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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: MAY 09 2011

Office: NEBRASKA SERVICE CENTER

FILE:



IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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,

Σ 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 senior specialist. 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 concurs with 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.

Initially, counsel asserted that the petitioner was an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Ph.D. in Mechanical and Aerospace Engineering from the University of Missouri. 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 AAO uses the term “prospective” 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.*

The AAO concurs with the director that the petitioner works in an area of intrinsic merit, material design and structural engineering, and that the proposed benefits of his work, improved oil extraction and transportation from deepwater rigs, 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. *NYS DOT*, 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.

In response to the director’s request for additional evidence, the petitioner submitted evidence that in June 2009, the Texas Board of Professional Engineers licensed the petitioner as a professional engineer.

On appeal, counsel asserts that only 40 percent of applicants pass the exam and that [REDACTED] where the petitioner works, has 1,900 employees in Houston, only eight percent of whom are licensed as professional engineers. The petitioner’s license postdates the filing of the petition and cannot establish 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). Regardless, a license to practice in a profession or occupation is one type of evidence that may be submitted to establish eligibility as an alien of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(C). Because exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement, a license in the profession, while relevant, is not dispositive to the matter at hand. *See NYS DOT*, 22 I&N Dec. at 222.

The record also establishes that the petitioner is an associate member of Sigma Xi, the University of Missouri at Columbia Chapter; a student member of the Society of Plastics Engineers (SPE) and a member of the American Institute of Aeronautics and Astronautics (AIAA). Once again, professional memberships are simply one type of evidence that may be submitted to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(E). As stated above, exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement. *NYS DOT*, 22 I&N Dec. at 218, 222. Thus, the above memberships are not dispositive as to whether waiving the alien employment certification process is in the national interest. *See id.* at 222.

The petitioner submitted a self-serving document purporting to explain the various associations of which the petitioner is a member. 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)). Moreover, the information provided is not persuasive. That Sigma Xi includes over 200 members who have won the Nobel Prize and other members who are members of the National Academies of Sciences and Engineering does not impart that distinction to the vast majority of its

members who have not been so recognized. Moreover, the petitioner is only an associate member of a local Sigma Xi chapter. The information about SPE and AIAA suggests that they are large professional memberships that do not restrict membership to those who have influenced the field. Moreover, the petitioner is only a student member of SPE.

The petitioner also submitted his "Superior Graduate Student Achievement Award" from the University of Missouri-Columbia. [REDACTED] Director of Graduate Studies at the university, asserts that the award was based on research and teaching performance and that only 30 out of 6,600 graduates receive this award. The petitioner did not submit the official standards for this award. Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. *NYSDOT*, 22 I&N Dec. at 219, n.6. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *Id.* Moreover, while the award may distinguish the petitioner from other students, it does not demonstrate his influence in the field beyond the University of Missouri.

The record also demonstrates that the petitioner received a Research Alliance of Missouri (RAM) travel grant to attend a conference in St. Louis, Missouri. The funds reimbursed the registration fee and up to \$350 in travel expenses. [REDACTED] the petitioner's Ph.D. advisor, asserts that the travel award was based on the petitioner's success in polymer processing simulation and design research. [REDACTED] does not state how many travel awards RAM issues or discuss the pool of candidates. The record does not establish that this award, local to Missouri, is more than financial assistance for students whose work has been accepted for presentation.

Moreover, formal recognition for achievements and significant contributions from peers, governmental entities or professional or business organizations is one type of evidence that may be submitted to establish exceptional ability, a classification that normally requires an approved alien employment certification. 8 C.F.R. § 204.5(k)(3)(ii)(F); section 203(b)(2) of the Act; *NYSDOT*, 22 I&N Dec. at 218, 222. Thus, such recognition, in and of itself, is not evidence that a waiver of the alien employment certification process is warranted in the national interest. *See NYSDOT*, 22 I&N Dec. at 222.

The petitioner initially submitted three requests to review manuscripts for the *Journal of Applied Polymer Science*. The requests ask that if the petitioner is unable to complete the review that he recommend one or two other possible reviewers with expertise in the area. In response to the director's request for additional evidence, the petitioner submitted a letter from [REDACTED] professor at the University of Maryland and a Deputy Editor for the [REDACTED] [REDACTED] asserts that the journal selects reviewers based on their "internationally recognized expertise, demonstrable research abilities and experience, prior review experience, and critical judgment of the subject matter." [REDACTED] does not provide the number of reviewers the journal utilizes annually. The petitioner submitted a July 5, 2008 request and a November 30, 2008 request to review manuscripts from this journal. Both requests ask that if the petitioner is unable to complete the review

that he provide suggestions “for alternative reviewers.” Regardless, these requests postdate the filing of the petition on June 23, 2008 and are irrelevant to 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.

Scientific journals are peer reviewed and rely on many scientists to review submitted articles. Journals rely on those with expertise in the topic to review the manuscripts as it would be counterproductive for a chemist to review an article on a topic in physics. Nevertheless, the petitioner has not satisfactorily established that the requests to review manuscripts from the *Journal of Applied Polymer Science* are indicative of his influence in the field rather than his education and experience in the topics presented in the manuscripts.

The petitioner submitted what appear to be two pages from his unpublished dissertation. The record contains no evidence that this manuscript appeared in a journal or otherwise impacted the field. The petitioner also submitted four published articles. Finally, the petitioner submitted two manuscripts that begin on page 1 and do not otherwise bear indicia of publication. The petitioner indicated on his self-serving curriculum vitae that these manuscripts represent presentations at conferences in 2004 and 2006. The petitioner did not submit the conference programs or proceedings documenting the presentation of these studies. As stated above, 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. at 165 (citing *Matter of Treasure Craft of California*, I&N Dec. at 190).

Evidence of publication cannot establish the impact of the work once published. The petitioner initially submitted evidence that one team in Japan cited the petitioner’s 2005 article twice. In response to the director’s request for additional evidence, the petitioner submitted an unpublished article by [REDACTED] an associate professor at the Lublin University of Technology in Poland. This article cites the petitioner’s 2006 article as one of three articles for the proposition that engineers use “various programs” to “facilitate, accelerate and limit the corrections of the flow channel shape in the longitudinal multi-plate extrusion head.”

The petitioner also submitted four published articles and a doctoral dissertation by [REDACTED] and colleagues that cite a 2003 presentation at a SPE conference by [REDACTED]. None of the footnotes list the petitioner as a coauthor of this presentation and the petitioner does not list a 2003 presentation on his curriculum vitae. The petitioner does list a 2004 presentation at an AIAA conference with the same title. [REDACTED] curriculum vitae, however, lists both the 2004 AIAA presentation (with a different title) and the 2003 SPE presentation (with the cited title). [REDACTED] lists the petitioner only as a coauthor of the 2004 AIAA presentation. The record lacks evidence that anyone has cited the 2004 AIAA presentation. Regardless, the citations by [REDACTED] all postdate the filing of the petition and 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.

In light of the above, the record establishes that one research team had published two articles citing one of the petitioner’s articles and another researcher authored an unpublished manuscript citing a second

article by the petitioner. This citation record, by itself, cannot establish the petitioner's influence on the field as a whole.

On appeal, counsel asserts that the petitioner's "minimal official citations are neither related to, nor correlated to, the importance and significance of his work." While a low number of citations does not preclude eligibility, it is the petitioner's burden to provide other evidence demonstrating his past history of demonstrable achievement with some degree of influence on the field as a whole. *See NYSDOT*, 22 I&N Dec. at 219, n. 6.

The petitioner submitted an email from [REDACTED] stating that he liked the petitioner's conference paper, encouraging the petitioner to continue pursuing this line of research and recommending an earlier article by [REDACTED]. The petitioner has not established that such correspondence is beyond the normal professional discourse among engineers. [REDACTED], while suggesting that the petitioner could do well pursuing further questions, does not suggest that [REDACTED] intends to apply the petitioner's model.

The remaining evidence consists of reference letters. [REDACTED] explains that the petitioner's research "addresses the role of modeling and computer simulations that are used in the design of polymer composite products and the manufacturing methods used in their production." [REDACTED] predicts that, as a result of the petitioner's "improved modeling approaches, energy to produce these products will be reduced and design cycles will be shortened which will reduce costs and allow for faster responses to changes in the marketplace." This statement is speculative.

More specifically, [REDACTED] states that the petitioner "developed an optimization-based design methodology that can be used to improve polymer components manufacturing processes, and better understand the flow rheology of the complex fluids." While [REDACTED] opines that this methodology "can" be used, he does not suggest that any independent research institution or industry is doing so.

[REDACTED] further states that the petitioner "has successfully incorporated various Generalized Newtonian Fluid models in the Hele-Shaw flow approximation model to address [sic] the complicated fluid-structure interaction in the polymer processing." [REDACTED] continues that the petitioner "has demonstrated that the manufacturing processes of polymer products can be efficiently and effectively improved using finite element analysis and simulation-based computer modeling strategies." [REDACTED] asserts that a group at Procter and Gamble learned of the petitioner's work and initiated "research interactions" between [REDACTED]'s laboratory and Procter and Gamble. [REDACTED] does not provide the outcome of these "interactions." The record includes an email to [REDACTED] and the petitioner from [REDACTED] development group. [REDACTED] notes that the petitioner's work has "significant overlap (from a physics standpoint) with P&G's capability development work for our packages." [REDACTED] expresses an interest in a future collaboration in which Procter and Gamble would fund a project or postdoctoral position or the recruitment of a graduate from [REDACTED] group. The record contains no further evidence as to how this collaboration ultimately proceeded.

██████████ concludes: “The impact of [the petitioner’s] work extends beyond my research laboratory and supports advancements in many U.S. materials-based technologies.” USCIS need not accept primarily conclusory assertions.¹ The only example of this impact that ██████████ provides, however, is the collaboration with Procter and Gamble. As stated above, ██████████ does not provide the outcome or even any details of that collaboration. The record does not include a letter from any official at Procter and Gamble explaining how they have ultimately applied the petitioner’s models.

██████████ asserts that the petitioner developed an optimization-based design methodology. ██████████ continues that “the performance measures in the optimization have been evaluated with a coupled flow analysis and 3D simulation of structure deformation.” As ██████████ used the passive, it is not clear who evaluated the performance measures. ██████████ expresses his personal belief that the petitioner’s model “is one of the most accurate models published to date” and predicts that it “will cause significant impact on the field.” ██████████ does not provide any examples of independent laboratories using this model.

██████████ then notes the petitioner’s publications and states: “Results in these articles are so significant in such a way that they are now guidelines for modeling and procedural design when dealing with manufacturing process optimization in the polymer material processing.” As stated above, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). The record does not contain any field-wide guidelines based on the petitioner’s work, text books referencing the petitioner’s work as guidelines or otherwise, curriculum at multiple universities assigning the petitioner’s articles as required reading or the type of widespread citations that would be expected of guidelines accepted in the field.

██████████ another professor at the University of Missouri, provides a similar letter, concluding: “Technologies based on [the petitioner’s] work *are expected to* improve the efficiency of a wide range of material processing, help address environmental concerns by providing more efficient designs that use less energy in production, and provide opportunities to better accommodate product requirements over the entire life cycle.” Emphasis added. This conclusion is speculative.

██████████ an assistant professor at Florida A&M University, asserts that, as a graduate student, he worked with the petitioner under the guidance of ██████████ ██████████ references the petitioner’s work in Generalized Newtonian Fluid analysis and states: “Most polymer processes, such as extrusion, injection molding, compression molding and RTM can only be fully understood using this analysis method.” The citations and the other letters do not suggest that engineers were unable to understand polymer processes prior to the petitioner’s model. ██████████ provides no examples of independent research institutions or industrial laboratories applying the petitioner’s model as would be expected of a model that allows engineers to fully understand processes they previously could not fully understand.

¹ *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

The petitioner submitted a letter from [REDACTED], a senior principal engineer and the petitioner's supervisor at [REDACTED]. [REDACTED] asserts that the petitioner is a "key team member of the [REDACTED] a project that will transfer oil from remote deepwater fields through subsea tie-back to an existing floating production platform. [REDACTED] further asserts that the petitioner "successfully demonstrated his technical expertise and leadership in overcoming technical and project challenges." The petitioner's completion of an assigned project, even a complex one, is not necessarily evidence that it is in the national interest to waive the alien employment certification process. As stated above, 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. *NYS DOT*, 22 I&N Dec. at 218.

[REDACTED], a senior principal engineer at [REDACTED] affirms that the petitioner's work "directly affects the solutions to our oil production problem in deep water." More specifically, [REDACTED] states that upon joining [REDACTED] in 2007, the petitioner began working on the BP Thunder Horse platform winch system and riser padeye projects. [REDACTED] continues:

Within one month, [the petitioner] successfully designed a structural analysis algorithm and applied it in the research projects. His research report on these analyses was highly recognized by BP deepwater development company. Until now [the petitioner] has successfully completed the BP winch systems design, WI (water injection) riser padeye design and analysis, finite element analysis of existing structures on PDQ (Production, Drilling and Quarters) deck. He has creatively used the finite element methods and nonlinear analysis techniques for the structure modeling and simulation. His cutting-edge structural models provide the most accurate and effective method to monitor structure behavior under external heavy loads in the offshore operation. The new method may save at least several million dollars for a typical offshore development project, and will also increase the safe measures for the offshore development projects, therefore, benefit our ocean environment.

The petitioner submitted internal [REDACTED] reports prepared by the petitioner, only two of which predate the petition's filing date.

In response to the director's request for additional evidence, [REDACTED], an engineering specialist for [REDACTED] USA in Houston, asserts that the petitioner's "simulation technique for understanding the fluid-structure interaction for offshore structures captured my attention and gave me motivation to begin to apply similar methods for the design of oil drilling tools." More specifically, [REDACTED] explains the challenge of complex fluid-structure interaction problems and asserts that the petitioner's findings "on fluid-structure seem to be able to overcome this challenging problem." While counsel asserts on appeal that [REDACTED] is an "Independent leading expert," the record does not support this characterization. According to his curriculum vitae, [REDACTED] worked for

██████████ until 2008 and worked specifically on the BP's Thunder Horse Project. Thus, his letter is not that of an independent reference influenced by the petitioner's work.

Also in response to the director's request for additional evidence, ██████████ a risers and pipelines contract manager for Petrobras America, Inc., asserts that the petitioner's "novel technique for understanding the fluid-structure interaction for offshore structures became an industry recognized methodology." In support of this broad statement, ██████████ asserts that the petitioner "was involved in the development of several offshore oil and gas projects in the Gulf of Mexico including the British Petroleum (BP) Thunder Horse platform, BP Holstein well system tie-back, Petrobras Cascade & Chinook field development, and Anadarko Caesar Tonga subsea development." The fact that the petitioner, as an employee of ██████████, worked on projects commissioned by BP, Petrobras and other companies does not document that his technique is an industry recognized methodology. ██████████ does not suggest that independent engineers are utilizing the petitioner's methodology.

██████████ further asserts that the \$3 billion field development project for Petrobras Cascade and Chinook "sets an industry-wide record for design and installation of subsea structures in ultra-deep water." The record contains no trade or general media coverage of this project. According to ██████████, ██████████ the petitioner "was specifically responsible for the design and development of the pipeline end terminations for this project." Neither ██████████ nor ██████████, however, addresses the petitioner's work for Petrobras in their earlier letters, suggesting this work postdates the filing of the petition. Accomplishments after the date of filing 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.

On appeal, ██████████ at ██████████ asserts that the petitioner has been very prolific at ██████████ authoring more than ten technical reports. ██████████ affirms that ██████████ "and the offshore industry have already benefited from [the petitioner's] talents and ingenuity." ██████████ explains that these reports are confidential and, thus, are not available for public dissemination and citation. At the time of filing, the petitioner had authored several published articles and only two technical reports. His published articles had not attracted notable citation.

The Department of Labor's official Occupational Outlook Handbook (OOH) provides the following information about engineers:

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, power plants, 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.

* * *

Petroleum engineers design methods for extracting oil and gas from deposits below the earth. Once these resources have been discovered, petroleum engineers work with geologists and other specialists to understand the geologic formation and properties of the rock containing the reservoir, to determine the drilling methods to be used, and to monitor drilling and production operations. They design equipment and processes to achieve the maximum profitable recovery of oil and gas. Because only a small proportion of oil and gas in a reservoir flows out under natural forces, petroleum engineers develop and use various enhanced recovery methods, including injecting water, chemicals, gases, or steam into an oil reservoir to force out more of the oil and doing computer-controlled drilling or fracturing to connect a larger area of a reservoir to a single well. Because even the best techniques in use today recover only a portion of the oil and gas in a reservoir, petroleum engineers research and develop technology and methods for increasing the recovery of these resources and lowering the cost of drilling and production operations.

See <http://www.bls.gov/oco/ocos027.htm> (accessed May 5, 2011 and incorporated into the record of proceeding. Thus, designing and testing systems is inherent to the occupation of engineer. The record contains no evidence that independent companies are using the petitioner's models or that [REDACTED] or BP have received coverage in the general or trade media noting their advanced models. While [REDACTED] predicts that the petitioner's analyses for [REDACTED] and BP will save money and improve safety for offshore drilling, the record contains no confirmation from high level officers at either [REDACTED] or BP confirming that the petitioner's analyses have already done so.

The petitioner also submitted independent letters. [REDACTED] a professor at the New Jersey Institute of Technology, asserts that the petitioner's research "has resulted in critical acclaim, which has

significant applications in the industry of material processing.” In support of this claim, [REDACTED] notes that the petitioner’s work has appeared in journal publications and that he was “honored as a journal reviewer for the *Journal of Applied Polymer Science*, which is a prestigious journal in the field of polymer science and technology.” Mere publication of the petitioner’s work cannot demonstrate the ultimate impact of that work. Moreover, the record contains no information from the *Journal of Applied Polymer Science* indicating that they rely on a small, elite group of referees. In fact, as noted above, the requests ask that if the petitioner is unable to complete the review that he recommend another research within the same area of expertise.

[REDACTED] notes that the U.S. National Science Foundation funds the petitioner’s research. Counsel stresses the government funding on appeal. The grants in the record show [REDACTED] as the primary investigator and the petitioner as the research assistant. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains a Ph.D. or is working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

[REDACTED] asserts that he was “excited to cite [the petitioner’s] research” in his own article and states that he typically cites “independent research that has influence on the filed as a whole.” The petitioner submitted only an unpublished manuscript by [REDACTED]. Moreover, in this manuscript, [REDACTED] merely cites the petitioner’s article as one of three examples of “various computer programs” engineers use to facilitate, accelerate and limit the corrections of the flow channel shape.”

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

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien’s eligibility. See *id.* at 795; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; see also *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

The letters considered above primarily contain bare assertions of skill and influence without providing specific examples of how the petitioner's innovations have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.² The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

While the petitioner's research into new engineering models are of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. Ultimately, the petitioner, an engineer, has completed the novel research required to obtain a Ph.D. and has successfully completed the projects his employer has assigned. These accomplishments demonstrate the petitioner's qualifications as an engineer, but do not demonstrate why the alien employment certification process, which would take into account his education and skills, should be waived in the national interest.

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.

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 primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.