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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date:

JAN 07 2011

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) 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 or a member of the professions holding an advanced degree. According to Part 6 of the petition, the petitioner, while relying on his past accomplishments as an operations research analyst for the [REDACTED] seeks employment as a Port Captain. The record contains a letter from [REDACTED] offering the petitioner a position as a Port Captain – Operations Area Americas. 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 does not qualify for classification as an alien of exceptional ability or as a member of the professions holding an advanced degree. The director further concluded 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 submits a brief and additional evidence. For some of his assertions, counsel relies on decisions that predate the regulatory definition of profession, an unpublished district court decision that predates the controlling precedent decision for national interest waiver cases, and an English maritime liability case without citation or explanation as to its relevance. As will be discussed in more detail below, counsel has not overcome the director's valid bases for denial.

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 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.

I. Member of the Professions Holding an Advanced Degree

An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The petitioner received a Ph.D. in transportation from the Newark College of Engineering. Thus, the petitioner does hold an advanced degree. While the petitioner may have an advanced degree in a professional field, being a member of the professions does not entitle the alien to classification as a professional if he does not seek to continue working in that profession. *See Matter of Shah*, 17 I&N Dec. 244, 246-47 (Reg'l. Comm'r. 1977). Thus, at issue is whether the occupation in which the petitioner seeks to work, Port Captain, is a profession.

As defined at Section 101(a)(32) of the act, profession "shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as follows:

[O]ne of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

Initially, the petitioner did not submit any evidence of the educational requirements for a Port Captain. The petitioner submitted a letter from [REDACTED] of [REDACTED] the petitioner's employer, advising that the petitioner was a member of the professions with an advanced degree, that the company "required an employee who was/is an expert in transportation logistics" and that the company hired the petitioner because "he was of higher education and capability than other candidates in the area of stowage and coordination for the West Africa Tradelane."

In response to the director's request for additional evidence, including evidence that a Port Captain is a professional occupation, counsel stated that the "minimum education requirement for a Port Captain is a Master's degree in Marine Transportation Management." The unsupported assertions of counsel do not constitute evidence. *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). Counsel referenced the Department of Labor's Occupational Outlook Handbook (OOH) as the primary source for the normal requirements for a given occupation. Counsel concluded:

[The OOH information for Water Transportation Occupations] states that "graduates from the U.S. Merchant Marine Academy or another maritime academy that offers a 4-year academic program leading to a bachelor-of-science degree, a license (issued only by the Coast Guard) as a third mate (deck officer) or third assistant engineer (engineering officer) must pass a written examination." Hence, it is fair to conclude that "at least a baccalaureate" is required for the entry-level deck officer position. The job of Port Captain requires stowage planning to maximize cargo intake and cargo forecasts; the OOH [information regarding Management, Scientific, and Technical Consulting

Services] states that similar managerial job opportunities are best for those with a master's degree or advanced degree "in transportation or a related field and with strong quantitative skills."

The petitioner provided the OOH materials for Water Transportation Occupations but only provided an Internet citation for the OOH materials on Management, Scientific, and Technical Consulting Services. As counsel notes on appeal, the Water Transportation Occupations materials focus on ship positions whereas the petitioner's occupation is on shore. Nevertheless, these are the materials submitted by the petitioner and counsel does not explain how the director erred in relying on the materials the petitioner submitted.

Counsel's purported "quote" from the OOH materials on Water Transportation Occupations is inaccurate. The accurate quote follows:

Entry-level workers are classified as ordinary seamen or deckhands. Workers take some basic training, lasting a few days, in areas such as first aid and firefighting.

There are two paths of education and training for a deck officer or an engineer: applicants must either accumulate thousands of hours of experience while working as a deckhand, or graduate from the U.S. Merchant Marine Academy or another maritime academy. In both cases, applicants must pass a written examination. It is difficult to pass the examination without substantial formal schooling or independent study. The academies offer a 4-year academic program leading to a bachelor-of-science degree, a license (issued only by the Coast Guard) as a third mate (deck officer) or third assistant engineer (engineering officer), and, if the person chooses, a commission as ensign in the U.S. Naval Reserve, Merchant Marine Reserve, or Coast Guard Reserve. With experience and additional training, third officer may qualify for higher rank. Generally, officers on deep water vessels are academy graduates and those in supply boats, inland waterways, and rivers rose to their positions through years of experience.

Contrary to counsel's assertion, it does not follow from this language that "entry-level" deck officer positions require a baccalaureate. First, deckhands, not deck officers, are the entry level position. Second, the actual language states that post-secondary education is common but not required for deep water ship officers and less common for inland boat officers. Regardless, as counsel himself notes on appeal in contesting the director's reliance on this language, it relates to ship positions rather than port positions.

We have accessed the OOH materials relating to Management, Scientific, and Technical Consulting Services at www.bls.gov.oco.cg.cgs037.htm on December 17, 2010 and incorporated that information into the record of proceeding. These materials do not contain the quote used by counsel. Rather, they indicate that only 73 percent of managers have at least a bachelor's degree. Thus, these materials do not

support counsel's assertion that the position of Port Captain requires a Master's degree or other advanced degree.

Counsel next cited *Matter of Rabbani*, 12 I&N Dec. 15 (Dist. Dir. 1966) for the proposition that a Port Captain is a profession. That case involved a pharmacist and has no relevance to the job requirements for a Port Captain. Moreover, that case predates the regulatory definition of profession at 8 C.F.R. § 204.5(k)(2), quoted above. Moreover, the case does not address the position of Port Captain. Thus, it has no relevance to the current question before us: whether the position of Port Captain requires at least a baccalaureate degree.

Counsel then discussed the petitioner's personal credentials. As stated above and subsequently acknowledged by counsel, however, the petitioner's possession of a Ph.D. does not qualify him for classification as a professional unless the occupation in which he seeks to work is a profession. *Matter of Shah*, 17 I&N Dec. at 246-47. Counsel concluded:

Even though the proposed employment job title identified on the instant petition is Port Captain (Port and Harbor Security and Administration), [the petitioner] is pursuing further research in efficient optimization methods for container stowage, inspection for security, and transportation logistics as indicated in the letters of recommendation from [redacted] and [redacted] respectively (see Exh 6e).

[redacted] an associate professor [redacted] and a former member of the petitioner's doctoral committee, asserts that he and the petitioner are "currently collaborating in studying efficient and optimization method for Container Stowage Problems (CSP)." The petitioner is not employed at CUNY and [redacted] does not explain the context of this research. Specifically, [redacted] does not provide the source of funding for this research or explain whether this research is paid employment, a volunteer service or part of the petitioner's duties for [redacted] the petitioner's employer. The issue is whether the petitioner seeks to work in an occupation that is a profession, not whether he may, outside that occupation, engage in minimal research with a former colleague or even whether his education qualifies him for extra duties within the occupation.

[redacted] states that the petitioner plays a "vital role" in planning and executing [redacted] service and has improved the efficiency of the company's operations through "high level logistics application, including engagement of time and motion study for cargo data movement." This letter has no relevance to whether the occupation of Port Captain requires a baccalaureate for entry into the occupation.

On appeal, counsel repeats his assertions from the response to the director's request for additional information. For the reasons discussed above, these assertions are misleading and not persuasive. At issue is whether the occupation of Port Captain requires at least a baccalaureate degree for entry into the occupation. 8 C.F.R. § 204.5(k)(2) (definition of profession). None of the evidence submitted and

none of the case law cited by counsel address this issue. Thus, the petitioner has not met his burden of demonstrating the education requirements for the occupation he seeks to pursue, Port Captain.

II. Exceptional Ability

The next issue is whether the petitioner qualifies as an alien of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the following six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business:

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

If a petitioner has submitted the requisite evidence, U. S. Citizenship and Immigration Services (USCIS) determines whether the evidence demonstrates "a degree of expertise significantly above that ordinarily encountered" in the arts. 8 C.F.R. § 204.5(k)(2). *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d at 145; *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043 (recognizing the AAO's *de novo* authority).

Evidentiary Criteria

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

The record contains evidence that the petitioner holds a Master of Science degree from the State University of New York, Maritime College at Fort Schuyler, and a Ph.D. from the New Jersey Institute of Technology. This evidence qualifies under the plain language requirements of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A).

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 plain language of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B) requires that the ten years of experience be "in the occupation" in which the petitioner intends to work. In this case, that occupation is Port Captain. The petitioner submitted evidence of his prior employment as a ship officer, an inspector and a Manager of Specialty Products for the [REDACTED]. While counsel asserts on appeal that the director miscalculated the petitioner's previous experience, it remains that none of this experience was in the petitioner's current occupation, Port Captain. Thus, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B).

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

As evidence to meet this criterion, counsel references the petitioner's Certification as a Six Sigma Black Belt with the American Society for Quality (ASQ). According to the self-serving press release from ASQ, ASQ "provides certification as a way to provide formal recognition to professionals who have demonstrated an understanding of, and a commitment to, quality techniques and practices in their job and career." Nothing in the record suggests that ASQ certification is a Port Captain certification. The petitioner also submitted the application for his ASQ certification, which relied on completing a project with the [REDACTED]. The petitioner provided the following description of his project:

The project was to identify statistically where there are discrepancies in production outcome [and] reduce hematology reject rate and improve split rates during apheresis platelet production.

The petitioner has not explained how certification for completing this project and passing a subsequent exam offered by ASQ constitutes certification in a specific occupation. The record contains no evidence that ASQ certification is specific to a given occupation or occupations and certifies ability in that occupation.

The petitioner, however, also submitted a 1997 Ghanaian Certificate of Competency (Deck Officer), Class I Master Mariner. In addition, the petitioner submitted an undated National Institute, London, Nautical Surveyor's Certificate. While counsel asserted that these certificates are academic credentials pursuant to 8 C.F.R. § 204.5(k)(3)(ii)(A), we find that these certificates meet the plain language requirements set forth at 8 C.F.R. § 204.5(k)(3)(ii)(C).

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

The petitioner submitted biweekly pay statements reflecting wages of \$2,812.50, which annualizes to \$73,125. The plain language of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(D) requires not only evidence of a salary or other remuneration but evidence that the salary or remuneration "demonstrates exceptional ability." Thus, as implied by the director, the petitioner must also provide evidence of other wages in the occupation for comparison purposes. On appeal, the petitioner submits a job announcement for a Port Security Specialist, GS-0080-11/12 with the U.S. Coast Guard. Counsel asserts that the salary range for this position is \$62,678 – \$97,658.¹ The petitioner's salary falls within this range and does not appear indicative of exceptional ability. Regardless, the duties of a Port Security Specialist do not appear to be consistent with the petitioner's duties. As such, the petitioner has not established that this salary comparison is a relevant one.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(k)(3)(ii)(D).

Evidence of membership in professional associations

Counsel asserts that a recommendation letter from [REDACTED] a member of the Executive Committee of the NY/NJ Metropolitan Section of ASQ, serves to meet this criterion. [REDACTED] the Newsletter and Web Master Chair for the committee, asserts that the petitioner "was a great contributing member of the committee." A committee is not a professional association. On his application for Six Sigma Black Belt Certification, the petitioner indicated that he was an "associate member" of ASQ. The petitioner, however, submitted no evidence of this membership. Regardless, the record does not establish that ASQ, which promotes "quality" in general terms, is a "professional association" focusing on a single profession.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(k)(3)(ii)(E).

¹ While the Federal Base General Scale (GS) Pay Scale reflects a lower range (which still includes the petitioner's salary), as the job announcement for the job does not specify the location, we cannot verify whether counsel's characterization of the salary range is correct. See <http://www.fedjobs.com/pay/pay.html>, accessed December 17, 2010 and incorporated into the record of proceeding.

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

Counsel asserts that published material about the petitioner falls under this criterion. USCIS may not impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian*, 596 F.3d at 1221, citing *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir.2008). Nothing in the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F) suggests that published material about the alien is included in this criterion. Moreover, the evidence to which counsel refers is an article *by* the petitioner.

Counsel further asserts that recommendation letters serve to meet this criterion. We are not persuaded that recommendations letters prepared in support of the petition are the type of formal recognition contemplated by the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F).

The record contains a Certificate of Appreciation from the NY-NJ Metropolitan Section of ASQ. The record does not demonstrate that this certificate is recognition for "achievements and significant contributions to the industry or field" of transportation management.

In light of the above, the petitioner has not submitted evidence that qualifies under three of the evidentiary criteria. Rather, the petitioner only submitted qualifying evidence that meets the regulatory criteria set forth at 8 C.F.R. §§ 204.5(k)(3)(ii)(A) and (C). Nevertheless, we will next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated that the beneficiary has "a degree of expertise significantly above that ordinarily encountered." 8 C.F.R. § 204.5(k)(2). Section 203(b)(2)(C) of the Act provides that the possession of a degree, diploma, certificate or similar award from a college, university school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of exceptional ability. Thus, in our final merits determination, we must determine whether the beneficiary's degree and license is indicative of or consistent with a degree of expertise significantly above that ordinarily encountered in the field of port management.

The petitioner has still not established the amount of education required for a Port Captain. Thus, in addition to not documenting that at least a baccalaureate degree is required for this occupation, the petitioner has also not demonstrated that a Ph.D. is indicative of a degree of expertise significantly above that ordinarily encountered in port management. Even if we accept that a Ph.D. is a higher level of education than is ordinarily encountered in the field, the remaining evidence submitted in support of the petitioner's exceptional ability claim is not persuasive.

First, even if we accepted that the petitioner's experience as a ship officer, an inspector and a Manager of Specialty Products for the [REDACTED] met the requirements set forth at 8 C.F.R. § 204.5(k)(3)(ii)(B), the petitioner has not established how this experience represents a

degree of expertise significantly above that ordinarily encountered with Port Captains. Significantly, the petitioner has not even demonstrated the relevance of his work at the

Second, while the petitioner is licensed as a ship officer and as a surveyor, it appears that these certificates were the minimum required certification to perform the duties of these positions. The record does not establish that these certifications demonstrate a degree of expertise significantly above that ordinarily encountered among Port Captains.

Third, even if we considered the petitioner's ASQ Six Sigma Black Belt Certification, the petitioner has not demonstrated how the petitioner's certification in the generic area of "quality" based on a blood platelet project is relevant to his expertise as a Port Captain. Moreover, the record lacks evidence other than the promotional materials of ASQ that might establish the significance of this society. USCIS need not rely on the self-promotional material of ASQ.² In addition, the petitioner did not submit the requirements for associate membership in ASQ. Thus, the petitioner's associate membership in ASQ, even if qualifying under 8 C.F.R. § 204.5(k)(3)(ii)(E), would not be persuasive evidence of a degree of expertise above that ordinarily encountered among Port Captains.

In summary, the only noteworthy evidence is the petitioner's Ph.D. As stated above, section 203(b)(2)(C) of the Act provides that the possession of a degree shall not by itself be considered sufficient evidence of exceptional ability. After careful review of all the evidence of record, the evidence does not support a finding that the petitioner qualifies as a Port Captain of exceptional ability.

III. National Interest Waiver

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "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

² See *Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

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.

On appeal, counsel relies on a district court decision, *Laila Mnayer v. INS*, LEXIS 21932 (S. D. Flor. 1995), for the proposition that letters can establish a waiver is warranted in the national interest. 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. In addition, as the published decisions of district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

Significantly, *Mnayer* predates *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, (Comm'r. 1998) (hereinafter "NYSDOT"), a published and therefore binding precedent decision. 8 C.F.R. § 103.3(c). Issued in 1998, no federal court has rejected the reasoning in *NYSDOT*.³ Moreover, the court in *Mnayer* was concerned that the AAO's brief decision had not considered all of the evidence. In contrast, we will provide a lengthy and in depth analysis of all the evidence submitted below.

NYSDOT, 22 I&N Dec. at 217-18 has set forth several factors which must be considered 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 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. *Id.*

³ In fact, at least one federal court has upheld the reasoning in that decision. *See Talwar v. INS*, 2001 WL 767018 (S.D.N.Y. July 9, 2001). Moreover, in 1999, Congress amended section 203(b)(2) of the Act in direct response to the 1998 precedent decision. Congress, at that time, could have taken any number of actions to limit, modify, or completely reverse the precedent decision. Instead, Congress let the decision stand, apart from a limited exception for certain physicians, as described in section 203(b)(2)(B)(ii) of the Act.

We concur with the director that the petitioner works in an area of intrinsic merit, port management, and that the proposed benefits of his work, efficient movement of cargo, 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.

On appeal, counsel asserts that because the [REDACTED] previously obtained an alien employment certification in behalf of the petitioner, the process would no longer serve any interest. The previous alien employment certification, however, was for a different position, operations research analyst, and, thus, says nothing about the availability of U.S. workers with the minimum qualifications to work as a Port Captain. Regardless, the assertion that an alien employment certification has been obtained in the past only demonstrates how unnecessary the waiver request is. As stated in *NYSDOT*, 22 I&N Dec. at 223, nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process.

Eligibility for the waiver must rest 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. *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 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. In evaluating the petitioner's achievements, we note 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 discussed above, ASQ issued the petitioner Six Sigma Black Belt Certification. In addition, the petitioner has made a presentation at the local ASQ chapter event. We reiterate that the record contains no evidence other than the promotional ASQ materials regarding the significance of this society in the field of port management or any other field. For example, the record contains no evidence regarding the number of attendees at local chapter presentations.

As also discussed above, the petitioner is licensed as a ship officer and surveyor. Qualifications that can be articulated on an application for an alien employment certification cannot serve as a basis to waive the requirement for an approved alien employment certification. *Id.* at 221.

The record contains the petitioner's abstracts and published articles on blood platelet inventories. The petitioner also submitted an email from [REDACTED] Acquisition Editor for [REDACTED] [REDACTED] advising that the publisher would be interested in "publishing" the petitioner's dissertation "in the form of a printed book." The record contains no evidence that [REDACTED] is a publishing company that pays authors for the right to publish their work rather than a vanity press that binds dissertations into books for a fee. Most significantly, the record contains no citations of the petitioner's work or other evidence that his publications have been utilized or applied beyond his employer.

Finally, the petitioner submitted letters from his immediate circle of colleagues. Specifically, the record includes a letter from [REDACTED] Chairman of the Department of Industrial and management Systems Engineering at the [REDACTED] and a member of the petitioner's Ph.D. dissertation committee. [REDACTED] explains that the petitioner's dissertation focused on the optimal allocation of blood products with special reference to Single Donor Platelets. [REDACTED] discusses the importance of blood platelets and concludes that the petitioner's publications have "substantial intellectual merit and serve the national interest of the United States." [REDACTED] does not provide any examples of the petitioner's influence beyond his school and employer. More significantly, the record contains no evidence that [REDACTED] is involved in storing or transporting blood platelets.

[REDACTED], a professor at the [REDACTED] and another member of the petitioner's doctoral dissertation committee, discusses the petitioner's doctoral work. [REDACTED] states that the petitioner "employed a heuristic method and a Linear Programming with a rolling horizon method to find the near optimal issuing policy, the expected average age, outdate rate, and shortage rate of a blood product from the perspective of the blood center." Once again, [REDACTED] does not explain how this work is influencing the field as a whole or how it is relevant to the petitioner's proposed employment as a Port Captain.

[REDACTED], the petitioner's doctoral advisor at the [REDACTED], provides similar information to that discussed above. [REDACTED] concludes that the petitioner's model "will improve the utilization of the invaluable blood products and help save lives" and that the petitioner "will no doubt continue to benefit our country by supporting the nation's blood industry and improve our quality of life." First, [REDACTED] provides no examples of any independent laboratory or other entity using the petitioner's model. Second, the petitioner no longer works for a blood center. Thus, it is difficult to see how the petitioner will benefit the national interest by supporting the nation's blood industry as claimed.

[REDACTED] discusses the petitioner's research on Container Stowage Problems (CSP). Specifically, [REDACTED] states:

Many shipping companies compete around the world to provide profitable container transportation services. In order to increase the benefit of economy of scale, the size of

containerships has increased over the last twenty years. Containership capacity has increased typically from relatively small 350 Twenty Foot Equivalent Units (TEUs) to more than 8000 TEUs. These increases contribute to profits of shipping companies, but also compound the complexity and difficulty of the arrangement of containers. CSP is complicated because of its combinatorial nature. [The petitioner] is working on a mathematical optimization method to address some of the problems encountered in CSP.

This work appears far too preliminary to evaluate whether it has influenced the field of port management as a whole to any degree.

[REDACTED], asserts that the petitioner is a minister, Sunday school teacher, and an organist/pianist in good standing of the Apostolic Faith Church. [REDACTED] supports the issuance of a "special immigrant visa." The Form I-140 petition at issue is not a petition for classification as a special immigrant pursuant to section 101(a)(27)(C) of the Act. Thus, this letter does not appear relevant to the issue of whether the alien employment certification process should be waived.

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 we have 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)).

The letters considered above primarily contain bare assertions of national benefit without specifically providing specific examples of how the petitioner's model has influenced the field or how it is relevant to his current work. Merely repeating the legal standard does not satisfy the petitioner's

burden of proof.⁴ The petitioner submitted no independent letters. The petitioner also failed to submit sufficient relevant corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters. On the basis of the evidence submitted, the petitioner has not 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 not sustained that burden.

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

ORDER: The appeal is dismissed.

⁴ *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); *Ayvr 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).