

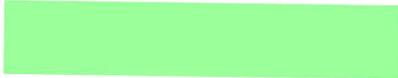


U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **FEB 26 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:



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. According to Part 6 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner seeks employment as a “Chiropractic Physician.” At the time of filing, the petitioner was working at the [REDACTED]. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel dated August 19, 2013.

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 record reflects 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.

The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, “[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate.” The petitioner did not execute this required document for the petition, and therefore the petitioner has not properly applied for the national interest waiver. For this reason

alone, the petitioner has failed to establish eligibility for the benefit sought. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. The AAO conducts appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.*

The petitioner has established that his work as a chiropractic physician is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the petitioner’s work will be national in scope and whether he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

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. *Id.* 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.

The petitioner filed the Form I-140 petition on June 28, 2012. In support of the petition, the petitioner submitted various letters of support. As some of the letters contain similar claims addressed in other letters, not every letter will be quoted. Instead, only selected examples will be discussed to illustrate the nature of the references' claims.

[REDACTED], stated:

[The petitioner] is a doctor of chiropractic who graduated from [REDACTED] in April 2011.

\* \* \*

[The petitioner], with his fluency in Korean, is uniquely suited to delivering chiropractic care to the underserved population within the growing local Asian community who may benefit from chiropractic care, but that who are unable to afford it. [The petitioner] has amply demonstrated his passion for service with his creation of a Free Chiropractic Clinic at [REDACTED] for un- or under-insured patients who cannot afford care. His mission services in Guatemala and his Internship at [REDACTED] in [REDACTED] both demonstrate his determination to help people achieve health and wellness.

While [REDACTED] graduates hundreds of students each year, [the petitioner's] unique background, culture, and passion, coupled with his skills in acupuncture, chiropractic, sports injuries management and pediatrics, make him a true asset to his community.

[REDACTED] comments on the petitioner's skills in acupuncture and experience in the medical care field. However, special or unusual knowledge or training does not inherently meet the national interest threshold. *NYS DOT* at 221. Any claim that the petitioner possesses useful skills, or a "unique background" relates to whether similarly-trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process.

[REDACTED], stated:

[The petitioner] was my student for three classes when he attended [REDACTED]

\* \* \*

The chiropractic profession has developed in the United States over the past 115 years but its outreach into Asian-American communities has been relatively limited, in large part because only a very small percentage of our chiropractic students are Asian and Asian-American. I know that [the petitioner] is acutely aware of this situation and has a strong desire to serve these underserved communities.

[REDACTED] indicates above that the petitioner's chiropractic practice will serve "underserved communities." In Section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), Congress specifically amended the Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians in underserved areas. This exception is limited to physicians who follow specific requirements set forth in the regulation at 8 C.F.R. § 204.12. In this instance, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.12 such as demonstrating that he will provide full-time clinical medical services in a geographic area designated by the Secretary of Health and Human Services as having a shortage of health care professionals or in a facility under the jurisdiction of the Secretary of Veteran's Affairs.

[The petitioner] . . . volunteers his working hours to provide free medical services to those with low-income or no health insurance. For the last six years he has spent 4 to 5 hours every Sunday afternoon providing Chiropractic services to the elders first and to anyone in need.

\* \* \*

I was fortunate enough to have [the petitioner] co-lead a mission trip to Guatemala with 17 young adults in 2010. He spearheaded the Health Care portion of the mission trip. He provided medical services for over 300 patients during our 6-day stay.

[REDACTED] and other references point to the petitioner's volunteer work, including providing chiropractic services on Sundays at [REDACTED] and co-leading the church's mission trip to Guatemala, but do not indicate how the petitioner's impact or influence as a chiropractic physician is national in scope. In addition, the petitioner's references do not provide sufficient details about the medical services performed by the petitioner in Guatemala that specifically involved chiropractic care, the specialty in which the petitioner intends to work in the United States.

[REDACTED] a chiropractor for Choice of [REDACTED] commented on the petitioner's passion for patients, chiropractic excellence, community work, and volunteer services, but does not provide specific examples of how the petitioner's work has influenced the chiropractic field as a whole.

[REDACTED], stated:

I met [the petitioner] through my community engagements under the [REDACTED] [REDACTED] from 2009 to 2011. [The petitioner] has spearheaded health and wellness initiatives for the Society by leading numerous free health educational seminars for those who were in need.

While the petitioner has been involved in various health and wellness events through the Korean-American community, there is no documentary evidence demonstrating that the petitioner's work has influenced the chiropractic field as a whole, or that the petitioner has or will benefit the United States to a greater extent than other similarly qualified chiropractic physicians.

The petitioner submitted a DVD recording from one of his wellness seminars, a brochure from a 2010 wellness seminar at [REDACTED] (emphasis added), and additional reference letters commenting on his wellness seminars, but there is no documentary evidence demonstrating that the petitioner's particular wellness guidelines or treatment methodologies have been implemented by a number of chiropractic clinics, have attracted significant attention in chiropractic magazines or journals, or have otherwise influenced the field as a whole.

[REDACTED] further stated that the petitioner "has volunteered to serve as a chief medical advisor for the 2013 [REDACTED] in June 2013." Additional references comment on the petitioner's work as "Medical Director" for the 2013 [REDACTED] in June 2013. For example, [REDACTED], President of the [REDACTED], stated: "Over five thousand athletes from all over the United States will travel to Kansas City to partake in the sports event . . . . It is important to recognize that [the petitioner's] involvement as Medical Director is national in scope since he will be responsible for treatment of injured athletes."

In addition, [REDACTED] stated:

I came to know of [the petitioner's] work while serving as the Honorary Chairman of the [REDACTED], which will be hosted by the [REDACTED]. [The petitioner] is the Medical Director of the Association and the Sports Competition. His role entails providing care and treatment of athletes from all over the country and this makes [the petitioner's] work nationally significant. If one person from each state were to return home after benefiting from [the petitioner's] chiropractic treatment,

they will further seek additional Chiropractic care at their home state. Thus, [the petitioner's] influence in Chiropractic care is not limited to one state but rather the nation as a whole.

The petitioner's service as a [REDACTED] post-dates the filing of the petition. Eligibility 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 petitioner's role for the [REDACTED] in June 2013 and any contributions deriving from that role cannot be considered as evidence to establish his eligibility at the time of filing.

Regarding [REDACTED] assertions that the petitioner's work is national in scope, there is no documentary evidence establishing that the benefits resulting from the petitioner's work as a chiropractic physician extends beyond his patients such that they will have a national impact. *NYSDOT* provides examples of employment where benefits would not be national in scope:

For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

*NYSDOT* at 217, n.3. The above analysis is applicable to the petitioner's occupation as well.

The director denied the petition on June 21, 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 record lacked evidence showing that the petitioner's work has influenced the field. 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.

Counsel argues on appeal that the letter from [REDACTED] shows that the petitioner's work for the [REDACTED] is national in scope. Counsel asserts that the petitioner's work as "Head of Medical Department . . . included work on athletes from all over the United States." The record, however, does not include documentary evidence showing the home states of the participants in the [REDACTED] Competition or the number of participating athletes who were injured and specifically sought the petitioner's chiropractic services. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534, n.2

(BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3, n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel also does not provide any arguments to distinguish the petitioner's occupation from those cited in *NYSDOT* as not having a national impact from a single individual. Furthermore, as the petitioner seeks employment as a chiropractic physician, his treatment of athletes who received non-chiropractic medical services at the I [REDACTED] Competition cannot establish his eligibility for the national interest waiver. Regardless, as previously discussed, the [REDACTED] mentioned in [REDACTED] letter was held in June 2013 and post-dates the filing of the petition. Again, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the petitioner's work at the competition in 2013 cannot be considered as evidence to establish his eligibility for this petition.

The record included additional letters of support from [REDACTED] [REDACTED] who all commented favorably on the quality of chiropractic treatment that they received from the petitioner.

Counsel asserts that the preceding letters from patients of the petitioner who "travel great distances to the [REDACTED] area to receive treatment" demonstrate the national scope of petitioner's work. Submitting letters from a handful of patients who reside outside of the petitioner's locality does not establish that he produces benefits that are national in scope. The impact of one chiropractor's treatment of his patients is so attenuated in the field that it would not yield a national effect. *See NYSDOT* at 217, n.3. In the present matter, the petitioner has not shown the benefits of his impact as a chiropractor beyond the patients utilizing his services and, therefore, that his proposed benefits are national in scope. In addition, counsel does not explain how the petitioner's treatment of patients from multiple states indicates that he will serve the national interest to a substantially greater degree than other U.S. chiropractors with the same minimum qualifications. Moreover, the record does not include specific examples of how the petitioner's chiropractic work has influenced the field as a whole.

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 an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal and professional contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien'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”).

A plain reading of the statute indicates that engaging in a profession (such as chiropractic care) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. The petitioner has not established 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. 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. *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.