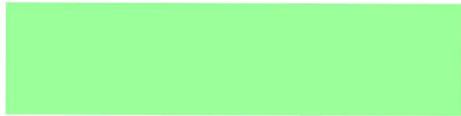


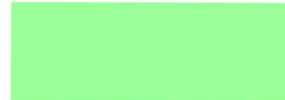


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JAN 15 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,

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 an alien of exceptional ability in the sciences. The petitioner is a mechanical engineer seeking self-employment in the oil and gas industry. 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 did not establish that he qualifies for classification as an alien of exceptional ability, or that an exemption from the requirement of a job offer would be in the national interest of the United States.

In this decision, the term “prior counsel” shall refer to [REDACTED] who represented the petitioner at the time the petitioner filed the petition. The term “counsel” shall refer to the present attorney of record.

On appeal, the petitioner submits a brief from counsel and supporting exhibits.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner filed the Form I-140 petition on November 29, 2011. In an accompanying statement, prior counsel stated that the petitioner “is currently serving as [REDACTED]”

Exceptional Ability

The first issue concerns the petitioner’s eligibility for the immigrant classification he seeks. The petitioner does not claim to be a member of the professions holding an advanced degree. An

evaluation of the petitioner's sole academic degree ([REDACTED]) indicates that the degree is equivalent to a United States associate's degree in welding technology. Therefore, the petitioner possesses neither an advanced degree nor five years of post-baccalaureate experience equivalent to a master's degree. See 8 C.F.R. § 204.5(k)(3)(i).

As prior counsel indicated in the passage quoted above, the petitioner seeks classification as an alien of exceptional ability in the sciences. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(k)(3)(ii) requires the petitioner to submit evidence that qualifies under at least three of the following categories:

- (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
- (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
- (C) A license to practice the profession or certification for a particular profession or occupation;
- (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
- (E) Evidence of membership in professional associations; or
- (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

Only aliens who establish "a degree of expertise significantly above that ordinarily encountered" are eligible for classification as aliens of exceptional ability. 8 C.F.R. § 204.5(k)(2).

On appeal, counsel cites to a Ninth Circuit Court of Appeals (Ninth Circuit) decision on a petition for an alien of extraordinary ability under section 203(b)(1)(A) of the Act. See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). In its decision, the Ninth Circuit concluded that USCIS should reserve any reservations about the record evidence that otherwise meets the plain language requirements of the regulatory criteria for a separate and subsequent "final merits determination. *Id* at 1121-22.

Citing to the *Kazarian* decision, counsel acknowledges that "[a]n individual might meet all six criteria and still not qualify as an individual of exceptional ability." The purpose of the final merits determination is to show whether or not the submitted evidence shows the petitioner meets the regulatory definition of "exceptional ability," *i.e.*, a degree of expertise significantly above that

ordinarily encountered in the field. The *Kazarian* decision does not preclude USCIS from discussing the sufficiency of the petitioner's evidence; it merely prescribes the correct procedure for doing so.

The petitioner's initial submission did not indicate which of the six exceptional ability criteria the petitioner claims to have met. The director issued a request for evidence (RFE) on April 21, 2012, instructing the petitioner to provide further documentation and explanation in this regard. Subsequently, counsel has asserted that the petitioner meets all six of the criteria.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A)

As discussed above, the petitioner holds the equivalent of a two-year associate's degree in "welding technology" from [REDACTED]. In the September 15, 2012 denial notice, the director stated that the petitioner had not shown that his "education and other training is significantly above that ordinarily encountered in the field."

On appeal, counsel asserts that the petitioner's degree meets the plain wording of the regulation, because it is an academic degree relating to the area of claimed exceptional ability. The petitioner has submitted sufficient evidence to establish that he possesses a relevant degree and meets the plain language of this criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

The director acknowledged that the petitioner has submitted the evidence required to meet this criterion, establishing his employment at [REDACTED] since June 14, 1998, first in [REDACTED]

A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C)

The petitioner's initial submission contained no evidence under this criterion. In response to the RFE, the petitioner submitted copies of nine certificates acknowledging the petitioner's completion of the following training programs:

- Emergency Aid in the Workplace for Appointed Persons ([REDACTED] 1999)
- STEP1 – Coiled Tubing ([REDACTED] 1999)
- Offshore Survival ([REDACTED] 1999)
- Basic Fire Fighting ([REDACTED], 2000)

- [REDACTED], 2005)
- Water Survival/Swing Rope/Personnel Trans. Basket ([REDACTED], 2008)
- [REDACTED] Training (Occupational Safety Training, Inc., 2008)
- [REDACTED]
- [REDACTED] 2009)
- [REDACTED] 2010)

In the denial notice, the director stated: “The record contains no evidence that [the petitioner’s] license is indicative of a degree of expertise above that ordinarily encountered in the occupation rather than a requirement to practice in the occupation.”

On appeal, counsel states that the director’s conclusion is inconsistent with *Kazarian*, because the director imposed conditions beyond the plain wording of the regulation. Counsel states: “the regulations are to be interpreted in their direct and plain meaning, without added glosses from the USCIS, and any questions of . . . exceptional ability are to be resolved in the final merits determination.”

The petitioner’s appellate exhibit list includes “10 Certifications in the field of oilwell coiled tubing techniques and downhole tools”:

- Coiled Tubing, Step 1, 3/26/1999
- Standalone Operation – CT, 12/01/2004
- DEE proficiency CT, 12/01/2004
- CTS: Inflatable Packers, 12/01/2004
- CTS-Execution: CT Tools, 12/01/2004
- CTS-Execution: Completion/Tools, 12/08/2004
- CTS: Special CT Skills, 12/08/2004
- Lean Sigma White Belt Training, 5/06/2005
- ACTive Advanced and TT, 4/30/2010
- DTS Matrix and Production Interpretation Course, 11/12/2010

The petitioner submitted copies of the listed certificates. The new group of certificates is almost entirely different than the collection submitted previously; the two sets have only three certificates in common.

None of the submitted certificates demonstrates “certification for a particular profession or occupation” comparable to, for instance, the certification held by a certified public accountant or board certification in a particular medical specialty. In those instances, the certification applies to the occupation itself. Instead, the petitioner’s “certifications” denote training in specialized tasks, techniques, and/or equipment. For example, the petitioner’s training in “CTS: Special CT Skills”

may be useful in the petitioner’s performance of his duties, but “Special CT Skills” is not, itself, “a particular profession or occupation.” 8 C.F.R. § 204.5(k)(3)(ii)(C).

In the RFE response and on the appeal, the petitioner has submitted copies of a total of 16 different certificates that he earned while working for the same employer. The petitioner earned four of those certificates on the same day, December 1, 2004, and two more a week later. The petitioner has not established that the occupation requires a license to practice the profession or a certification. Although the petitioner has submitted numerous certificates, none of the certificates are from any government licensing board or private certifying entity with authority over the industry that employs the petitioner. The petitioner’s completion of numerous, short-term training classes do not establish certification for the occupation itself. The petitioner’s evidence is insufficient to establish that he meets this criterion under the plain language of the regulation.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D)

The petitioner initially submitted copies of Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements showing that Schlumberger paid him \$103,217.01 in 2008, \$128,491.40 in 2009 and \$124,432.44 in 2010 (including elective salary deferrals). The petitioner did not provide any basis for comparison to show that the documented amounts demonstrate exceptional ability.

Following the RFE, the petitioner submitted a letter from [redacted] personnel manager for Well Intervention Services at [redacted] stating the following figures regarding the petitioner’s “total pay package” as of the following dates:

| | 12/31/2010 | 12/31/2011 |
|------------------------|------------|------------|
| Cash Compensation: | \$127,650 | \$160,420 |
| Health, Life & You: | \$14,723 | \$14,369 |
| [redacted] | \$99 | \$1,243 |
| Financing Your Future: | \$30,978 | \$23,152 |
| Total: | \$173,450 | \$199,184 |

The petitioner documented his receipt, in March 2011, of “an Incentive Stock Option to purchase up to a maximum of 750 shares of [redacted] stock at a grant price of \$83,885 under the 2010 Stock Incentive Plan.” The letter, bearing the reproduced signature of [redacted], chairman and chief executive officer (CEO) of [redacted] stated: “Stock options are considered the top award for outstanding performers.”

In the denial notice, the director stated that the petitioner had not provided any basis for comparison to allow USCIS to determine whether the petitioner’s remuneration “demonstrates exceptional ability,” a requirement found in the plain wording of the regulation. On appeal, counsel states:

According to OES wage data from May 2011, there are 238,260 mechanical engineers in the United States. Their median wage is \$79,230. The top 10% of those mechanical engineers earn \$119,950. [The petitioner's] earnings are substantially above that. Most likely, he places well into the top 5% of mechanical engineers in the United States. This is evidence that he has commanded a salary or other remuneration which demonstrates exceptional ability.

To support the above assertions, the petitioner submits a partial printout from the web site of the Department of Labor's Bureau of Labor Statistics (BLS). The printout estimated the median annual wage for all mechanical engineers at \$79,230, and the mean annual wage at \$83,550, as of May 2011. The petitioner's partial printout shows that pay rates for mechanical engineers differ from industry to industry, but does not show the rates in the petitioner's industry. Likewise, it does not reflect regional variations in compensation.

The web page, <http://www.bls.gov/oes/current/oes172141.htm> (printout added to record January 14, 2014), now shows figures for May 2012 instead of May 2011. The updated figures show a median annual wage of \$80,580, a mean annual wage of \$84,770, and a 90th percentile of \$121,530.

The web page ranks Texas fourth on the list of "Top paying States for this occupation," with a mean annual salary of \$92,470. A screen capture of an interactive map showing the "Annual mean wage of mechanical engineers, by area, May 2012" provides the following figures for the [redacted] metropolitan area:

| | |
|-------------------|------------------------------|
| Mean wage: | Percentile Wages: |
| Annual: \$100,900 | 10 th : \$61,870 |
| Hourly: \$48.51 | 25 th : \$74,340 |
| | 50 th : \$93,900 |
| | 75 th : \$119,360 |
| | 90 th : \$148,270 |

The same web page places "Oil and Gas Extraction" first on the list of "Top paying industries for this occupation." Nationally, the mean annual wage for mechanical engineers in that industry is \$128,650, more than 50% higher than the mean annual wage throughout the field, and significantly higher than the 90th percentile figure for the field across all industries. This is significant because the 90th percentile figure of \$148,270 for [redacted] is for all mechanical engineers in that area, not just mechanical engineers in the oil and gas extraction industry. The BLS web page does not indicate the median salary for the petitioner's occupation, mechanical engineers who are engaged in oil and gas extraction.

The complete web page shows that employers in Texas pay higher salaries than the national average; employers in the [redacted] area pay higher salaries than the Texas average; and the oil and gas extraction industry pays substantially higher wages than other industries, but does not specify the

higher wages. The evidence from the BLS, upon which the petitioner relies on appeal, does not establish that his salary or remuneration can be considered evidence of his exceptional ability.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E)

The petitioner's résumé listed three memberships: the [redacted] the [redacted] [redacted] The petitioner initially submitted no supporting evidence.

In response to the RFE, the petitioner submitted evidence of membership in the [redacted] [redacted] and various special interest groups [redacted] The evidence of the [redacted] took the form of printouts from the "[redacted] [redacted] web site, bearing the legend "[redacted] internal use only." The [redacted] Communities appear to be web-based bulletin boards and discussion forums. The petitioner submitted no evidence to show that [redacted] constitute professional associations with members across the discipline, rather than private communities for discussing proprietary matters within a single company.

In the denial notice, the director stated that the petitioner had not established that "membership is indicative of a degree of expertise significantly above that ordinarily required in the profession." Counsel, on appeal, once more states that the director did not follow the *Kazarian* procedure, because the submitted evidence is sufficient to meet the plain wording of the regulations (at least with regard to some of the memberships claimed).

The record supports counsel's assertions. The petitioner has documented memberships in at least two associations in his field, and has thereby satisfied the plain wording of the regulation.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F)

The petitioner's résumé, submitted initially, listed four "Awards" and five "Recognitions":

AWARDS

- Top Rank at [redacted], July 1997
- [redacted] in [redacted] 2000
- Silver Medalist in Recognition of Achievements in Water Shut-Off project for [redacted] 2001
- Outstanding Employee, Stock Option Award by [redacted] March 2011

RECOGNITIONS

- Recognition for Excellent [REDACTED]
[REDACTED] Dec 2005
- Recognition for [REDACTED]
[REDACTED], January 2008
- Recognition for [REDACTED], March 2004
- Recognition for [REDACTED], April 2009
- Recognition for [REDACTED], Jan 2006

The petitioner did not document the above claims or explain what form the “recognitions” took.

In the RFE, the director stated, without further elaboration, “[t]his criterion has been met.” The petitioner’s response to the RFE, therefore, did not address this issue, except to show that the petitioner’s employer acknowledged the petitioner’s publication of a paper in 2004 by presenting him with a plaque and offering to reimburse him for the cost of a celebratory dinner.

In the denial notice, the director stated:

The awards mentioned appear to have been given based on education and work related performance and fail to establish evidence of achievements and contributions to [the petitioner’s] industry or field of endeavor. Without more information about this recognition, USCIS cannot evaluate whether the beneficiary has been recognized for achievements and significant contributions to the industry or field generally. The record does not indicate that the beneficiary meets this criterion.

On appeal, counsel states:

Perhaps no portion of the Director’s decision is as strikingly deficient as the assertion that the record does not indicate that [the petitioner] has made significant contributions to the industry or field. It is more odd that the Request for Evidence would inform the petitioner that this standard had been met, but then in the denial notice decide it had not been, without any explanation of why the first conclusion was wrong.

The wording of the regulation provides no definition of what constitutes “recognition.” Counsel asserts that the petitioner has provided sufficient evidence in the form of witness letters, patents, journal articles, and employee evaluations.

Counsel’s statements fail to distinguish between evidence that the petitioner has made contributions in his field, and evidence of recognition for significant contributions. The two are not identical, because not every contribution is significant, and evidence of a contribution is not necessarily recognition for that contribution. Counsel, for instance, asserts:

An issued patent is evidence of an achievement by a governmental organization, in this case the U.S. Patent and Trademark Office. A patent which is filed and pending is evidence that the business filing the patent [REDACTED] evaluates the invention as being significant and worth spending thousands of dollars in patent fees to protect their property rights in the invention.

The record includes references to the petitioner as an “inventor” for whom “product development” is a core task. The petitioner has not shown that a patent is a form of government recognition for achievements or significant contributions, rather than a routine outcome of the patent application process. Likewise, the petitioner has not shown that it is in any way unusual for businesses to seek patent protection for their employees’ inventions.

Acknowledgement is not the same as recognition, and the petitioner submitted no documentary evidence that his contributions have attracted significant attention outside the context of letters from current and former [REDACTED] officials, solicited specifically to support the petition. The issue is moot, because the petitioner has otherwise established that he meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii).

The director concluded that the petitioner “has not met at least three of the six criteria” for exceptional ability, and stated that “USCIS will not conduct a final merits determination.” However, the director’s evaluation of the six criteria included several elements that should be evaluated as part of a final merits determination. As the petitioner has established that he meets at least three of the six regulatory criteria, USCIS will conduct a final merits determination.

Final Merits Determination

The petitioner provided materials from the BLS revealing that the occupation of mechanical engineer typically requires a bachelor’s degree. The petitioner does not claim to hold a bachelor’s degree. A credential evaluation in the record indicates that his experience conveys expertise equivalent to a master’s degree, but that his foreign academic degree is the equivalent to a U.S. associate’s degree in welding technology. The petitioner’s experience falls under a separate regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B). The petitioner’s academic degree is below, rather than significantly above, what is ordinarily encountered in the field.

The petitioner has not established any certification for his occupation. Instead, he appears to have provided copies of certificates earned during short-term training courses. The petitioner has not established that completion of these courses is a mark of distinction, setting him apart from what is ordinarily encountered in his field.

The petitioner did not establish that his rate of compensation demonstrates exceptional ability, taking into account the BLS information indicating that the salaries of mechanical engineers in the oil and gas extraction industry in Texas are higher.

The petitioner's two unquestioned memberships are in the [REDACTED] and the [REDACTED]. Counsel correctly noted that these memberships meet the plain wording of the regulation, but the petitioner did not establish the membership requirements of either association named above. Accordingly, the petitioner has not established that these memberships demonstrate a level of expertise significantly above that ordinarily encountered in the petitioner's field.

Alluding to higher-priority immigrant classifications, counsel states:

"Exceptional ability" refers to a level of skill, competence, recognition which is clearly lower than "extraordinary" or "outstanding." So it would be logical that membership in professional associations . . . might not be bounded by requirements other than paying a membership fee or some routine administrative process. In any event, the plain language of the regulation binds the adjudicator.

Based on counsel's statement, the petitioner appears to be asserting that his membership in professional associations that require nothing more than "paying a membership fee," demonstrates his exceptional ability. If membership in a given association does not take one's expertise into account when judging a membership application, then that association does not require exceptional ability, and membership in such an association cannot show exceptional ability.

The appeal includes additional information about the petitioner's third claimed membership, showing that he belongs to the [REDACTED] at the "Senior" level. Materials submitted on appeal show that [REDACTED] is not a professional association. Rather, an [REDACTED] document with the heading "The [REDACTED] states:

The [REDACTED] scheme provides proven technical contributors with a career path that offers them recognition, reward, and influence that parallels an equivalent management progression. . . .

The [REDACTED] career progression has four major levels:

1. **Senior:** a technical expert contributing independently, typically at a project level;
2. **Principal:** a technical expert leading locally in a [REDACTED];
3. **Advisor:** a technical expert leading widely in an entire [REDACTED];
4. **Fellow:** a technical expert leading in all [REDACTED] and industry/academia.

Thus, the record shows that [REDACTED] is an internal promotion scheme, not a professional association, and that the petitioner is at the lowest level of "[t]he [REDACTED] career progression."

With respect to the petitioner's claimed recognition for achievements and significant contributions to the field, the petitioner relies partly on documentary evidence and partly on witness letters. The letters contain praise for the petitioner's work, but the documentary evidence does not support the claims in the letters. Patents and articles represent contributions to the field, but all patents and articles are not equally significant and they are not, themselves, recognition for achievements and significant contributions. The petitioner's evidence shows that the recognition the petitioner has received for his work has come from within [REDACTED] itself, indicative of contributions not to the field but to the petitioner's employer. The record shows that Schlumberger has congratulated the petitioner for his articles and patents, but the petitioner has not submitted evidence to establish whether it is rare or common for [REDACTED] employees, or other workers in the industry, to write articles or create patentable inventions. Without this evidence, the petitioner has not established the level of expertise that is ordinarily encountered in the petitioner's field. Accordingly, the petitioner has not provided sufficient evidence to establish that he is an alien of exceptional ability pursuant to 8 C.F.R. § 204.5(k)(2).

National Interest Waiver

The second and final issue concerns the national interest waiver. Without a finding of eligibility for the underlying immigrant classification, the petitioner cannot qualify for the waiver. Even if the petitioner had established that he is an alien of exceptional ability for purposes of 8 C.F.R. § 204.5(k)(2), he has not established that he qualifies for a national interest waiver.

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 (NYSDOT), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope.

Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

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. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is 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.

The petitioner submitted documentation showing that his inventions had led to the filing of five patent applications with the U.S. Patent and Trademark Office. The initial submission showed three approved patents and two pending applications, all identifying the petitioner as the sole inventor or (with [REDACTED] co-inventor. In terms of his technical writings, the petitioner initially submitted copies of three published conference papers, one of which later appeared as an article in the [REDACTED] [REDACTED] as well as reports and other materials intended for internal use within Schlumberger rather than for publication or dissemination throughout the industry.

Five witness letters accompanied the initial filing of the petition. [REDACTED], a principal engineer at [REDACTED], stated:

I have known [the petitioner] since he joined my group of [REDACTED] in 2002 as a new technology implementation specialist. Since then [the petitioner] has been working on some of the most important new product development projects in our company and the most advanced technologies in this industry, including multi lateral reentrance tool, downhole depth control tool, thru tubing zonal isolation tools, subhydrostatic well tools, and fiber optics tools. He has made remarkable contributions to the success of these projects and technologies. These tools and technologies have been commercialized and served the national interests in the oil and gas productions.

[REDACTED] is a through tubing zonal isolation tool. This is one of the most sophisticated areas in the oil industry. . . . [The petitioner's] work in [REDACTED] project has not only significantly contributed to the successful implementation of the project but also been essential for improving our understanding of fundamentals of zonal isolation techniques. The result of [the petitioner's] feedbacks on [REDACTED] technology from the oilfields around the world has also been applied to a variety of other products.

The International wide impact of this [REDACTED] system is evident from the fact that it has been selected as the premium product by our customers around the world, and the results of our projects have been presented at numerous international conferences and published in premier scientific journals. . . .

In his current position at the [REDACTED] Texas, [the petitioner] continues to do groundbreaking work. More recently he has been assigned to implement another novel product, the [REDACTED] optical technology. [The petitioner] does critical work in commissioning this new technology that has never been tried anywhere in the world. While the multimillion dollar project involves premier research across [REDACTED] in the U.S., [the petitioner's] work is exceedingly important because he focuses on . . . implementing the technology in the actual practicality in the oil fields.

[REDACTED] now a drilling department program manager at [REDACTED] research facility in [REDACTED], previously worked with the petitioner in [REDACTED] from 2003 to 2009. [REDACTED] stated:

[The petitioner] was one of the most respected people in my previous organization for his in depth knowledge of [REDACTED] operations and technology. He was always brought in for the most challenging and complicated operations. His strong technical background and strong belief in the power of new technology made him an indispensable asset for our organization. As a result of all this he was one of the few people coming from the operations who were awarded with the title of Senior in our technical career progression scheme.

[REDACTED] stated that the petitioner played significant roles “during the deployment of the DepthLOG tool, which was an electromechanical system to enable pressure telemetry for locating casing collars in an oil well” and in addressing design and deployment problems in “the development of [REDACTED] back pressure valve.”

[REDACTED] stated that he was previously “the department manager at the [REDACTED] group between 2005 to 2008,” although he also stated that his previous title was “[REDACTED]” He stated:

[The petitioner's] work at [REDACTED] was considered as very demanding and highly complex in nature, his work initially encompassed the requirements as technology implementation coordinator for [REDACTED] high pressure – high temperature zonal inflation packers. He was the top specialist in the group and successfully developed and demonstrated, for the first time, that [REDACTED] zonal isolation packer could achieve what the conventional packers could not.

[The petitioner] was the first to launch this novel product around the world . . . [and] proposed several improvements for the [REDACTED] technology – formulating technology improvement plans which were ultimately approved and adopted by [REDACTED]

More importantly, he developed a series of the novel ideas to enhance the interface between the operational personnel and the technology . . . which ultimately led to the elimination of known failure modes and extending the technology's operational envelope. [The petitioner's] contribution was rated the highest in the department and set new standards for his peer group.

In addition to his company wide recognition [the petitioner] obtained national and international recognition for his technological achievements and is well respected within the coiled tubing intervention community. . . .

[The petitioner's] innovative and novel technology contributions sets [*sic*] a truly impressive record of success that has had a considerable impact on the USA business environments.

did not elaborate as to the nature of the petitioner's claimed "national and international recognition."

a project manager at , stated:

I have not directly worked nor had a personal friendship with him. However, I was very impressed with [the petitioner's] professional understanding and input to coiled tubing intervention technologies. . . .

I met [the petitioner] during the development of the project at . . . [The petitioner's] work was among the most demanding and challenging in the down hole tools group. He has developed a substantial amount of new technologies in the coiled tubing intervention area. His methods have proven to be very useful, and departments have started to apply his methods in other branches of operation. Not only our group, but others all over the world are seeking [the petitioner's] expertise.

provided technical details regarding some of the petitioner's projects, and asserted that the petitioner "is well known in the international coiled tubing arena due to the widespread recognition of these achievements." Like did not elaborate on this point, and the petitioner did not submit evidence showing that he "is well known" outside of .

, now "a product manager for the Multi-stage fracturing group of technologies at the segment based in " previously worked "at . . . as inflatable thru-tubing tools Product Champion," in which role he used to "communicate and exchange opinions with" the petitioner. credited the petitioner's "involvement, drive and initiative" with "the current strong position" and continued growth of "Inflatable Thru-tubing

business.” In technical detail, [REDACTED] stated that the petitioner’s “numerous findings from the [REDACTED] high pressure and high temperature zonal isolation project have greatly advanced our view of understanding the technology that has been designed for the [REDACTED] packer” and his development of “the hydraulic releasable inflation tool for the permanent bridge plug concept.” Mr. [REDACTED] asserted that the petitioner has also “made the mile stone achievements on the exceptionally successful field trial of the [REDACTED] zonal isolation packer,” and “has continued to break new ground on the zonal isolation developments.” [REDACTED] stated:

[The petitioner’s] exceptional and outstanding abilities, whose groundbreaking inventions on the intervention techniques, are of vital importance to oil and gas industry [*sic*]. His accomplishments to date have far exceeded those of the vast majority of his peers as evidenced by his productive patent publications to the United States patent office as well as premier articles about the coiled tubing new technology implementations.

The director’s April 21, 2012 RFE focused on the petitioner’s claim of exceptional ability, rather than the national interest waiver. Nevertheless, some elements of the petitioner’s response to the RFE are relevant to the waiver application. Specifically, the petitioner submitted partial copies (each missing the first page) of nine conference papers including citations to his published work – five citations to a paper from 2004, and four to a paper from 2009. Three of the nine citations are self-citations (two by [REDACTED] and four of the remaining six citations are from employees of Schlumberger, leaving only two evidently independent citations (both from the same first author, [REDACTED] outside of the company that employs the petitioner.

In the September 15, 2012 denial notice, the director stated: “the evidence submitted establishes that the beneficiary is and has been performing the inherent duties of his employment of a mechanical engineer,” but “[t]he petitioner has not shown that the waiver of the required job offer and labor certification would be in the national interest.”

On appeal, counsel states that the labor certification process can only accommodate “objective criteria” such as experience and training, and cannot take into account “subjective criteria such as creativity or the capacity to innovate.” This general observation about the labor certification process does not warrant a blanket waiver for individuals with “the capacity to innovate.” It is, therefore, necessary to examine how the petitioner, as an individual, merits special consideration. Seeking to accomplish this goal, counsel quotes witness letters submitted previously as well as new letters that echo previous assertions with additional technical details. Like the letters submitted previously, the petitioner’s new letters appear to be from current or former [REDACTED] employees.

[REDACTED] repeats assertions from his first letter, with additional technical details. [REDACTED] describes the three patented inventions on which he and the petitioner collaborated, specifically “a new kind of backpressure valve to maintain a substantially controlled pressure [in] the coiled tubing uphole while ALSO [*sic*] being compatible with a ballistically actuated tool downhole,” “invented a Dynamic Scale Removal Tool, also for use in the downhole environment,” and an “Adjustable

Diameter Fishing Tool” used for retrieving items that “become[] stuck downhole.” [REDACTED] asserted that the petitioner’s “abilities are exceptional, significantly above the average. He is inventive, which is not the norm even for engineers. . . . Among his peers at work, he has consistently been regarded as outstanding.”

[REDACTED], in his second letter, stated that the petitioner “was the critical worldwide focal point for implementing . . . [a] project” involving the deployment of “[t] [REDACTED] coiled tubing through-tubing inflatable packer,” and “is the sole inventor of a hydraulically releasable inflation tool for a permanent bridge plug, for which he received two patents.” In language similar to wording found in his earlier letter, [REDACTED] asserts that the petitioner’s “accomplishments to date have far exceeded those of the vast majority of his peers as evidenced by his U.S. patents and premier articles on new coiled tubing technologies.”

[REDACTED] asserts that the petitioner’s “expertise in the area of oil field coiled tubing intervention techniques . . . sets him apart from many of his professional peers.” [REDACTED] states:

[The petitioner] has made a positive contribution to the American economy. Any incidents in oil/gas wells are extremely expensive. The new developments in the coiled tubing intervention tools resulting from [the petitioner’s] contributions not only provide a more effective way to counter these very expensive problems, but also make coiled tubing intervention operations more affordable to oil companies, thus less expensive to the U.S. public in oil and gas prices.

A letter from [REDACTED] Equipment Center, bears the date September 12, 2011, but the petitioner did not submit it until the appeal. [REDACTED] who “met [the petitioner] during the first [REDACTED] project execution in [REDACTED] in May 2000,” stated:

I felt very comfortable to have him on my design team for developing the Multi-[REDACTED] assembly. [The petitioner] created a remarkable design with his unique background and skills. He has a very comprehensive knowledge of mechanical design, he is very creative with many original new ideas.

. . . . I was quite fortunate to have him close to my department to discuss [sic] and exchange his valuable opinions on the [REDACTED] project that I was managing [in 2002]. . . . [The petitioner’s] suggestions and recommendations on the engineering design unquestionably gave a positive impact on [REDACTED] project. He is without doubt among the top specialists in the coiled tubing intervention business.

Moreover, [the petitioner] was of a [sic] critical importance to the success of the [REDACTED] project design, testing and field implementations in 2008. . . . [T]he first abrasive jetting field trial exceeded expectations and was very successful because of

[the petitioner's] excellent design, evaluate [sic] and execution skills. The well opened to flow shortly after the treatment and it . . . [showed] an 8 fold increase!

Two further witnesses stated that their new letters are supplements to previous letters written in September 2011, but the record does not contain the earlier letters. The exhibit list submitted with the initial filing of the petition in November 2011 did not list letters from those witnesses. Their new letters, therefore, represent their only statements in the record. [REDACTED] manager for North America, stated: "I write to supplement my letter of September 18, 2011," but the petitioner did not submit that letter. In his October 1, 2012 letter, [REDACTED] stated:

[The petitioner] has made significant intellectual property contributions (patents) to the well downhole tool industry through his efforts in [REDACTED] and his assistance to our business in [REDACTED] trademark technologies. [The petitioner] worked closely with our development teams for several years and personally developed new methodologies now being used in coiled tubing operations.

. . . [The petitioner] has been the key specialist on the [REDACTED] zonal isolation technologies using zonal isolation packers, which are designed for extreme conditions. [REDACTED], a through-tubing inflatable anchoring packer, extends critical zonal isolation capability to previously inaccessible, chemically harsh, and high-temperature environments. . . .

[The petitioner] played a crucial role for the first ever project start up of the [REDACTED] PS (production system) on [REDACTED] area in March 2010. [REDACTED] to understand the fracture and completion program effectiveness on their dry gas wells using combined distributed temperature survey (DTS) and production logging technologies. . . .

[The petitioner] was the critical focal point to complete the [REDACTED] coiled tubing project with the Electrical to Optical tool application together with another Schlumberger product, the FSI tool to log the well while it is producing, and take a [sic] distributed temperature surveys (DTS) and distributed vibration surveys (DVS) from the wells.

[REDACTED] to eliminate one downhole trip per well, resulting in reduced risk, cost and nonproductive time. The project has been finished very successfully and as a result [REDACTED] awarded more contracts for my department.

[REDACTED] coiled tubing services staffing and career manager at [REDACTED] referred to an earlier letter dated October 1, 2011, not found in the record or the initial exhibit list. [REDACTED], who worked with the petitioner in Saudi Arabia and now, like the petitioner, works in [REDACTED] states that the petitioner "plays a crucial role in the transfer of technology from the drawing board to actual

practice.” [REDACTED] asserts that the petitioner is [REDACTED] “most experienced individual” with respect to “the [REDACTED]” and contends: “It is imperative for [the petitioner] to remain in the United States as all our research facilities are located in Houston, along with the teams conducting the technology development, manufacturing and field deployment.”

The opinions of experts in the field are not without weight and have received consideration 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 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; 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. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

The authors of the quoted letters express strong opinions regarding the value of the petitioner’s contributions to [REDACTED] and its operations on behalf of various clients, but the record lacks sufficient evidence to allow a comparison between the petitioner’s contributions and those of other qualified workers in his specialty.

The petitioner has established that his inventions have yielded several patents. The awarding of such patents is not, by itself, evidence of eligibility for the waiver. See *NYS DOT*, 22 I&N Dec. 221, n.7. Similarly, authorship of conference presentations does not establish the field or industry’s response to the petitioner’s work. These types of evidence demonstrate that the petitioner has made contributions, but do not establish that those contributions stand out to an extent that would warrant the additional immigration benefit of the national interest waiver.

Counsel has asserted that the very filing of the patent applications illustrates [REDACTED] high opinion of the petitioner’s work, but the petitioner has not shown that the filing of such patent applications is an unusual step that [REDACTED] and comparable companies rarely take. Likewise, the petitioner has established a small number of independent citations of his presented work, but provided no context to show that these citations, though few in number, nevertheless distinguish the petitioner from others in his field. Most of the attention the petitioner’s work has attracted has come from within [REDACTED].

The petitioner has provided extensive information about what he does for [REDACTED], but the record does not substantiate claims that his role within the company has been of such particular significance that it is in the national interest to waive the job offer requirement that normally applies to the immigrant classification he has chosen to seek. Also, as stated previously, the petitioner has not established eligibility for the underlying immigrant classification, and therefore he cannot qualify for the national interest waiver.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.