



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **JAN 16 2014** Office: TEXAS 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. 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 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 general surgeon. At the time of filing, the petitioner was working as a surgery resident at [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 an April 8, 2013 letter from counsel contesting the director's decision, citation information from [REDACTED] and copies of two non-precedent AAO decisions.

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.

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 surgeon is in an area of intrinsic merit and that the proposed benefits of his minimally invasive surgery research would be national in scope. It remains, then, to determine whether the petitioner 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. *NYSDOT* at 220. At issue is whether this petitioner’s contributions in the field are of such significance that he merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification he seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner’s achievements, original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner filed the Form I-140 petition on September 26, 2012. In support of his petition, the petitioner submitted academic records, letters commenting on his experience as a surgeon, and professional memberships. Academic records, occupational experience, and professional memberships are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (E). Exceptional ability, in turn, is not self-evident grounds for the waiver. *See* section 203(b)(2)(A) of the Act. The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his field of expertise.

Counsel argues that the director’s “denial was based on an overly restrictive standard that rises to the level of extraordinary ability” under section 203(b)(1)(A) of the Act. The director, however, did not require the petitioner to submit evidence commensurate with that required by the regulation at 8 C.F.R. § 204.5(h)(3). Instead, the director determined that the petitioner had failed to demonstrate that “his work has influenced the field as a whole.” In addition, the director noted a lack of evidence showing that the petitioner’s work has been frequently cited by other researchers. While the petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that his influence be national in scope. *NYSDOT* at 217, n.3. More specifically, the petitioner “must clearly present a significant benefit to the field of endeavor.” *Id.* at 218. *See also id.* at 219, n.6 (the alien must have “a past history of demonstrable achievement with some degree of influence on the field as a whole”). The director’s analysis accurately addresses the third prong of the *NYSDOT* test and is consistent with the precedent decision’s guidelines.

Frequent citation by others is not the only means by which to show the petitioner’s impact on his field. Independent reference letters can play a significant role in this respect. Here, however, the petitioner has submitted only a few such letters, which collectively fail to establish the depth or extent of his influence on the field as whole. Listing the petitioner’s novel findings and speculating on their potential future impact cannot suffice in this regard, because all researchers are expected to produce original work. Not every surgery researcher who performs original investigations or studies that add to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

Along with copies of his published and presented work, the petitioner submitted letters of support discussing his activities in the field. 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 resident in good standing in the general surgery program here at [REDACTED] New York. He began his training on July 1, 2009. He is expected complete her [sic] general surgery training on June 30, 2013.” [REDACTED] indicates that the petitioner is in the “training” phase of his surgical career, but does not provide specific examples of how the petitioner’s work has influenced the field as a whole.

I have worked closely with [the petitioner] . . . for 4 years during his training.

* * *

As a distinguished surgeon, [the petitioner] is an expert in diagnosing and managing acute surgical emergencies, as well as treating severely compromised patients. He possesses superior medical knowledge and mastery of complex procedures from multiple disciplines, including general surgery, minimally invasive surgery, trauma surgery, vascular surgery, colorectal surgery, thoracic surgery, pediatric surgery and critical care.

[The petitioner’s] surgical skills are exceptional. He is an authority in the most complex and high-risk surgical cases and, as a result, many surgeons regularly call upon him at the time of critical operations to manage such cases.

* * *

[The petitioner] is interested and expert in Minimally Invasive Surgery. . . . [The petitioner] has also performed an excellent research in this field. His work has been presented in many national and international conferences such as [REDACTED]

[REDACTED] comments on the petitioner’s expertise in handling surgical emergencies, ability to treat severely compromised patients, medical knowledge, mastery of complex procedures, and surgical skills. However, it cannot suffice to state that the petitioner possesses useful skills, or a “unique background.” Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *NYSDOT* at 221. In addition, Dr. [REDACTED] states that the petitioner’s “work has been presented in many national and international conferences such as [REDACTED] Many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. These meetings and conferences are promoted and sponsored by professional associations, health organizations, businesses, educational institutions, and government

agencies. While presentation of the petitioner's work demonstrates that his findings were shared with others and may be acknowledged as original based on their selection to be presented, there is no documentary evidence showing that his presented work has specifically impacted minimally invasive surgical techniques performed by others throughout the field, that his work is frequently cited by independent researchers, or that his findings have otherwise influenced the field as a whole.

stated: "[The petitioner] is a leading researcher in Minimally Invasive Surgery. His paper titled

The preceding paper coauthored by the petitioner was not published in [redacted] until after the petition's September 26, 2012 filing date. Research work published after the date of filing does not constitute evidence that the petitioner's findings were already influential as of that date. 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. In this matter, that means that the petitioner must demonstrate his track record of success with some degree of influence on the field as a whole as of that date. Consistent with the preceding precedent decisions, a petitioner cannot secure a priority date in the hope that his unpublished research at the time of filing will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008). Accordingly, the petitioner's research paper that was not yet published as of the date of filing and, thus, had not been widely disseminated in the field as of that date, cannot establish his eligibility for the waiver as of the date of filing.

further stated:

According to current reports, our nation suffers from a shortage of qualified health care professionals, and in particular Surgeons like [the petitioner]. America is sitting on the cusp of a major shortage of general surgeons that will only worsen as baby boomers grow older, hitting a stage of life when they will need surgery most. . . . Each year, thousands of medical students graduate, but very few specialize in General Surgery and Minimally Invasive Surgery due to declining medical student interest in certain surgical specialties with a perceived poor lifestyle, most notably general surgery.

[redacted] asserts above that there is a "shortage" of qualified general surgeons in the United States. The unavailability of qualified U.S. workers or the amelioration of local labor shortages are not considerations in national interest waiver determinations because the alien employment

certification process is already in place to address such shortages. *NYS DOT* at 218. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor through the alien employment certification process. *Id.* at 221.

[The petitioner's] recent article titled "[redacted]" has been accepted for publication in the "[redacted]". This article is a significant contribution to the literature at many levels. Single Incision Surgery is uncommon in pediatric patients. It leads to less number of scars on the abdomen compared to the conventional laparoscopy and diminishes the postoperative pain. [The petitioner] has addressed the need and feasibility of teaching this emerging technique to all surgical residents so that it can be incorporated and used by all surgeons throughout the United States. He has also published other equally important papers in different fields of Surgery, such as "[redacted]".

[redacted] comments on the petitioner's article in "[redacted]", but as previously discussed, the article was published subsequent to the petition's filing date. 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. Regardless, while the article discusses the authors' "[redacted]" in "[redacted]" surgical residency program, there is no evidence indicating that the petitioner and his coauthor were the first surgeons who originated or pioneered the "[redacted]" appendectomy technique. The petitioner has not established that teaching a surgical technique developed by others demonstrates a level of achievement sufficient to waive the job offer requirement. In addition, there is no documentary evidence showing that the petitioner's two articles in "[redacted]" are frequently cited by independent researchers, that his findings have led to widespread changes in teaching protocols with corresponding improvement in surgical outcomes, or that his findings have otherwise influenced the field as a whole.

[The petitioner] is at forefront of research. He has performed a leading and critical role in many research projects such as single incision surgery, surgery for morbid obesity and breast surgery. Single incision surgery is a newer technique in Minimally Invasive Surgery. . . . [The petitioner] is one of the very few surgeons in the United States who can perform the single incision surgery. As a surgeon scientist [the petitioner] is always willing to innovate, evaluate and teach the newer techniques such as single incision surgery. [The petitioner's]

work in this area has been appreciated and presented at many national and international meetings such as [REDACTED]

[REDACTED] comments on the petitioner's surgical research experience and ability to perform single incision surgery, but any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for alien employment certification. *NYSDOT* at 220-221. In addition, while [REDACTED] asserts that the petitioner's work was "appreciated" at meetings of the [REDACTED] there is no documentary evidence showing that his research presentations have been frequently cited by independent researchers or that his findings have otherwise influenced the field as a whole.

[REDACTED]
stated:

[I]t is clear that [the petitioner's] work is providing tremendous benefits to the United States and will continue to do so in the future. For example, [the petitioner's] publication titled [REDACTED]

[REDACTED] has been recently accepted for publication. . . . In this study [the petitioner] has shown that not only is this new technique safe in pediatric patients, but it also can be safely taught to surgery residents so that they can use it for the benefits of the patients all over the U.S. In particular, this impressive work has significant value to our nation because it has the potential to revolutionize the treatment in laparoscopic surgery.

I very much look forward to the results from [the petitioner's] current research and the innovative projects he will undertake in the future. I have no doubt that [the petitioner] provides incredible value to the United States and our healthcare system. I am confident that he is a physician-scientist of extraordinary ability, as his contributions to the field of general surgery and Minimally Invasive laparoscopic surgery are truly exceptional.

[REDACTED] asserts that the petitioner's work "has the potential to revolutionize the treatment in laparoscopic surgery," but the record does not show that the petitioner's work has yet had that effect on a national level. Speculation about the possible future impact of the petitioner's work is not evidence, and cannot establish eligibility for the third prong of the national interest waiver test. In addition, while [REDACTED] states that he "look[s] forward to the results from [the petitioner's] current research and the innovative projects he will undertake in the future," [REDACTED] fails to provide specific examples of how the petitioner's past work has already influenced the field of surgery as a whole. A petitioner cannot establish eligibility based on the expectation of future eligibility. *Matter of Katigbak*, 14 I&N Dec. at 49.

[REDACTED]

I met [the petitioner] at [REDACTED] four years ago and have been impressed by his work as a researcher since then. . . . I have been following [the petitioner's] presentations at various nationally and internationally recognized conferences such as [REDACTED]. [The petitioner's] presentations at these various conferences have inspired me in my work as a Minimally Invasive and Bariatric Surgeon. For example [the petitioner] is one of the few surgeons in the United States who perform the single incision surgery, which is a form of Minimally Invasive Surgery. Through his research [the petitioner] has shown that this newer technique not only enables surgeons to reduce the number of incisions and decrease the postoperative morbidity but also that it is safe for patients. His pioneering work in this field has inspired me to incorporate this technique in my practice for the benefit of my patients.

[REDACTED] asserts above that the petitioner "is one of the few surgeons in the United States who perform the single incision surgery." As previously discussed, assuming the petitioner's qualifications are unique, the national interest waiver was not intended to alleviate skill shortages in a given field. *Id.* at 221. Regardless of the petitioner's particular experience or skills, even assuming they are unique, the benefit that his skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the employment certification process. *Id.* In addition, [REDACTED] states that the petitioner inspired him to incorporate the single incision surgery technique in his practice, but he does not identify any other surgeons whose work that the petitioner has influenced. Again, there is no evidence demonstrating that the petitioner originated or pioneered the single incision surgery technique. While the petitioner coauthored an article about teaching the [REDACTED] procedure to other surgical residents at [REDACTED], there is no documentation showing that the petitioner's specific teaching methodologies have been applied in surgical residency programs throughout the country, that his findings are frequently cited by independent researchers, or that his work has otherwise influenced the field as a whole.

[REDACTED] further stated:

In one of his presentations at the prestigious [REDACTED], [REDACTED], [the petitioner] presented his findings that removing the band from its insertion site can cause postoperative sepsis in patients. He then presented an alternative way to avoid that sepsis by removing the band from a different location in the stomach. These are a few examples of how [the petitioner] has influenced the field of Minimally Invasive Laparoscopic Surgery.

[REDACTED] indicates that the petitioner "presented an alternative way to avoid [] sepsis by removing the band from a different location in the stomach" in his [REDACTED] presentation, but does not provide specific examples of how the petitioner's method is being utilized by others throughout the field or has otherwise influenced the field of minimally invasive laparoscopic surgery as a whole. In addition, the petitioner did not submit citation evidence demonstrating that his findings have impacted the field.

[REDACTED], stated:

[The petitioner] has helped to increase the knowledge of many surgeons in our field through the presentations of his work at many prestigious national and international surgical conferences. For example his presentation named [REDACTED] was very well received. This presentation has influenced the field of surgery as a whole. More specifically, through this presentation [the petitioner] showed that how a single incision laparoscopy can easily be incorporated in surgical residency training. As more and more surgical residents will be trained in this technique, the United States will soon have many surgeons skilled in this unique technique.

[REDACTED] asserts above that the petitioner's presentation at the [REDACTED] conference "was very well received" and "has influenced the field as a whole." However, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). There is no supporting evidence showing that the petitioner's findings have been frequently cited by independent researchers or have otherwise influenced the field of surgery as a whole. 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 addition, [REDACTED] asserts that "more and more surgical residents will be trained" in single incision laparoscopy, and that "the United States will soon have many surgeons skilled in this unique technique." While [REDACTED] offers his opinion regarding the potential impact of the petitioner's work, he fails to provide specific examples of how the petitioner's specific findings and methods have already been implemented in surgical residency training programs throughout the United States. 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.

While the petitioner's published and presented findings have value, any research must be original and likely to present some benefit if it is to receive funding and attention from the scientific or medical community. In order for a university, publisher, conference organizer, or grantor to accept any research for graduation, publication, presentation, or funding, the research must offer new and useful information to the pool of knowledge. Not every researcher who performs original research that adds to the general pool of knowledge stands out from that of his peers at a level sufficient to justify a waiver of the job offer requirement.

The director denied the petition on March 9, 2013, stating: "Without evidence that the petitioner's research has found wide application throughout his field, or frequent . . . independent citation by other researchers, USCIS cannot find that his work has influenced the field as a whole." The

director further stated the record did not establish that the “petitioner will serve the national interest to a substantially greater degree than would similarly employed U.S. workers.”

On appeal, the petitioner submits citation information from [REDACTED] reflecting an aggregate of two cites to his body of research work. One of the submitted citations from the [REDACTED] is a self-cite by the petitioner’s coauthors, [REDACTED]. Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. In addition, the article citing to the petitioner’s work in [REDACTED] was published in 2013. 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. The petitioner has not established that a single independent cite to his body of research work at the time of filing is an indication that his findings have influenced the field as a whole.

Counsel argues that the director ignored and failed to give sufficient weight to the letters from surgical experts who discussed the petitioner’s achievements. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is “self-serving.” *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: “We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of the petitioner’s references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, USCIS is ultimately responsible for making the final determination regarding a petitioner’s eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner’s professional contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner’s eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). Thus, the content of the experts’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by a petitioner in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a surgery researcher who has influenced the field as a whole.

Counsel points to two non-precedent decisions in which the AAO sustained appeals for a research pathologist and a network traffic engineering researcher dated June 3, 2003 and August 12, 2005, respectively. Counsel argues that the AAO’s August 12, 2005 decision, which acknowledged the value of reference letters, comports with the present matter. Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). While AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished AAO decisions are not similarly binding. *See* 8 C.F.R.

§ 103.3(c). Furthermore, counsel has not established that the facts of the instant petition are similar to those in the unpublished decisions.

Counsel asserts that the director “erred by replacing the ‘preponderance of evidence’ standard with a stricter ‘clear and convincing’ standard.” Counsel further states:

[T]he director has greatly overstated the degree of influence required for an alien to qualify for the national interest waiver. It is absolutely true that the petitioner cannot simply show that he is an above-average surgeon. This does not mean, however, that the petitioner must be a “household name” who “shook the field of medical research.”

In most administrative immigration proceedings, the petitioner must prove by a preponderance of the evidence that he or she is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* at 376. The record reflects that at the time of filing the petitioner was a surgical resident who was scheduled to complete his general surgery training on June 30, 2013. The director’s analysis did not require the petitioner to demonstrate that he was a “household name” who “shook the field of medical research.” Instead, following *NYSDOT*, the director stated that “[a] qualifying individual must present a record of achievement having some degree of influence on the field as a whole.” *See NYSDOT* at 219, n. 6. In the present matter, the documentation submitted by the petitioner fails to demonstrate by a preponderance of the evidence that he will serve the national interest to a substantially greater degree than would an available U.S. worker with the same minimum qualifications.

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. The petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. 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.