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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

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DATE: JUL 07 2011 OFFICE: TEXAS SERVICE CENTER 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:

SELF-REPRESENTED

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. 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. The petitioner seeks employment as a geophysicist. At the time he filed the petition, the petitioner was a postdoctoral research associate at the [REDACTED], Los Angeles. 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, witness letters, and other exhibits.

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.

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 (USCIS)] 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 (Act. Assoc. Comm’r 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.

The AAO also notes 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 Form I-140 petition on June 24, 2009. In an introductory letter, the petitioner described his work:

My current research interest is pore-scale investigation of geological carbon sequestration in saline aquifers, which has important applications in reducing carbon dioxide (CO₂) emission and consequently mitigating global warming.

. . . Capture and storage of tremendous amounts of CO₂ is a tempting approach to reduce the concentration of CO₂ in the atmosphere. Specifically, geological carbon sequestration, which is the injection of CO₂ into geological formations (e.g. coal beds, depleted petroleum and gas reservoirs, saline aquifers, and deep-sea sediments) for long-term storage, can significantly reduce the atmospheric emission of greenhouse gases. . . . In addition, injecting CO₂ into depleted petroleum reservoirs provides additional oil production and improved storage security. Therefore, CO₂ flooding has been used as a popular enhanced oil recovery (EOR) mechanism.

During my Ph.D. research, I obtained a lot of skills and experience in pore-scale investigation. These skills and experience are vital for the research of geological carbon sequestration. . . .

During my past research, I developed a set of innovative and revolutionary experimental-numerical approaches for studying colloid transport and deposition, as well as transport of heavy metals in groundwater. My . . . research experience on colloid transport and deposition is useful for the investigation of geological carbon sequestration. . . .

I am a leading and indispensable researcher in my current project, because of the special expertise I possess on high-energy synchrotron-based X-ray microtomography and scientific computation. . . . I have independently developed an advanced mathematical model simulating the coupled processes at the pore scale, based on the X-ray tomographic data. These interdisciplinary skills and qualifications make me the ideal scientist for my current research. . . .

I have done distinguished research in earth and environmental sciences, which are extremely important and valuable in improving the environmental and energy situations of the United States. Specifically, my research has the potential to mitigate global warming, by storing excessive CO₂ in underground geological formations. Also, my research advances the predictions of contaminant transport and heavy metal distribution in groundwater. . . . [The] national interest would be adversely affected if a Labor Certification were required for me, because there are no available American candidates that meet the minimum requirements for my current position.

(Emphasis in original.) The argument that the labor certification process would harm the national interest “because there are no available American candidates that meet the minimum requirements for [his] current position” is not persuasive, because the very purpose of the labor certification process is to determine whether or not qualified United States workers are available for a given position. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 221. The petitioner argued, in effect, that because no qualified

workers were available to replace him, it would be against the national interest to confirm that no qualified workers were available to replace him.

Throughout this introductory letter, the petitioner repeatedly stresses the importance of his skills to his “current project” and “current research” at USC. The petitioner did not explain why it would be in the national interest to grant permanent immigration benefits for him to fill a temporary postdoctoral position. The job offer letter in the record described a one-year appointment, expiring August 16, 2009, with no guarantee of reappointment, and a “maximum possible term [of] five years.” The record does not reveal whether or not USC reappointed the petitioner after August 16, 2009, but USCIS records do show that the petitioner left USC less than six months after he filed the present petition, moving to Indiana in late 2009 to accept a position at ██████████ West Lafayette.¹

Six witness letters accompanied the petitioner’s initial filing. ██████████ who ██████████ the petitioner’s research at ██████████ stated:

Carbon sequestration (storage) is the isolation of carbon dioxide (CO₂) from the earth’s atmosphere. Sequestration can play a significant role in preventing continued CO₂ buildup in the atmosphere and is thus a viable option for mitigating global warming. Geological sequestration involves storing CO₂ underground in rock formations that can retain large quantities of CO₂ for long periods of time. The CO₂ would be held in small pore spaces inherent in rocks. . . .

[The petitioner] is an outstanding scientist with extraordinary research ability, by considering the following:

- 1) [The petitioner] has made original scientific contributions. His research on colloidal particle transport is actually the first published work that observes and simulates the movement and accumulation of micron-scale particles in porous media. This accomplishment is prominent. He also developed an X-ray microtomography method to quantitatively study sediment mixing and transport in real streambeds. In my group, [the petitioner] developed a coupled numerical model, which takes into account two-phase flow, dissolution on interface, and solute transport. This sophisticated model advances our understanding of the complicated pore-scale processes during CO₂ injection in geological formations.
- 2) [The petitioner] has published many outstanding papers and conference proceedings, which proves he is a talented and hard-working scientist. His work has been cited by others in the field, even though the papers are relatively new.
- 3) [The petitioner] has independently judged the work of others in the field for many professional journals, indicating that he has been recognized as an expert in earth and environmental sciences.

¹ USCIS records show that the petitioner no longer works at Purdue University. ██████████

- 4) Because of his original scientific contributions, [the petitioner] has received two international awards and two fellowships. The [redacted] he received at 2006 [redacted] is absolutely competitive and renowned.
- 5) [The petitioner] is a member of highly recognized scientific organizations, including [redacted], and [redacted] Engineers.

The research associate position in my group was opened last spring, and I received more than one hundred applications. However, it was not easy to find an ideal candidate because we wanted someone who has extensive knowledge in numerical simulation and geophysics. . . . [The petitioner's] past research on pore-scale processes in porous media made him the perfect researcher for my project. Not only does he have good qualifications in scientific computation, but also he has a lot of experience in high-energy X-ray tomography and digital image processing. These skills are critical and necessary to my project.

Now [the petitioner] is making exciting progress in the project of CO₂ storage in geological formations, and we will publish our up-to-date results very soon. I am glad to see that he has been a leading and productive role in this promising project. Thus, [the petitioner] is an outstanding scientist in his field, and an indispensable asset in my project. If I lose him because of the visa issue, the project will be adversely affected.

[redacted] argument that the petitioner's "skills are critical and necessary to [the] project" at [redacted] is now moot, given the petitioner's subsequent relocation to Indiana. The nature of the petitioner's contributions will receive due consideration, but the AAO will not find that it is in the national interest to grant permanent immigration benefits for a temporary job that the petitioner has already left.

[redacted] was the petitioner's primary [redacted] during the petitioner's doctoral studies at that institution. [redacted]

[The petitioner's] research is focused on developing innovative methods for micro-scale analysis of the structure of sedimentary materials, and applying those methods to assess the evolution of pore structure and pore fluid flow in a variety of geophysical contexts. [The petitioner] achieved several notable accomplishments through his research. [The petitioner's] first major accomplishment was to develop methods for synchrotron-based x-ray difference tomography, and to demonstrate their use to observe local-scale patterns of colloid deposition and sediment sorting. [The petitioner] not only designed and executed experiments, but also developed his own image analysis routines to extract quantitative information from the tomograms. . . . The approach [the petitioner] developed is quite valuable, as it provides unique

insight into the reorganization of pore structure that occurs during processes such as contaminant remediation, carbon dioxide injection, and oil extraction. . . .

Recently, [the petitioner] has also extended this method for analysis of arsenic distributions in sediments. This . . . will greatly improve evaluation of arsenic efflux from contaminated deposits, which will be critical in managing ongoing health risks from arsenic. . . .

[The petitioner] also engaged in a completely separate effort to use the newly available pore-scale data to analyze the coupling between pore fluid flow and the evolution of pore structure. . . . These methods are very fundamental and have wide applicability to problems in hydrogeology, sedimentary geology and geochemistry, fluvial geomorphology, environmental engineering, and petroleum engineering. Specifically, I am certain that the approach [the petitioner] developed to assess interaction of fluid flow with the matrix structure of sediments and groundwater aquifers will become a standard tool for scientific and engineering assessment of these systems. . . .

[The petitioner's] accomplishments are widely recognized. He has numerous technical publications in the highest-ranked journals. . . . His productivity in this regard is outstanding relative to others with a comparable level of experience in this field. . . . His technical achievements are very well known among leading researchers in the field, including the pore flow modeling group at [REDACTED] and the geomaterials group at [REDACTED]

The remaining witnesses represent a variety of institutions, but not [REDACTED] or [REDACTED] claim in this regard is, therefore, unsubstantiated. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 remaining witnesses represent a variety of research institutions. [REDACTED] praised the petitioner's "tremendous accomplishments, which have attracted extensive attention in the geophysical community and potentially have wider applications for the industry and medical advancements." [REDACTED] stated:

I would like to point out [the petitioner's] experience in dealing with colloid transport. Colloids are small mobile particles in soil water and have the ability to absorb and transport contaminants. . . . While there is a substantial group of researchers in the US who work on colloid transport, virtually none of these researchers is able to deal with colloidal transport at . . . the microscopic scale at [which the petitioner] has worked. To my knowledge, [the petitioner's] recently published work on the effects of colloids on flow at the pore-scale is the first work

that shows that – contrary to some claims of the experts – colloids can actually be studied at this scale. This is a truly tremendous achievement, which will likely lead to new development of knowledge and lead to better predictions of colloid behavior in U.S. Groundwater resources.

stated:

Although I have never collaborated with [the petitioner], I have noticed his research since 2004. At that time he was using high-energy X-ray Micro-tomography to observe the internal pore structure of natural sediments. . . . This unprecedented technology is of great interest[] in both natural and engineered applications. Specifically, the experimental approaches and image processing methods [the petitioner] developed can provide detailed and accurate data as boundary conditions in pore-scale numerical simulation. His research has attracted peer's attention. . . .

Additionally, [the petitioner] has successfully combined his experimental data with pore-scale lattice Boltzmann simulation. Since 2004 we have been keeping frequent email communication because I am an expert in the lattice Boltzmann simulation and was able to give him advice on this method. His Ph.D. research is the first reported work which combines high-energy X-ray tomography and lattice Boltzmann method to accurately study the effects of micron-scale particle on the transport properties of natural porous media. . . . The quantity and quality of his publications are impressive, compared to his peers with the same age and experience.

stated:

I knew [the petitioner's] work when he applied for a post-doctoral experimentalist position in the [redacted] in 2008. . . .

Because of his strong and diverse academic record, [the petitioner] was our top candidate. Unfortunately, because I accepted a position at [redacted] Irvine in summer 2008, the position was never filled. . . . The most challenging issue in [carbon sequestration] research is the long-term safety and monitoring of stored carbon dioxide. Our understanding of these processes will benefit greatly from pore-scale investigations. [The petitioner] developed a systematic experimental and numerical approach for investigating the coupling of pore structure and transport processes in porous media. This approach holds great promise in the research of carbon dioxide sequestration.

Specifically, [the petitioner] has achieved the following: a) he developed an approach for using high-energy X-ray microtomography to study pore structure evolution due to colloid deposition, which can be used to study the modification of pore geometry

due to injected carbon dioxide; b) he developed a great deal of techniques in digital image processing which could be used to process CT images for the boundary conditions in numerical models; c) he developed 3D numerical simulation of single- and multiple-phase fluid flow and solute transport, which is crucial for quantitatively studying the coupling of carbon dioxide injection, pore geometry modification, and transport properties of the porous medium.

stated:

[The petitioner's] PhD research dealt with the deposition of small particles in porous media, a process, for example, relevant to water filtration. With interest, I have been following his research for a couple of years, because one of my former PhD students also performed research on this topic under my direction. [The petitioner] has performed top-notch research. He pioneered the use of novel techniques in the field of water filtration. Specifically, he combined an imaging method for filters based on X-ray computed tomography with mesoscopic simulations based on the lattice-Boltzmann method. In his PhD research, he significantly advanced our understanding of particle deposition in porous media.

The petitioner submits copies of seven articles, six of which saw publication before the petition's filing date. The remaining article was still in review at the time. Of the petitioner's six published articles, one, in Chinese, dates from 2003. The other five articles are all products of the petitioner's doctoral research at [REDACTED] is a co-author of all five of these articles. The petitioner and [REDACTED] also collaborated on a book chapter and six conference presentations. As of the filing date, therefore, all of the petitioner's published and presented work in the English language arose from his work under [REDACTED]

A number of witnesses praised the petitioner's publication record, but the petitioner did not submit objective evidence (such as citation data) to show the extent to which other researchers have relied on his articles. The petitioner submitted aggregate citation data for the journals that carried his articles, thus demonstrating his awareness of the significance of citations, but the petitioner did not provide citation information for his articles, relying instead on the overall impact and reputations of the journals.

A graphic image relating to the petitioner's work appeared on the cover of an issue of [REDACTED] *Letters*. The petitioner's article was one of three named as "Highlights of this issue." Clearly the editors of the journal had a high opinion of the article, but its selection as the cover story cannot serve as evidence of the story's subsequent reception by others in the field.

Several witnesses mentioned the petitioner's [REDACTED] from the [REDACTED] [REDACTED] An electronic mail message from the [REDACTED] indicated that the petitioner's presentation was one of 24 selected for an award out of 511 presentations in the hydrology section at the 2006 fall meeting, for a selection rate of about 4.7%. In all, the [REDACTED]

awarded 77 outstanding student paper awards at that meeting. (There were more winners in the hydrology section than in any of the other six sections.) Under the USCIS regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F), recognition of this kind can contribute, in part, to a finding that the petitioner is an alien of exceptional ability in the sciences. As previously explained, aliens of exceptional ability are generally subject to the job offer requirement. Therefore, evidence of exceptional ability is not presumptively also evidence of eligibility for the national interest waiver. The petitioner has not shown that his award from the [REDACTED] is of a caliber that stands out even among aliens of exceptional ability; its status as a student award (thus disqualifying established and experienced researchers) argues otherwise.

The director denied the petition on August 31, 2009. The director acknowledged the intrinsic merit and national scope of the petitioner's research, with its applicability to carbon sequestration and other important scientific goals. The director concluded, however, that the petitioner had not "established that [his] achievements have made a significant impact within the field of civil and environmental engineering."

The petitioner filed his Form I-290B Notice of Appeal from California. Three weeks later, the petitioner submitted a supplement to the appeal, including an "updated Curriculum Vitae" that continues to indicate that the petitioner resides in [REDACTED] California and works at [REDACTED]. The petitioner mailed the supplement, however, from [REDACTED], Indiana.

The petitioner states:

I am a top scientist in my field of endeavor, and my contribution has made a significant and influencing impact upon the field. . . .

I am the first-author of 4 high-quality papers, and a contributing author in many other papers. . . . This publication record is definitely outstanding for a young scientist.

The petitioner criticizes the director for stating conclusions "not supported by any explicit data, evidences, or criteria," but the petitioner himself provides no "data, evidences, or criteria" to support the claim that his "publication record is definitely outstanding for a young scientist." The petitioner then quotes from witness letters, both previously submitted and newly presented on appeal.

The petitioner submits what he describes as a "[m]odified recommendation letter" from [REDACTED] which basically repeats most of [REDACTED] first letter with new language added at the end. The new letter, dated [REDACTED], repeats the assertions that the petitioner "is currently a post-doctoral research associate in my group" and that the petitioner's "skills are critical and necessary to my project," even though the petitioner had left California by the time he submitted the letter in late October. [REDACTED] contends that the petitioner "has risen to the very top of his research area," but offers no empirical support for that claim.

states that the petitioner's work "brought him national and international recognition. . . . It is undoubted that [the petitioner's] contributions have made a more significant impact than most of his peers with similar experience." In terms of describing that impact, appears to be less decisive, stating: "As far as I know, the lattice Boltzmann method he developed for studying colloid transport has been utilized to investigate CO₂ sequestration at the pore scale."

calls the petitioner's work "impressive compared to his peers. I can say with confidence that he has risen to the top in pore-scale research. His remarkable work has received international acclaim, and made significant impacts on the field. . . . Additionally, [the petitioner] has received two world-famous awards for his research contributions." The AAO duly notes high opinion of the quality of the petitioner's work, but the absence of objective documentary evidence remains a point of concern. If the petitioner is truly an acclaimed figure in his field, then it is not clear why the only materials mentioning that acclaim are letters that the petitioner solicited to support the petition. does not identify documented instances whereby the petitioner's work has influenced the ongoing research of others. Likewise, he does not show that any existing engineering project has put the petitioner's research to practical use. He simply asserts "acclaim" and leaves it at that.

The opinions of experts in the field are not without weight and the AAO has considered them 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. 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 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). *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"). Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.²

² *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

When considering the credibility and weight of the witness letters, examination of claims about the petitioner's awards is instructive. [REDACTED] asserts that the petitioner has won "two world-famous awards," while Prof. Saiers refers to "two prestigious international awards." The witnesses do not identify the awards, but presumably they refer to the only two awards that the petitioner has identified and documented. Those awards are the [REDACTED] discussed earlier, and a [REDACTED] from the [REDACTED] [REDACTED] which the petitioner received at the [REDACTED] on [REDACTED] in [REDACTED] in 2008. The record contains no information about the latter award except to show that the petitioner received it. The record identifies both of these awards as student awards, indicating that as late as 2008, authorities in the field of hydrology considered the petitioner to be a "student" rather than a fully trained participant in that field.

The AAO agrees with the director's finding that the evidence made available to the director did not warrant the approval of a national interest waiver. The evidence submitted on appeal does not indicate that this decision was in error.

USCIS records show that, on [REDACTED], 2009, weeks after filing the present appeal, the petitioner filed a new Form I-140 petition (with receipt number [REDACTED] on his own behalf. In the new petition, the petitioner again sought classification as a member of the professions holding an advanced degree, with a national interest waiver. The Director, Nebraska Service Center, approved that petition on February 9, 2010. The record of proceeding for the approved petition is not before the AAO, and the AAO therefore will not discuss the merits of that petition.

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. Whatever the petitioner may have submitted in support of his later, approved petition, the evidence submitted in support of the present petition does not establish 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.

ORDER: The appeal is dismissed.

primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).