



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: JAN 07 2014 OFFICE: NEBRASKA SERVICE CENTER [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.

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner seeks to classify the beneficiary pursuant to 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, a public university, seeks to employ the beneficiary as an associate professor of quantitative psychology. 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 had 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On appeal, the petitioner submits a brief from counsel, a copy of an unpublished appellate decision, and documentation of the beneficiary's ongoing efforts and the citation of his previously published work.

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 beneficiary 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 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 the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term “prospective” is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on October 31, 2011. Materials in the record make it clear that the petitioner intended to petition for the beneficiary’s classification under section 203(b)(2) of the Act and to apply for the national interest waiver, but counsel and witnesses described the evidence of record in terms of elements found at section 203(b)(1)(B) of the Act and the regulations at 8 C.F.R. § 204.5(m)(i), pertaining to outstanding professors and researchers. There is no need to evaluate the record in those terms, because the

petitioner did not petition for the beneficiary under section 203(b)(1)(B) of the Act, but this emphasis means that the initial submission does not address the guidelines set forth in *NYS DOT*.

In a personal statement accompanying the petition, the beneficiary asserted: "I have established myself as a premier expert in the area of statistical consultation." He stated:

I conduct research on the history of statistics and practice the application of quantitative methods. Research into applied statistics is critical for students and professionals in using these statistical methods correctly, leading to correct and accurate interpretations of their research findings and results. My goal is to educate the public on the correct and careful use of statistical methodology through a combination of historical and analytical approaches. . . .

While at [REDACTED] I conducted research on the misuse of hypothesis-testing procedures in psychology and other sciences. I found that null hypothesis significance testing, which is the primary method by which scientific conclusions are drawn, had been misused in a variety of scientific domains. This was a most important finding because it suggested that researchers may be drawing inappropriate conclusions based on their scientific and research studies.

. . . My ability to successfully apply quantitative methods has been a tremendous help to our department's efforts to publish significant papers and present at conferences.

. . . My [current] research is focused on the history of statistics as well as its application in psychological (and other) sciences. The goal of my research is to educate the professional and lay public on the history and development of statistical science in psychology as to facilitate its correct use and interpretation. . . .

The historical work I've already completed has been recognized and promoted by the very top internationally recognized scholar in the world, [REDACTED]

In 2007, I published what I strongly believe is one of the best statistics study guides currently available, [REDACTED]. . . . The guide is used by virtually all instructors who adopt the associated textbook.

The beneficiary claimed that his "ability to successfully apply quantitative methods has been a tremendous help to our department's efforts to publish significant papers and present at conferences," but the record does not establish how the beneficiary's work has affected publication rates within his department at the petitioning university. Likewise, the record contains no documentary evidence to support the claim that "virtually all instructors" who use [REDACTED] textbook also use the beneficiary's study guide. 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)).

In an introductory statement, counsel stated:

[The beneficiary] has published major contributions in internationally peer-reviewed journals in the field. . . . His work has received substantial citations from other researchers in the field as well as invited commentary. Furthermore, [the beneficiary] has served as an invited reviewer for prestigious journals in the field, a textbook reviewer for books such as [REDACTED] and is the author of a published study guide for one of the most popular undergraduate textbooks on statistics.

[The] petition is supported by advisory opinions from six national and international experts – four of whom have never worked or collaborated with him. These experts confirm that [the beneficiary's] research has already made a substantial impact on the field as a whole.

[REDACTED] of the petitioning university stated:

[The beneficiary] plays a critical role in our department, which requires a resident expert on statistical methods to help guide our students and faculty in the execution of their research. [The beneficiary] has already made major discoveries [in] psychological statistics at the international level and has been an important addition to our department. . . .

[The beneficiary] has made a string of major contributions to psychological statistics and other areas of psychological research. Nearly a decade ago, [the beneficiary] brought to researchers' attention that the way psychology and science in general tests its hypotheses may be severely flawed. . . . While still a Ph.D. candidate, [the beneficiary] followed this breakthrough by working on new alternative hypothesis-testing procedures that could be used in place of what was currently status-quo. . . . In 2004, [the beneficiary] published a landmark article on [REDACTED] the inventor of modern day statistics, and through historical and methodological analysis, [the beneficiary] proved that the hypothesis-testing methodology we practice today has widely diverged from the practices established by [REDACTED] in the early twentieth century.

In addition, [the beneficiary] has traced the origins and development of multivariate statistical techniques to late nineteenth century Britain, and demonstrated how their original uses were primarily politically and socially motivated. . . . That, along with his work on causal modeling and the origins of path analysis published in [REDACTED] [REDACTED] has demonstrated for the first time how these methods are possibly being

misused and misapplied in modern social science. . . . The consequences of [the beneficiary's] findings are significant, and I believe it has helped researchers critically evaluate their own methodological practices when conducting scientific investigations.

As an example of an important application of [the beneficiary's] research, his methodological work has recently been cited by a specialist analyzing the protection of beneficial uses of water in the [redacted]. In the specialist's recommendation provided to the [redacted] Environmental Protection Agency, the water specialist highlighted that "the proposed actions are not based on any peer reviewed science designed to determine the cause of the decline in the health of aquatic communities in the delta." The water specialist cites and discusses [the beneficiary's] article on inferring the alternative hypothesis and provides methodological approaches to test for pyrethroid toxicity in water based on [the beneficiary's] paper. . . .

His website, [redacted] is unique and stands out as one of the most thorough resources on applied statistics. [The beneficiary] also continues to work on and develop another website, [redacted], [redacted], Canada. This is an invaluable resource, internationally renowned, providing researchers with point-and-click accessibility to countless on-line key graphics. The site serves to better educate students and researchers on the history and development of statistical graphics.

Apart from the two identified web sites, the claimed contributions that [redacted] mentioned relate to articles by the beneficiary, published since 2001. Discussion of those articles appears further below.

Professor [redacted] Canada, stated:

From approximately 2000 to 2004, as a doctoral candidate, [the beneficiary] played a critical role in my research efforts at [redacted] Department of Psychology. And from 2002 to 2003, he also played a key role in [redacted] statistical consulting endeavors. [The beneficiary] is a top-level researcher in psychology and is a leading expert in the history and methodological practice of statistics in psychology. His independent research here resulted in breakthroughs and other major contributions. . . .

During the time he worked with me, [the beneficiary] contributed at least 3 key discoveries:

1) Several leading researchers had recognized that today's methods of hypothesis-testing in psychology are problematic. It was [the beneficiary], however, who . . . demonstrated how today's null hypothesis testing can no longer be correctly attributed to [redacted] . . . and that there are huge inconsistencies in today's approach with what [redacted] recommended. The significant impact of this is to have researchers critically evaluate the tools they use in making scientific statements.

2) [The beneficiary] clearly elucidated the differences and commonalities between [redacted] contributions to the origins of correlation and those of [redacted] an often unrecognized very early contributor to the statistical idea of correlation.

3) [The beneficiary] and I outlined the early origins and development of statistical graphics in two publications in a top journal in the field, [redacted] as well as collaborated in the development of an internationally recognized website [redacted] on significant milestones in the history of statistical graphics. . . . [The beneficiary] was instrumental in the early researching and cataloguing of these significant milestones.

. . . [The beneficiary] has continued to make important contributions to the area of psychology and statistics. [The beneficiary] has continued his strong publication record. . . . [The beneficiary's] published work has earned substantial citations from other researchers in the field.

[redacted] stated:

Expertise in the history of statistics and application of quantitative methods in the social sciences is essential in producing reliable research results. Virtually every science and field of study or investigation utilizes statistics to evaluate and report its findings, which means that the ability to process statistical information accurately is directly related to the quality of research findings.

On the basis of my review and analysis of [the beneficiary's] background, it is my professional opinion that [the beneficiary] has made original contributions of international significance to the field of statistics and the application of quantitative methods. . . .

Perhaps one of the best illustrations of [the beneficiary's] achievements in the history of statistics is his work on Fisherian significance testing and early analysis of variance. . . . [The beneficiary's] sole-authored article titled, [redacted] . . . is one of the first papers worldwide to address the methodological history of the hybrid. I provided invited commentary to [the beneficiary's] article in the [redacted]

along with 5 other independent commentators. [The beneficiary's] publication is a major contribution to the field because he determined that the work and contribution of is not being practiced by researchers today as he had originally prescribed more than 75 years ago. . . . In all, [the beneficiary's] contribution serves to help correct researchers' thinking about probabilistic conclusion and hypothesis-testing logic.

France, stated that the beneficiary's "record of achievement . . . presents substantial evidence that [the beneficiary] is an outstanding researcher specializing in the history of statistics." praised the beneficiary's article in the and stated that the beneficiary "has also written one of the most thorough and detailed study guides in statistics for a well-known undergraduate studies book for the behavior sciences."

Missouri, stated that the beneficiary's "record in the history of statistics and research and application of quantitative methods more than demonstrates that he has made major contributions of international significance to the field." stated that the beneficiary's article in the "serves as a monumental piece in this area of research."

associate professor at the stated:

[I]t is my professional opinion that [the beneficiary's] record of achievement in applied statistics is impressive and places him among those internationally recognized as outstanding in the field. . . . One of [the beneficiary's] recent publications features the introduction of decision-based modeling to fields in psychology, a contribution that sparks a much needed interest in the application of decision models to the study of psychological processes. This is a very unique contribution to our field. . . . Further, [the beneficiary] has published one of the most thorough study guides currently available on the market for an undergraduate statistics course, which he has made available to all students through his Data & Decision Lab page, an excellent resource that not only features the study guide, but also several tutorials on applied statistics useful to students and researchers alike across the nation, and indeed internationally as well.

[The beneficiary's] work on the history of statistics is also extremely noteworthy. He has published in top journals in the history of statistics field, and his papers have received substantial citations from other researchers in the field.

The petitioner submitted copies of the beneficiary's scholarly writings, including published articles and manuscripts, as well as copies of articles containing citations to the beneficiary's work. A partial copy of a 2004 issue of the included the beneficiary's handwritten notation: "Entire journal publication was devoted to my article." The

issue included the beneficiary's article "The modern hypothesis testing hybrid: [REDACTED] fading influence," followed by six commentaries on that article and the beneficiary's response to those commentaries. Three of the commentators [REDACTED] provided letters on the beneficiary's behalf.

The petitioner provided copies of the first page of each commentary, one of which is in French with no English translation provided. The untranslated foreign-language document establishes the article's existence, but not its content. See 8 C.F.R. § 103.2(b)(3). Likewise, exhibit E19 is an untranslated article in Spanish. Most of the citing materials, however, are in English.

[REDACTED] in his letter, claimed that "being asked to serve as a judge of others in this capacity [as a peer reviewer] is a strong indication of [the beneficiary's] renown across the field." The evidence intended to show the beneficiary's work as a judge consists of printouts of four electronic mail messages. Two messages invited the beneficiary to peer review articles submitted to [REDACTED]. The petitioner did not submit evidence from the journal's publisher [REDACTED] to establish its selection criteria for peer reviewers, and therefore the beneficiary's peer review work is not evidence of his impact or influence on his field. The third message inquired whether the beneficiary "might be interested in reviewing a new textbook, [REDACTED]. [REDACTED] The message did not specify how or why the publisher chose the beneficiary to write the review, but asked him to "suggest some other potential reviewers" if he were unable to write the review himself. The fourth message begins:

Thank you for agreeing to participate in the online review of Chapter 17 from *Statistics for the Behavioral Sciences*, Second Edition by [REDACTED].

I will send you a link to your students' review form tomorrow.

The message indicated that the beneficiary would "participate in the online review," but did not specify that the beneficiary would be a reviewer. Rather, the reference to a "students' review form" (not included in the record) indicates that the students would be the reviewers, implying that the beneficiary's role would be recruiting his own students to perform the review.

For the reasons listed above, the materials relating to peer review do not support the petitioner's claim that the beneficiary qualifies for the waiver.

The director issued a request for evidence on July 24, 2012. The director instructed the petitioner to submit further evidence of citation of the beneficiary's published work. The director stated that the petitioner "must establish, in some capacity, [the beneficiary's] ability to serve the national interest to a substantially greater extent than the majority of [his] peers."

In response, counsel stated that director's reference to "the majority of [the beneficiary's] peers" "is inconsistent with the explicit language of *NYS DOT*. Under *NYS DOT*, all that is required is to show

that the beneficiary has demonstrated an ability to benefit the national interest to a substantially greater degree than someone with the ‘same minimum qualifications.’ See *NYS DOT*, at 218.” The cited passage, however, does not indicate that the petitioner need only establish that the beneficiary is better qualified or more accomplished than a minimally qualified worker.

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”]. *NYS DOT* at 216-17, quoting 56 Fed. Reg. 60897, 60900 (November 29, 1991). Aliens of exceptional ability are generally subject to the job offer requirement, and therefore a degree of expertise significantly above that ordinarily encountered in the beneficiary’s field (the regulatory definition of “exceptional ability” at 8 C.F.R. § 204.5(k)(2)) does not establish eligibility for the waiver.

The petitioner’s response included evidence of 22 additional citations to the beneficiary’s published work. At least 14 of the citations predate the filing of the petition, while two others include insufficient information to date precisely; one [redacted] is undated, and the other [redacted] is dated simply 2011. Three of the newly submitted citations (two of them pre-filing) are self-citations by [redacted]. The remaining citations are from authors in several different countries. Some of the citations are in the context of historical information about statistical methods, while others illustrate problems with significance testing.

The petitioner submitted two new witness letters. [redacted] Rhode Island asserted that the beneficiary “is already a tenured professor,” meaning that the petitioner “has already reviewed the significance of his prior work . . . and found it worthy of granting him tenure. In that regard, it could seem somewhat unnecessary to inquire further whether [the beneficiary] has made significant enough contributions to warrant allowing him to continue his research on a permanent basis.” There is no blanket waiver for tenured university faculty. As members of the professions holding advanced degrees, university professors are subject to the statutory job offer requirement.

[redacted] also stated:

[The beneficiary’s] research focuses on improving the quality of data assessment and statistical analysis to ensure that the scientific conclusions reached are valid. Although his research is primarily within the field of psychology, his research discoveries are of significant impact to drug and disease research, in fact any area of research based on the analysis of data. . . .

[The beneficiary] has from the very beginning achieved great success for his major contributions in the field. In my opinion, he clearly has already made a significant impact on the field as a whole. . . .

I would like to especially highlight two key areas of objective evidence demonstrating that [the beneficiary] is truly an outstanding researcher and has already significantly advanced the field of psychology, particularly in quantitative science. . . .

In 2003, [the beneficiary] published as sole author, [REDACTED] . . . [The beneficiary's] article provided keen insight into the [REDACTED] then-forthcoming guidelines on using alternatives to traditional hypothesis-testing procedures. . . . [The beneficiary's] article is a major contribution, because it highlights numerous alternatives to traditional Fisherian hypothesis-testing with a high level of clarity. . . .

As another – even more important – example of the international significance of [the beneficiary's] work, which continues to influence researchers and the field today.

Specifically, [the beneficiary's] paper, "[REDACTED]" [REDACTED] a leading European journal. In addition to the subsequent citations of this work by other researchers in the field, I would like to point out that in response to the obvious international importance of [the beneficiary's] paper to the field, the journal immediately solicited several of the top experts in the field . . . to prepare written comments about [the beneficiary's] paper.

Objectively speaking, what this means is that when the editors of this prestigious European journal received [the beneficiary's] paper, they immediately recognized it as a major contribution to the field. That is why they requested other top colleagues to contribute written comments . . . about [the beneficiary's] new paper. Objectively speaking, such treatment of papers is highly unusual and clearly reflects the international significance of [the beneficiary's] work.

Substantively, [the beneficiary's] paper is of monumental importance because [REDACTED] is considered one of the masters of hypothesis testing, but as pointed out in [the beneficiary's] paper, the field has continued to label its approaches as "Fisherian," but has in the meantime drifted away from [REDACTED] guidance, which suggests that perhaps our methodological practices need serious revision.

. . . [The beneficiary's] published work is important because it helps clarify for researchers the significance of drawing coherent conclusions from their work, void of methodological misunderstandings.

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. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 165. The record does not contain objective, documentary evidence to corroborate [REDACTED] claims of fact regarding, for instance, the publication of the beneficiary's 2004 article.

[REDACTED] head of research for the [REDACTED]; at the [REDACTED] (and a former assistant professor at the petitioning university), stated that the beneficiary's "work has been cited extensively by other researchers." [REDACTED] asserted that the beneficiary's "qualitative expertise is regularly applied to a variety of fields," and that peer "review requests would not have been made or accepted if he were not a top expert in the field."

The record does not contain evidence from the journals' publishers to corroborate [REDACTED] claim about peer review requests. A newly submitted request to review a textbook manuscript for [REDACTED] like similar requests submitted previously, did not explain how the publisher came to select the beneficiary for the review.

Furthermore, the newly submitted request appears to postdate the October 31, 2011 filing of the petition. The message is undated, but shows a due date of August 27, 2012, and the petitioner acknowledged that the request was new. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Also postdating the filing of the petition was evidence of the beneficiary's continued involvement in scholarly authorship. In July 2012, the journal [REDACTED] published a new article by the beneficiary and three co-authors (including [REDACTED]). The publishers of the [REDACTED] invited the beneficiary to contribute an entry. The invitation letter did not say how or why the publisher chose the beneficiary to write the entry, and therefore the invitation is not evidence of the beneficiary's standing in the field.

The director denied the petition on January 30, 2013, stating that the petitioner had met the "intrinsic merit" and "national scope" prongs of the *NYS DOT* national interest test, but that the petitioner had not established that the impact and influence of the beneficiary's work qualifies him for the waiver. The director stated: "The record shows that the [beneficiary's] . . . published work has been cited a very small number of times." The director quoted examples of witness letters, and stated that the letters have "less weight than the preexisting, independent evidence one would expect to find from an individual of exceptional ability."

On appeal, counsel state that the beneficiary "presents an outstanding record of achievement and impact." Counsel repeats the assertion that the beneficiary "has written the study guide to one of the

most widely used undergraduate textbooks on statistics,” but this assertion remains uncorroborated, as do several of counsel’s other claims on appeal, such as the contention that the beneficiary “has developed a highly popular website to help students worldwide learn statistics.” 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).

The petitioner submits a copy of an October 9, 2012 contract between the beneficiary and [REDACTED], in which the beneficiary agreed to deliver a 576-page textbook on [REDACTED] to the publisher “not later than November 1, 2014.” The textbook did not exist at the time of filing, and apparently will not exist in finished, published form until 2015 at the earliest. Therefore, the petitioner has not established the impact the book will eventually have on the beneficiary’s field. Apart from the timing of the contract, authorship of a textbook entails the potential to influence the field, but the existence of such a textbook (or an invitation to write it) is not, itself, evidence of that influence. The record contains nothing from [REDACTED] to explain how and why the publisher selected the beneficiary to write the textbook.

More persuasive are printouts from the [REDACTED] database, identifying over 180 citations of the beneficiary’s published work, with over 100 citations of his most-cited article. Counsel asserts that only four of these citations are self-citations, but counsel only counted self-citations by the beneficiary, omitting self-citations by coauthors such as [REDACTED]. Even then, the great majority of the citations are independent, from many different nations. The evidence corroborates witnesses’ prior assertions that the beneficiary’s published work is widely cited, and expands upon the citation evidence submitted previously. The evidence submitted on appeal (and earlier) is consistent with the claim that the beneficiary has created widely used resources to illuminate the history and proper use of statistical techniques. The record further demonstrates that the beneficiary remains active in the same field of research that has produced his earlier, heavily cited work, and therefore he will continue to benefit the United States as he has done in the past.

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 field of endeavor, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the beneficiary’s impact on his field. The benefit of retaining this alien’s services outweighs the national interest that is inherent in the labor certification process. The petitioner has established, by a preponderance of the evidence, 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, the petitioner has met that burden.

**ORDER:** The appeal is sustained. The petition is approved.