



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 05 2014 Office: NEBRASKA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Nebraska Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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.¹ The petitioner states that he seeks employment “as a food scientist or food science professional.” At the time of filing, the petitioner was working as a Residential Advisor at [REDACTED], a nonprofit organization in Kansas serving individuals with developmental disabilities. 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 additional documentary evidence.

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 petitioner received a Ph.D. in [REDACTED] in 2011. The director determined 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.

¹ According to Form I-94, Arrival-Departure Record, the petitioner was last admitted to the United States on January 20, 2009 as an F-1 nonimmigrant student.

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).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

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

In re New York State Dept of Transportation, 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 he 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 he 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 his past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s subjective assurance that he will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the petitioner, rather than to facilitate the entry of an individual with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

Eligibility for the waiver must rest with the petitioner’s own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner’s area of expertise cannot suffice to establish eligibility for a national interest waiver. *NYSDOT* at 220. At issue is whether this petitioner’s contributions in the field are of such significance that he merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification he seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner’s achievements, original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

In support of his petition, the petitioner submitted academic records; letters commenting on his experience as a food science researcher at [REDACTED] earnings statements; and a June 26, 2008 letter informing the petitioner that he was “being considered for inclusion into the [REDACTED]” and that he should complete an “application form” to be included in the registry. Particularly significant awards may serve as evidence of the petitioner’s impact and influence on his field, but the petitioner has failed to document his actual inclusion in the registry, or to demonstrate that being “listed among thousands of accomplished professionals in the [REDACTED] Registry” constitutes an award indicative of influence in the field of food science. Regardless, academic records, occupational experience, salary, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. See 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (D) and (F), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. See section 203(b)(2)(A) of the Act. 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 individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his field of expertise.

In addition, the petitioner submitted copies of his published and presented work, and letters of support discussing his activities in the field.

[REDACTED] stated:

[The petitioner] began his multidisciplinary doctoral studies at [REDACTED] in the Fall of 2007, when I hired him as a research and teaching assistant; as a graduate student in my interdisciplinary Frontier program, he helped support the development of classroom-based as well as online courses related to food safety, the multilateral trading system, and health regulation of the agricultural and food trade. [The petitioner] has [] excellent teaching abilities, which I observed through his impressive leadership in my USDA [United States Department of Agriculture] funded ([REDACTED] training sessions related to sanitary (food safety and animal health) and phytosanitary (plant health) trade policy. In these sessions, he took full responsibility for teaching entire summer-long courses for visiting agricultural and trade officials from Thailand (summer 2008) and Egypt (summer 2009). . . . [The petitioner’s] role in developing and administering undergraduate and graduate-level courses, and his leadership in my USDA-funded training sessions underscores his unique teaching ability.

[REDACTED] comments on the petitioner’s “unique teaching ability” as a teaching assistant at [REDACTED]. However, it cannot suffice to state that the petitioner possesses useful skills, or a “unique background.” The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the U.S. Department of Labor through the labor

certification process. Special or unusual knowledge or training does not inherently meet the national interest threshold. *NYS DOT* at 221. In addition, [REDACTED] fails to provide specific examples of how the petitioner's specific work in developing and administering courses and training sessions on behalf of his academic supervisor has influenced the field as a whole.

[REDACTED] continued:

[The petitioner's] Ph.D. project focused on U.S. food import safety and security issues, and the population-based risks faced by U.S. consumers of seafood products, including those that may be contaminated due to poor environmental agricultural practices. [The petitioner] also conducted, an in-depth study on ways in which the U.S. food safety regulators can improve the safety of food imports; his work was published in the 2011 [REDACTED]

[REDACTED] comments on the petitioner's Ph.D. project and article in [REDACTED] but there is no documentary evidence showing that the petitioner's Ph.D. work and published article have been frequently cited by independent researchers or that his findings have otherwise influenced the field as a whole.

[REDACTED] further stated:

As an interdisciplinary minded professional with a keen curiosity, he pursued several experiential learning opportunities to better understand contemporary and emerging issues in today's complex world. For example, he attended conferences and delivered talks in Ireland (a professional risk-based modeling software conference), Canada (international studies related to food science), Wisconsin (an import-security conference), Washington, D.C. (USDA and Homeland Security related meetings), and the U.S.-Mexico border (to observe and recommend ways of improving import security). [The petitioner's] research achievements have also been recognized internationally; in April 2012, the [REDACTED] formally invited him to present his work in China.

[REDACTED] points to the petitioner's attendance and participation in professional meetings and conferences. Many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. These meetings and conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. While presentation of the petitioner's work demonstrates that his findings were shared with others and may be acknowledged as original based on their selection to be presented, there is no documentary evidence showing that his presented work has specifically impacted food import safety practices, that his work is frequently cited by independent researchers, or that his findings have otherwise influenced the field as a whole.

[REDACTED] stated:

I have known [the petitioner] since 2007 in my capacity as a faculty member of the Food

[The petitioner] recently defended his Ph.D. research within the inter-departmental Food the hallmark of this program is its focus on interdisciplinary graduate education.

* * *

As is evident from his dissertation title, for his doctoral research [the petitioner] focused on food safety risk assessments related to the safety of U.S. food imports from China. In the context of this work he has explored food safety problems that characterize U.S. food imports and the various technical, regulatory, and international trade policy approaches to solving the issues. In developing his research questions and methodologies, [the petitioner] sought to blend disciplinary insights in both domestic and international contexts so as to paint truer pictures of the food safety challenges faced by the U.S. He has made significant contribution to the academia and public through his research on U.S. import safety, population-based risk assessment on food contaminants, and protecting public health from food contaminants.

* * *

[The petitioner's] research has greatly contributed to a better understanding of the complexity of food safety issues as they relate to international trade, and the means of addressing U.S. import safety.

comments on the petitioner's doctoral research concerning food safety risk assessments, but she fails to provide specific examples of how the petitioner's findings are being applied by food safety professionals or have otherwise influenced the field as a whole. While the petitioner's Ph.D. research has value, any research must be original and likely to present some benefit if it is to receive funding and attention from the scientific community. In order for a university, publisher or grantor to accept any research for graduation, publication or funding, the research must offer new and useful information to the pool of knowledge. Not every researcher who performs original investigations or studies that add to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

continued:

[The petitioner] has considerable practical experience working as a food scientist in the food industry in his home country of Kenya, including in the farming, dairy, poultry, and sugar industries. His food industry skills and experience will be of greater national interest to the U.S., which continues to experience a shortage of qualified food science professionals to serve as public health inspectors, food safety auditors, food technologists, food safety managers, educators, et cetera.

comments on the petitioner's food industry skills and experience, and asserts that there is "a shortage of qualified food science professionals" in the United States. The unavailability of qualified U.S. workers or the amelioration of local labor shortages are not considerations in national interest waiver determinations because the alien employment certification process is already in place to address such shortages. *NYS DOT* at 218. Again, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor through the alien employment certification process. *Id.* at 221.

stated:

I first knew [the petitioner] through his major professor who recommended him for professional training at our headquarters in

I had the opportunity to interact with [the petitioner] during his training at our headquarters in and later when he was invited for a professional user-conference to present a paper on his research findings. [The petitioner] presented an excellent paper on his research, which involved conducting chemical contaminant exposure assessment on certain vulnerable demographic segments of the U.S. population. His study sought to determine the extent to which the vulnerable U.S. subpopulations were at risk from chemical contaminants in seafood imports. [The petitioner] is one of the best trained persons on the use of tool for food safety risk assessment; during his research, he interacted extensively with software engineers, who from time to time assisted him whenever he faced technical problems with [The petitioner] is a food scientist by profession, and his skills in food sciences as well as food safety risk assessment will be of great value to United States.

Since I have known him, [the petitioner] has shown a high level [of] professionalism by his extensive knowledge in conducting food safety risk assessment on microbial and chemical contaminants in food.

points to the petitioner's knowledge and training on utilization of the tool for food safety risk assessment, but any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for alien employment certification. *NYS DOT* at 220-221. In addition, while asserts that the petitioner "presented an excellent paper" at the user-conference, there is no documentary evidence showing that his research findings have been frequently cited by other food scientists or that his work has otherwise influenced the field as a whole.

In response to the director's request for evidence, the petitioner submitted a copy of a single article citing to his research work. The petitioner has not established that this level of citation is indicative of his influence on the field as a whole. Frequent citation by others is not the only means by which to show the petitioner's impact on his field. Independent reference letters can play a significant role in this respect. Here, however, the petitioner has submitted no such letters from independent

references. Instead, the above letters are limited to individuals who have trained and educated the petitioner. While such letters are important in providing information about the petitioner's role in various projects and his professional development, they cannot by themselves establish the impact of his work beyond his educators and trainers.

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 the petitioner's references are not without weight and have been considered 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 a petitioner's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's professional contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by a petitioner in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a food scientist who has influenced the field as a whole.

The director denied the petition on May 17, 2013. The director stated that the petitioner had not shown that the benefits of his proposed employment are national in scope. The director also determined that the petitioner had "not established that his past accomplishments set him significantly above his peers such that a national interest waiver would be warranted." The director therefore concluded that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner does not mention the *NYS DOT* guidelines or explain how he meets them. Additionally, the petitioner does not specifically challenge any of the director's findings or point to specific errors in the director's analyses of the documentary evidence. Instead, the petitioner submits documentation of his appointments to positions as a researcher and a lecturer that post-date the filing of the petition. Specifically, the petitioner submits a July 12, 2013 letter from the [REDACTED] for Science and Education appointing him to the [REDACTED] at the U.S. Food and Drug Administration; the [REDACTED] public announcement; an August 15, 2013 e-mail from the Assistant Director for [REDACTED] [REDACTED] offering the petitioner employment as a "Part-time Lecturer" to teach online courses; the May 7, 2013 job announcement for the Part-time Lecturer position at [REDACTED] and an August 26, 2013 "Letter of Appointment" from the [REDACTED] of Professional Studies at [REDACTED]

offering the petitioner employment as a Part-time Lecturer for the 2013-2014 academic year. The preceding job appointments post-date the filing of the petition. Eligibility, however, must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, the job appointments offered to the petitioner after August 13, 2012 cannot be considered as evidence to establish his eligibility.

The director's finding that the petitioner failed to demonstrate that the proposed benefits of his work are national in scope is withdrawn. The documentation submitted by the petitioner is sufficient to establish that the proposed benefits of his work in the food science field contribute to U.S. public safety and therefore are national in scope. The petitioner, however, has not established that he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. The petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. While the petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that his influence be national in scope. *NYS DOT* 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"). 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.

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, that burden has not been met.

ORDER: The appeal is dismissed.