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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

[REDACTED]

DATE: **JUN 22 2011** Office: NEBRASKA 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:
[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, Nebraska 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 a member of the professions holding an advanced degree. The petitioner seeks employment as a product development engineer. 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 submits a brief and additional evidence. For the reasons discussed below, the AAO uphold the director's determination that the petitioner has not established his 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 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 petitioner holds a Master of Science degree in Engineering from Texas A&M University. 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 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 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 use of the term “prospective” requires 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.*

The AAO concurs with the director that the petitioner works in an area of intrinsic merit, waste reclamation and monitoring engineering, and that the proposed benefits of his work, improved waste recycling, reclamation and elimination systems as well as improved sensor or monitoring technology, 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, U.S. Citizenship and Immigration Services (USCIS) generally does 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, 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.

On appeal, [REDACTED] where the petitioner works, compares the petitioner’s duties with the normal duties of an industrial engineer as listed on O*Net and concludes an engineer with the same qualifications could not perform the petitioner’s duties. The job duties for an industrial engineer on O*Net do not include any design responsibilities. While the petitioner’s degree is in industrial engineering, his duties are close to those of an environmental engineer. O*Net states that environmental engineers “design and supervise the development of systems processes or equipment for control, management, or remediation of water, air or soil quality.” This statement describes much of what the petitioner has been doing.

The AAO also accessed the Department of Labor’s Occupational Outlook Handbook (OOH), available at <http://www.bls.gov/oco/ocos027.htm#nature> on June 7, 2011 and incorporated the information about engineers into the record of proceeding. Specifically, the OOH provides far more detailed information about the nature of various occupations. The OOH specifically provides the following information about the nature of engineering positions:

Many engineers develop new products. During the process, they consider several factors. For example, in developing an industrial robot, engineers specify the functional requirements precisely; design and test the robot's components; integrate the components to produce the final design; and evaluate the design's overall effectiveness, cost, reliability, and safety. This process applies to the development of many different products, such as chemicals, computers, powerplants, helicopters, and toys.

In addition to their involvement in design and development, many engineers work in testing, production, or maintenance. These engineers supervise production in factories, determine the causes of a component’s failure, and test manufactured products to maintain quality. They also estimate the time and cost required to complete projects. Supervisory engineers are responsible for major components or

entire projects. (See the statement on engineering and natural sciences managers elsewhere in the *Handbook*.)

Engineers use computers extensively to produce and analyze designs; to simulate and test how a machine, structure, or system operates; to generate specifications for parts; to monitor the quality of products; and to control the efficiency of processes. Nanotechnology, which involves the creation of high-performance materials and components by integrating atoms and molecules, also is introducing entirely new principles to the design process.

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Environmental engineers use the principles of biology and chemistry to develop solutions to environmental problems. They are involved in water and air pollution control, recycling, waste disposal, and public health issues. Environmental engineers conduct hazardous-waste management studies in which they evaluate the significance of the hazard, advise on its treatment and containment, and develop regulations to prevent mishaps. They design municipal water supply and industrial wastewater treatment systems, conduct research on the environmental impact of proposed construction projects, analyze scientific data, and perform quality-control checks. Environmental engineers are concerned with local and worldwide environmental issues. Some may study and attempt to minimize the effects of acid rain, global warming, automobile emissions, and ozone depletion. They also may be involved in the protection of wildlife. Many environmental engineers work as consultants, helping their clients to comply with regulations, prevent environmental damage, and clean up hazardous sites.

In light of the above, simply having design, development and testing duties does not distinguish the petitioner from any other engineer with the same education and experience. Moreover, simply successfully performing his assigned tasks demonstrates competence rather than an ability to benefit the national interest to a greater extent than an available U.S. worker with the qualifications for the position.

The petitioner submitted the following: (1) preliminary disclosures listing himself as one of the inventors, (2) internal progress and final reports on projects prepared by the petitioner and his coauthors, (3) a Disclosure of Invention and New Technology filed with the National Aeronautics and Space Administration (NASA) listing the petitioner as an innovator, (4) project funding proposals listing the petitioner as the engineer or one of the engineers who would work on the project under the supervision of the principal investigator and (5) a paper presented at a 2006 Society of Automotive Engineers (SAE International) conference. A February 12, 2007 letter advises the petitioner that the *SAE 2006 Transactions Journal of Aerospace* would include the petitioner's paper as "among the most

outstanding technical papers of 2006.” The letter indicates that the issue will include 720 of the best SAE technical papers.

The above evidence reveals that the petitioner has been and will be involved in several government funded projects and disseminated one of his papers at a conference and in a journal. Most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

The AAO acknowledges that the petitioner has been working on confidential projects that involve intellectual property concerns. Such work is typically reported in confidential reports as documented in the record rather than published. There is no opportunity for other, independent engineers and researchers to consider and potentially cite confidential reports. That said, while the lack of citations does not preclude a finding that the petitioner has influenced the field, it is the petitioner’s burden to provide some type of evidence to establish such an influence. The inclusion of the petitioner’s technical paper as one of 720 papers selected for publication in an SAE International journal does not single out the petitioner’s work as influential.

In response to the director’s request for additional evidence, the petitioner submitted confirmation that he attended the NASA Lunar Surface Systems and Small Business Innovation Research (SBIR) Technology Workshop in November 2009, after the petitioner filed the petition. The purpose of the workshop was to allow for open communication and learning about technologies developed through the program and to develop Phase 3 opportunities. The petitioner presented a Phase 2 project. This meeting, as it postdates the filing of the petition, cannot establish the petitioner’s eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l. Comm’r. 1971).

The petitioner also submitted a September 11, 2009 email advising that the petitioner was “specified as an Innovator in the NASA eNTRe system on a New Technology Report.” The petitioner’s report on this system is “Pending Internal Review.” According to [REDACTED] [REDACTED] are four steps for the eNTRe system. First, the innovator creates the New Technology Reporting (NTR), second the innovator submits the NTR to NASA, third NASA reviews the NTR *for completeness*, and fourth, NASA enters the NTR into the database. There is no step in this process whereby NASA reviews the NTR for significance or influence. Regardless, the petitioner was listed in eNTRe after he filed the petition. Thus, the evidence cannot establish his eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner’s response also included at June 10, 2009 Letter of Interest from [REDACTED] a contracts manager at Boeing. [REDACTED] advises [REDACTED] and the petitioner that Boeing is interested in [REDACTED] research aimed at capturing CO₂ from the atmosphere for use in fuel production. The letter further invites a proposal from Lynntech for support of this research by Boeing. While this letter

documents some outside interest in the petitioner's work, it postdates the filing of the petition and, thus, cannot establish the petitioner's eligibility as of that date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The remaining evidence consists of letters. One of the letters is purportedly from [REDACTED], a [REDACTED] and a former fellow student at Texas A&M University. [REDACTED] however, did not sign his letter. Thus, the letter has no evidentiary value.

[REDACTED] simply lists all of the projects on which the petitioner has worked and the funding applications to which he has contributed. Without an explanation as to how any of these projects has already influenced the field, a list of projects is not particularly informative.

[REDACTED] explains the toxicity of gases produced by the combustion of fossil fuels and the importance of monitoring these emissions. [REDACTED] asserts that no sensor able to monitor gases in the presence of interferences exists in the market today. [REDACTED] continues that the petitioner "designed, built and tested a novel micro-porous solid array sensor and sensor chamber to detect gaseous combustion pollutants in a complex gas mixture at elevated temperatures." [REDACTED] does not suggest that any industrial plant or government agency has expressed any interest in licensing the petitioner's sensor.

[REDACTED] text explains the need for cost-effective and energy friendly novel adsorbents that can adsorb carbon dioxide and carbon monoxide efficiently at various pressures and temperatures in the presence of high humidity. [REDACTED] continues that the petitioner "secured proof of concept funding to take a common inexpensive adsorbent and perform surface modifications in order that it could capture more total carbon dioxide, and adsorb this gas in the presence of high humidity." [REDACTED] asserts that the petitioner developed a material that is significantly better than currently available media and obtained more funding to develop the material into a commercial product. The record, however, lacks evidence that the petitioner did develop the material into a commercial product and that industrial or government representatives have expressed an interest in licensing or otherwise using this material.

Finally, [REDACTED] discusses the petitioner's work on the remediation and disinfection of air and water using advanced oxidation. [REDACTED] explains:

[The petitioner] has successfully applied photocatalytic oxidation to the destruction of pyrogens in hemodialysis water for the National Institutes of Health (NIH), the reclamation of both water and air for astronauts for NASA, and under the sink drinking water purification for the NIH. He has applied photolysis and hydroxyl radical generation (from both UV light with ozone and UV light with hydrogen peroxide) to water sampling for NASA. [The petitioner] was also an integral contributor to the development of a household vacuum cleaner that disinfects the carpeting as it vacuums for a leading consumer products company.

The record does not reflect that NIH or NASA is applying or in the process of applying the petitioner's methods for treating water and air. The record also lacks a letter from a vacuum company confirming the petitioner's contribution to their vacuum cleaner.

██████████ a ██████████ discusses her collaborations with the petitioner. First, she asserts that the objective of the Phase II water treatment project funded by NIH "is to design fabricate and test a new, small-scale photocatalytic oxidation system for [point-of-use] water treatment." She further explains that the aim of the project is "to provide a unique, low-cost consumer device designed to effectively eliminate [disinfection byproducts] and microorganisms at the location where water is consumed." While ██████████ explains how Lynntech's proposed system is an improvement over other systems, she does not provide examples of companies expressing an interest in licensing, commercializing or otherwise utilizing this technology. Instead, she concludes that the petitioner's disinfection systems have "a high potential for use in many areas where high quality water is needed."

██████████ also discusses the importance and complexities of maintaining a healthy atmosphere in the closed system of a space module. ██████████ asserts that the petitioner's novel photocatalytic air cleaner "could be installed in the International Space Station (ISS)." The record contains no agreements between NASA and ██████████ or media coverage suggesting that NASA has expressed an interest in installing the petitioner's system in the ISS. Similarly, ██████████ explains NASA's interest in recovering and processing spacecraft wastewater to provide clean water and asserts that the petitioner's reactor unit can be integrated into the water reclamation systems in the ISS. She does not suggest, however, that NASA is considering doing so.

██████████ then discusses the petitioner's currently funded research, some of which derives from the U.S. Department of Energy. She concludes that the petitioner's technologies "are immediately applicable to the nation's fossil fuel fired power plants, increasing contaminant and pollutant gas separation efficiencies, reducing electricity production costs and more importantly reducing greenhouse gas emissions to the environment." While these goals may have substantial intrinsic merit, the AAO generally does 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.

██████████ discusses her collaboration with the petitioner on the water reclamation project. ██████████ explains NASA's priority of recovering and processing spacecraft wastewater. She reiterates that the petitioner developed and tested a prototype reactor unit that can be integrated into the water reclamation system on the ISS. ██████████ confirms that her laboratory evaluated the device and concluded that it increased RO flux, membrane life and reduced bacterial concentrations in advanced water reclamation systems. She notes that NASA listed the project on eNTRe. As discussed above, however, NASA only evaluates the project for completeness before listing it. The record contains no evidence that NASA's listing implies an interest in integrating the petitioner's device onto the ISS.

explains that he has worked with the petitioner on NASA funded projects. asserts that NASA selected the petitioner's filter for the removal of trace contaminant gases project for Phase II funding, demonstrating its success and the merit of the technology. concludes that the petitioner's system "will provide NASA with a low cost, low maintenance cabin air remediation option with reliability, longevity, size, performance and diverse flow rate capacity advantages." does not confirm that NASA intends to utilize the petitioner's technology on the ISS.

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 this decision 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)).

The letters considered above primarily contain bare assertions of valuable skills without providing specific examples of how those innovations have influenced the field. Merely repeating the legal standards does not satisfy the petitioner's burden of proof.¹ The petitioner did not provide any letters from independent experts. More significantly, the petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

Ultimately, the petitioner is an engineer working on government-funded projects with significant importance and potential. The petitioner is respected by his colleagues and has made useful

¹ *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).

contributions in his field of endeavor. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. The petitioner has not documented a track record of success with some degree of influence on the field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved 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.

ORDER: The appeal is dismissed.