to understand nonlinear optical properties, transport properties, polarization properties and charge injection properties of organics. The petitioner “developed several new schemes for so doing, interfaced them with extant computer codes, did the calculations, interpreted the results, and applied them to understand the material prepared in ██████████ laboratory.” ██████████ asserts that the petitioner also had to evaluate the results of the results from collaborating departments nationwide. ██████████ concludes that the petitioner’s “alphabet block approach to self-assembly” is unique.

██████████ a professor at ██████████ University, discusses the petitioner’s work at that institution. First, according to ██████████ the petitioner developed “methods to discover new molecules and materials with optimal optical and medicinal properties.” ██████████ explains that this work “led to a significant collaboration in a second area, medicinal chemistry.” Specifically, the petitioner’s results led to a collaboration with ██████████ and others at the University of ██████████ Third, the petitioner developed “new physical models for charge migration in DNA.” ██████████ notes the

importance of this work to the repair of genetic material. [REDACTED] notes that the petitioner's results formed the basis of a successful application for funding from a local pharmaceutical company and the National Institutes of Health (NIH) to apply the petitioner's methods to drug screening.

[REDACTED] a professor at the University of [REDACTED] asserts that he shared his software with the petitioner, who "expanded and added capabilities" to that software. [REDACTED] confirms that this software is now in use in [REDACTED] the United States. [REDACTED]

Finally, [REDACTED] a professor at the University of [REDACTED] and a member of the National Academy of Sciences, supports the petition. While [REDACTED] does not specifically explain how the petitioner's work is already influencing the field beyond the institutions where she has worked, his support and other evidence of record substantiates the petitioner's wider influence.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered 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 the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also 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)).

Merely repeating the legal standards does not satisfy the petitioner's burden of proof.<sup>1</sup> Some of the letters, however, provide specific examples of the petitioner's contributions in the field. The petitioner also submitted corroborating evidence in existence prior to the preparation of the petition that bolsters the weight of the reference letters.

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<sup>1</sup> *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Ultimately, the record demonstrates that the petitioner is respected in the field for her contributions and has a lengthy record of consistent publication and citation indicative of a track record of success with some degree of influence on the field as a whole. Other evidence of record not discussed in this decision also supports our determination that the petitioner qualifies for the benefit sought.

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 field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the alien employment certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved alien employment 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 sustained that burden. Accordingly, the AAO withdraw the decision of the director denying the petition and approve the petition.

**ORDER:** The appeal is sustained and the petition is approved.