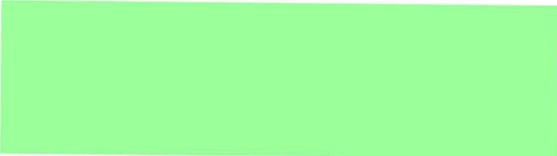


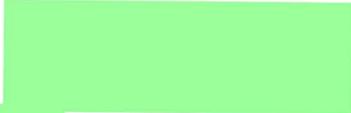
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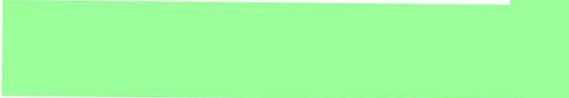
U.S. Citizenship
and Immigration
Services



DATE: FEB 21 2014 OFFICE: TEXAS SERVICE CENTER



IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 with post-baccalaureate experience equivalent to an advanced degree. The petitioner seeks employment as a senior process engineer in the petroleum industry. Materials in the record identify his employer variously as [REDACTED] and affiliated entities, [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 with the defined equivalent of 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 copies of previously submitted letters.

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 with progressive post-baccalaureate experience equivalent to an advanced degree under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). 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 June 4, 2012. The petitioner submitted copies of certificates establishing his academic and vocational training, including several corporate in-house training programs, membership certificates from professional organizations, and documentation of his past compensation. The petitioner submitted these materials primarily to support his claim of exceptional ability in the sciences. Under section 203(b)(2)(A) of the Act, aliens of exceptional ability in business are typically subject to the job offer requirement.

The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability in business” as “a degree of expertise significantly above that ordinarily encountered in business.” Therefore, such a degree of expertise is not sufficient by itself to warrant the national interest waiver.

In an introductory statement, counsel stated:

NYSDOT devotes substantial discussion to the test as to whether an NIW [national interest waiver] applicant may have the labor certification process waived. However, there will be no labor certification in this case as the applicant will be self-employed, notwithstanding that he has already secured a potential client, a situation which moots all labor certification discussion and is recognized under NYSDOT, Id at 218 footnote 5.

The cited portion of *NYSDOT* reads:

The Service [now USCIS] acknowledges that there are certain occupations wherein individuals are essentially self-employed, and thus would have no U.S. employer to apply for a labor certification. While this fact will be given due consideration in appropriate cases, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field.

Counsel noted that the petitioner has spent “almost the entirety of his career” in supervisory, managerial, or senior roles, “demonstrat[ing] that he is substantially more qualified than those with a bachelor’s degree and five years’ experience.” Counsel also quoted *NYSDOT* at 219 n.6, which called for “a past history of demonstrable achievement with some degree of influence on the field as a whole.” Counsel stated:

“Some” degree of influence is certainly less than “major” or even “significant” influence.”

In any event the clear meaning of this portion of NYSDOT is to preclude persons who have graduated with an advanced degree but have done nothing else. It is not designed to exclude any other category of applicant. . . . The Service in this regard is respectfully requested to take into account applicant’s leadership role with the Mexican petroleum company PEMEX to reduce sulfur emissions, leading an assessment of the Brazilian national oil company’s storage capacity, single handedly designing operational guidelines and other projects for the Venezuelan national oil company etc. . . . To do so many things at such a high level for so many countries clearly has had “some” influence on the field. . . . [T]he requirement of “some influence[”] means more than “no” influence and is not comparable to the significant contribution standard of an EB1 extraordinary ability case.

... NYS DOT excludes persons fresh out of graduate school and allows flexibility as to all other applicants. Applicant has had some as opposed to no influence on the field and thus is not subject to denial on that ground. Applicant has shown that his work will have intrinsic merit, will be national in scope and that he is substantially more qualified than the majority of his peers.

The initial submission included a 24-page statement, dated May 1, 2012, with the petitioner's digitally reproduced signature. The petitioner stated:

My professional success comes from a proven track record in successfully designing and implementing pioneering Process Engineering Methodologies that have optimized oil refining operations. . . .

Throughout the whole length of my professional career I have occupied key positions, such as Senior Process Engineer, Planning and Economics Supervisor, Process Engineering Manager, Interface-Integration Coordinator, among others, with some of the leading global corporations in the oil and natural gas industry, including [REDACTED] – one of the largest suppliers of oil to the US and the world's fifth largest crude oil producer; [REDACTED] a Venezuelan leading engineering firm focused in developing projects for the oil business in Venezuela & Middle East; and currently [REDACTED], a world leader in design, construction and installation of marine structures and process plants. I have also developed leading positions in the execution of important oil refining-petrochemicals projects for [REDACTED] – the biggest company in Brazil and the 8th biggest in the world in market value . . . and recently for [REDACTED] the biggest enterprise in Mexico, and one of the few oil companies in the world that develops all the productive chain of the industry, upstream, downstream and final product commercialization.

Currently, I work for [REDACTED] a leading global provider of engineering and construction services, technology products and integrated solutions to the oil & gas, refining & chemicals, mining & metals and power generation industries; and seconded on a full time basis to [REDACTED]

... [The] [REDACTED] [is] a US \$5,000 Million Dollar [sic] Project, part of [REDACTED] "Clean Fuel Initiative," that aims to ramp up the production and distribution of Ultra-low Sulfur Diesel among Mexico's largest and most polluted cities. . . . To accomplish the preceding, [REDACTED] has launched a massive "Infrastructural Modification Campaign" on six of its largest refineries in the country (Mexico) in order to generate the expected results.

As Interface/Integration Coordinator, I manage all process engineering activities related to the integration of new/revamped Plants Processes . . . to the existing refineries' facilities . . . [and] currently supervise 16 Senior Process Engineers. . . .

Presently, while working for [REDACTED] . . . , I have accomplished several milestones, including:

Successfully leading the Process Engineering Work on [REDACTED] . . . Project. . . . The project investment . . . will be accomplished in "phases" starting in 2010-12 with the Conceptual Engineering, where I am actively involved, followed by Basic and Detailed Engineering in 2013; construction in 2014-15; and final start-up of operations toward the end of 2015.

On this regard, I am responsible for the successful execution of all the "Conceptual Engineering" to be applied in six refineries . . . that [REDACTED] has chosen to "re-condition" in order to produce its much cleaner fuel. Moreover, the phase of the project that I am overseeing plays a critical factor in the successful completion of this US \$5000 Million-Dollar [*sic*] venture, since it is liable for the flawless integration of more than 65 newly built and revamped plants . . . into each of the refineries' existing infrastructure.

(Footnotes omitted.) The petitioner described various past projects in technical detail, and stated that his work led to several recommendations. In some instances, the petitioner specifies that the clients implemented the recommendations, but in the case of a [REDACTED] project he stated only that his "recommendations were greatly appreciated and taken into consideration by the Project Client."

The petitioner asserted:

My knowledge and skills in oil refining processes and technologies, with emphasis in clean fuel production, are among the best in the energy industry, worldwide. I am in the position to lead highly intricate and critical refining projects that demand unparalleled level of knowledge and an acute implementation of technical analysis. . . .

Moreover, my extensive professional background in the energy industry has provided me with the unparalleled capacity to provide leading edge improvement recommendations in energy efficiency, operational cost reduction, and environmental safety strategies that will allow strategically recovering, and further economic improvement of any company, sector, or government. . . .

Only a handful of experts in the world, such as myself, have the skills, abilities and knowledge to ultimately help [the] energy industry to tackle the above mentioned challenging tasks, while optimizing the nation's own resources.

The petitioner's own assertions regarding the significance of his work cannot establish eligibility. 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 petitioner stated: "As an expert in my field, I have authored several written works that have contributed and guided other professionals in my field, and have been used as a reference." The petitioner listed six manuals, technical reports, and presentations at corporate events, and two "papers developed for . . . college [that] are used as reference by the students of the institution." The petitioner submitted a partial copy of one of the eight listed items. "Development and evaluation of a project for the production of high-octane gasoline (100-130 octanes) based on Alkylation feed," is an undergraduate thesis that the petitioner completed in 1983 at the University of [REDACTED] Venezuela. The record does not contain confirmation from the university that the petitioner's paper is "used as a reference." The petitioner did not submit copies of the other listed items, or documentary evidence of their existence.

The petitioner submitted copies of several witness letters dated December 2010 and January 2011.

[REDACTED] now construction coordinator for [REDACTED], stated:

[The petitioner] is a relentless and natural-born problem-solver, with an extensive knowledge of heavy crude oil processing, chemical engineering, and a solid technical foundation, which have strengthened, even farther, his managerial skills. . . . I first became aware of [the petitioner's] professional excellence in his field of expertise as I was appointed Manager of the [REDACTED]. During this term, [the petitioner's] team was under my supervision. Moreover, I must say that his expertise in the subject of ethers, and more specifically [REDACTED] and [REDACTED] [sic]. The preceding project, worth approximately US \$55 Million Dollars [sic] allowed [REDACTED] the opportunity to establish a strong presence in the US market.

It is noteworthy to mention that this was a pioneering process, and as such, it generated further work aimed at identifying adequate engineering process studies that would meet the current needs of the project. On this line, [the petitioner], as leader of [the] process engineering team, was involved in every phase of the operation, from Basic and Detail Engineering to the development of the pilot plant's tests, and the construction of a fully functional system [REDACTED] production infrastructure. The successful outcome of this project was the subject of countless recognition by [REDACTED]s upper management, and the Venezuelan oil industry as a whole.

[REDACTED] production/planning/allocation supervisor for the [REDACTED] stated:

[I]n 2004 . . . [the petitioner] was appointed as Senior Planning & Economics Analyst at [REDACTED] and was subsequently seconded to the [REDACTED], a joint venture between [REDACTED]. The [REDACTED] was, at the time, one of the largest heavy crude oil processing plants in the Venezuela [sic], with a refining capacity of 180,000 barrels per day. During his term at [REDACTED] [the petitioner] was responsible for supporting all engineering requirements for successful completion of operational performance appraisals, warranty test run preparation, and economic evaluations on process changes in Hydrotreating/Hydrocracking and Delayed Coking Units. During his tenure at [REDACTED], one of the most exceptional contributions made by [the petitioner] was the development and implementation of the reliable and accurate “Monthly Operational Guidelines” . . . [that] serve as manuals for the operations personnel of the upgrader to adjust the production capacity of the plant via the optimal configuration of the infrastructure; hence maximizing revenue. The optimization is accomplished through the use of highly complex model[s] that include information on the availability and prices of raw materials, current market demands and prices for the products as well as operational limitations and other constraints. [The petitioner’s] timely and accurate development of the “Monthly Operational Guidelines” helped [REDACTED] to reach unprecedented levels of revenues in the neighborhood of US \$188 Million Dollars [sic.]

During his tenure at [REDACTED], [the petitioner] also embarked on several other challenging tasks that required from him, among other things, to single-handedly [sic] manage large, and very intricate, technical projects for [REDACTED]. Most of the projects that were implemented as a result of these initiatives contributed to [REDACTED] profitability.

The petitioner submitted a partially translated copy of the “Monthly Operational Guidelines” for January 2005. The document listed the company’s objectives for the month and contained several tables and charts.

[REDACTED] stated:

[The petitioner] is a renowned authority in the [REDACTED] which were widely used in the production of [REDACTED]. [REDACTED] are chemical compounds designed to increase the octane of gasoline; thus improving the power and economic characteristics of engines, while simultaneously lowering carbon monoxide and hydrocarbon contents. Moreover, under his careful lead, both of the previously mentioned technologies were successfully implemented at [REDACTED]. Hence, creating Millions of Dollars in additional profits to [REDACTED] between the years of 1998 and 2000.

. . . [The petitioner], as one of the highest technical authorities in the abovementioned subjects, was in charge of providing technical training to the operations and maintenance personnel operating these production units. On this line, I personally witnessed how he strategically covered a wide, and critical, range of issues including processes, planning and monitoring of the units.

. . . He is fluently [*sic*] in English and Spanish, with international exposure, knowledge of well-known worldwide service contractors and process licensors, in-depth familiarity with Latin American Culture and the global crude oil refining business.

[REDACTED], stated:

[The petitioner] is among the most brilliant and diversified oil refining process experts in the energy field that I have come across in my life. [The petitioner's] tremendous diversity as a top class process engineer is matched only by his prominence in each field of endeavor. During his tenure at [REDACTED] he was always top ranked among the entire corporation, with complete confidence of upper management. Proof of the preceding was his assignment, as Senior Process Engineer, to develop and lead a complex assessment study on [REDACTED] storage capacity, when faced with Processing Units Shutdown and Start-up events. The foregoing required from [the petitioner] to closely analyze key plant processes such as: Atmospheric D[i]stillation, Vacuum Distillation, Naphtha Hydrotreating, Catalytic Cracking, Steam Cracking, and Aromatic Hydrocarbon; just to name a few. In addition, he single-handily [*sic*] conducted a detailed assessment study on more than 80 storage tanks, each with a capacity to hold 633000 cubic meters (or 4 million Barrels)[.]

Moreover, [the petitioner's] groundbreaking findings and subsequent recommendations to optimize storage projections/logistics activities, and even a contingency plan to channel excess product via sales or redistribution to [REDACTED] other facilities made a positive impact on the company's outlook and growth strategy.

[REDACTED] stated:

[The petitioner's] extensive knowledge of crude oil, extra heavy crude oil and natural gas refining processes, in addition to his outstanding managerial and organizational skills, have made him a walking wealth of knowledge and the right candidate for any petrochemical-related operation that demands the best in his field of expertise. I met [the petitioner] during his tenure at [REDACTED] At the time, he was seconded to [REDACTED] one of the world's leading providers of technical, project and operational support services to the energy industry.

In fact, due to his exceptional work on the Aromatics Unit, [the petitioner] was assigned to develop the HAZOP [hazards and operability] studies for two different plants of the [REDACTED] commonly known as "[REDACTED]". As appointed "Specialist" to both projects, he was solely accountable for generating and further communicating to upper management acute information on the level of progress, timelines, and action plans in order to meet the company's objectives.

Needless to say, his flawless personal performance in the foregoing, while exceeding all expectations, made him the recipient of countless praises, not only from his colleagues, but also from [REDACTED] management.

[REDACTED] stated:

[The petitioner's] extensive managerial and business acumen have been constantly sought out, and praised, throughout his whole career with the corporation. Proof of the foregoing is his initial involvement as Interface/Integration Coordinator and recently as OSBL (Outside Batter Limit) Process Supervisor for [REDACTED] "Ultra-Low Sulfur Diesel" Project, which is part of the company's revolutionizing "Clean Fuels" Scheme. . . .

The project in all is worth approximately US \$5000 Million Dollars, and it is slated to start operations at the beginning of 2014.

On this line, anyone of merit at [REDACTED] can support the magnitude of [the petitioner's] professional accomplishment in these particular events.

The petitioner submitted a printout of "Contracts & Projects Tracker: April 2012" from the online publication *Process Engineering*. The document mentioned recent agreements into which [REDACTED] Solutions had entered with other companies, but there was no apparent specific mention of the petitioner or any of the projects described in the witness letters.

The director issued a request for evidence (RFE) on September 4, 2012. The director stated that the petitioner's initial submission "does not establish the beneficiary has a past record of performance which justifies projection[s] of future benefit to the United States." The director noted a lack of documentary evidence to establish the nature and extent of the petitioner's contributions to his field.

In response, counsel repeated the assertion that *NYSDOT* requires only "some influence on the field," and that the petitioner need not establish the extent or significance of that influence. Counsel also repeated the observation that "NYSDOT specifically states that self-employment for NIW applicants is allowed."

NYSDOT, consistent with the statute, acknowledges that a self-employed alien can qualify for the waiver, but there are no special provisions for self-employed prospective immigrants in either the statute or the regulations. Just as the job offer requirement (including labor certification) protects employment opportunities for U.S. workers (see *NYSDOT* at 218), the absence of a statutory provision allowing for the automatic immigration of self-employed aliens protects the opportunities of self-employed U.S. workers in terms of competition for customers and clients.

Counsel asserted: "it is apparent that applicant's many accomplishments necessarily had 'some' influence, just as it is apparent that applicant is more qualified than his colleagues." Counsel did not elaborate by providing any details or citing specific evidence in the record. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

The petitioner submitted a new statement, dated December 5, 2012. Much of the statement repeats or paraphrases the petitioner's earlier statement of May 1, 2012. Other sections of the statement are quotations from the RFE or from witness letters. Apart from these repetitions, the petitioner asserted that the accomplishments listed in his statement are "evidence that [he has] influenced the field as a whole," and that he had submitted "[t]estimonials from independent experts currently in high rank[ing] positions." The petitioner did not explain how the witnesses were independent, when those witnesses indicated that they had worked with the petitioner, or for his employers, in the past.

The petitioner submitted a graph showing that "less than 30% of the oil and gas professionals fall in the ages below 40," while the comparable figure in "a technology focused industry" amounts to 75%. The petitioner stated: "This pattern . . . means that there are not enough professionals to replace previous generations of professionals when the next round of high oil and gas demand arrives." The petitioner was 52 years old at the time he filed the petition. A claimed shortage of trained professionals in a given field is not grounds for the national interest waiver. See *NYSDOT* at 218. The petitioner warned of "catastrophic consequences to the nation's economy" "[i]f the U.S. petrochemical industry ceased to exist," but he did not demonstrate that the continued existence of that industry depends on his receiving the national interest waiver.

In contrast to counsel's discussion of self-employment, the petitioner stated: "I have an honest and solid job offer issued by [redacted]. A December 3, 2012 letter from [redacted] regional manager of [redacted] stated: "We currently recruit for a wide range of engineering industries. . . . We have talked with [the petitioner] about our potential clients and projects . . . and we are confident he will empower our future in this industry." A similar letter, dated December 17, 2010, had accompanied the initial filing of the petition.

The director denied the petition on May 7, 2013. The director acknowledged the substantial intrinsic merit of the petitioner's occupation, and that the benefit from that employment would be national in scope. The director found that the petitioner had not established a history of influential achievement that would satisfy the remaining third prong of the *NYSDOT* national interest test. The director

acknowledged the petitioner's evidence, but stated that the submitted materials did not establish eligibility for the waiver.

The director stated that the witness letters establish the petitioner's experience in his field and show that "[h]e is well thought of as an employee and as a colleague," and that he has "[e]xceeded the expectations of [his] employers." The director concluded that the record lacks documentary evidence to support the witnesses' claims about the significance of the petitioner's achievements. The director stated that the petitioner had not shown that his "contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver."

Counsel, on appeal, cites *Kazarian v. USCIS*, 580 F.3d 1030 (9th Cir. 2009) as stating: "Neither USCIS nor an [sic] AAO may unilaterally impose novel substantive or evidentiary requirements beyond those set forth in 8 CFR 204.5." *Id.* at 1033. The Ninth Circuit Court of Appeals subsequently withdrew the cited decision and issued a superseding decision, *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). The superseding decision contained the same quoted passage at 1121.

Counsel maintains that *NYSDOT* requires no more than "some degree of influence on the field as a whole," and that the director's added "unusual significance" requirement "is a violation of the Kazarian rule." Counsel states: "'Some' means more than zero. It is self-evident that applicant has had more than zero impact."

NYSDOT, read in its entirety, does not indicate that influence on the field secures the waiver without regard to the extent of that influence, nor does it indicate that the waiver is available to all except "persons fresh out of graduate school" whose qualifications exceed the minimum for a given position. By statute and regulation, a person who will substantially benefit prospectively the United States, by virtue of a degree of expertise significantly above that ordinarily encountered in a given field, remains subject to the job offer requirement. Section 203(b)(2)(A) of the Act; 8 C.F.R. § 204.5(k)(2).

Furthermore, it is not "self-evident" that the petitioner has influenced the field as a whole. The petitioner's work for a given employer may have internal influence on that employer, but the petitioner has not established his impact on "the field as a whole," which is the standard in *NYSDOT* at 219 n.6.

Documentation in the record shows that the petitioner has undertaken projects for his various past employers, but these exhibits do not establish that the petitioner's work has influenced his field (for example, by introducing new practices adopted by other companies). The petitioner's claims of influence rest largely on witness letters, resubmitted on appeal and quoted in counsel's appellate brief.

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).

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 165.

The witnesses are individuals who have worked with the petitioner in various capacities. Furthermore, the letters contain claims of fact that the record does not otherwise corroborate. For instance, ██████████ stated: “The successful outcome of this project was the subject of countless recognition by PDVSA’s upper management, and the Venezuelan oil industry as a whole.” ██████████ provided no further details about this claimed recognition. ██████████ asserted that the petitioner’s “timely and accurate development of the ‘Monthly Operational Guidelines’ helped ██████████ to reach unprecedented levels of revenues in the neighborhood of US \$188 Million Dollars [*sic*].” The record documents neither the specific amount claimed, nor the claim that the petitioner’s work resulted in “unprecedented levels of revenues.” The witnesses did not establish that the petitioner’s influence extended beyond his employers. Counsel asserts that, because the petitioner has held several different jobs, “he has . . . necessarily had some influence beyond a single employer.” “Beyond a single employer,” however, is not the same as “the field as a whole.”

Furthermore, apart from general similarities in the format of the various letters (including overall structure and the inclusion of most contact information on separate sheets rather than on the letters themselves), some letters contain the same errors and/or idiosyncracies, such as the use of the term “single-handily” instead of “single-handedly,” sentences beginning with “On this line . . .,” arbitrary capitalization of words such as “Million” and “Sulfur,” and the redundant use of both a dollar sign (“\$”) and the word “Dollars” when describing a sum of money. These similarities are consistent with common authorship, in whole or in part, of the witness letters. *Cf. Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (it is reasonable to infer that a party who submits strikingly similar documents is the common source of those similarities). Such letters cannot suffice, by themselves, to establish the petitioner’s influence on the field as a whole, and the petitioner has provided no corroborating evidence to support the specific claims in the letters. These unsupported claims do not meet the petitioner’s burden of proof. *See Matter of Soffici*, 22 I&N Dec. 165.

Counsel claims that “the petroleum industry is notorious for refusing to file labor certifications, preferring to keep foreign employees in indentured status.” Counsel provides no evidence to support this claim, and counsel’s unsupported claims are not evidence. *See Matter of Obaighena*, 19 I&N

Dec. 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 506. Also, the standard for waiving the labor certification requirement is the national interest, rather than circumventing an employer's alleged refusal to seek labor certification.

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* 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.