

(b)(6)



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **APR 25 2014**

Office: TEXAS SERVICE CENTER FILE:

[Redacted]

IN RE: Petitioner:
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 (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 immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner seeks employment as a “Physician.” At the time of filing, the petitioner was working as a physician specializing in pediatric endocrinology and metabolism at the [REDACTED]

[REDACTED] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a letter from counsel. Counsel asserts “that clear evidence was submitted showing that [the petitioner] has made significant contributions to the field, that his [sic] work has impacted the national interest, especially his [sic] research work, and that he [sic] has distinguished himself [sic] from his [sic] peers, thereby justifying the waiver of labor certification.”

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 record reflects that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), 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.

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 she 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 she 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.

The petitioner has established that her work as a physician is in an area of substantial intrinsic merit. With regard to the second prong of the national interest waiver test, the director found that the proposed benefits of the petitioner’s work as a physician would not be national in scope. However, in addition to her duties as a physician, the petitioner performs pediatric endocrinology research that seeks to improve treatment methods for childhood diabetes. Improving treatment methods for childhood diabetes would substantially benefit the U.S. healthcare system. As the documentation submitted by the petitioner is sufficient to demonstrate that the proposed benefits of her pediatric endocrinology research are national in scope, the director’s finding is withdrawn. 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.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish her past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s subjective assurance that she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the petitioner, rather than to facilitate the entry of an individual with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

Eligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner's area of expertise cannot suffice to establish eligibility for a national interest waiver. *NYSDOT* at 220. At issue is whether this petitioner's contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. 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, 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.

The petitioner filed the Form I-140 petition on December 6, 2012. In support of the petition, the petitioner submitted academic records, letters verifying her employment experience, professional certifications, information regarding her salary, membership in professional associations, and awards recognizing her achievements. The preceding types of evidence are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A) – (F), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. *See* section 203(b)(2)(A) of the Act.

The U.S. Citizenship and Immigration Services (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 individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. Particularly significant awards may serve as evidence of the petitioner's impact and influence on her field, but the petitioner has failed to demonstrate that the awards she received (which are institutional in nature or limited to those in the training phase of their medical career) are indicative of her influence on the field as a whole.

Counsel states that "the testimonials submitted from lead experts in the field document that [the petitioner] is very well-regarded nationally for both clinical and research work." Counsel points to the petitioner's medical presentations and creation of clinical protocols for managing Turner's Syndrome and adrenal insufficiency as evidence of her achievements in the field.

In addition to documentation of her medical presentations, the petitioner submitted letters of support discussing her work.

Dr. [REDACTED] Endowed Chair and Director, [REDACTED] School of Dental Medicine, and Adjunct Professor of Epidemiology, [REDACTED] stated: "[The petitioner] is a leader in the field of pediatric endocrinology. Her research is published in internationally circulated journals and she is frequently invited to present her work at national and international conferences." Dr. [REDACTED] asserts that the

petitioner's "research is published in internationally circulated journals," but she fails to identify the specific journals. Further, the petitioner did not submit any documentary evidence of the journal publications that she authored. 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)).

With regard to the petitioner's presentations at medical conferences, many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. These meetings and conferences are promoted and sponsored by professional associations, educational institutions, employers, and government agencies. Although presentation of the petitioner's work demonstrates that her research findings were shared with others and may be acknowledged as original based on their selection to be presented, there is no documentary evidence showing, for instance, that her presented work has resulted in medical advances that have been implemented at a number of hospitals, that her work has been frequently cited by independent researchers, or that her findings have otherwise influenced the field as a whole.

Dr. [REDACTED] continued:

[The petitioner] is currently involved in multiple IRB [Institutional Review Board] approved clinical research projects.

In "Effect of dietary counseling and behavior modification on lipid profiles and inflammatory mediators in preschool children with Type 1 Diabetes," [the petitioner] compared the macronutrient intake between children with type 1 diabetes and age-matched subjects without diabetes.

* * *

In her research, [the petitioner] also compared fasting lipid profiles in children with type 1 diabetes and age-matched children without diabetes. Notably, both hyperlipidemia and type 1 diabetes increase an individual's risk for cardiovascular disease. This study also looks at whether to issue standard diabetes dietary education or intensive dietary/behavioral education over a six month period of time to children with diabetes. This is important because it defines whether an intervention incorporating both dietary and behavioral education leads to improvements in overall lipoprotein profiles in preschool children with type 1 diabetes. This extensive research is just one example of the many wide-reaching and impressive studies that [the petitioner] has undertaken.

Dr. [REDACTED] comments on the petitioner's diabetes research, but fails to provide specific examples of how the petitioner's findings are being implemented by others in the field or have otherwise affected the field as a whole. While the petitioner's research studies have value, any research must be original and likely to present some benefit if it is to receive funding and attention from the medical or

scientific community. In order for a university, publisher or grantor to accept any research for graduation, publication or funding, the research must offer new and useful information to the pool of knowledge. Not every physician who performs original research that adds to the general pool of knowledge in the field inherently serves the national interest to an extent that is sufficient to waive the job offer requirement.

Dr. [REDACTED] further stated that “the U.S. scientific community faces a shortage in the number of pediatric endocrinologists who conduct research.” The unavailability of qualified U.S. workers or the amelioration of local labor shortages, however, are not considerations in national interest waiver determinations because the alien employment certification process is already in place to address such shortages. *NYS DOT* at 218. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the U.S. Department of Labor through the alien employment certification process. *Id.* at 221.

Dr. [REDACTED], Chair of Pediatrics at [REDACTED] stated:

Currently, [the petitioner] is a specialist in pediatric endocrinology and metabolism at the [REDACTED]. Prior to this appointment, [the petitioner] was a pediatrician and instructor at the [REDACTED]. She has also held impressive posts at hospitals throughout England and India.

At the [REDACTED] [the petitioner] is regularly relied on to treat patients suffering from very rare endocrine diseases. These include disorders such as Turner Syndrome. . . . [The petitioner] is one of the unique few with advanced experience in the treatment of this condition.

Dr. [REDACTED] comments on the petitioner’s hospital appointments and unique experience in treating Turner Syndrome. However, it cannot suffice to state that the petitioner possesses useful skills, or a “unique background.” Special or unusual knowledge or training does not inherently meet the national interest threshold. *Id.* at 221.

Dr. [REDACTED] continued:

[The petitioner] is particularly acclaimed for the clinical protocol he [sic] developed in the management of Turners [sic] Syndrome. . . . Presently, there is no appropriate protocol to screen, diagnose and treat all the symptoms and signs of this syndrome; however [the petitioner] wrote clinical guidelines and made a protocol to manage this condition. The guidelines and protocol are in use in medical centers through-out the U.S. and Europe.

[The petitioner] is also well known for her work on the management of adrenal insufficiency, which is caused by conditions such as congenital adrenal hypoplasia, adrenoleukodystrophy, Addison’s disease, thrombosis, coagulopathy, HIV, tuberculosis, medications such as Etomidate, and cancer. The specific clinical protocol that she developed to manage adrenal

insufficiency is innovative and revolutionizing the way that patients with this condition are treated.

Dr. [REDACTED] asserts that the petitioner's guidelines and clinical protocols "are in use in medical centers through-out the U.S. and Europe" and are "revolutionizing the way that patients . . . are treated." Dr. [REDACTED] however, fails to specifically identify the other medical centers that are utilizing the petitioner's guidelines and protocols, and there is no documentary evidence to support her assertions regarding the impact of the petitioner's work. As previously stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165. In addition, 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).

Dr. [REDACTED] further stated:

As one of the nation's most respected pediatric endocrinologists, prestigious organizations have recognized his [sic] work. She has held impressive employment posts. Further, [the petitioner] is a member of prestigious professional societies, such as the [REDACTED]

Again, occupational experience and membership in professional associations are elements that relate to a finding of exceptional ability, but exceptional ability is not sufficient to establish eligibility for the national interest waiver. The plain language of section 203(b)(2)(A) of the Act indicates that aliens of exceptional ability are subject to the job offer requirement (including employment certification). *NYSDOT* at 218, 222. There is no documentary evidence showing that the petitioner's employment experience and memberships are indicative of her influence on the field of pediatric endocrinology as a whole.

The petitioner also submitted a letter from Dr. [REDACTED] Chairman of Pediatrics at [REDACTED]. The second through seventh paragraphs in Dr. [REDACTED] letter are virtually identical in content to the second through seventh paragraphs in Dr. [REDACTED] letter. The identical paragraphs in their letters suggest the language in at least one of the letters is not the author's own. *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).

While it is acknowledged that Dr. [REDACTED] and Dr. [REDACTED] have provided their support to this petition, it appears that at least one of them did not independently prepare the full content of his or her letter. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by

its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In addition, 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.* Based on the identical paragraphs Dr. [REDACTED] and Dr. [REDACTED] letters, USCIS may accord them less weight. Regardless, neither of their letters demonstrates that the petitioner's work has influenced the field as a whole.

The Board of Immigration Appeals (BIA) 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 BIA 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 submission of letters of support from the petitioner's references is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *See Matter of Caron International* at 795-796; *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"). Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by a petitioner in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a pediatric endocrinologist who has influenced the field as a whole.

The record establishes that the petitioner is a capable physician who has made a favorable impression on her superiors. The intrinsic merit and national scope of her pediatric endocrinology research are not in dispute. Nevertheless, the evidence submitted does not show that the petitioner's work stands out from that of her peers. The petitioner has not submitted documentary evidence of any of her publications and the record does not show that the petitioner's work has come to the attention of other researchers outside of her own circle of colleagues, except those who may have attended certain medical conferences. Two witnesses have asserted that the petitioner's clinical guidelines and protocols are in use in a number of medical centers in the United States and internationally, but the record does not include documentary evidence to support their claims.

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. The petitioner has not shown that her past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. While the petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that her influence be national in scope. *NYSDOT* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* 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”). 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.

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, that burden has not been met.

ORDER: The appeal is dismissed.