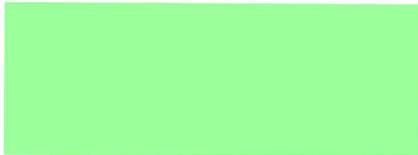


(b)(6)

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: **APR 28 2014** OFFICE: TEXAS 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 (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, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke (NOIR), and subsequently revoked the approval of the 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 a member of the professions holding an advanced degree. The petitioner seeks employment as a self-employed instructional coordinator with [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. The director based this conclusion, in part, on inconsistencies in the record that the petitioner did not adequately resolve.

On appeal, the petitioner has filed a number of statements and briefs.

Validity of the Revocation Process

Before addressing the merits of the petition and the grounds for revocation, this decision will address the petitioner's assertion that "USCIS [U.S. Citizenship and Immigration Services] committed a blatant abuse of discretion of authority by simply overruling itself, absent legal or lawful cause."

The petitioner filed Form I-140, Immigrant Petition for Alien Worker, on October 13, 2009. The director approved the petition on February 2, 2010. Based on that approval, the petitioner then filed Form I-485, Application to Register Permanent Residence or Adjust Status, on February 26, 2010. While reviewing the adjustment application and supporting materials, the director found inconsistencies in the petitioner's various claims regarding her past employment and her work location. We will discuss these inconsistencies in greater detail further below in this decision, when discussing the merits of the appeal.¹ These inconsistencies did not surface until after the director's initial decision on the petition.

On October 18, 2011, as required by the USCIS regulation at 8 C.F.R. § 205.2(b), the director issued a NOIR, stating that the "inconsistency in the record . . . raises doubts about both the truthfulness of the intended field of employment as well as doubts about the petitioner's eligibility for the requested waiver of the labor certification process."

On appeal, the petitioner calls the revocation "an erroneous and impermissible abuse of discretion, resulting from summarily re-adjudicating an already approved petition, despite the absence of any indication or evidence of fraud, deceit, or any other affirmative wrong-doing by the applicant or the

¹ The director also cited concerns regarding the petitioner's academic credentials, which the petitioner has since successfully resolved.

petitioner-company.” The petitioner further asserts that, “absent a showing of such wrongdoing . . . the Service ought to be bound by its prior decisions.” In a personal statement, the petitioner details her family’s acclimation to the United States, having “lived in the United States for almost 12 years.”

Section 205 of the Act, 8 U.S.C. § 1155, states: “The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.” In terms of due process, the USCIS regulations at 8 C.F.R. § 205.2 govern the process of revocation on notice:

(a) *General.* Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in 205.1 when the necessity for the revocation comes to the attention of this Service.

(b) *Notice of intent.* Revocation of the approval of a petition or self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

(c) *Notification of revocation.* If, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for the revocation. The director shall notify the consular officer having jurisdiction over the visa application, if applicable, of the revocation of an approval.

(d) *Appeals.* The petitioner or self-petitioner may appeal the decision to revoke the approval within 15 days after the service of notice of the revocation. The appeal must be filed as provided in part 3 of this chapter, unless the Associate Commissioner for Examinations exercises appellate jurisdiction over the revocation under part 103 of this chapter. Appeals filed with the Associate Commissioner for Examinations must meet the requirements of part 103 of this chapter.

The petitioner does not claim or demonstrate that the director failed to follow any of the above procedures.

Revocation need not arise from “fraud, deceit, or any other affirmative wrong-doing” on the part of the petitioner. The Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of

proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.* Furthermore, the director had, in fact, identified instances in which the petitioner had provided material information that proved to be incomplete or incorrect, and properly advised the petitioner of those issues in the NOIR.

The petitioner asserts, on appeal: "At no point previously, has the Service ever offered any explanation as to why the determination of the initial reviewing officer to issue an approval was not within the law, nor why it should not be upheld." The petitioner attributes the revocation to "what clearly appears to be arbitrary 'mood-swings'" on the part of individual USCIS adjudicators. The record does not support this conclusion.

The petitioner, on appeal, also cites "Public Policy Considerations," stating: "The general public and the mainstream media focus on the issues of 'amnesty,' 'legalization,' and other ways to deal with the substantial undocumented alien population in this country," while "the large body of legally present non-immigrant aliens . . . are left virtually unnoticed, and are given little to no consideration for their contributions." The petitioner's general assertions and claims regarding overall immigration policy do not establish error in this proceeding, and do not show that the petitioner was eligible for the requested classification.

The petitioner claims that the director's decision "causes undue and unreasonable hardship for the [petitioner's] entire . . . Family, through no fault of their own." In her personal statement, the petitioner states: "All our children grew up in the United States, deeply rooted here, and for all intents and purposes consider themselves to be 'American.'" While we are not unsumphathetic to the petitioner's claims, the approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 589. The statute and regulations contain no provision to consider claims of hardship in the context of an employment-based immigrant petition.

The Merits of the Petition

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.

In the NOIR, the director raised concerns about the petitioner's foreign academic degrees. The petitioner's response to the notice included several exhibits addressing the issue. The director later concluded that the petitioner qualifies as a member of the professions holding an advanced degree. The issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

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

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (NYSDOT), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

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 revocation centered on two issues: the merits of the petitioner’s national interest waiver claim, and inconsistencies in the record. The following discussion will address each of these issues in turn.

The petitioner’s initial submission included an introductory statement signed by the petitioner, which referred to her in the third person by name or as “the Applicant.” Regarding the petitioner’s intended future work, the statement read:

[The petitioner’s] work benefits the United States on a nationwide scale, and is not limited or restricted to a localized setting or problem.

The Applicant’s work serves the national [*sic*] as a whole, and seeks to ameliorate critical and significant problems in the area of childhood education, healthcare and welfare of children, particularly those with cognitive, and developmental disabilities.

[The petitioner] is widely recognized in her home country, for her work, as playing a foundational, pioneering role in her endeavor, through the use of new educational concepts which are crucial to address autism-related education issues in school systems, and which in turn could lead to an improvement of the already existing critical educational situation and could even forestall a further deterioration of the systems currently in place.

The statement indicated that the petitioner, “as a self-employed consultant, by definition cannot petition [for] herself under current labor certification regulations,” and the labor certification process would be unlikely to identify a United States worker “able to provide the same competence, gained through experience and significant insight into the problem at hand, and implement the unique, high-level approach [*sic*] developed by and already successfully implemented by [the petitioner] abroad.”

The statement provided further details about the petitioner’s intended work:

[The petitioner] created a unique educational consulting company, which provides highly focused solutions in the area of Learning Disability Syndrome Student Education for schools and school districts nationwide.

[The petitioner’s] company, which she owns entirely, [REDACTED] is based in Naples, Florida.

With the aid of an individual, customized school-centred program, and the educational background and qualification of the consulting professionals, [the petitioner] will work with schools throughout the United States on a series of broad spectrum of ASD-related educational and human resource issues. . . .

[The petitioner's] work will include teaching, advising, consulting, analyzing and training for all schools and school types . . . in all aspects of Autism Syndrome Disorder and related Learning-Behavior Disorders.

She will assume the role of an independent consultant-advisor by applying/administering a new integrated-structured teaching method and new-developed technology aids as a learning support.

Among her day-to-day duties, [the petitioner] is also responsible for directing financial goals, objectives, and budgets. As such, when working with a school, her duties and responsibilities include, but are not limited to:

- Assessment and evaluation of schools
- Establishing minimum standards for each individual schools [*sic*]
- Evaluating and adjusting existing curriculums
- Implementing new adequate curriculum
- Adapting a working inclusion policy
- Use of the new teaching concept and strategy
- Teaching and in-class support for ASD students through the new integrated structured teaching method
- Assessment and evaluation of students
- Implementing of new technology aids
- Establishing educational requirements for each school
- Collecting and analyzing school specific data
- Staff training
- Establishing parents relationship – collaboration and support
- Introducing systems for monitoring and evaluating the effectiveness of a school's work

(Evidentiary citations omitted.) Elsewhere, the statement provided details about “[t]he business concept, which [the petitioner] has devised and successfully implemented in Germany.” The statement did not cite any evidence of the claimed successful implementation of the plan. 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)).

Similarly, with respect to the claim that the petitioner has experience “as a specialized professional educator for children with learning disabilities at all levels of public schools,” the statement cited

“TAB 7/8.” Tab 7 marks the petitioner’s own résumé, which amounts to the petitioner’s claims about her experience, rather than evidence of that experience. *Id.*

Tab 8 marks an unsigned, unattributed statement, entitled “Personal Background,” indicating that the petitioner’s niece performed poorly in standard schools but flourished at “a specialized but expensive private school.” The “Personal Background” statement did not indicate that the petitioner herself was responsible for the content of her niece’s improved education. Rather, it indicated that her “personal experience with autism has resulted in a dedicated professional involvement in education and developmental disabilities.”

The statement, also, did not indicate that the petitioner’s academic degrees related directly to autism education. Rather, it stated the petitioner “focused on research” in the area after she completed her master’s degree. The statement cited “TAB 10” to support this claim. The evidence at tab 10 consists of translated certificates relating to teaching examinations that the petitioner took in 1983 and 1986. The certificates do not mention autism or special education, and they do not establish that the petitioner “focused on research” relating to those topics after she received her master’s degree in 1986. Therefore, tab 10 does not substantiate the petitioner’s claim to have conducted research.

The petitioner submitted background documentation establishing the intrinsic merit of autism-related educational endeavors. These materials do not show that the petitioner’s work has produced, or will produce, benefits that are national in scope, or address the petitioner’s particular contributions to her field.

Several witness letters (most of them translated from German) accompanied the initial filing of the petition. Prof. [REDACTED], dean of the Department of Educational Science at the [REDACTED] Germany, stated that the university holds “the leading faculties in the field of Educational Science and Special Education within Germany and the EU [European Union].” Prof. [REDACTED] stated that the petitioner “ranks, based on her strong vocational and academic background, among the most qualified specialists in the field of educational concepts and strategies for students with learning and behavioral disabilities.” Prof. [REDACTED] praised the petitioner’s “unique approaches and strategies” but did not identify or describe them.

A letter on the letterhead of the Department of Education and Training of the [REDACTED] signed with the surname “[REDACTED]” reads:

During her internship [the petitioner] placed her work and research emphasis on the development of methodologically controlled teaching concepts as well as their intervention and prevention through schools for the education of children with learning and behavioral disturbed perception.

In doing so, her work was focused on the curriculum development, evaluation studies of educational concepts, transfer, and organizational adaptation through schools and teacher training in the field of student with autistic disposition.

The didactic approaches designed by [the petitioner] have significantly contributed to the promotion of schools, school development and improvement of educational outcome of learning-disabled children within the public school system.

[redacted] executive committee member of [redacted], stated:

[The petitioner] is a nationwide acknowledged specialist in the field of education of children with autism syndrome learning and behavioral disorders and her work record demonstrates broad experience. Her academic and professional work in the area of educational concepts for students with autistic disorder is of substantial significance for the national education system.

Mr. [redacted] did not elaborate on the above assertions, for instance by describing the petitioner's "academic and professional work," her "educational concepts," or how her work impacted the national educational system.

Dr. [redacted] national deputy chair of [redacted], stated:

[The petitioner] is known to me as a presenter at several symposia focused on topics as autism syndrome disorder, applied behavior analysis, positive behavior supports and instructional approaches. She also served as a member of advisory committees for autism special education issues in the context of public school education. Her contributions to school education concepts have raised the national standards for special needs education of autistic children.

[redacted] vice-chair of [redacted] attested to the petitioner's membership in that organization and stated:

The refinement of existing traditional educational concepts and development of new approaches and projects, initiated by [the petitioner], in the general education setting for the promotion, integration and improvement of school education for children with learning disabilities, especially autistic children, have made an outstanding contribution to improving education in schools.

[The petitioner's] strong commitment to improving educational services for learning disabled students and her ongoing, successful work in this field, being her area of expertise, have gained general national recognition.

One letter is translated from French. [redacted] vice president of [redacted] in Belgium, stated that the petitioner "is highly respected both as a person and a professional. She has contributed as a presenter in collaboration with the association on selected autism related education topics. . . Her high level of professional accomplishment in autism teaching and educational [sic] is recognized as being among the top in her field of expertise."

The letters considered above primarily contain bare assertions regarding the petitioner's expertise and contributions without specifically identifying those contributions and providing specific examples of how those contributions have influenced the field. The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

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).

Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). None of the submitted translations meet this standard; they are uncertified, and the translator is unidentified. While USCIS has considered the letters quoted above, they do not satisfy the regulatory requirements.

The only letter originally written in English is from [REDACTED] director of exceptional student education (ESE) at [REDACTED] Florida. Ms. [REDACTED] stated that the petitioner was "an essential part of the ESE team for two years during 2006-2008. . . . Her valuable contributions and efforts to our ESE programs at all school levels have resulted in increased educational outcome."

On December 11, 2009, the director issued a request for evidence (RFE), instructing the petitioner to "[s]ubmit a detailed statement by the beneficiary that describes in plain English, the significance of the beneficiary's accomplishments in the field, supported by corroborative, independent, documentary evidence." In response, the petitioner submitted copies of previously submitted letters, along with three new letters, all translated from unsubmitted German-language originals. Prof. [REDACTED] of [REDACTED] stated: "The model of integration-pedagogy presented by [the petitioner] had been pioneering in nature in terms of objectives, needs, and applicability for the school inclusion and promotion of children with learning disabilities."

An individual identified only as "[REDACTED]" from the [REDACTED] stated:

[The petitioner's] most significant achievement was the development and introduction of a fundamental, pedagogic concept, the aim of which was and is to enhance and facilitate the introduction and inclusion of autistic children into the mainstream classroom in public schools. Her integrated, practical approach to solving this very evident educational deficiency was of such a leading character that a

general change of thinking and reassessment in this area took place, with regard to school education of children with learning disabilities in Germany.

A writer at the [REDACTED] identified only as "[REDACTED]" stated that the petitioner's "educational approach . . . has lead [sic] to a directional change in the didactic fundamentals and practical requirements for the integration and inclusion of learning-disabled children within the autistic spectrum in the public classroom in Germany."

The director approved the petition on February 2, 2010. In the NOIR, the director stated: "Generally, the record doesn't indicate that the beneficiary's education was focused in the area of special education," and that "[t]he record lacks objective evidence to indicate that the beneficiary's previous experience and accomplishments have prepared her to perform the described tasks . . . [or] that the beneficiary has [the] appropriate level of licensing and education to perform the described duties in either a public or private school setting."

The director added: "Even taking the claimed duties at face value, it is not clear that the proposed benefit would be national in scope. Aside from the ambiguous claim that the beneficiary's services would be provided "nationwide," there is no persuasive evidence to demonstrate that the described duties would be performed beyond a regional area."

In response, the petitioner stated:

[that her] work focuses heavily on redressing shortcomings in the U.S. education system with regard to handling the special needs and addressing the learning requirements of children who have a disorder within the broad autism spectrum.

This issue concerning Autism Spectrum Disorders (ASD) is not and cannot be limited to a specific geographic locality. . . . Children with Autism Spectrum Disorders live in virtually every part of the United States. . . .

[USCIS] cannot honestly make an argument that the Beneficiary's work is anything BUT nationwide in its scope and application.

The issue is not whether ASD is nationally prevalent, but whether the petitioner's work presents a prospective national benefit that is national in scope. The petitioner's own "business concept" involves providing "tailored services" to individual teachers, schools, and school districts, which would limit the impact of her work to those districts. That the petitioner could, hypothetically, serve clients in various parts of the United States does not lend national scope to her work; the impact would still be limited to individual students or schools, rather than affecting the field as a whole.

The petitioner submitted copies of invoices from [REDACTED] dated between August 2009 and August 2010. These materials indicate that the company has conducted some business, as indicated on the petitioner's 2010 income tax return, but they do not demonstrate that the petitioner's work has produced nationally significant results or that others in her occupation have done so in the past. The

petitioner blacked out the names and addresses of the clients, leaving no evidence that any of those clients are schools or school districts. The petitioner submitted no evidence to show that any school or district in the United States had availed itself of the petitioner's consulting service.

The petitioner stated that her "work will initially begin 'close to home,' in Southwest Florida," but that, as her "unique methodology is accepted and implemented, one school at a time, one district at a time, the program will quickly radiate outward to other school districts, to state-wide levels, and eventually encompass regions of states."

The above statement amounts to speculation about the eventual results of work that the petitioner has not yet undertaken in the United States. The petitioner's subjective assurance that her work will serve the national interest in the future is not sufficient to establish eligibility for the national interest waiver. The term "prospective" in the statute and in *NYSDOT* is used 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. *NYSDOT*, 22 I&N Dec. at 219. The petitioner acknowledged that "no U.S. experts in the field have yet had the ability to examine [the petitioner's] work first-hand" because the petitioner's "methodology is still new and relatively untested in the United States." The petitioner asserts that her plan will be so successful and effective that it "will quickly radiate outward" to cover significant parts of the United States. This unsupported claim does not meet the petitioner's burden of proof. See *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner did not claim that her program has produced any results in the United States. Instead, the petitioner stated that "letters from relevant experts in the field . . . are not only probative, but should almost be regarded as 'binding' on the Service, since it can be safely assumed that the Service (and its individual adjudicators) in all likelihood do not possess an equal or superior level of expertise regarding the subject matter at hand."

Most of the witness letters referred to the petitioner's work in vague and general terms, and the record contains no verifiable documentary evidence to support the assertion that the petitioner's work has led to (unspecified) changes and improvements in Germany's handling of students with ASD. Even if the petitioner had corroborated her claims of impact in Germany, she has not shown that her intended work in the United States, providing "tailored services" using her "new and relatively untested" methodology, will be the same as what she claims to have done in Germany. Therefore, the German witness letters are not sufficient to establish that the petitioner's work has influenced the field as a whole.

The opinions of experts in the field are not without weight and have received consideration 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 above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is

not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). *See also Matter of Soffici*, 22 I&N Dec. at 165. The letters lack not only detail, but corroboration. For instance, the letters refer to the petitioner’s presentations at professional gatherings, but they did not identify the gatherings and the record contains no documentary evidence of the presentations.

An exhibit list submitted with the petitioner’s response indicated that the materials at “Tab 9” comprised documentation of her “Certification/Training in Autism Spectrum Disorders.” Tab 9 marks three exhibits:

- An undated “Certificate of Completion” from the [REDACTED], indicating that the petitioner completed “Autism & the Environment 101 Online Course”;
- A “CME Credit Certificate” from “[REDACTED]” indicating that the petitioner “has completed 1 hour” of Category 1 CME Credit.” The date on the certificate is September 25, 2011, nearly two years after the petition’s filing date. The certificate does not identify the course the petitioner took to earn the credit. Notations on the certificate indicate that the [REDACTED] “provide[s] continuing medical education for physicians,” but the petitioner is not a physician;
- A “Certificate of Course Completion” from [REDACTED] Inc., indicating that the petitioner completed “the online class Autism Spectrum Disorders for Teachers.” The class began on October 26, 2011 and ended November 6, 2011, meaning that the petitioner took the class after the director issued the NOIR.

All of the above exhibits are in English. They do not show that the petitioner possessed any specialized training before late 2011, or while she worked in Germany a decade earlier. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). The petitioner’s online course work in 2011 cannot establish her eligibility as of the 2009 filing date. The same applies to a July 13, 2013 letter, submitted on appeal, showing the petitioner’s acceptance into an online Doctor of Education program at [REDACTED]. The petitioner claims to have been a recognized expert in autism education in Germany before she left that country in 2002, but she has submitted no verifiable documentary evidence to support that claim.

Tab 10 of the petitioner’s response consists of the petitioner’s “Articles about ASD and Education.” A cover page reads:

Among others, three articles:

1. [REDACTED]

2.

3.

For further articles you may visit:

[http](http://)

The identified web site consists of a home page with links to 15 papers (four in German and 11 in English), each naming the petitioner as the sole author. Each of the linked papers, in turn, is an abstract or excerpt of one or two pages, with the notation “The full text of this article or related articles can be requested by contacting the author.” The petitioner’s name appears at the top of the home page, indicating that the web site is her own. The three sample papers that the petitioner submitted each indicate that they are summaries or abstracts adapted from lectures or articles that the petitioner presented or published in Germany. For example, the site identified [REDACTED] as an “Abstract from the full text of an article, [REDACTED] 1-9, Germany, (2003).” The petitioner did not submit a copy of the original article or identify the publication that purportedly carried it. The petitioner identified the other two papers as summaries of lectures, but she did not identify the specific venues of those lectures. She claimed that one lecture was at a “symposium [in] Frankfurt, Germany, (1998),” while the other was in “Germany, (2001).” These materials lack basic information that would make it possible to verify the petitioner’s claims. Previously submitted witness letters mentioned no articles, and referred vaguely to “lectures.” There is no documentary evidence that the petitioner gave lectures or published articles in Germany, except for claims on her own web site.

The petitioner did not mention the web site when she filed the petition. Until recently, the web site did not indicate that the petitioner had given any lectures or published any articles since her arrival in the United States in 2002. The dissemination of what the petitioner claims is earlier work does not establish the national scope of her current activities. Recent additions to the site include [REDACTED] identified as an “[e]xcerpt of an article - [REDACTED] and [REDACTED] identified as “a summary from the full text of the lecture [REDACTED] (2011).” The web site does not identify any publication that carried the claimed 2008 article, or any conference or other venue where the petitioner delivered the claimed 2011 lecture. The petitioner has not established that any autism researchers or educators in the United States have used the materials she posted on her web site.

² We visited the identified web site on September 19, 2013, January 23, 2014, April 10, 2014, and April 28, 2014. An annotation on the home page claims that the site was “updated 11-05-2013,” but the petitioner has added several documents to the site since that time. Earlier printouts show eight papers on the site as of January 23, 2014, and 13 as of April 10, 2014, which has increased to 15 as of April 28, 2014.

The director revoked the approval of the petition on March 26, 2013. The director noted the petitioner's claim that the petitioner's activities will eventually spread to a national level, but the director cited *Katigbak* and stated that the petitioner must be eligible as of the filing date. The director held that the claimed potential for future impact could not satisfy the "national scope" prong of the *NYS DOT* national interest test.

The director acknowledged the petitioner's submission of witness letters, but found them lacking in detail. The director also asserted: "Generally, an individual who has changed national policy in an area would be expected to be able to provide evidence" to substantiate such a claim, but the petitioner failed to submit "objective evidence of accomplishments of . . . national significance."

On appeal, the petitioner contests the finding that she has not shown that the benefit from her work will be national in scope. The petitioner states that the director erroneously considered the petitioner's work to be "a form of 'teaching,' in the traditional sense of the word," whereas the petitioner is "acting in a consulting capacity to other licensed educators." The petitioner states that her work will have national reach not through work with individual students, but because she "has devised a proprietary system, much like a 'blue-print,' based on years of her own research and study, which is equally applicable to any school, in any school district, anywhere in the United States." The record contains no evidence that any school or district has adopted the petitioner's methods, or that those methods existed in a finished form at the time of filing and were, at that time, available for adoption. The record contains no evidence to show that the petitioner's work has, thus far, produced benefits that are national in scope. Speculation about the possibility of future adoption of her methods does not establish national scope. *See NYS DOT*, 22 I&N Dec. at 219.

The petitioner states that she "will be securing the services of other like-minded, highly-qualified educators who will be working directly under the Applicant's direction. . . . These educators will be screened, interviewed and selected nationwide, from a variety of different states, covering different areas of the United States." This assertion is, again, speculation about the petitioner's future activities. The petitioner does not claim to have established this proposed network of subordinates, and she has not shown that similar networks now exist.

The petitioner states: "we have included . . . a selected sample of job applications, in response to posted job offers, which the Applicant had run nationally." The petitioner submits a printout of a template job announcement for [REDACTED] in the form of an electronic mail message addressed to [REDACTED].com, an online job search service. The message appears to be an unsent, unfinished draft; the "Sent" line, which would show the sending date and time, is blank. The message includes this passage: "Due to growth and development of our business [REDACTED] is now searching for several experienced Autism-Special Educators and Educational Assistants for the following state/regions:" No list of states or regions follows.³ The petitioner submits no evidence to show when the job announcement publicly appeared.

³ The announcement claims that [REDACTED] "has built a reputation for excellence of providing school and educator development and support services for autism syndrome disorders and developmental disabilities related special education environments," but the job announcement is not, itself, evidence of that claimed reputation.

The record contains no “job applications” as such, but the petitioner submits résumés and letters of interest from individuals in several different states. Several of these documents refer to events (such as graduations and employment) that took place in 2013. Therefore, the petitioner received these materials in 2013, several years after the petition’s 2009 filing date. The résumés and letters of interest do not show that the petitioner was seeking employees when she filed the petition.

Prior submissions from the petitioner did not indicate that the petitioner would delegate her consulting work to “other like-minded . . . educators.” It appears, therefore, that the petitioner has modified her claims regarding the nature of her intended work. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998); 8 C.F.R. § 103.2(b)(1) and *Matter of Katigbak*, 14 I&N Dec. at 49, which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Altering the proposed structure of the proposed business does not establish eligibility as of the petition’s filing date.

The petitioner states that USCIS “failed to appreciate entirely” her “imminent ability . . . to create job-opportunities for un- or under-employed teachers throughout the United States, which is clearly a benefit on a national scale.” The record contains no mention of job creation prior to the brief now under discussion. The introduction of this new claim does not show, retroactively, that the director “failed to appreciate” the job creation element of the petition earlier in the proceeding. The record does not show that the petitioner has created any jobs. The petitioner appears to have solicited the submission of résumés, but this does not establish that the petitioner subsequently hired anyone who responded. The petitioner has not established any track record of job creation, and therefore the new claim regarding her “imminent ability . . . to create job-opportunities” is unsupported speculation.

The petitioner observes that autism is a “nationwide problem.” In her most recent submission, the petitioner submits “some recent articles regarding recent findings of autism in the United States, underscoring the importance of the Applicant’s proposed work, the national scope, scale and need.” The issue is not whether autism is a national problem, but whether the petitioner has demonstrated that her methods will produce benefits that are national in scope. The national scope of autism does not mean that the petitioner’s activities are inherently national in scope, or that they were national in scope when she filed the petition in 2009. The petitioner has not demonstrated national-level activity; she has, rather, claimed an intent to pursue activity on that level at some point in the future.

The petitioner acknowledges that “the proposed work, as documented, is a relatively new, proprietary approach, which prior to the filing of the I-140, had not yet been implemented. Therefore, there was no ‘past record’ to be included in the record.” The past record of impact on the field is a basic component of the *NYS DOT* national interest test. See *id.* at 219. USCIS will not disregard or waive this provision on the ground that the petitioner’s technique is new and untried. The acknowledgment that there is “no ‘past record’” is grounds for denying the national interest waiver, not for approving it.

The petitioner states that she “underwent . . . specialized training in Germany” to deal with autistic children, but provides no further details or evidence. The record contains no evidence to support this general claim. *See Matter of Soffici*, 22 I&N Dec. at 165. When the director specifically instructed the petitioner to document her specialized training, the petitioner responded with documentation of recent training in the United States. There are also credibility issues concerning the petitioner’s claims, to be discussed further below.

The petitioner contends that “the first USCIS adjudicator who initially approved the I-140 petition properly understood the subject at hand,” but “[f]or reasons which the Service never disclosed to the Applicant or counsel, the Service simply took it upon itself, without apparent cause, to challenge the initial adjudicator’s judgment and decision. This amounts to an arbitrary abuse of discretion.”

In the NOIR, the director had noted that “the petitioner’s current employment appears to be inconsistent with the claimed intent to work in the field of special education.” In the revocation notice, the director stated that the petitioner had not addressed this concern, and that:

the petitioner’s lack of full-time employment in her field over a multiple year period in the U.S. naturally raises doubts about her eligibility for the required waiver. . . . The petitioner’s inability to work full-time in her field raises further doubts about the benefit she has to offer her field. In this case, the record does show limited activity with the petitioner’s business in her field. However, the majority of activity appears to have been in her translating business.

In a subsequent appellate brief, the petitioner protests “the second adjudicator’s contention that the Applicant’s work could not be national in scope or in the national interest, if performed at a level of less than full-time employment.” This is not what the director had stated, and the petitioner’s attempt to reframe the issue in this way does not resolve the issue.

The petitioner asserts that she “has additionally obtained independent letters from some of the most authoritative sources in the United States and Europe.” The petitioner cites two letters newly submitted with the supplemental appellate brief. A letter attributed to Dr. [REDACTED] president of the [REDACTED] reads, in part:

The position to be filled requires the services of a person with exceptional ability and qualification in the autism spectrum disorder special education field.

The provided information clearly establishes that [the petitioner] possesses this specific qualification, ability and demonstrated achievements in this particular field of endeavor.

It is therefore our professional opinion that [the petitioner] fully meets the standards of distinction, qualification and experience, as set forth by applicable federal regulations, regarding employment-based petitions and related matters, specifically as

relates to the Applicant's professional credential, experience and nature of the work performed.

The second letter, attributed [REDACTED] director of [REDACTED] (a Belgium-based organization with the initials [REDACTED] from its French name), contains almost exactly the same passage, with non-substantive differences in wording in the last quoted sentence.

The director revoked the approval of the petition in part because the petitioner had not established her credentials in special education. The new letters do not resolve this issue; they refer (in nearly identical language) to review of unspecified "provided documents," leading to the summary conclusion that the petitioner is adequately qualified for her intended occupation.

Furthermore, the petitioner fails to explain how [REDACTED] is an "authoritative source" regarding autism spectrum special education. The submitted letter describes the organization as follows:

[REDACTED] is . . . the leading provider of [REDACTED] in Europe. [REDACTED] stands with individuals and organizations of all cultures and backgrounds to promote intercultural dialogue and diversity as a core value. Committed to enhance intercultural and interfaith understanding, [REDACTED] through its ever-growing networks is actively contributing through innovative ideas to policy-making processes promoting social cohesion through training, education, dialogue and advocacy.

A submitted printout from [REDACTED] web site states that [REDACTED] is "the leading provider of [REDACTED] in Europe," and exists "to promote intercultural dialogue and diversity as a core value." The same printout states that "Mrs. [REDACTED] has 20 years experience in developing and delivering anti-prejudice diversity awareness training programmes." There is no evidence that [REDACTED] as an organization, or Mrs. [REDACTED] as an individual, has any expertise or authority relating to autism spectrum disorder.

The petitioner claims influence over autism education policy in Germany, but has not substantiated that claim. The petitioner claims authorship of articles, but has not submitted copies of those articles or evidence of their publication, or even provided background information that would permit verification of the claim. A single web site that exists only to showcase the petitioner's work is not a sufficient, credible source of corroboration in this regard. The petitioner submitted witness letters praising her specialized training in autism education, but she submitted only a handful of documents relating to such training, most if not all of which date from well after the filing date.

The petitioner maintains that labor certification is not an option because she is "a self-employed consultant" who cannot apply for labor certification on her own behalf. The threshold for the waiver is the national interest, not an alien's inability to obtain labor certification. The unavailability of labor certification to self-employed aliens receives due consideration in appropriate cases, but the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a

national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. See *NYSDOT*, 22 I&N Dec. at 218 n.5.

The petitioner states that the adjudicator who revoked the approval relied on “arbitrarily created issues” as a pretext for revoking the approval of the petition. The petitioner states: “While the second adjudicator attempted to paint the Applicant’s limited activity in a negative light, as though a legal requirement had not been met, the EB-2 NIW category makes no specific (or implied) mention of such a requirement.” The petitioner asserts that she will not be able “to significantly increase the business activities to the desired and anticipated level” until she receives “her Lawful Permanent Resident status, rather than that of a non-immigrant. . . . If the Applicant were eventually given the ‘green light’ and can take charge of the reigns [*sic*], there will be more than enough work to be performed year-round.”

In a separate personal statement, the petitioner states:

In order for my company, [REDACTED] to fully and truly thrive, I will need to hire additional personnel, expand the working hours, lease/rent more office space, I would need to travel significantly throughout the United States, advise and counsel significantly more clients, in order to satisfy the ever-growing demand and need. None of these growth-steps will happen should the U.S. government choose to send us packing.

The statute and regulations contain no specific instructions or guidelines for the national interest waiver, except for provisions regarding certain physicians, at section 203(b)(2)(B)(ii) of the Act and 8 C.F.R. § 204.12, which do not apply in this proceeding. In the absence of specific statutory or regulatory instructions, the *NYSDOT* precedent decision is the controlling authority. That decision requires (at 219 n.6) “a past history of demonstrable achievement with some degree of influence on the field as a whole.” The petitioner has established no such history. The assertion that she will have a greater influence on the field once she becomes a lawful permanent resident cannot suffice to establish eligibility. The petitioner must qualify for the benefit sought at the time of filing the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. The expectation of future eligibility, contingent on prior approval of the petition, cannot suffice in this regard.

The petitioner claims: “Several documents regarding the Applicant’s work experience in Germany sufficiently confirmed her credentials and standing in the particular field of endeavor,” and that the revocation rested on an “artificially raised evidentiary threshold in terms of past record of accomplishments or demonstrated influence.” The record, however, does not support the petitioner’s claims regarding that evidence.

The petitioner claims to have “authored numerous papers and articles, in both English and German, and much of her work has not only been translated into other languages, but also have been cited by other scholars and researchers.” The record does not support this claim. The evidence relating to the petitioner’s claimed published work derives from the petitioner’s own [REDACTED] web site. The appeal includes a printout from a “Google Custom Search” of the [REDACTED] web site, indicating

that the petitioner “has been an expert author on [REDACTED].com since October 21, 2009 and has 7 published articles.” The article titles listed on the printout match the titles of seven of the articles on the [REDACTED] web site, and the [REDACTED] printout shows that the petitioner added all of those articles to [REDACTED] over a span of about three weeks, from October 21 to November 13, 2009. The record contains no primary evidence to show that any peer-reviewed journal has published any article by the petitioner in any language, or that any autism researcher has cited her work.

The petitioner asserts that “much of the Applicant’s work and research originated in the mid 1980’s, at a time, where there was very little awareness of autism-spectrum disorders in general,” and before the World Wide Web revolutionized the dissemination of information. The petitioner states: “the area of autism or autism spectrum disorders was largely unknown, uncharted [*sic*] territory until later in the mid- to late 1990’s, when researchers such as Austrian pediatrician Dr. Hans Asperger (a pioneer in autism research) gained international recognition.” Dr. Asperger died in 1980. The petitioner thus effectively acknowledges that some research in “the area of autism . . . gained international recognition” years or decades after that research was performed.

The petitioner submits a list of post-NYS DOT AAO approvals of national interest waiver petitions, covering a broad range of occupations. The nature of the beneficiary’s occupation is not at issue. An influential autism researcher or pioneer in autism-related education may qualify for the waiver, depending on the facts of the individual petition. None of the cited decisions are published precedent decisions under 8 C.F.R. § 103.3(c).

The petitioner asserts that the national interest waiver is not “reserved for the academic elite of only the world’s best of the best, such as might be the case with Nobel Prize laureates, etc. But rather, it was clear from the legislative intent, that any qualified worker, whose work would benefit the nation as a whole, could avail themselves of this particular immigration avenue.” The petitioner does not explain or expand upon this claim. With respect to legislative intent, section 203(b)(2)(A) of the Act states that an alien whose employment will “substantially benefit prospectively the . . . United States” is typically subject to the job offer requirement. It is true that one need not be of “Nobel Prize” caliber to qualify for the waiver, but in this instance the petitioner has relied upon questionable evidence to establish her credentials and past experience, while attempting to attribute her lack of recent achievements to factors such as her lack of permanent resident status and the embryonic state of her intended business. The petitioner must establish that her accomplishments qualify her for the waiver, not that the waiver will clear the way for future accomplishments.

The director found that the petitioner had not shown that the benefit from her employment will be national in scope, or that she will serve the national interest to a substantially greater degree than other qualified workers in her intended field. The evidence in the record does not support the claims that the petitioner has made regarding her expertise and experience in the field of autism education. Predictions of her future impact amount to speculation. The petitioner has not shown that it is in the national interest to waive the job offer/labor certification requirement that normally applies to the immigrant classification that the petitioner has chosen to seek.

Inconsistencies

The revocation rested in part on inconsistent or contradictory claims regarding the beneficiary's past experience and related matters. On Form I-140, the petitioner provided the following information about her employer:

| | |
|---|----------------|
| Date Established: | August 9, 2009 |
| Current Number of Employees: | 1 |
| Address where the [petitioner] will work: | [REDACTED] |

The petitioner signed Part 8 of the Form I-140, thereby certifying under penalty of perjury that the petition and the evidence submitted with it are all true and correct.

A printout from [REDACTED] showed the same address shown above, and so did corporate documents. The petitioner submitted six "photos of the office," depicting:

- A door and a plate-glass window bearing a sign reading "SUITE 200";
- A smaller, wall-mounted sign reading "200 / [REDACTED] LLC";
- A video display of what appears to be of an alphabetical directory, showing 15 business names beginning with "1," "A," or "B," including [REDACTED]
- A room with four leather chairs around a round table, and two wooden chairs on opposite sides of a smaller but taller square table;
- An office with papers on a round table surrounded by three rolling chairs; and
- The same table and chairs from a different angle, and a wall-mounted white board showing the handwritten words:

Autism Spectrum Disorder
↓
ESE

In her introductory statement, the petitioner stated that she had been "employed, in H-1B status, by [REDACTED] based in Naples, Florida" until July 31, 2008, and that she "currently holds H-4 visa status" which does not convey employment authorization. See 8 C.F.R. § 214.2(h)(9)(iv). The petitioner's spouse entered the United States as an H-1B nonimmigrant, employed by [REDACTED] Inc.

In the December 2009 RFE, the director instructed the petitioner to submit Form ETA-750B, Statement of Qualifications of Alien, as required by the USCIS regulation at 8 C.F.R. § 204.5(k)(4)(ii). The petitioner executed the form on January 12, 2010. Part 15 of that form instructed the petitioner to "List all jobs held during the last three (3) years." The form provided space for three such jobs, but the petitioner listed only one job, providing the following information:

Name and Address of Employer: [REDACTED] Naples, FL

Name of Job: Prof. Educator/Multiling. Specialist

Date Started: 09/2002

Date Left: 07/2002

Kind of Business: Language School

No. Hours per Week: Full-time

Describe in Detail the Duties Performed: Prepare, adjust and integrate foreign nationals and speakers of other languages than English, in terms of exceptional education, for the entrance into the different levels of the public U.S. school system.

By signing Part 16 of the Form ETA-750B, the petitioner declared under penalty of perjury that the information on the form was true and correct. Although the form had room for two other jobs, the petitioner did not list her employment at [REDACTED] or her work with [REDACTED]

In the RFE, the director described inconsistencies in the petitioner's claims regarding her past employment and work location. The director noted that the petitioner did not list [REDACTED] as a past employer, or [REDACTED] as a present employer, on her Form ETA-750B. On February 22, 2010, six weeks after the petitioner executed Form ETA-750B, she executed Form G-325A, Biographic Information. Instructed to list her "employment [over the] last five years," the petitioner repeated the information about [REDACTED] and added the claim that she had worked as an "Autism-ASD-Educational-Behavioral Specialist" for [REDACTED] Florida, from August 2009 to the present. Once again, the petitioner did not mention employment at [REDACTED]. The form cautioned: "Severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact."

The director, in the NOIR, stated:

USCIS research has confirmed that the petitioner received wages from the [REDACTED] with [sic] from 2005 through 2008. Furthermore, the petitioner has submitted a letter from that organization indicating that the petitioner was associated with that organization. Recent wages from other sources are not confirmed. . . . [W]ork experience with this organization should have been included on both the Form G-325A and the Form ETA-750.

Other records available to USCIS indicate that you are an officer of the company [REDACTED] Inc. However, your level of involvement or employment with that organization has not been determined.

Finally, USCIS has been advised of an October 2011 interview between Customs and Boarder [sic] Protection officers and the petitioner's husband. During this interview, the petitioner's husband indicated that the petitioner continues to be involved with her translating business.

The director asserted that the inconsistent information about the petitioner's employment history raises overall questions of credibility. Doubt cast on any aspect of the petitioner's proof may lead to

a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

The director stated that the petitioner had repeatedly identified her work location as [REDACTED] Florida, and had submitted photographs of her claimed office and a sign showing the suite number and the name of her company. The director stated: "The clear implication of these photographs is that they represent the petitioner's working space. . . However, a search of open public records indicates that this address . . . [belongs to] the [REDACTED] service [REDACTED]."

The director instructed the petitioner to submit new information and evidence to provide a complete and accurate accounting of the petitioner's employment history and the actual, physical location of [REDACTED].

In response, the petitioner stated that her "work history may raise doubts, at first glance," but "a more detailed look and understanding of the various entities involved, will clearly show that [the petitioner] has not made ANY misrepresentations, nor taken any other affirmative actions which could be seen as untruthful or dishonest." The petitioner submitted a newly executed Form ETA-750B, indicating that she worked at [REDACTED] as a "Prof. Educator GERMAN/ESOL . . . (on an indep. contractor basis)" from August 2005 to August 2008, and as an "ESE Dept. VOLUNTEER" at the same school from August 2006 to August 2008. The petitioner did not claim employment at [REDACTED] despite identifying that entity as an employer on Form G-325A and reporting income from the company.

With respect to the petitioner's documented employment at [REDACTED], the petitioner asserted that she acted as a contractor through her company, [REDACTED]. The record does not support this claim. [REDACTED] issued the petitioner Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements, rather than a different form such as IRS Form 1099-MISC, Miscellaneous Income, used to report non-salaried compensation (such as compensation paid to a contractor). The petitioner's income tax returns show that she reported her income from [REDACTED] under "wages, salaries, tips, etc.," and reported her income from [REDACTED] separately, as "business income." All of this evidence indicates that both [REDACTED] and the petitioner considered the petitioner to be a [REDACTED] employee, whom [REDACTED] compensated directly, rather than a contractor who received payment via [REDACTED].

Furthermore, the letter from [REDACTED] (which never mentioned [REDACTED]) indicated that the petitioner worked with students with "Learning Disabilities." The petitioner herself, on Form ETA-750B, indicated that the purpose of [REDACTED] was to "prepare, adjust and integrate foreign nationals and speakers of languages other than English . . . into the different levels of the public U.S. school system." On Schedule C of her income tax returns, the petitioner described [REDACTED] as providing

“Translator/Interpreter/Language Services.” Only after receiving the NOIR did the petitioner claim that her work at [REDACTED] was connected to her work with [REDACTED]

A copy of the petitioner’s 2010 income tax return shows that she continued to operate and derive income from [REDACTED]. She reported gross receipts of \$48,521 that year, with net profit of \$35,497. Previously, on repeated occasions, the petitioner had claimed that she had stopped working for [REDACTED] in July 2008. She put that information on Forms ETA-750B and G-325A, signing each form under penalty of perjury.

The petitioner, in response to the NOIR, claimed that she returned to [REDACTED] because of delays in processing her Form I-485 adjustment application. The petitioner asserted: “It would have been irresponsible for [the petitioner] to close down or otherwise seriously neglect [REDACTED] in favor of the [REDACTED] company, not knowing for sure if and when the Adjustment process would be completed.” The petitioner’s response to the NOIR included copies of tax documents from 2008 and 2010, but not 2009. This gap means that the petitioner has not supported the claim that she left [REDACTED] in 2008 and returned to it in 2010 after the approval of the petition. The petitioner claimed more income from [REDACTED] in 2010 (\$48,521 gross, \$35,497 net) than in 2008 (\$37,423 gross, \$16,550 net).

In response to the director’s request for “[a] statement clarifying the petitioner’s activities with [REDACTED]” the petitioner stated: “The entity [REDACTED] was her husband’s entity. . . . At no time did [the petitioner] receive any compensation from [REDACTED]

Concerning [REDACTED] location, the petitioner stated: “we would respectfully submit that the [REDACTED] address is the office location from which [REDACTED] conducted its work.” The petitioner claimed to have “enclosed copies of emails between [herself] and the property owner” and other documents “showing that office space and ancillary services were used on numerous occasions.” The [REDACTED] between [REDACTED] and [REDACTED] indicates that the \$250 monthly “virtual office plan” includes 15 hours of “Conference Room Usage” per month. The agreement also indicates, in all capital letters, “THIS DOCUMENT DOES NOT CONSTITUTE A LEASE.”

Regarding the petitioner’s claim that she submitted “copies of emails between [the petitioner] and the property owner,” the response to the notice includes a copy of only one electronic mail message from the petitioner to [REDACTED]. In that message, the petitioner identified eight occasions when her company used the [REDACTED] conference rooms between August 7, 2009 and April 13, 2010; once per month with no claimed use in January 2010. These dates indicate that the petitioner began using the rooms shortly before she filed the petition, and stopped using them shortly after USCIS approved that petition. The petitioner indicated “[t]here may have been some more” such instances, and asked [REDACTED] to “check/verify the dates.” The record contains no response from [REDACTED] to verify or correct the claims in the petitioner’s message.

Although the petitioner identified [REDACTED]'s address as her work place, it appears that she used [REDACTED]'s conference rooms one day per month, or less. The record does not show that the petitioner had access to any [REDACTED] facilities other than the conference rooms; that she ever used the office space shown in the photographs she submitted; or that the sign printed with her company's and the suite number, 200, ever hung at the location.

The petitioner identified the [REDACTED] address not as her business address, mailing address or administrative address, or as a site that she would use "on numerous occasions." She identified it as the "[a]ddress where [she] will work." The petitioner's submission of a photograph of a sign showing the company name next to the suite number, 200, amounted to an affirmative claim that [REDACTED] actual, physical, primary place of business.

In the March 2013 revocation notice, the director found that the petitioner did not adequately address the inconsistent information regarding her past employment. The petitioner states that the director's December 2009 RFE "referenced some apparent inconsistencies regarding the Applicant's employment record, and the proposed work location," but that the petitioner then established "that there were in fact no 'inconsistencies.'" The petitioner asserts that the subsequent approval of the petition demonstrates that the petitioner had addressed the issue to the director's satisfaction.

As discussed earlier, the director did not revoke the approval for "reasons which the Service never disclosed." The director stated several specific concerns in the NOIR, as required by the USCIS regulation at 8 C.F.R. § 205.2(b). The revocation notice explained the grounds for revocation, as required by the USCIS regulation at 8 C.F.R. § 205.2(c). A finding that the petition was not approvable based on the record at the time of filing, and therefore should have been denied, is sufficient grounds for revocation. *See Matter of Estime*, 19 I&N Dec. at 452.

The petitioner, on appeal, maintains that she "address[ed] all concerns raised by the Service" in the NOIR. The evidence that the petitioner submitted in response to that notice, however, raised new questions and left some old ones unanswered. For example, the petitioner claimed that she worked for [REDACTED] as a contractor through [REDACTED] but the record contains no evidence to support that claim. The IRS Form W-2 from 2008 indicates that [REDACTED] paid the petitioner directly as an employee and reported that compensation as employee wages rather than non-employee compensation. There is no evidence that [REDACTED] contracted with [REDACTED] which then paid the petitioner.

The petitioner contends that "[t]here were never any actual 'inconsistencies' in the Applicant's employment record," and therefore the claimed inconsistencies are among the "arbitrarily created issues" that led to the revocation. The petitioner states: "It is very important to note the crucial distinction between mailing address of the company, and 'work location,' which refers to the specific work-site where the Applicant will be performing her actual work and services to her clients." The petitioner asserts that there is a "distinction between mailing address . . . and 'work location,'" however, the petitioner had given the address of [REDACTED] as the "Address where the [petitioner] will work" on Form I-140.

The petitioner states that she “was not a [REDACTED] customer, but actually utilized the on-site offerings of [REDACTED]” The petitioner claims, on appeal, to have been “renting commercial office facilities” from [REDACTED] and to have submitted “copies of the lease agreement.” The record, on its face, contradicts all of these claims. The petitioner submitted not a lease, but a [REDACTED] which stated: “THIS DOCUMENT DOES NOT CONSTITUTE A LEASE.”

Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that “the facts stated in the petition are true.” False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner’s claims are true. See *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988). The petitioner has made inconsistent assertions regarding her work history and office location, and the director was justified in citing those concerns as grounds for revocation.

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 national interest waiver contemplates that her influence be national in scope. *NYS DOT*, 22 I&N Dec. 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.”).

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 record indicates that the director approved the immigrant petition in error, and justifiably revoked the approval. In doing so, the director properly followed all applicable statutory and regulatory requirements.

The AAO will dismiss the appeal for the above stated reasons. 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.