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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

DATE **DEC 05 2013**

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences. The petitioner seeks employment as an electrical engineer. At the time of filing, the petitioner worked for [REDACTED] a consulting firm in [REDACTED] Venezuela, and performed consulting work for [REDACTED] Florida. 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 the equivalent of 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. The director also found that the petitioner had not properly applied for the waiver.

On appeal, the petitioner submits a brief from counsel and supporting 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 petitioner claims eligibility for classification as an alien of exceptional ability in the sciences. The director made no finding regarding this claim, because the petitioner submitted sufficient evidence to establish eligibility for classification as a member of the professions with post-baccalaureate experience equivalent to an advanced degree under the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(k)(2). The record supports the director's determination.

The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest. The USCIS regulation at 8 C.F.R.

§ 204.5(k)(4)(ii) states that, to apply for the national interest waiver, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate, as well as evidence to support the claim that such exemption would be in the national interest. Form ETA-750 is now obsolete, replaced by ETA Form 9089. Parts J, K, and L of ETA Form 9089 have replaced Form ETA-750B. The petitioner's initial submission included an entire ETA Form 9089. The petitioner completed portions of Part J, Alien Information, and left Part K, Alien Work Experience, blank. On the form, the petitioner provided basic identifying information, but did not provide the required information about past employment or where he earned his degree.

In denying the petition on March 20, 2013, the director stated that "the petitioner did not submit a properly completed Form 9089, Parts J, K, and L as Part K was incomplete." The director cited this omission as one of the grounds for denial. The petitioner does not address this issue on appeal, and has therefore abandoned it. When an appellant fails to offer argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2. (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998). See also *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff abandoned his claims as he failed to raise them on appeal to the AAO).

In addition to finding that the petitioner had not properly applied for the waiver, the director also decided that the waiver application failed on the merits. 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, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

The Service [now 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.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish 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.

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 assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The USCIS 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 February 10, 2012. In an introductory statement, counsel's firm stated:

[The petitioner] is currently a project engineer and a prospect coordinator for [redacted] [sic], CA in [redacted] Venezuela. His primary function is that of a project engineer with a specific focus on the design, implementation, and maintenance of electrical equipment facilities, components and systems for commercial, industrial and domestic purposes. His most recent accomplishments have been the development of new technologies of energy saving innovation in housing that has had a direct impact on more than 55,000 inhabitants in five {5} satellite cities with the potential of an expanded capacity from 20,000 hectares up to 500,000 hectares in the near future.

One of the most notable projects to date, was the design and development of a public transportation mode that serves more than 50,000 persons per day that typically used private autos, buses, taxi's, and motorcycles. This unique innovation has significantly reduced the traffic congestion in [redacted] {the second largest and most densely populated city in Venezuela} as well as toxic emissions from petroleum powered vehicles.

[The petitioner] is also under contract as an Electrical Engineering Contractor with [redacted]. He is involved in the development of state-of-the-art gear boxes used in American power plants for cooling and recycling steam used to generate electricity..

The overall results of [the petitioner's] accomplishments to date have made a very substantial and significant impact towards the development of efficient mass transit

systems that will reduce the carbon footprint not only in Venezuela but also in the United States.

Several witness letters, many of them translated from Spanish, accompanied the filing of the petition. Three of the letters concerned the petitioner's "Special Degree Thesis" from 2005, "Study for Enlarging the [REDACTED] Attending to the Demand of Passengers." (The record contains numerous variant translations of the title.) The petitioner claimed that the study permits "an enlargement of [REDACTED] which will result in an increase of up to 24 wagons per hour, and a frequency of 2 minutes, 30 seconds of wagons per station, during peak hours." The study also outlined "a contingency plan for the moment of non-desired electrical eventualities in one or several of [REDACTED]"

[REDACTED], writing on behalf of [REDACTED], stated:

With the [end] of improving the urban public transport of [REDACTED] the [REDACTED] elaborated a proposal for a system of transport . . . with a view of substituting the "carro por puesto" (collective taxi) of five seats, for units of a larger capacity. . . .

The [REDACTED] recognized the study and development of the innovating and research contribution of the . . . STUDY FOR EXPANDING THE TRACTION SUBSTATIONS OF THE [REDACTED] IN FUNCTION TO THE INCREASE OF THE DEMAND OF PASSENGERS [by the petitioner].

This research work permitted to offer the enlargement of the [REDACTED] and obtain the increase from the demand of the services . . . and for future expansions.

Ms. [REDACTED] indicated that ridership increased by 147% from 2007 to 2008, growing "from a daily average of eight thousand users" to "31 thousand daily passengers" by the end of 2009. Ms. [REDACTED] stated that the petitioner's "research work" was one of the "factors influencing the increase of mobilized population."

Oswaldo H. Segade, partner manager of [REDACTED] was manager of integral systems for [REDACTED] "in charge of the inspection of the construction of the . . . Mass[] Transit System of [REDACTED] during the period 2003-2007." Discussing the petitioner's research project that Ms. Chacin named above, Mr. [REDACTED] stated:

This Research Work allowed offering the reinforcement of the [REDACTED] which served as an expansion platform for the increment of the service to passengers sustained by line number one and future expansions of the [REDACTED] determining the new levels of electric load of the [REDACTED] selection of [REDACTED] conductors selection, Elaboration of technical

specifications and diagrams of [REDACTED] and this way, adequately serve a transport capacity of 14000 passengers per hour and direction.

Mr. [REDACTED] served as an industrial consultant on the Metro project.

Douglas Semprún, general manager of operations and maintenance for [REDACTED] stated:

With pleasure I redact this recommendation letter to [the petitioner], and in this way acknowledge his exceptional value developing innovating technologies and the improvement of public urban transport, by elaborating a proposal that directly allowed the benefit and adapting of the policy of transport of [REDACTED] . . .

[T]hrough [the petitioner's] innovating analysis and an exceptional technical solution, it is possible to determine the new levels of electrical load of the [REDACTED] group, and the selection of conductors, and in this way adequately take care of a capacity of transport of 14,000 passengers per hour and direction. . . .

This study of non-desired contingencies of electrical eventualities is developed, and which could present a one or several of the [REDACTED] of Stage 1 of Line 1 of the [REDACTED] and simulate the impact at the substation where the non-desired eventuality happens, and the consequences on the remaining substations.

Other witnesses described the petitioner's activities outside of mass transit. [REDACTED] technical manager at [REDACTED] stated:

As a focal point and as a sample of the commitment of [the petitioner] with the innovating development, the massive building of houses, and the commitment with the conditions of people, at the plains of [REDACTED], and the implementation of a model initiative of economic and social development of near 55,000 inhabitants in 5 satellite cities, on a surface of 20,000 hectares, and a capacity of expansion of 500,000 hectares, covering residential and urbanistic aspects, which have been replicated at national level because of its high innovation aspect.

Mr. [REDACTED] stated that the petitioner had worked on "engineering of details" for three schools in [REDACTED] approximately 40 miles west of [REDACTED] but provided no further information apart from general descriptions of the schools' floor plans.

[REDACTED] project engineer with [REDACTED], stated: " I can recognizes two (02) [of the petitioner's] projects that allowed me to maintain the petrochemical operation in a safe and reliable form in my performance area. . . . I am completely sure that his effort will have a positive impact to the petroleum industry in the U.S.A." One of the petitioner's two

projects concerned "Furnaces/Heaters," and the other "assur[ed] the reliability of the Electrical Sub-Stations."

Architect [REDACTED] praised the petitioner's "exceptional ability on developing health systems, whose systems have been implemented" throughout Venezuela. Mr. [REDACTED] identified six hospitals and clinics and specified their square footage, but did not indicate the nature of the petitioner's work at the named sites.

Witnesses from other industries offered general praise for the petitioner, but provided no details.

With respect to his intended work in the United States, the petitioner submitted a copy of a December 15, 2010 letter he received from [REDACTED] chief executive officer and president of [REDACTED]. The letter reads, in part:

We need an expert opinion on the development of electrical gear boxes to be used in American Power Plants for cooling and recycling of steam used to generate electricity.

Currently our electrical gear boxes are no longer adequate to meet the E.P.A. standards. We are searching for the R & D for the state of the art electrical gear boxes that meet or exceed federal state and local standards. Your preliminary research and recommendations are in keeping with our needs and requirements.

We, therefore, are prepared to enter into a consulting agreement with you, that will provide the technical data and research for the next generation of electrical gear boxes.

Translated copies of certificates indicate that the petitioner facilitated workshops on "Introduction to Electrical Engineering" and "Renewable Energy," and received training certificates in various technical areas and first aid.

On August 15, 2012, the director issued a request for evidence (RFE), instructing the petitioner to submit documentation to meet the guidelines set forth in *NYS DOT*. In response, counsel's law firm stated: "Counsel has previously submitted all of the requested evidence as outlined in this RFE." Most of the ensuing discussion concerned the petitioner's exceptional ability claim. Section 203(b)(2)(A) of the Act specifies that aliens of exceptional ability are subject to the job offer requirement. Therefore, evidence of exceptional ability is not evidence of eligibility for the waiver.

Counsel's law firm stated that the petitioner "has dramatically affected the economy of Venezuela; specifically in the [REDACTED] whereby he was instrumental in improving the grid for the mass transit system." Counsel's law firm asserted that the implementation of this grid "that does not depend on fossil fuel . . . has been noted by the Mayor of [REDACTED]" Counsel's law firm did not elaborate on this point or identify any evidentiary exhibit to support the claim. The record contains

no statement or documentation from the mayor of that city. 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)).

Counsel's law firm stated: "The obvious importance and dangers of global warming and the reduction of carbon emissions and greenhouse gases is immediately apparent." Counsel's law firm did not establish how much the petitioner's past work has affected these issues, or what effect the petitioner's intended work in the United States would have on carbon and greenhouse gas emissions. Increased use of mass transit has an overall beneficial effect, but this is only one of the petitioner's past projects. Witnesses have indicated that the petitioner has also worked on behalf of "the Oil and Gas Industry" and "the [redacted]" The witnesses who mentioned that work did not indicate that the petitioner's work for those industries had either the intention or the result of reducing pollution.

Along with copies of previous submissions, the petitioner submitted three new witness letters. [redacted], a retired electrical engineer who formerly worked for [redacted] stated:

I have reviewed the credentials and resume of [the petitioner] and I have come to the conclusion that this young man has had a very impressive career. He has demonstrated a unique ability to tackle complex and multi-faceted issues. His accomplishments are indicative of an individual of exceptional ability and talents.

I am of the opin[ion] that [the petitioner] could make a very significant and comprehensive impact on the US economy, especially in the area of mass transit and low voltage technology.

The remaining two letters are similar in format and contain the same grammatical errors and anomalies, and at times the same phrasing. (The quoted passages below reproduce some of these errors as they originally appeared.) Such similarities suggest common authorship. Cf. *Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).¹ The petitioner submitted the new letters only in English, with no indication that they are translations from another language, so the similarities are not attributable to a common translator (as is the case with the Spanish-language letters submitted previously).

A letter signed by [redacted] field services engineer with [redacted], reads, in part:

¹ The petitioner had previously submitted two entirely identical letters, signed respectively by [redacted] and [redacted]. These letters attested to the petitioner's past work with [redacted] but consisted only of general praise for the petitioner's skills.

career achievements involves, strengthening of the national health systems and infrastructure, through facility planning, construction and management that ensured to accommodate the technologies that have been accompanied by significant medical breakthroughs, this has been replicated in over 15+ designs at Federal and Private facilities, from Public Hospitals with a catchment area of 950,000 inhabitants, Private clinics attending over 100 patients a day or Ambulatory Medical Care in rural areas; housing development with an approach of energy savings and with the implementation of a model initiative of economic and social development, that has been replicated at a National scope in over 40+ designs because of its high innovation aspect. . . .

Illustrating the potential impact of [the petitioner] to the U.S. development, I note his experience in housing and urbanism development, a renewed federal commitment is bringing unprecedented policy focus and targeted resources to integrate green practices into affordable housing. . . .

The development of electrical gear boxes proposed by [the petitioner] under the agreement with [redacted] could potentially result in NO_x reduction of up to 80 percent, with lower reductions achievable in oil-fired boilers.

In terms of Public Health Infrastructure . . . [there are] more than 3,000 medical projects representing \$35 billion and 378 million square feet began the planning stage. . . . All this present development and future trends could potentially be address by [the petitioner] and his wealth experience in large scale health infrastructure projects.

. . . Public transportation use . . . is reaching fast the maximum capacity. A recent trend in search of ways to increase the capacity of the existing system would be greatly benefited by [redacted] experience, precisely in this trend, bringing a continuous development in the economy, quality of life and cleaner environment among others subjects.

A letter signed by [redacted] project engineer for [redacted] reads, in part

[redacted] expertise (in addition to his educational background, academic/career achievements) includes, the housing development with a fundamental approach of urbanism, engineering and landscaping, minimizing the use of resources, optimizing building elements, using new materials and taking advantage of the new tendencies of energy savings and the global vision with the implementation of a model initiative of economic and social development, all of which have been replicated at a National level in over 40+ designs because of its high innovation aspect. . . .

As examples of his potential contribution to the US development, I note his experience in housing and development. . . . [The petitioner] has significant proven experience in urbanism, engineering and landscaping minimizing the use of resources, optimizing building elements and using new materials, developing and experimenting on social policies, neighborhoods and neo-traditional urbanism.

In terms of public transportation . . . [the petitioner] has a wider experience specifically in this scenario where is necessary to increase the capacity to continue to develop the U.S. economy. In the area of urban mass transit [the petitioner] is considered an expert and a recognized authority.

The director denied the petition on March 20, 2013. The director concluded that the petitioner's occupation has substantial intrinsic merit and can produce benefits that are national in scope. The director, however, determined that the petitioner had not met the third prong of the *NYS DOT* national interest test by establishing past impact and influence on his field. The director quoted from several witness letters, but stated that "the writers do not explain how the beneficiary's work has so far affected . . . the field as a whole."

On appeal, counsel states that the phrase "national interest" appears "36 times" in the director's decision, which counsel deems "overkill" and an "abuse of discretion that completely ignores the Service's requirement to apply a 'flexible as possible' standard of review." By statute and regulation, USCIS grants the waiver of the job offer only when it is in the "national interest" to do so. Counsel does not explain how repetition of the statutory phrase "national interest" amounts to an "abuse of discretion."

Counsel states that the director "failed to review the documentation submitted with the original application as well as supplemental information provided in response to the RFE." The denial notice, however, cited specific materials from both submissions. Counsel identifies no overlooked exhibit that would have changed the outcome of the director's decision.

Counsel states: "it is an established fact that there is a shortage of qualified electrical engineers in the United States, especially in North Florida." The petitioner submits several web printouts to support this assertion. (One of the submitted articles, from the *Philadelphia Inquirer*, states that the evidence for a shortage is mixed, indicating "there have been layoffs and [engineers] are worried about losing their jobs.") Counsel asserts that [REDACTED] decision "to hire the petitioner . . . is substantial and credible evidence that the US employer was unable to find a 'qualified' US worker to fill the position."

Most of the exhibits submitted on appeal are media articles submitted as background to support counsel's claims. The only appellate exhibit to identify the petitioner specifically is a new letter from [REDACTED] asserting: "I made several attempts to find a capable and qualified engineering consultant . . . with no success."

With regard to the unavailability of qualified U.S. workers, the job offer waiver based on national interest is not warranted solely for the purpose of ameliorating a local labor shortage, because the labor certification process is already in place to address such shortages. *NYSDOT*, 22 I&N Dec. 218. Counsel contends that “[t]he labor certification process is convoluted and disruptive.” The job offer requirement, including labor certification, is the statutory default position for the classification the petitioner seeks. USCIS must judge waiver applications case-by-case, rather than grant blanket waivers owing to perceived flaws in the process. The waiver is not a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223.

Without identifying the precedent decision directly, counsel contests several elements of *NYSDOT*, from its wording to its creation of “an ‘artificial’ standard, with no legislative or rational basis.” As a precedent decision, *NYSDOT* is binding on all USCIS employees. 8 C.F.R. § 103.3(c). Counsel cites no judicial decision or other case law to overrule the standard set forth in *NYSDOT*.

Counsel asserts: “The beneficiary has not merely enumerated his accomplishments but rather has documented his achievements with a projection of future benefit to the ‘national economy,’ specifically 12 major projects, under his direct supervision.” Counsel states that the petitioner has made substantial contributions regarding “the following areas of national interest:”

- Mass Transit Safety
- Pollution Control
- Energy Efficiency
- Alternative Fuels
- Oil Exploration
- Food Safety Production
- Electricity Grid {USA}
- US Patent Application

An alien cannot secure a national interest waiver simply by demonstrating that he or she holds a patent. Whether the specific innovation serves the national interest must be decided on a case by case basis. *NYSDOT* at 221 n.7. Here, the petitioner does not claim to hold a patent, only to have filed an application. The United States Patent and Trademark Office received 542,815 utility patent applications in 2012, more than half of them from a foreign source.² The filing of a patent application does not inherently demonstrate a level of impact or influence that warrants approval of the national interest waiver.

Listing the areas of endeavor affected by the petitioner’s work, as counsel has done, speaks to the “intrinsic merit” prong of the *NYSDOT* national interest test, which the petitioner has met. There exists no blanket waiver for every foreign worker whose past work has involved energy efficiency, food safety, or the other topics listed above. Even then, the amount and detail of submitted

² http://www.uspto.gov/web/offices/ac/ido/oeip/taf/us_stat.htm (printout added to record October 24, 2013).

information relating to each of those subjects varies greatly. Several witnesses have described the petitioner's report relating to electrical improvements to [REDACTED] mass transit system, but the record offers almost no details about the petitioner's work on behalf of the oil and gas industry, and the issue of food safety appears to surface for the first time on appeal. Witnesses indicated that one of the petitioner's projects involved hospitals, and another involved schools, but there is no indication of what the petitioner did on the projects. The record overall lacks the necessary information about the petitioner's influence on the fields he claims to have affected.

Serving clients in a wide range of industries does not create an entitlement or imply eligibility for the waiver. Witness letters devoted particular attention to the petitioner's work on mass transit (which appears to have begun as a student project), but the record does not show that mass transit systems in the United States are at a stage of development comparable to those in Venezuela, giving the petitioner the opportunity to make similar contributions here, nor does it show that mass transit authorities in the United States seek the petitioner's involvement or input.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the petitioner "must clearly present a significant benefit to the field of endeavor." *NYS DOT* at 218. See also *id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole."). In addition, the petitioner has not addressed the director's finding that he did not properly apply for the waiver.

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 labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.