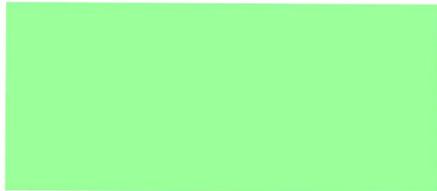




U.S. Citizenship  
and Immigration  
Services

(b)(6)



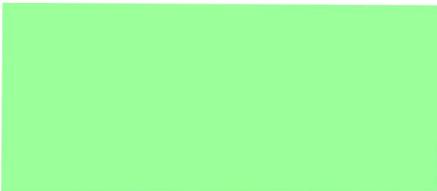
DATE: **DEC 15 2014** OFFICE: TEXAS SERVICE CENTER

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, 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 states that he seeks employment as an aerospace engineering researcher and director of the [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 statement and a separate affidavit.

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, P.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 August 29, 2013. An accompanying statement included the following assertions:

[The petitioner’s] unique and comprehensive research knowledge in aerospace engineering as well as the overall nation [sic] defense and his design and expert consulting abilities, serves the national interest. . . .

[The petitioner] worked for the establishment [redacted] at [redacted] of [the] [redacted] . . . [Later, the petitioner] was in charge of [redacted] [at the] [redacted]

... followed by serving as Director of ...

His distinguished research and investigation experiences and proven track record conclusively demonstrate that he can be expected to continue servicing the U.S. national interest to a significantly greater extent than other well-trained Korean-language human resource[s]...

The attached testimonial and documentary evidence unambiguously establish that [the petitioner] is widely recognized as playing a highly innovative role that is unquestionably at the forefront of this aerospace engineering field. He is a foundational figure in furthering the development and advancement of the aircraft design and plane engineering in ... which is becoming essential with the world's growing technologies being utilized in improving the national defense. ...

[I]n recognition of his accomplishments in his field, he was appointed as a manager in the field of international cooperation by the ...

[H]e was given two awards from the ... in ... Based on his significance for the national security, [the petitioner] was awarded [a] Presidential Citation from the President of ... in ... in the area of Science and Technology Promotion. ... In ... a total of 18 distinguished persons of ... national merit were given the presidential citation. ...

[The petitioner] plans to establish a technology consulting firm, which will not only provide high quality services related to national defense matters in terms of technical, legal and policy issues but also create various employment opportunities. ...

[The petitioner], who is one of the leading engineer[s] and researcher[s] in Korean and international combat aircraft society, will make great contributions to the development of next generation fighter[s] and sales and marketing related activities for American combat weapon production corporations.

In a personal statement, entitled "Personal Expertise and Business Plan," the petitioner described his intended future employment:

I would like to establish [the] ... with employment of experts. By utilizing the current networks in Korea and the U.S., and establishing the following center in the U.S., it will be possible to provide high-quality services and enable the entrepreneurs from both countries to receive potential benefits. ...

The [REDACTED] will be an organization of experts that is wholly responsible for technology, policy, and legal matters related to national defense. It will be a specialized organization that provides a one-stop, comprehensive research and consultation on the technical and political requirements that will inevitably arise during Korea's development in the defense industry. The [REDACTED] will serve professional clients in the U.S. defense industry, international defense industry, U.S. defense agencies, and the Department of Defense including the various branches of the military.

The petitioner claimed no prior experience running an organization like the [REDACTED]. Rather, his past experience was in the South Korean Air Force, including some teaching responsibilities at the [REDACTED]. In describing the [REDACTED] and his intended duties there, the petitioner did not mention aerospace engineering research, although he identified his intended occupation as "researcher" on Part 6, line 1, of Form I-140. An organization chart for the [REDACTED] indicated that the entity would encompass three divisions, with the following functions:

Defense Technology Division	Defense Policy Division	Defense Legal Division
[REDACTED]		

The petitioner submitted several letters in support of the petition. Dr. [REDACTED] associate professor at [REDACTED], praised the petitioner in general terms, stating for instance that he "has a proven track record for progressive development as a distinguished expert in Aerospace Engineering including Korean fighter aircrafts and its [sic] research and development." Dr. [REDACTED] listed several titles that the petitioner has held and recognition that the petitioner has received, and praised the petitioner's "distinguished contributions and accomplishments," but did not identify or describe those accomplishments.

Other letters included more details, but did not indicate that the petitioner continues to engage in aerospace engineering research. Rather, their discussion of the petitioner's recent work focused on

procurement. Dr. [REDACTED] professor at [REDACTED] was the petitioner's academic advisor during the petitioner's graduate studies at that institution. He stated:

During his doctor's and master's courses, [the petitioner] published numerous papers in helicopter design. . . .

Through his significant research and study of rotorcraft design and other aircraft work, he published his doctoral thesis, "[REDACTED]."

In this study, he introduced the optimal design method, which went beyond the previous concept of design in its prediction of factors such as [REDACTED] by applying the integrated product and process development . . . concept to take into consideration the various suggestions of pilots in the early design phases. Based on previous understandings of helicopter design, the flying quality felt by pilots was the result of the design and thus was a difficult factor to manage in the design stage. However, [the petitioner's] paper made a contribution to the process by making such factors something that can be controlled in advance.

Concerning the petitioner's more recent work, Dr. [REDACTED] stated:

[The petitioner] is heavily involved in an ongoing South Korean project focused on [REDACTED]. . . Korea possesses numerous export opportunities for U.S. defense corporations.

If [the petitioner] has the opportunity to work in the U.S. [for] the next two years while the negotiations are in progress, the U.S. will be able to better understand the purchasing system and the related requirements for such South Korean projects.

Dr. [REDACTED] did not explain why the petitioner's two-year negotiation period would merit permanent immigration benefits.

Dr. [REDACTED], professor at the [REDACTED], stated that the petitioner, in his doctoral studies, "developed a new and revolutionary approach to integrate [REDACTED] into a generic conceptual design using an Integrated Product/Process Development methodology." Dr. [REDACTED] stated that the petitioner subsequently "was a key figure in establishing Korea's national plan for the systematic development of the aerospace industry. . . . [The petitioner] is an engineer and policy maker. There are not many people who could play both roles."

[REDACTED] a partner at [REDACTED], stated that he has sought the petitioner's technical advice in litigation involving helicopter crashes and other engineering-related matters. Mr. [REDACTED] then described the petitioner's more recent procurement work, and stated: "I strongly believe that in a changing environment where [the] Korean government is becoming more receptive to the weapons and

technologies possessed by other countries, [the petitioner] is the person who can best strengthen the cooperation between Korea and the U.S.”

[REDACTED], president of the [REDACTED], described the petitioner’s involvement in various procurement programs for the South Korean government, stating, for example:

When we met in 2005, [the petitioner] was serving as an advisor to the President for national policy matters related to the procurement of foreign weapon systems and domestic R&D. At the time, Korea was in the process of conducting large procurement projects such as the [REDACTED] the [REDACTED] and the [REDACTED] project. [The petitioner] was responsible for determining each program’s feasibility, potential problems, and the overall direction. . . .

[The petitioner] is currently acting as the international cooperation and external relations manager for the [REDACTED], which is being jointly carried out by the Korean and the Indonesian governments. . . . [The petitioner] is successfully leading his team members in this project, and the [REDACTED] even formally recognized and awarded him for his achievements and contributions.

Currently, Korea is carrying out various large-scale defense programs in which U.S. corporations . . . are strongly willing to participate. The Korean government created a special task force of experts, [of] which [the petitioner] is a member, to ensure the success of these programs. As a result, [the petitioner] . . . will be able to facilitate the participation of U.S. corporations in various defense projects held by the Korean government, bringing numerous profitable opportunities to the U.S.

The petitioner submitted materials showing that he received awards from the [REDACTED]. The award which appears to be the most significant is a “Presidential Citation” which he received for “[c]ontribut[ing] to the development of the aviation industry through hosting major national defense technology business and policy consulting and technical reviewing of private enterprises.” Background materials indicate that no more than 20 people receive the Presidential Citation in a given year; the petitioner was one of 18 recipients in [REDACTED].

The petitioner’s Presidential Citation was the subject of an article in [REDACTED]. The same publication subsequently issued an article about aircraft development efforts, which included a quotation from the petitioner. The petitioner was also the subject of a profile in the [REDACTED] in [REDACTED] when he completed his doctoral thesis.

The petitioner submitted copies of the thesis and other articles and conference papers he has written. The petitioner did not claim or establish that any of his work was published outside of Korea after he

completed his graduate studies in the 1990s. The petitioner claimed only one article published after [REDACTED], specifically “[REDACTED]” in the [REDACTED]. The [REDACTED] article did not report research in aerospace engineering, but rather “reviewed the importance and meaning of international joint development by briefly introducing the history and current status of the cooperation between” [REDACTED].

The introductory statement submitted with the petition discussed the importance of citations in the context of establishing the reputation of a journal where one of the petitioner’s articles appeared, but the petitioner did not make any claims about the citation of his own published work. Evidence about the reputation of a given journal does not mean that the petitioner’s work has a comparable reputation by virtue of appearing in that journal.

The director issued a request for evidence on September 24, 2013. The director stated that the petitioner made inconsistent statements regarding the field in which he intends to work in the future, calling himself a “researcher” while submitting a business plan indicating that the petitioner, according to the director, “intends . . . to engage in a consulting business to be named the [REDACTED].” The director stated: “While the [petitioner’s] educational credentials are in the field of aerospace engineering, the work of the [petitioner], both currently and as proposed for the United States, relates to the field of government policy making and procurement relative to the aeronautical and defense industry.” The director also stated that the petitioner had not met the three-pronged test set forth in *NYSDOT*.

In response, the petitioner submitted copies of previously submitted materials, as well as a new letter and a revised business plan. An accompanying statement reads, in part:

As [the petitioner] plans to provide “a one-stop service” with distinguished experts from the fields of technology, policy, contract, negotiation and other legal areas, the U.S. companies can benefit from more cost-effective and time-saving consulting service.

Since the additional business of [the petitioner’s] research center is also to provide consulting service based on his research findings, he can carry out his plans to work both as a researcher and business consultant by establishing a research center named the [REDACTED] . . . in the United States. . . .

[The petitioner] has been a leading researcher in this field of aerospace engineering as one of the pioneers in these studies. . . . Moreover, his expertise has led him to publish and present numerous academic articles and participate in various national projects, which have led him to make great contributions to development of the military technology and national defense in Korea. . . .

[The petitioner] has definitely secured a nationwide standing as a seminal figure in the field of aerospace and defense as an expert aerospace engineer as well as a researcher.

The petitioner has not established that he “has been a leading researcher” or a “pioneer” of aerospace engineering. 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)). The unsupported assertions of counsel do not constitute evidence. *Matter of Baigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, while the petitioner has held important positions in South Korea’s defense community, the petitioner has not established how his “contributions to development of the military technology and national defense in Korea” benefit the national interest of the United States. The petitioner has not shown that he has developed military technology that the United States does not possess. Rather, his business plan reflects an intention to sell United States technology to South Korea. The petitioner has claimed that his doctoral thesis introduced new concepts into the design of helicopters, but the record does not show that any manufacturer of helicopters has adopted those concepts.

The petitioner’s revised statement, now entitled “Personal Expertise and Future Research & Business Plan,” reads, in part:

The ultimate purpose of my research is not only limited to academic theoretical study in the field of aerospace engineering, I would like to expand my study to contribute to the military and the society economically and practically. Thus, in [the] long term, I plan that my research will provide techniques and advices which proper [*sic*] to the professional development. . . . On the basis of the short term research activities, I would like to carry out business providing advanced techniques and consultation to the companies in the U.S. . . .

The major strength of my research is to integrate the specific requirement of an aircraft into a generic conceptual design using an Integrated Product/Process Development methodology. This research was accomplished by using a unique approach to conceptual and early preliminary aircraft design. . . . This kind of process and information are very evolutionary for the concept of traditional design. . . .

Based on [my] experience, I will be able to research the future-promising convergence technology and train talented people that are needed in the United States. Researching in such field of study at a university or an institute, I would not only develop advanced and innovative products but also train professional manpower . . . lead[ing] to the development of the new technologies in the field of the national future industry. . . .

Therefore, as my short-term plan, I would like to conduct researches in the field of aerospace engineering and train the future experts. Based on my short term plan, I will provide the proper output of research with my unique experience and professional knowledge by working as the research consultant. Therefore, my proposed employment is covering not only the researcher in the short-term but also the consultants in the long-term.

Dr. [REDACTED] professor at [REDACTED], stated that the petitioner “is one of the pioneering researchers in the field of aerospace engineering, who [is] nationally and internationally recognized [for] his significant contributions.” Dr. [REDACTED] made a general reference to the petitioner’s published and presented work, and asserted that the petitioner’s doctoral thesis “could be actually applied to the optimal design of helicopters and also suggested [a] new and revolutionary approach.” Dr. [REDACTED] did not indicate that any manufacturers actually had used the petitioner’s work in that way in the [REDACTED] years following the paper’s completion in [REDACTED]. The remainder of Dr. [REDACTED] letter is, in essence, a description of previously submitted materials and the petitioner’s employment history.

Dr. [REDACTED] stated: “I completed my Ph.D. degree in aeronautical and astronautical engineering” in [REDACTED] but all of his subsequent claimed employment has been in mechanical engineering, dealing with such topics as “soldering and surface mount technology” and “electronics packaging,” with no evident emphasis on aerospace engineering.

The director denied the petition on April 28, 2014, stating that the petitioner had established that his intended work in the aerospace industry has intrinsic merit, and that the benefit from that work will be national in scope, but that the petitioner had not met the third prong of the *NYS DOT* national interest test. The director stated:

Based upon all the documentation provided, the petitioner has not demonstrated that he will present a significant benefit to the field of endeavor of aerospace research since [he] proposes to come to the United States to work in another field of endeavor – a weapons sales and procurement consultancy business . . . to be called the “[REDACTED]” . . .

[E]ven considering that a minority one third of the proposed business may be said to be collaterally related to aerospace research, the petitioner/beneficiary, by his own self-admission, states that he will serve in a managerial (rather than a research) capacity. . . .

[I]t plainly appears that the [petitioner] proposes to come to the United States to leverage his intimate knowledge of and connections with the South Korean military and government to establish a new military sales and procurement business.

In an affidavit submitted on appeal, the petitioner states:

My unequivocal intent is to come to the U.S. and work in the field of aerospace engineering research. . . . [M]y initial plan overly emphasized a business venture, taking the focus away from how my credentials and qualifications will be used to benefit the national interest in the field of aerospace research.

. . . [My discussion] of the [REDACTED] was not meant as a description of the type of work I wish to engage in, but rather as a way of showing how my research work could provide broader benefits beyond the field of aerospace engineering. By no means is it my intent . . . to “leverage” my knowledge to establish a new military sales and procurement business. The description of the [REDACTED] was unnecessary as my interest is not in establishing a sort of business venture.

. . . [M]y research will enable the rapid integration of the military or international market’s specific aircraft or satellite requirements into a general conceptual design. . . . To this end, I have enclosed my revised research proposal.

The final sentence quoted above may refer to the petitioner’s statement in response to the RFE; the appeal includes no “revised research proposal.”

A statement accompanying the petitioner’s affidavit expands on the assertion that the petitioner’s principal goal is not to establish his own business as such, but to establish a framework in which he will be able to conduct research, relinquishing managerial functions as the “research center” grows and accumulates personnel.

The petitioner’s descriptions of his intended activities in the United States have lacked detail, and have changed throughout the course of this proceeding. The initial emphasis was clearly on business, but shifted toward research as the proceeding progressed, apparently in response to concerns that the director expressed in the RFE and, later, in the denial notice. 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); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Furthermore, the petitioner has not established how his proposed consulting/research activities would bring new benefit to the United States. The record indicates that the South Korean military already purchases significant quantities of equipment from manufacturers in the United States. The petitioner has not shown that he has any experience operating a business like the proposed [REDACTED], and therefore assertions about its future impact are only conjecture.

With respect to the petitioner’s research work, the record contains no recent evidence to show that he continued to perform research for any substantial period after he completed his graduate studies, or that his research has ever had a significant impact on the aerospace industry. Without such evidence, there

is no basis to conclude that his future work as a researcher will stand out to an extent that warrants the national interest waiver (which is a special benefit beyond the underlying immigrant classification).

The petitioner has had a distinguished career within the South Korean military, earning significant honors along the way. His stated plans for employment in the United States, however, have lacked both consistency and detail, and rest on unsupported assumptions about the future impact of his efforts both in business and in research.

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. 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.

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.