

(b)(6)



U.S. Citizenship  
and Immigration  
Services

DATE: DEC 05 2014 OFFICE: TEXAS SERVICE CENTER

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, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. We 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 cardiologist. The petitioner is currently a fellow at [REDACTED] Pennsylvania. 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 legal brief.

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 director did not dispute 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).

Supplementary information to regulations implementing the Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 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 Dep’t of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

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

The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on September 20, 2013. An accompanying introductory statement called the petitioner “a highly renowned Cardiologist as well as a medical researcher who is acclaimed and respected in the field of his expertise.” In a separate personal statement, the petitioner stated:

It is my goal to continue in my field of expertise by working in a tertiary or referral center, which is at the forefront of new advances and has active clinical and translational research programs. My primary interests include structural heart disease

interventions, advanced heart failure management and imaging modalities to modify treatment strategies. By working in a teaching hospital I will have the opportunity to teach medical students and house staff at various levels of training.

To date, I have received several offers of employment from different medical centers throughout the United States.

The intrinsic merit of cardiovascular medicine is not in dispute in this proceeding. Regarding the “national scope” prong of the *NYSDOT* national interest test, the petitioner did not claim that he would engage in medical research in the future. Rather, the petitioner emphasized “his unique clinical skills” and “mastery of complex, life-saving procedures.” The petitioner asserted that the benefit from his employment is national in scope because, given the number of patients affected with cardiovascular disorders, “early identification and disease management utilizing [the petitioner’s] expertise will result in a significant reduction of health care costs,” “by preventing an unnecessary use of more expensive and invasive interventions.” The petitioner did not establish that his work has had such an effect to date. Without evidence to that effect, his assertions about future results amount to unfounded speculation. 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)).

Regarding the third and final prong of the *NYSDOT* national interest test, the petitioner stated that his “record of accomplishments justifies projections of continued future benefits to the national interest. . . . The dramatic increase in cardiovascular workload due to the aging population, combined with a shortage of cardiologist[s], further warrants the granting of this waiver.”

A shortage of qualified workers is not grounds for a national interest waiver under *NYSDOT*, because the labor certification process already takes into account the unavailability of qualified workers. *See id.* at 218. Section 203(b)(2)(B)(ii) of the Act makes the national interest waiver available to physicians in designated shortage areas, but to qualify for the shortage-based waiver, physicians must meet a number of conditions described in the regulations at 8 C.F.R. § 204.12. The petitioner has not met, or claimed to have met, those conditions. Therefore, the assertion of a shortage is not relevant, except to the extent that a true shortage would tend to improve the petitioner’s chances of obtaining an approved labor certification.

The petitioner also bases his waiver request on his claimed accomplishments. The petitioner claims that he “was selected for the prestigious residency position in [redacted] and “a highly prestigious and coveted Cardiology Fellowship position at the world renowned [redacted] . . . based on his prior outstanding achievements.” Residencies and fellowships are temporary training positions; one’s appointment to such a position constitutes recognition that one’s training is not yet complete.

The petitioner asserted that he has also “participated in important research projects where he was a critical member on the research team,” and claimed: “His groundbreaking research has attracted considerable attention in the national and international medical research community.” The petitioner then identified three conference presentations.

To support the claim that his work “has attracted considerable attention,” the petitioner submitted what he called “four (4) letters from leading recognized experts in the field of medicine, including those who have never worked with [the petitioner], attesting to the significance of his work.”

Two of the letters are from physicians at [redacted] where the petitioner works. Dr. [redacted] director of cardiovascular magnetic resonance imaging (MRI), has “worked with [the petitioner] on some of his research projects.” Dr. [redacted] praised the petitioner’s “outstanding performance” and described the research projects on which he and the petitioner have collaborated. One project, involving the use of cardiac MRI to identify changes in the heart that affect the prognosis in pulmonary hypertension, “can allow us to use expensive therapies and referral to transplant programs at an appropriate juncture in the natural history of disease progression.” Another project used cardiac MRI “to assess the correlation between adjusted pro BNP levels and invasive hemodynamic parameters obtained by right heart catheterization. . . . The use of non invasive [*sic*] modalities to identify the correlation can translate into safe and effective patient care without having to undergo repeated invasive procedures.” Dr. [redacted] did not state the extent to which these projects have led to new treatment protocols in the field.

Dr. [redacted] program director for advanced heart failure and cardiac transplant fellowship, has “worked closely with [the petitioner] on the inpatient Heart Failure service, which handles high acuity patients with end stage heart failure as they are awaiting LVAD/Heart Transplant.” After describing a case in which the petitioner stabilized a “very ill” patient, Dr. [redacted] stated that he “had a special interest in [the petitioner’s] research projects as they pertained to pulmonary hypertension.” Dr. [redacted] stated that the petitioner’s work on one such project “may allow us to decrease the number of invasive procedures,” thus reducing hospital admissions and risk.

The remaining two letters are from individuals who stated that they based their comments not on personal knowledge of the petitioner, but on review of his credentials. Dr. [redacted] of the [redacted] stated that the petitioner’s “work has led to important improvements for clinicians and patients in the early diagnosis, cost effective treatment and less invasive procedures in the management of patients with pulmonary hypertension.” Dr. [redacted] did not identify any clinicians or institutions (including the [redacted] that have adopted the methods described in the petitioner’s research, or that the petitioner was responsible for developing (as opposed to testing) those methods.

Dr. [redacted], assistant professor at the [redacted] stated that the petitioner “has garnered wide acclaim for his research”; however, the record does not directly support this assertion. Dr. [redacted] stated that the petitioner’s “work will shed significant light on the

way the right ventricular function and geometry adapts to the high pulmonary pressures.” The use of the future tense suggests that the full importance of the petitioner’s work is not yet known.

The petitioner submitted a copy of his “Residency Agreement of Appointment” with the [REDACTED] Part VI of that document, “Resident Responsibilities/Eligibility Requirements,” includes “patient care” and “educational activities,” but not medical research, under “the general responsibilities of residents.”

The director issued a request for evidence on October 23, 2013. The director stated that the petitioner’s residency agreement does not establish that his residency includes research duties. The director acknowledged the four letters submitted with the petition, and concluded that the petitioner had not established his influence on the field of cardiology as a whole.

In response, the petitioner asserted that he “spends his time evenly between research activities and clinical duties,” and repeated the claim that “[h]is groundbreaking research has attracted considerable attention in the national and international medical research community.” The petitioner listed several ongoing projects, and asserted that “he has proven to be a pioneering cardiologist with exceptional achievements in the areas of cardiovascular diseases. His level of knowledge and skill (clinical and research) can be found only among very few individuals.”

The petitioner submits a copy of an informational booklet about the [REDACTED] The publication establishes that research takes place at the hospital, and describes some of the projects, but the petitioner did not show that the publication mentioned his work at all, which would be expected if his research was of particular significance as he has claimed. Furthermore, the Institute’s own promotional materials are not evidence of wider recognition of the research outside the Institute.

Further evidence of recognition within [REDACTED] comes in the form of a letter from Dr. [REDACTED] an interventional cardiologist who has “known [the petitioner] for several years.” Dr. [REDACTED] described some of the petitioner’s research projects, and stated that one of the petitioner’s earlier works “has been highly appreciated as well as referenced by national leaders in pulmonary hypertension such as Dr. [REDACTED] as well as Dr. [REDACTED]” The record contains no statement from Dr. [REDACTED] or Dr. [REDACTED] and no evidence to corroborate or clarify Dr. [REDACTED] claim.

The director denied the petition on May 8, 2014, stating that the petitioner had established the intrinsic merit of his intended occupation, but had not met the other prongs of the *NYSDOT* national interest test. The director again cited the petitioner’s residency agreement, and found that the petitioner had not supported his claim that he evenly divides his time between clinical and research duties. The director concluded: “Based on the evidence of record, the scope of the [petitioner’s] work as a cardiologist will be limited to the patients he treats at [REDACTED].”

Concerning the third prong of the *NYSDOT* national interest test, the director quoted from the letters in the record, but found that the record does not support “the letter writers’ claims that the [petitioner’s] work in the field has been ‘groundbreaking.’” The director concluded that the petitioner has not established “a past history of achievement with some degree of influence on the field of cardiology as a whole.”

On appeal, the petitioner contends: “The denial was based on an erroneously narrow consideration of what constitutes national scope.” The petitioner asserts that the precise ratio of research to clinical practice is not important, because both have national impact. The petitioner contends that his clinical work produces benefits that are national in scope because they reduce “the health care costs associated with heart disease by preventing an unnecessary use of more expensive and invasive interventions. . . . Inpatient cardiovascular operations . . . accounted for an estimated \$286.6 billion dollars [*sic*] nation-wide.” The issue of cardiovascular health is of national concern, but the petitioner has not shown that his clinical work has addressed the problem on a national level, or resulted in cost savings that are perceptible on a national level.

Research has a greater national scope due to its dissemination; the audience for medical research does not have the same practical constraints as the size of one physician’s patient base. Although the director emphasized the petitioner’s residency agreement, which mentions clinical practice but not research, the agreement, viewed as a whole, is not a detailed job description, but rather a legal document explaining the terms of employment, dealing with parking, benefits, time off, and other factors. The record contains substantial, credible documentation showing that the petitioner has engaged in several research projects while at [REDACTED]

The petitioner has stated that his intended future work would include a significant amount of research, and such work would satisfy the “national scope” prong of the *NYSDOT* national interest test. The issue of concern in this regard is not the nature of what the petitioner intends to do, but rather how he will do it. The petitioner has specifically stated his intention to work “in a teaching hospital” with “active . . . research programs.” The petitioner claims to have “received several offers of employment from different medical centers throughout the United States,” but he has not identified the prospective employers or documented the job offers. He also did not show that these offers were for faculty positions at teaching hospitals, rather than for purely clinical positions at medical practices.

The petitioner has not established that any demand exists for his services as a researcher or teacher beyond the duties tied to his time-limited fellowship at [REDACTED]. The petitioner has claimed that his research work has attracted significant outside attention, but the record does not offer sufficient support for this claim.

The petitioner’s appellate brief includes quotations from some of the letters submitted previously, with the protest that the director “apparently ignored” the quoted portions.

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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The letters describe the petitioner's research in varying levels of detail, but do not show that it has influenced the field. At most, some of the letters indicate that the petitioner's work "will" or "can" have such an impact at some unspecified time in the future. The petitioner also failed to submit corroborating evidence, which could have bolstered the weight of the reference letters.

The petitioner, in the brief, concedes that "letters of reference are not controlling evidence," but asserts that "neither may they be summarily discounted." The letters are not without weight, but there is nothing else in the record to support the contention that the petitioner's research has importance or influence beyond the norm for research projects conducted by house staff at university-affiliated teaching hospitals. In the absence of such evidence, it cannot suffice to submit a letter that claims the petitioner's work is "groundbreaking" or "has attracted considerable attention."

The petitioner has established that he is performing well at a reputable institution, and that his mentors are confident in his future success. The record also shows, however, that any research duties he has performed to date have been in the context of still-ongoing training. Most of the petitioner's documented research presentations have been in-house or at the regional level (such as a "Western Pennsylvania" conference). The evidence submitted is not sufficient to establish that his research has been particularly influential throughout the field, or that he is likely to have opportunities to continue performing research once his training is complete.

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 his influence be national in scope. *NYS DOT*, 22 I&N Dec. 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").

As is clear from 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.

We 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.