



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

DATE: DEC 08 2014 OFFICE: TEXAS SERVICE CENTER [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

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

On appeal, the petitioner submits a legal brief. He has subsequently submitted information concerning a project in Turkey.

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 cited one ground for the denial of the petition, specifically that the petitioner had not 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 October 17, 2013. On Part 6, line 3 of the petition form, the petitioner described his intended duties: “Manage trading company to export U.S. manufactured goods internationally; match U.S. manufactured goods with international needs; work with U.S. vendors to develop specialty products to win target customers and establish logistical routes.” In a separate, personal letter, the petitioner stated:

... began operations in ...

The company . . . acquires goods from the U.S. and exports them to a variety of countries including Georgia, Armenia, Azerbaijan and Turkey.

We source manufactured goods . . . from the states of Virginia, South Carolina and Georgia. . . .

The company increases U.S. employment by purchasing, through U.S. manufacturers and distributes the goods internationally. The company's business has national and international impact.

. . . I have developed the business model enabling the export of U.S. manufactured goods internationally. . . . I utilize my expertise identifying market leaders in livestock feed consumption in the [redacted] and Turkey. . . .

I work with U.S. vendors to develop specialty products to win target customers and establish logistical routes. . . . I facilitated sales of U.S. manufactured products with a value of more than \$10,000,000. This has resulted in revenue to the company of over \$415,000 in 2012.

The petitioner quoted the \$415,000 figure twice in his statement, but he submitted no evidence to provide a source for that figure. Financial statements include the following figures:

	2010	2011	2012
Total Income	\$2,451,835	\$3,925,466	\$4,154,685
Cost of Sales	\$1,718,218	\$3,562,921	\$3,705,012
Gross Profit	\$733,617	\$362,545	\$449,673
Total Operating Expenses	\$145,503	\$100,542	\$112,397
Net Income	\$588,114	\$262,003	\$337,276
Total Assets	\$828,295	\$1,243,395	\$1,203,775

Copies of invoices and other documents establish that [redacted] has conducted business, but the petitioner does not qualify for the waiver simply by actively conducting business. The materials do not show how the petitioner's work has had a wider effect on the field.

The petitioner submitted several letters, all from individuals with business relationships with the petitioner and/or his company. Most of these letters offered brief, general descriptions of the petitioner's work, stating that, owing to his expertise and experience in the agricultural industry, the United States economy will benefit from the petitioner's continued activity. The most detailed letter is from [redacted] senior vice president of [redacted] who stated:

Our company has been doing business with [the petitioner] since 2003. . . . Though [redacted] we have been exporting U.S. agricultural products such as Hi

Protein Soybean meal, animal by-product meals and animal feed concentrates, all of which are produced here in the United States.

[The petitioner's] long experience in the foreign trade arena affords him a fundamentally strong knowledge of import/export financing, logistics and documentation.

“on the ground” knowledge of the agriculture sector in the Black Sea region has given our company the opportunity to increase our export sales into a region previously closed to our U.S. products.

[The petitioner] has grown his region business to a point where a needed “next step” is required. In this case, his customer base is demanding that he become their “key” supplier of certain critical feed ingredients such as concentrates and Hi Protein soybean meal.

export complex is particularly well located to help [the petitioner] meet this challenge . . . ; we stand ready to support this significant increase in trade volume with

The letters indicated that the national interest waiver would help the petitioner achieve the stability needed for expected increases in export volume. In this way, the letters relied on speculation about the future rather than documented evidence about the petitioner's existing accomplishments and effect on his field.

The director issued a request for evidence on January 15, 2014. The director instructed the petitioner to submit documentation of “a past record of specific prior achievement with some degree of influence on the field as a whole.”

In response, the petitioner asserted that labor certification is not available to the petitioner, because he owns the company where he seeks employment. While this fact will receive due consideration in appropriate cases, 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 he 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 waiver is not simply a means to avoid labor certification. *Id.* at 223.

Citing instability in the region, the petitioner asserted that “[e]xpansion of the U.S. trade [in that region] is a key item in the U.S. national interest.” The petitioner submitted new letters from many of the same individuals who had provided letters earlier. The new letters are brief (with a single substantive paragraph) and lack detail. As an illustrative example, office managing partner of tax services for and vice president of , each signed separate letters which read:

I have written previously in support of [the petitioner]. I want to emphasize the¹ uniqueness of his background. He has held positions with the Republic of Georgia Ministry of Economy, the British Embassy, and been Director of an [redacted] company in Georgia. His knowledge of these areas makes him far superior to others in the field. Further, his achievements project a considerable benefit to the U.S.

If you require any additional information, please do not hesitate to contact the undersigned.

The letters contain the assertion that the petitioner possesses superior knowledge and expertise, but do not elaborate on how these characteristics rise to a level that would justify approval of the national interest waiver. Exceptional ability, defined at 8 C.F.R. § 204.5(k)(2) as a level of expertise significantly above that ordinarily encountered, is not a sufficient basis for the waiver. Section 203(b)(2)(A) holds aliens of exceptional ability to the job offer requirement.

The petitioner submitted printouts of an electronic mail exchange which he described as:

Correspondence between me and Mrs. [redacted] who is agricultural counselor of the US embassy in Turkey. We are talking about a project envisaging moving US origin soybean meal to the south [redacted] and [B]lack [S]ea shore of Turkey [where] it had never been sent direct before. We work[ed] on this project for [the] last 2.5 years and finally all is starting next month [April 2014]. It is [a] very big thing as you can see from the correspondence and this is directly impacting supporting US exports to the markets [where] it was not active before directly.

In a message sent on March 26, 2014, the petitioner stated:

May we remind you of our brief meeting in Istanbul where you have made a memorable speech on the annual [redacted] gathering. . . . We have briefly informed you about the project aiming [at] establishing [a] sustainable supply of the US soybean meal and other US origin feed materials to the markets of South [redacted] Black Sea Shore of Turkey and beyond to the bordering countries. . . . [Previously,] there was no direct route to these geographies. . . .

[T]his project envisages . . . moving 15 thousand [metric tons] of US origin products worth . . . 8 million USD monthly doubling this number [after the] first year. We are pleased to inform you that on the 14th of April we, [redacted] and other relevant parties are completing [the] legal framework of this project by initializing [a] series of contracts and agreements. Later this or early next month we envisage [sending the] first shipment.

¹ This word appears as "his" rather than "the" in the letter that Ms. [redacted] signed.

The remaining correspondence back and forth concerned efforts to set a specific time for the meeting. Ms. [REDACTED] stated: "I've been wondering how your project was proceeding," but offered no further comment about its merits. The petitioner also submitted background information regarding [REDACTED] a privately operated Turkish port "located at the eastern border of Eastern Black Sea" near the Georgian border.

The proposed starting date, April 14, 2014, was nearly six months after the petition's October 17, 2013 filing date. 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).

Furthermore, the electronic mail correspondence was sent in March 2014, before the project began, and therefore the correspondence is not evidence of the project's success or impact. The only source of details about the project is the petitioner himself, who cited no source for the figures provided. The petitioner claimed that he would ship \$8 million worth of products per month during the first year, which is more than the cost of what his company sold in all of 2011 and 2012 combined. The petitioner cited no evidence regarding this substantial increase beyond his intention for it to occur. The brief indicates that "[i]nformation about the project . . . is obviously not merely speculative." The petitioner has documented his intention for the project to occur, but all of his evidence dates from before the project actually began. The petitioner provided no basis for the projected figures regarding the eventual success of the project. Assertions about its future success are, therefore, speculative.

The director denied the petition on May 20, 2014, stating that the petitioner had met the first two prongs of the *NYSDOT* national interest test, concerning intrinsic merit and national scope, but had not shown "any prior achievement with some degree of influence on the field of exporting agriculture products."

On appeal, the petitioner, via an appellate brief, contends that "evidence [of] a past history of achievement with some degree of influence on the field as a whole . . . is not a *per se* requirement. . . . Congress intended the determination of what is in the U.S. national interest to be flexible." Flexibility does not entail or imply the petitioner's ability to set his own standards in this regard. The petitioner cannot rely solely or primarily on his own expectations of future success, and on brief, general statements from individuals who have worked closely with him. The petitioner selected the individuals who wrote the letters, and he has not shown that their assertions amount to a consensus in his field. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The 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 primarily contain general assertions that the petitioner's work is important, without specific information regarding how the petitioner stands out in his field. The lack of corroborating evidence diminishes the weight of the reference letters.

The petitioner asserts that the director's decision "did not account for or address the additional evidence including evidence from the U.S. Embassy in [REDACTED]" "reflecting on the U.S. government's interest in the petitioner's proposals regarding the [REDACTED]". The brief indicates that "[t]he Agricultural Counselor at the U.S. Embassy was keenly interested in the project." The petitioner has documented that he scheduled a meeting with Ms. [REDACTED] but the record contains no evidence to show that the Embassy took an unusual interest in the project. Furthermore, this development occurred six months after the petition's filing date, and therefore does not represent the state of affairs at the time of filing.

The petitioner asserts: "It is important that the requirements for the [national interest waiver] not merge into the requirements for an extraordinary alien." The latter classification, established at section 203(b)(1)(A) of the Act, has a higher eligibility threshold centered around sustained national or international acclaim. The petitioner is correct that he need not establish such acclaim. He need not be a universally recognized figure or one of the best-known workers in his field. Nevertheless, the petitioner must meet the *NYSDOT* guidelines, which he cannot do simply by establishing that international trade is important and that he has some experience in that area. The petitioner asserts that he will export at least \$8 million worth of agricultural products each month, a figure considerably higher than the sums appearing on his earlier documentation. To support claims of this very substantial increase, the petitioner must do more than submit general letters of support and show that he scheduled a meeting with embassy officials. Furthermore, the record lacks information to show that the sums claimed are significant in the context of the industry as a whole.

After filing the brief, the petitioner submitted additional printouts of an electronic mail conversation from September-October 2014. In a message dated September 29, 2014, [REDACTED] (whom the petitioner identified as "Agriculture Attache at U.S. Department of Agriculture, Foreign Agricultural Service") told the petitioner: "Your plan for distribution through [REDACTED] is one our office has been

watching with anticipation for some time. We look forward to seeing more US agriculture distributed in eastern Turkey, as well as through Georgia and Azerbaijan.” [REDACTED] agriculture marketing assistant at the U.S. Consulate General in Istanbul, stated: “We believe you have tapped a good business opportunity. . . . We also hope that you succeed in your endeavors, after all the hard work and time you have invested in this project.” These individuals gave no indication that the plan had yet been implemented, nearly a year after the petition’s filing date. The petitioner’s own messages in the conversation referred to a “project aiming at setting up [a] Regional Distribution Warehouse in [REDACTED]” and he stated “we are planning to sell soybean meal and other products for livestock feed out of [REDACTED] port.” He did not indicate that any of his previously discussed plans had already come to fruition.

As explained above, the facts at the time of filing must support approval of the petition. The petitioner cannot file a premature petition, on the expectation that future developments will eventually warrant its approval. The petitioner has not shown how his record as an agricultural exporter compares with that of others in his field, or that his company’s performance has measured up to his plans for that performance.

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. *NYSDOT*, 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.

Because we review the record on a *de novo* basis, we may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). In this instance, the record does not support the director’s conclusion that the petitioner qualifies for classification as a member of the professions holding an advanced degree.

The introductory statement submitted with the petition indicated that the petitioner “qualifies as an individual with an advanced degree.” The statutory term, however, is “member of the professions holding an advanced degree.” The petitioner must establish not only that he holds an advanced degree, but also that he is a member of the professions.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2). Section 101(a)(32) of the Act lists architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries. The degree or major must be academically appropriate to the profession for which petitioned. *Matter of Katigbak*, 14 I&N Dec. 46.

The petitioner holds a foreign degree equivalent to a United States master's degree in mechanical engineering, with a concentration in "Mechanization of Agricultural Manufacturing," but he does not seek employment as an engineer. Rather, he seeks employment as the general director of a trading company. The petitioner, in a statement submitted with the petition, asserted that his "knowledge of engineering technology is important" because it allows him "to identify manufacturers as well as conducting sales engineering with end users," but it does not follow that the petitioner is employed as an engineer or that his occupation requires at least a bachelor's degree.

We note that the petitioner's résumé indicates that, from 2006 to 2010, he was "General Director of [redacted]," a company engaged in "[i]mporting and distributing . . . specialty tableware for the [redacted]." The petitioner claimed no academic background relating to catering or specialty tableware. By the same token, while the petitioner's educational background in engineering may be to his advantage in his current job, he has not shown that the position requires such a background.

The petitioner has not established that his degree is academically appropriate to the occupation he seeks, or that a bachelor's degree is the minimum requirement for entry into the occupation. Therefore, the petitioner has established that he holds an advanced degree, but he has not submitted sufficient evidence to establish that he is a member of the professions.

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

ORDER: The appeal is dismissed.