

(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

[Redacted]

DATE: FEB 04 2014 OFFICE: TEXAS SERVICE CENTER

FILE: [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,

9 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 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 is a graduate student at [REDACTED] studying for a doctorate in epidemiology. 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 brief from counsel and information about the citation history of an article published in *Environmental Health Methodology* in 2012.

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 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 petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on September 6, 2012. On Part 6 of the form, the petitioner indicated that she sought temporary, part-time, unpaid work as a graduate research assistant/teaching assistant. Describing the work on Part 6, line 3 of the petition form, the petitioner stated:

Performing literature reviews, entering data into spreadsheets and managed [*sic*] them. Using statistical software to produce results using this data on topical issues such as health effects from environmental chemical pollutants and poor vision and obesity. Conducting several searches and produced [*sic*] proposal on a pilot patient cancer navigation program in Appalachia. Providing in-class

The description cuts off at that point due to lack of space. The petitioner may have entered more information on the electronic version of the form, but the printout in the record does not include that information.

In a statement accompanying the petition, counsel stated:

[The petitioner] has conducted extensive studies in [redacted] Alabama testing the health effects of exposure to polychlorinated biphenyls (PCBs), a well known environmental contaminant, on the community. . . . One of the significant findings of this study was the finding of associated health effects of PCBs including diabetes and heart disease. . . . This study also provided the necessary support for policy that allowed the establishment of a free diabetes clinic. . . . It has also led to further research on the effects of chemical environmental pollutants. [The petitioner] was crucial to this project. She has personally spent a great amount of time and effort conducting hundreds [of] health interviews and recruiting participants for the clinical evaluations. . . .

The Appalachian region has high rates of cancer morbidity and mortality. This is due in particular to the lack of access to treatment in the region. [The petitioner] created a pilot patient cancer navigation program that is aimed at reducing the time of diagnosis and reduc[ing] the barriers to access to healthcare. . . . Her research is directly impacting navigation services throughout the country that allow cancer patients to receive full services. Her studies are also affecting the framework of healthcare reform being implemented in the country including the [redacted] for which she was [sic] reviewed the proposals for Federal Government agencies. . . .

Her findings have been used by the CDC [Centers for Disease Control and Prevention], the [redacted] an[d] the [redacted]

[The petitioner] has been and continues to be internationally recognized as an outstanding researcher in her field.

[The petitioner's] publications have contributed to significant projects such as the [redacted] program.

Counsel stated that the petitioner "has also published several works in the [redacted] journal." The record contains printouts of two abstracts showing the logo of that journal, but no evidence that the journal published full articles by the petitioner. Instead, other materials in the record (such as printouts of electronic slide presentations) indicate that the abstracts relate to conference presentations.

An electronic mail (email) message from the journal's editorial office acknowledged the submission of a third manuscript. The date of the message is February 18, 2011, a year and a half before the petition's filing date, but the record contains no evidence that the journal accepted the third paper. All three papers concerned studies relating to obesity and visual impairment, rather than the subjects counsel discussed in the introductory statement.

The petitioner submitted a printout of an email exchange between herself and Dr. [REDACTED] associate professor at the [REDACTED] discussing "the manuscript." On December 15, 2011, Dr. [REDACTED] stated: "I'm hoping we can get it wrapped up on the next few months. If you're too busy one option is to have someone here at [REDACTED] finish it up (in which case we'd still keep you on as a coauthor." An accompanying manuscript discussed "the association between PCBs exposure and age at menopause." The record does not indicate that the manuscript was published or submitted for publication.

The petitioner submitted several witness letters, providing different levels of detail regarding the petitioner's work. Dr. [REDACTED] senior science advisor for the CDC, stated that the petitioner's "work here at CDC related to a project known as the [REDACTED] [The petitioner's] duties were largely related to data entry."

[REDACTED] then a grant coordinator for [REDACTED] [REDACTED] explained that the petitioner's work for that office was not publicly available:

During the Spring 2011 term [the petitioner] completed a background paper for . . . the [REDACTED] program. [The petitioner's] work was a background paper we used to inform a one-page summary about patient navigation in Appalachia. So [the petitioner's] paper itself wasn't shared, but what we did share included information from her paper. The only people who saw [the petitioner's] full white paper were our staff who worked on the project at that time.

Ms. [REDACTED] indicated that program presentations "did not include [the petitioner's] background paper, or a reference to her background work."

[REDACTED] executive director of [REDACTED] stated:

[The petitioner] contributed a great deal to a significant project regarding cancer in the Appalachian region of the United States. She had the responsibility for developing a white paper that describes navigation services now emerging throughout the country that assist cancer patients to achieve full involvement in a continuum of cancer care. In doing so, [the petitioner] used multiple sources of information, demonstrated her research skills and her ability to reconceptualize programs as services that interface health systems and their patients. The significance of her work, and that of the resulting study conducted by state comprehensive cancer control

coalitions from eight different states, is now being seen as instrumental to promoting navigation services within health systems across the Appalachian region. . . .

The cancer navigation work completed by [the petitioner] is part of a broader rural Appalachian cancer program. . . . As such, her work has been shared within those Federal agencies and by them to other national associations concerned with cancer care and outcomes.

Professor [redacted] stated:

I was the thesis advisor for [the petitioner] when she was at the School of Public Health in 2006-2007. She did her thes[is] on the risk of diabetes associated with exposure to PCBs in a contaminated area of [redacted]. She gathered a great deal of raw data from interview. She proved to be [a] tireless, energetic, and highly effective interviewer, with a personality enabling her to get things done. She then analyzed the data obtained and did an excellent job on her thesis. Her medical background served her well in this endeavor.

Prof. [redacted] described the work that the petitioner undertook for her thesis project, but did not establish the impact of that work or show how it differed from the work of other graduate students. The letter specifically mentions the petitioner's "application for permanent residency," but the date on the letter is November 4, 2010, nearly two years before the petition's filing date.

Dr. [redacted] associate dean in [redacted] stated:

I served as the co-principal investigator for a CDC-funded study of effects of polychlorinated biphenyls (PCBs) in [redacted] Residents. . . .

[The petitioner] is currently involved in investigating health effects of polychlorinated biphenyls exposure on female endocrine system and expression profiling of gene environmental interaction in PCB exposure.

. . . [The petitioner's] work is very important in that it may have application regarding policy development in environmental/chemical endocrine disruptors.

Such an understanding of the epidemiological effects of this type of exposure will possibly allow early management and monitoring of such a disease process. This work has been accepted for publication by the [redacted] and findings will be made publicly available. The manuscripts are in the stage of peer review process.

[The petitioner] also conducted important research at [redacted] regarding PCBs. She analyzed the effects of PCBs and diabetes, heart disease, and fasting

blood glucose. Her findings indicated that individuals with low exposures to PCBs over a significant period of time may have increased risk of developing diabetes from PCB exposure. This information is extremely relevant for development of environmental health policy.

The assertion that “manuscripts are in the stage of peer review process” appears to contradict the claim that the “work has been accepted for publication,” because a scholarly work is not “accepted for publication” until and unless it has completed the “peer review process.” Dr. [REDACTED] did not identify any journal that had accepted an article by the petitioner for publication, and the petitioner submitted no such evidence from the publisher of any such journal.

Dr. [REDACTED] identified above, stated:

[The petitioner] and I conducted a study of community health in [REDACTED] as part of a team of researchers from many universities. . . .

[The petitioner’s] contributions to the research project were crucial. For over a year, she drove from [REDACTED] nearly every weekend in order to conduct health interviews and recruit [REDACTED] residents for clinical evaluations. [The petitioner] personally recruited and interviewed hundreds of study participants. . . . Study results were presented at national scientific meetings and in major scientific journals, and we anticipate additional publications during the next few years. . . .

[The petitioner] has recently revisited these data in order to pursue innovative analysis of reproductive health in the [REDACTED] community. She has authored a scientific manuscript demonstrating associations between toxic chemical exposures and health problems in [REDACTED] which is currently under review by our research consortium. Having personally conducted most of the interviews, [the petitioner] is uniquely suited to interpret our data for the scientific community.

Dr. [REDACTED] identified three journal articles published between 2010 and 2012, but the record does not indicate that the petitioner was a credited coauthor of any of those articles. Dr. [REDACTED] own *curriculum vitae* listed the earliest two of the three articles, and identified their coauthors. Neither listing shows the petitioner’s name, and there is no indication (such as the notation “*et al.*”) that some authors’ names were omitted for space.

[REDACTED] of the [REDACTED] at the U.S. Department of Health and Human Services (HHS), stated:

I have known [the petitioner] since the summer of 2009 when she came to the [REDACTED] to complete her field practicum as a prerequisite for graduating with her doctoral degree from [REDACTED]. . . . [REDACTED] leads the development and implementation of the [REDACTED]

[The petitioner's] practicum internship coincided with the development of the latest set of national health objectives – [REDACTED] – which allowed her to apply her expertise in epidemiology to help shape the development of national public health policy. [The petitioner's] work at [REDACTED] related to several projects that led to the successful launch of [REDACTED] in December 2010.

. . . [The petitioner's] highly honed skills and knowledge of data systems contributed to the scientific validity of the [REDACTED] objectives, of which there are 1,194. She participated in the review of the proposals from Federal government agencies seeking to develop objectives for inclusion in [REDACTED]. The process required a thorough review of each of the proposed data sources to ensure that they met the scientific rigor and standards required by HHS. In particular, she reviewed survey design, methodology and appropriateness of data sources. Impressed with [the petitioner's] competence in this area, the [REDACTED] invited her to work with a team of statisticians responsible for ensuring the statistical integrity of [REDACTED]. The fruits of her can be credited, in part, with the integration of the [REDACTED] objectives into the HHS Health Indicators Warehouse (www.healthindicators.gov) which [REDACTED] maintains.

While [the petitioner's] primary role in the development of [REDACTED] pertained to epidemiological and statistical matters, she also made significant and lasting contributions in other areas. She assisted in the determining methods for setting and calculating targets for objectives. She helped break new ground in the burgeoning areas of aging, genomics, social determinants of health, food safety, and health information technology by evaluating the previous decade's objectives for adequacy and relevance and identifying gaps that needed to be addressed. She was a member of a workgroup that developed criteria for the selection of evidence-based and best practices for the implementation of [REDACTED] objective. As part of this effort, she performed extensive literature reviews and background research, which included study of programs and policies within and outside HHS. She also facilitated meetings between interagency groups working on the development of the resources and intervention section of the [REDACTED] Web site.

In summary, [the petitioner's] expertise and contributions were pivotal to the timely launch of [REDACTED]. She played a unique role in the [REDACTED] objective development process where she demonstrated exceptional qualities and abilities in providing crucial and relevant ideas that will continue to have a positive impact in the field of public health.

The last quoted letter contained the longest description of the petitioner's work, but provided little information about what that work entailed apart from "literature reviews and background research."

The director issued a request for evidence on November 16, 2012. The director listed the petitioner's evidentiary submissions, and stated: "Although the evidence indicates that the petitioner has a strong academic background and has some contributions in the field, however, the evidence does not sufficiently demonstrate that the petitioner's contributions have been significantly greater than the majority of other workers in the field." The director stated that "the petitioner has written two short research reports," but that "[t]he documentation submitted does not show that the petitioner's [sic] has published scientific research papers in recognized journals."

In response, counsel asserted "that there was a lack of proper review and evaluation of the evidence in the record." Counsel stated: "While it is true that there may be many graduates undertaking research, [the petitioner] has shown herself to be considered above and beyond other researchers who have achieved a similar academic plateau." Counsel contended that the petitioner "served as a key asset" to the CDC's efforts to study the effects of PCBs on the population of [REDACTED]. To support this claim, counsel stated that the petitioner's "Master's Thesis is currently listed with the Library of [REDACTED]" and cited a March 29, 2008 email message from Dr. [REDACTED] stating that it named the petitioner "as being one of a limited number of individuals who were considered to have been instrumental in the project."

Regarding Dr. [REDACTED] message, the March 2008 email chain includes a copy of an abstract for a paper entitled "[REDACTED]". The abstract identified eight individual authors and the [REDACTED]. The petitioner was not one of the eight identified authors. One of the credited authors, [REDACTED], replied with the comment: "I am still rather disappointed (as are [REDACTED] and [REDACTED]) that they were not named specifically. They really worked very hard on this." Dr. [REDACTED] responded:

I do very much appreciate the hard work everyone has put in and continues to put into the consortium efforts. Certainly [REDACTED] and others have been instrumental in the overall project or one of its components. It may be possible to revisit this and add more authors. . . . However, my understanding . . . is that only up to 5 or 10 individual authors and the [REDACTED] would be listed on each individual abstract/paper.

In context, the message did not single out the petitioner. Rather, it indicated that "the consortium efforts" involved a large number of researchers, including the petitioner, ten other named researchers, "and others," beyond those whose contributions warranted author credit. When Dr. [REDACTED] forwarded the exchange to the petitioner on January 23, 2013, he added the prefatory statement that "[w]e ended up withdrawing this abstract because the different study investigators wanted to publish results individually rather than together." This publication strategy would have allowed author credit for more researchers, but the record does not show that this resulted in a credit for the petitioner. Rather, Dr. [REDACTED] suggested: "You could also include your MS thesis as a work product; I believe it is publicly available at the [REDACTED] library in which case it is a publication – though not a peer reviewed journal article."

Regarding the claim that the petitioner's "Master's Thesis is currently listed with the Library of [REDACTED]" counsel cited "Exhibit 3C." Exhibit 3c is a partial copy of the thesis itself. The petitioner did not submit evidence from [REDACTED] to establish what the university did with the petitioner's thesis, or to show that the university treated the petitioner's thesis any differently, with regard to preservation or public access, than it treated other master's theses at that university. In the acknowledgments of the thesis, the petitioner stated: "My involvement with the [REDACTED] Health Study was not only as a research interviewer conducting face-to-face interviews and recruiting study participants for the study, but also performed secondary data analysis on de-identified data from [REDACTED]"

The record establishes the overall significance of the [REDACTED] study, but it does not follow that every researcher involved in the study made a contribution as significant as the study itself. The record does not show that the leaders of the [REDACTED] considered the petitioner's contributions to be significant enough to warrant author credit in any published, peer-reviewed articles.

Counsel asserted that the petitioner "was also heavily involved in the success of . . . the Appalachian project." The documentation submitted to support this claim concerned the project itself rather than the petitioner's role in that project.

The documentary evidence in the record describes the [REDACTED] and Appalachian studies, but not the petitioner's roles therein. The waiver claim, therefore, rests heavily on witness letters. Counsel cited unpublished appellate decisions to establish the importance of these letters. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. The letters in the first submission included divergent descriptions of the petitioner's role in the research, ranging from lengthy but vague discussions to the assertion that her "duties were largely related to data entry." Rather than show that the petitioner's contributions stood out in the field, much of the available information, including some witness letters, indicate that the petitioner's activities were standard requirements for graduate students in her field.

Newly submitted letters, like those submitted initially, are from the petitioner's collaborators, superiors, and officials of entities where she has worked or studied. Three of the five letters are from prior witnesses. One of those letters, from Prof. [REDACTED], is dated February 6, 2013, but is otherwise identical to Prof. [REDACTED] November 4, 2010 letter, even including the same erroneous use of the word "these" instead of "thesis."

Three witnesses indicated that the petitioner's role in the [REDACTED] study consisted of "data collection." The witnesses stated that this collection was important because other researchers then studied the data to draw their various conclusions. The three witnesses are Dr. [REDACTED] identified previously; Dr. [REDACTED] and [REDACTED] Dr. [REDACTED] stated: "This project led to two peer-reviewed journal publications . . . in [REDACTED]" but the record does not indicate that the petitioner was a co-author of either of

those publications. The emphasis on data collection indicates that the petitioner provided a support function, providing raw information that the project's credited researchers then used in their studies.

█ in her second letter, stated that the petitioner "was one of 4 individuals who completed background papers" for the Appalachia project at █ and that the petitioner's "background paper was used to inform a one-page summary about . . . how cancer patients are assisted in making sense of the complex healthcare systems." Ms. █ also repeated her previous assertion that the petitioner's "paper itself was not shared, and was not publicly made available," and that "[p]resentations about this project . . . have not shared [the petitioner's] paper, and only reference our one-page summaries in passing as they were not the focus of the work. . . . [T]he background papers provided by [the petitioner] and the other individuals have not been further utilized." This letter, like the three discussed above, indicates that the petitioner played a supporting role as a gatherer of information rather than as a front-line researcher.

The director denied the petition on May 3, 2013. The director found that the petitioner's occupation has substantial intrinsic merit, but that "the beneficiary's proposed employment will not be national in scope." The director stated that "[t]he petitioner must demonstrate that her contributions have been substantially greater than other workers in the field," and that the evidence submitted did not meet that threshold. The director quoted some of the witness letters, and stated that the "letters generally focused on the petitioner's data collection activities." The director also stated that, while the research projects yielded published articles, the record does not include any full articles that list the petitioner as a co-author.

On appeal, counsel asserts that the director did not properly apply the second and third prongs of the national interest test articulated in *NYSDOT*. The petitioner submits citation data regarding █ a paper published in █ that used data collected by the petitioner. The petitioner is not a credited co-author of the paper.

The "national scope" prong of the *NYSDOT* national interest waiver test relates to the intended occupation, rather than to the petitioner individually. In this instance, the petitioner specified her proposed job title as "Graduate Research Assistant/Teaching Assistant." This, however, is not an occupation as such. The petitioner indicated that the position would be unpaid, part-time, and temporary, coinciding with her doctoral studies. The wider field, in which the petitioner presumably seeks eventual employment, is epidemiological research. That field produces benefits that are national in scope, because even when research focuses on a specific geographical area (such as █ or Appalachia), the findings can have broader implications (for instance, regarding environmental pollutants or availability of medical care). The petitioner's occupation, therefore, meets the second (national scope) prong of the *NYSDOT* national interest test.

The petitioner has not, however, established error in the director's finding regarding the third *NYSDOT* prong. Counsel contends that the director erred because the director required that the petitioner's "contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver." Counsel states:

Nowhere does the decision [*i.e.*, *NYSDOT*] require the petitioner [to] show their impact on the field be ‘of such unusual significance’ as does the Service in its Denial. We submit that the proper standard is articulated by the AAO in footnote 6 of [the *NYSDOT*] decision:

“The alien, however, must have established . . . a past history of demonstrable achievement with some degree of influence on the field as a whole.” This is a discernably different standard than of such unusual significance and [the petitioner’s] application should be reviewed in the proper context.

The disputed passage appears in a paragraph on page 4 of the denial notice. The complete paragraph reads as follows:

At issue is whether this beneficiary’s contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver. A petitioner must demonstrate that the beneficiary has a past history of achievement with some degree of influence on the field as a whole.

In stating that the director applied the wrong standard, counsel quotes the first sentence of the above paragraph but omitted the second sentence. The omitted language articulates the very standard that, counsel claims, the director failed to apply. By counsel’s own reasoning, the director’s use of that language in the decision is evidence that the director applied the correct standard. Elsewhere in the decision, the director quoted or paraphrased other elements of *NYSDOT*. A single sentence from that decision, quoted out of context, does not establish that the director failed to follow *NYSDOT*.

Counsel, on appeal, does not explain how the petitioner has met the *NYSDOT*-derived standard of eligibility. Counsel offers only the general assertion that “we provided evidence related to the projects that [the petitioner] has been involved in during her career, and the extent to which her contributions have served to impact and influence her field of study.”

The record does not establish that the petitioner conduct research that influenced the field as a whole. Rather, she performed data-gathering functions in service of research projects undertaken by others, and in at least some instances, the information she collected was made available only to specific research groups rather than disseminated throughout the field, thus limiting its impact. The petitioner’s work appears to be several generations or layers removed from the published work that ultimately resulted. Some witnesses specified that the petitioner, by collecting this information, was performing a function that is a requirement for completing her graduate degree. Performance of required graduate work does not inherently rise to the level contemplated in *NYSDOT*, and the provision of support to a research project does not constitute influence on the field.

The data collection process is important to individual projects, because the researchers base their work on that data. In this sense, the petitioner played an important role in the [redacted] and Appalachian projects. Playing an important role in a given project does not qualify the petitioner for

the waiver, however, if a competent and available U.S. worker could fulfill that same role. The alien must present a significant benefit to the field of endeavor. *NYSDOT* at 218. Here, the record shows that the projects required the data that the petitioner collected, but it does not show how the results would have been any different if someone else had collected the data. The petitioner seeks an exception from a requirement that normally applies to the classification she seeks. She must, therefore, establish impact and influence that would warrant such an exception. The basic importance of the occupation itself speaks to the intrinsic merit prong of the *NYSDOT* test, not to the impact and influence of the petitioner as an individual.

The petitioner was still a graduate student at the time she filed the petition. The evidence of record indicates that, prior to the filing of the petition, she played supporting roles in projects, consistent with her position as a trainee who had not yet achieved full professional qualifications in her intended field.

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. *NYSDOT* at 217, n.3. More specifically, the petitioner “must clearly present a significant benefit to the field of endeavor.” *Id.* at 218. *See also id.* at 219, n.6 (the alien must have “a past history of demonstrable achievement with some degree of influence on the field as a whole.”).

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 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.