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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: **JUN 05 2014** OFFICE: NEBRASKA SERVICE CENTER

FILE: [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)

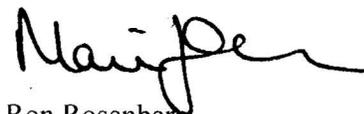
ON BEHALF OF PETITIONER:

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,



<sup>2</sup> Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before us at the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a physician. When he filed the petition, the petitioner was a medical resident at the [REDACTED] in Ohio. He later began a fellowship at [REDACTED] in Nashville, Tennessee. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a legal statement.

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

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

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

(B) Waiver of Job Offer –

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

The director did not dispute that the petitioner qualifies as a member of the professions 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, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*In re New York State Dep’t of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

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

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

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 5, 2012. The petition included an introductory legal statement that reads, in part:

[The petitioner] is a brilliant surgeon with particular expertise in surgical oncology, laparoscopic (minimally invasive) and vascular surgery. . . .

[E]ven among surgeons, just a few have the great experience and expertise to treat patients and perform major vascular surgery. . . . [The petitioner] researches and investigates the outcomes of open and minimally invasive surgeries, in addition to performing aortic aneurysm repairs; carotid endarterectomies and lower extremity bypass surgeries and teaching his fields of expertise. . . .

[The petitioner] has been consistently recognized by top experts in this field. He has received prestigious awards, and his research has been published in leading journals and presented before prominent national and international conferences and meetings. . . . The world's leading experts acknowledge his unparalleled expertise in surgery. . . . [The petitioner's] expertise significantly improves health care and reduces hospital stays and medical costs. . . .

In addition, [the petitioner] frequently diagnoses and treats patients from different parts of the country on referral. . . . Because he is able to perform such advanced procedures that only a very small percentage of his peers are able to perform, he is called on to treat patients from around the US.

The record does not support all of the above claims. 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)). Corroborated claims will receive due consideration, but the introductory statement submitted with the petition has no evidentiary weight.

The introductory legal statement indicates that the petitioner "is one of the handful of surgeons across the nation who have expertise in Single Incision Laparoscopic Surgery . . . which defines the cutting edge of minimally invasive surgery available today." The petitioner has not documented the number of surgeons qualified to perform this procedure, and there is no indication that the petitioner developed or significantly modified the procedure. An alien's job-related training in a new method, whatever its importance, cannot be considered to be an achievement or contribution comparable to the innovation of that new method. *See NYS DOT*, 22 I&N Dec. at 221 n.7.

The introductory statement establishes the intrinsic merit of the petitioner's occupation, and the national scope of the benefit from his published and presented work. Regarding the third prong of the *NYS DOT* national interest test, the petitioner's introductory legal statement presented the assertion that "[l]abor certification prohibits a job offer that includes a combination of occupations. See 69 Fed Reg 247 at 77394." The cited entry in the Federal Register promulgated a final rule issuing new Department of Labor regulations governing labor certification. The relevant regulation does not match the description in the petitioner's legal statement. Specifically, the regulation at 20 C.F.R. § 656.17(h)(3), which appears on the cited page of the Federal Register, reads:

If the job opportunity involves a combination of occupations, the employer must document that it has normally employed persons for that combination of occupations, and/or workers customarily perform the combination of occupations in the area of intended employment, and/or the combination job opportunity is based on a business necessity. Combination occupations can be documented by position descriptions and relevant payroll records, and/or letters from other employers stating their workers normally perform the combination of occupations in the area of intended employment, and/or documentation that the combination occupation arises from a business necessity.

The quoted regulation does not state, as counsel claimed, that “[l]abor certification prohibits a job offer that includes a combination of occupations.” Rather, combination occupations are acceptable, provided the employer is able to meet one of the specified conditions. The assertion that physicians do not routinely engage in teaching or research does not take into account the faculty of medical schools, for whom such duties would appear to be routine.

When the petitioner filed the petition, he was a resident at a medical school, with clinical, research, and teaching duties. [REDACTED] documentation in the record shows that the petitioner’s residency program in general surgery “is a 6 year program, 5 clinical, 1 research.” The petitioner’s mandatory participation in research during his residency does not mean that the petitioner will continue to engage in research after his training is complete. Electronic mail messages from recruiters discussed various employment opportunities. The job descriptions did not mention research, and therefore the recruiters’ messages do not demonstrate demand for the petitioner’s services as a researcher.

The petitioner submitted several letters with the petition. [REDACTED] Professor [REDACTED] stated: “I would estimate that [the petitioner] is in the top 1% of surgeons in education, experience, intelligence and character.” Describing the petitioner’s treatment of a patient with “a ‘ganglioneuroma,’ a rare nerve cell tumor,” Prof. [REDACTED] claimed: “Very few surgeons have experience in removing such tumors.”

Professor [REDACTED] chair of the Department of Surgery at [REDACTED] asserted that the petitioner “is a master diagnostician and has been known as one from the start of his career. He has unparalleled expertise in performing complex procedures in the care of cancer patients, especially with lung, breast, pancreatic, and gastric cancer.” Prof. [REDACTED] described the petitioner’s diagnosis and treatment of a patient for whom “only 2 similar cases have been reported in English medical literature over the last 150 years.”

Professor [REDACTED] now at [REDACTED] was formerly an associate professor at the [REDACTED] where the petitioner earned his master’s degree in public health from 2005 to 2007. Prof. [REDACTED] stated that the petitioner participated in research projects concerning hypertension, diabetes, breast cancer, and “Health Perceptions and Status.” Prof. [REDACTED] did not explain how these projects relate to the petitioner’s subsequent work in laparoscopic surgery, and the record does not indicate that the petitioner will perform future research on those subjects. Prof. [REDACTED] has served in departments of

epidemiology and obstetrics and gynecology; she claimed no expertise in surgery and provided no information about the petitioner's work after he left the [REDACTED] in 2007.

Other witnesses work at various medical schools in the United States. Professor [REDACTED] chief of the Division of Head and Neck and Skull Base Surgery at the [REDACTED] stated:

[The petitioner] is a master of the most advanced and complex medical technologies in the area of minimally invasive surgery, such as laparoscopic surgery. His experience with advanced procedure[s] such as Single Incision Laparoscopic Surgery is matched by only a handful of his peers in the country. In fact, he is one of the elite corps of surgeons that have attained this high level of expertise. . . . [The petitioner] is at the forefront of his field because of his breadth and depth in employing specialized techniques in laparoscopic surgery.

Dr. [REDACTED] assistant professor at [REDACTED] stated that the petitioner "has produced groundbreaking research findings" but did not describe those findings or discuss their significance. Dr. [REDACTED] focused on a video presentation in which the petitioner described how he "performed a one step laparoscopic band removal and conversion to a sleeve gastrectomy." Dr. [REDACTED] stated: "I would estimate that he is one of at most a dozen or so physicians in the United States today with this type of expertise," but cited no evidence to support this estimate.

Professor [REDACTED] of [REDACTED] claimed that the petitioner "is recognized as a leading academic" and "a nationally-recognized leader in surgery [who] has served in critical roles reserved for leaders in the field. . . . [H]e is House Staff to one of the nation's leading institutions in categorical surgery." The petitioner's house staff position as a resident is, by definition, a training position, as attested by [REDACTED] documents in the record. Prof. [REDACTED] claimed that the petitioner's "medical research prowess is well-known throughout the medical community and has had significant impact in the advancement of our medical knowledge," but he did not elaborate or identify any specific contributions that the petitioner has made. Prof. [REDACTED] works in the Neurology department, and does not claim expertise or training in the petitioner's specialty of laparoscopic and vascular surgery.

Dr. [REDACTED], associate professor at [REDACTED] stated that the petitioner "is recognized for his competency in vascular, minimally invasive, and cancer surgery." Dr. [REDACTED] did not elaborate on this point, focusing instead on statistics regarding foreign medical graduates, the reputations of the institutions where the petitioner has studied, and the importance of the type of public health research that the petitioner conducted while studying at the [REDACTED]

The petitioner submitted background materials about a shortage of surgeons in parts of the United States. Such a shortage is not grounds for a national interest waiver under *NYS DOT*, because the labor certification process exists to verify that qualified U.S. workers are unavailable for a given position. See *NYS DOT*, 22 I&N Dec. at 218. Section 203(b)(2)(B)(ii) of the Act makes the waiver

available to certain physicians in government-designated underserved areas, but the physician shortage waiver is available only under specific conditions spelled out in the statute and in the USCIS regulations at 8 C.F.R. § 204.12. The petitioner has not met those conditions. Rather, he has submitted copies of newspaper articles about shortages in various parts of the country.

The petitioner submitted documentation of his participation in peer review. This evidence shows that, in mid-October of 2011, the petitioner contacted several publishers and volunteered as a peer reviewer. The record includes a printout of an October 13, 2011 electronic mail message from the petitioner to the editors of the journal [REDACTED] stating: "I would be thankful if you will consider me for the role of a reviewer for [REDACTED]. This experience will be an invaluable supplement to my clinical training as I embark on an academic career." A reply indicated that the journal added the petitioner to the journal's "list of reviewers."

The record also contains a printout of an October 12, 2011 electronic mail message from an editor at the [REDACTED]. The subject line of the message reads: "FW: Request for info about the Journal; Inquiry about becoming a reviewer for the Journal." This subject line indicates that the petitioner had made such an inquiry, although the record does not contain the petitioner's initial message. The record indicates that, in the second week of October 2011, the petitioner volunteered to serve as a peer reviewer for at least two journals. The record does not specify the journals' respective minimum requirements for peer reviewers, or that any journal sought the petitioner's services as a peer reviewer (rather than accepting offers from the petitioner himself).

The petitioner submitted four exhibits under the heading "Material about the alien in print or electronic media." The first exhibit is an article from [REDACTED] a campus publication of the [REDACTED] at Brownsville and [REDACTED]. The article is not about the petitioner's work. Rather, as its title indicates, "International students face challenges" is "a closer look at . . . international students." The article includes a quotation from the petitioner, explaining why he chose to study at the university.

The next two exhibits both appeared in India in mid-1999, before the petitioner's 18<sup>th</sup> birthday. One exhibit appears to be an advertisement in [REDACTED] naming the petitioner one of the [REDACTED]. The other exhibit, "which appeared in the Monthly Newsletter of the [REDACTED]" reported the petitioner's score "in the [REDACTED]" because the petitioner's father worked for the company that published the newsletter.

The fourth and final exhibit submitted as "[m]aterial about the alien in print or electronic media" is a copy of a 2010 article from the journal [REDACTED]. The petitioner is not a credited author of the article. The article's concluding paragraph lists several individuals and organizations and thanks them "for their invaluable assistance with the project." The petitioner was one of 17 named "study staff" for the project.

The petitioner submitted copies of his published articles and printouts of electronic slides from his presentations. Under the heading "Evidence that the Alien's Work Has Been Cited," the petitioner submitted a copy of one citing article.

The director issued a request for evidence on February 11, 2013. The director instructed the petitioner to show that the benefit from his intended employment will be national in scope; to submit copies of articles that cite his published work; and to establish the extent of his influence on his field.

The petitioner's response does not show that he continues to perform the laparoscopic and vascular surgery which had formed the original basis for the waiver application. Rather, Professor [REDACTED] chair of the Department of Plastic Surgery at [REDACTED] stated: "[The petitioner] was recruited by our department in July 2012 as a fellow in Plastic and Reconstructive Surgery." Prof. [REDACTED] praised the petitioner's "expertise in laparoscopic surgery, vascular surgery and cancer surgery," but did not indicate that the petitioner's duties at [REDACTED] included those types of surgery. A legal statement accompanying the petitioner's response indicates that the petitioner "specializes in burn surgery, hand surgery, cleft lip and cleft palate surgeries."

The petitioner submitted seven letters with the response to the request for evidence. Two of the witnesses, Prof. [REDACTED] and Dr. [REDACTED] chief of plastic surgery at the Department of [REDACTED] focused on the petitioner's plastic surgery work. The petitioner had not done this work prior to the petition's filing date. 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 petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

[REDACTED] assistant professor at the [REDACTED] stated that the petitioner "was a lead contributor" to "the study entitled [REDACTED]" presented at a conference in 2008. The record establishes that the petitioner has participated in research as part of his ongoing training. This participation in what the record suggests is a routine element of medical training does not distinguish the petitioner from other medical trainees.

The remaining witnesses claimed that the petitioner's past work has influenced their own work. Prof. [REDACTED] in his second letter, described work that the petitioner did in 2009, analyzing omissions and errors in patients' medical records. Prof. [REDACTED] stated: "I apply the findings of his research to my own practice and I make it a point to always confirm the information contained in the medical record with the patient." The record does not show that the petitioner innovated the practice of confirming information in medical records, or that the petitioner's 2009 presentation on the subject has significantly reduced the problem.

Prof. [REDACTED] also stated that, in "a manuscript . . . that [the petitioner] is currently working on," the petitioner "has made a compelling argument to revise guidelines for use of warfarin in the elderly

population which is likely to initiate a nationwide debate upon publication.” Speculation about the eventual result of a now-unfinished manuscript is not evidence of the demonstrable impact that the petitioner’s work had already had on the field as of the petition’s filing date.

Dr. [REDACTED] assistant professor at [REDACTED] discussed a paper that the petitioner wrote on hydatid cyst disease. Dr. [REDACTED] stated: “[The petitioner’s] excellent paper has allowed me to offer the most appropriate treatment to these patients.”

Dr. [REDACTED] assistant professor at the [REDACTED] credited the petitioner with “a revolutionary new technique to treat a debilitating complication after weight-loss surgery. . . . [The petitioner] successfully demonstrated, for the first time anywhere in the world (as mentioned in his paper) that one step surgery with [gastric] band removal and conversion to a sleeve gastrectomy . . . can be performed safely . . . with minimally invasive techniques.” Dr. [REDACTED] assistant professor at the [REDACTED] asserted that the technique described above “is of tremendous benefit for patients around the world.” Dr. [REDACTED] claimed that the petitioner’s “technique has . . . been adopted by numerous surgeons worldwide.”

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 witness letters in the record 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. 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. at 165.

The letters considered above contain claims that the petitioner is a widely recognized and highly influential figure in the field of surgery. The record lacks independent documentary evidence to corroborate the claims in the witness letters. For instance, the petitioner has submitted copies of articles from medical journals, but these materials do not show that the petitioner pioneered a new surgical procedure combining gastric band removal and sleeve gastrectomy in a single operation.

The petitioner documented five citations to his published work, including the one citation documented previously. The petitioner also documented citations of two articles that he did not

write, but which identify him in their respective “Acknowledgements” sections. Citation of these articles is not tantamount to citation of the petitioner’s own published work. Statements from authors of the articles [REDACTED] and [REDACTED] purport to show that the petitioner was a major contributor to the research projects described in the articles, but their statements, solicited specifically to support the petition, do not outweigh or explain the omission of the petitioner’s name from the author credits on the articles. The evidence, on balance, indicates that the petitioner had some involvement in the projects as a physician, but that others conducted the actual research that led to the publications.

The director denied the petition on December 5, 2013. The director concluded that the petitioner’s occupation has substantial intrinsic merit, but that the petitioner had not met the other two prongs of the *NYS DOT* national interest test. The director found that the petitioner had not established that his intended work as a surgeon would produce benefits that are national in scope, and that the petitioner’s nationally published research has been, in comparison, a secondary endeavor. The director also found that the petitioner had not established a degree of impact or influence on the field as a whole that would justify approval of the waiver.

The legal statement submitted on appeal notes that the petitioner “is a peer-reviewer for [three] medical periodicals.” The record does not establish the significance of this activity, and it does not establish that there are any significant requirements for such work beyond familiarity with the subject matter.

The appellate statement adds that the petitioner has produced several published articles and conference presentations. The record demonstrates that participation in research is an integral part of the petitioner’s ongoing medical training. Evidence of the articles’ existence is not evidence of their influence. The messages from recruiters show that employers seek the petitioner’s services as a physician and surgeon, but not as a researcher.

The appeal contains the assertion that the petitioner “is highly respected for his clinical and teaching work in the field of plastic and reconstructive surgery. The testimonials submitted from lead experts in this country both with the original application as well as with the response to the request for evidence documented his outstanding clinical reputation.” The original petition contained no reference to plastic and reconstructive surgery, because the petitioner did not begin that fellowship until after he filed the petition. The witness letters have received due consideration, but the record does not support many of the claims in those letters (and the petitioner has not shown that the witnesses are “lead experts” as claimed on appeal). The absence of corroboration diminishes the weight of the witnesses’ claims. *See Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYS DOT*, 22 I&N Dec. 217, n.3. More specifically, the petitioner “must clearly present a significant benefit to the

field of endeavor.” *Id.* at 218. *See also id.* at 219, n.6 (the alien must have “a past history of demonstrable achievement with some degree of influence on the field as a whole.”).

As is clear from the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

We will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.