



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **MAR 25 2014** OFFICE: TEXAS SERVICE CENTER

[Redacted]

IN RE: Petitioner:
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 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 a member of the professions holding the defined equivalent of an advanced degree. The petitioner is the vice president of private banking at the [REDACTED] office of [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 with progressive post-baccalaureate experience equivalent to 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 affidavit, a brief from counsel, and witness statements.

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 with progressive post-baccalaureate experience equivalent to an advanced degree under the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

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

In re New York State 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 28, 2012.

described the petitioner’s duties:

[The petitioner] is currently responsible for attracting and managing funds from high net worth customers to the bank’s Fixed Income, Stock Markets and Currency Market products. He structures financial transactions[,] the coordination of document production and the design of pricing and distribution of security offers. He maintains and develops

relationships with high net worth investors in Brazil and utilizes extraordinary skill to implement investment strategies and policies.

In a statement accompanying the petition, counsel cited background evidence to establish the substantial intrinsic merit of international investment banking. Counsel stated that the benefit from the petitioner's work is national in scope because: "[i]n securing much-needed foreign capital and investment from high-net-worth investors, the ENTIRE United States economy is impacted in a most positive way. These assets are infused into the financial markets and government bond sector and into the national economy."

With respect to the third prong of the *NYS DOT* national interest test, counsel asserted that the petitioner "is recognized by worldwide leaders in every industry, including finance, business, government, and professional sports, as the top expert to consult when investing funds in the United States. He single-handedly manages and continues to attract over 150 million dollars in investments, and is applauded as reaching the top level in his field."

The petitioner did not submit documentary evidence to support the claim that he "manages . . . over 150 million dollars in investments," or to show how this figure compares to the portfolios managed by others in his field. With respect to corroborating evidence, counsel stated that the petitioner "owes a duty of confidentiality to his clients, and accordingly, his work is not written about in disseminated journals or periodicals." Counsel claimed that the petitioner "has influenced the way others within the field market their financial products to foreign investors." Counsel asserted that the petitioner has attracted funds to the United States that his clients would otherwise have invested overseas.

Counsel claimed:

[I]ndependent witnesses in [the petitioner's] field attest to the fact that his track record is not ordinarily found in the field, that it has led and continues to lead to sustained incoming investment for our country, and that he is looked to as an expert in the field – his client-based building is emulated and he has influenced the way others within the field market their financial products to foreign investors.

The petitioner submitted several letters with the petition, but none are from "independent witnesses in his field." One witness is the head of [REDACTED] and the other witnesses are not currently employed in investment banking. Also, two of the witnesses identify themselves as the petitioner's clients. The letters, therefore, do not reflect the petitioner's reputation in the greater investment banking community.

[REDACTED], stated:

During these turbulent financial times, [the petitioner] is precisely the force needed to continue our bank's growth and our nation's recovery and predominance in the industry. . .

[The petitioner] combines his comprehensive understanding of Brazilian and international capital markets with a rare ability to convince investors and financial

institutions of his vision of the future of these markets. He has been a critical force in the increased participation of Brazilian financial investment in U.S. capital markets. He continues to add hundreds of millions to our own US based bank. In addition, by bringing in these amounts for our bank we are able to grow and, in turn, expand hiring, increase employment and opportunities for our current employees.

The remaining witnesses praised the petitioner's work in very general terms. [REDACTED] currently a board member on the Regulatory Agency of Energy and Sanitation for the [REDACTED] [REDACTED] stated:

As someone who regularly travels among industry and business leaders, I am able to confirm [the petitioner's] competent ability in the field of international investment management for high net worth investors, and especially, the client relationships he has built and grown with Brazilian individuals, businesses, and government agencies. [The petitioner] is an elite member in a most competitive field. Even during tumultuous financial times, [the petitioner] is praised as an expert. His solid ability in garnering the trust of the most discerning clients has brought hundreds of millions in investments to the U.S.

[REDACTED] "the largest producer of iron ore and the second largest mining company in the world," stated:

[REDACTED], I meet with some of the top industrial leaders from around Brazil, Latin America and the world. [The petitioner] is the point of contact for many of these investors as he has amassed an elite reputation among them.

[The petitioner] is well known among the leaders of industry in Brazil as the individual to turn to when investing in US financial markets and products. He receives the utmost praise for his special expertise in wealth management strategies in U.S. securities and other traditional U.S. financial instruments. He is trusted to protect wealth from the uncertainty of turbulent financial markets. As I am part of this investor group, I can attest to the high importance we place on personal relationships and trust. [The petitioner] is *the* trusted expert for the elite investor class with whom he deals. Through these relationships, he has attracted investment for the U.S., even throughout these difficult financial times.

[The petitioner] is especially admired for his understanding of the motivation guiding his client's international investments. He uniquely comprehends the uncertainty and fragility that is characteristic of Latin American financial systems.

(Emphasis in original.) [REDACTED] stated:

I am a retired professional soccer player. . . . After reaching the top of the league, many players like myself look to prudently invest large amounts of money, frequently reaching

tens of millions of dollars. [The petitioner's] reputation in investments among league players in Brazil is akin to what a top soccer player's reputation would be in the sports world. His name is the one that is mentioned when large-scale investments need to be made and his advice is revered.

When I began my search for a financial advisor, I looked for guidance not only from other top professional athletes in Brazil, but also to high level individuals in business and finance with whom I had come into contact over my career. They consistently sent me to [the petitioner]. He is the expert in the field to whom the investors at the top of their field turn for advice in their investments.

. . . It is solely because of his expertise that I decided to shift my investments from Brazil to financial markets and products in the United States. He has proven to me and countless others over and over he is able to obtain returns and security where others fail.

(Emphasis in original.) The witness letters all contain broad assertions that the petitioner is a well-regarded expert in his field, but the letters do not provide specific, verifiable evidence of the petitioner's impact on his field. Providing investment advice appears to be a core element of the petitioner's occupation rather than an influential contribution that distinguishes the petitioner from others in his field, and the petitioner submitted no documentary evidence that would permit an objective comparison between himself and others in his field. Client satisfaction is not impact or influence on the field as a whole.

The director issued a request for evidence on December 29, 2012, stating:

You provided four testimonial letters from . . . employers [and] clients who have invested with the beneficiary. While the authors of the letters all speak in compl[i]mentary terms regarding the beneficiary, none specifically identify the beneficiary's work in his field or any contributions which he has made to the field as a whole. Furthermore, the petitioner provided no documentary evidence demonstrating any demonstrable achievement made by the beneficiary, a methodology pioneered by the beneficiary, or any innovation developed by the beneficiary which has influenced or impacted his field. . . .

The petitioner must establish that he has a past record of specific prior achievement with some degree of influence on the field as a whole.

In response, counsel maintained that many investors have moved their investments from Brazil to the United States based solely on the petitioner's advice and efforts, and that, without the petitioner, "these investments might be placed elsewhere." Counsel stated: "One readily acknowledges that depriving a U.S. employer of hundreds of millions of dollars in the aggregate would be contrary to our national interest." Counsel cited *NYS DOT* in support of the following claim:

It is not necessary to prove that the petitioner intends to convey his private banking techniques to others in his field, but rather, by a preponderance of the evidence, it is

necessary to demonstrate that it is more likely than not that the petitioner serves the national interest to a substantially greater degree than a U.S. worker with the same minimum qualifications.

NYS DOT calls for “a past history of demonstrable achievement with some degree of influence on the field as a whole.” *Id.* at 219 n.6. Although counsel did not acknowledge this requirement, counsel stated that the petitioner “nevertheless influences other investment managers in the field. The fact that top international financial experts also believe that [the petitioner] is an expert in his field must be given weight by USCIS.” Counsel, here, appeared to equate expertise in the field with influence in the field. 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 field. Foreign workers possessing such a degree of expertise remain subject to the statutory job offer requirement. Therefore, expertise is not a sufficient basis for approving the national interest waiver.

Counsel contended that the petitioner “has achieved an elite level in his field that few on an international scale have achieved, bringing hundreds of millions of dollars in Latin American investments to the U.S. economy.” The petitioner provided no documentary evidence either to corroborate the figures claimed or to support the claim that few international bank executives with comparable responsibilities have matched his achievement.

The petitioner submitted two additional witness letters. [REDACTED] identified as a senior [REDACTED] stated:

[The petitioner] is known as a top producer for his employer. When compared to others in the industry, proportionally, [the petitioner’s] production far outpaces financial managers throughout the country. . . . His extraordinary percentage of production is well known within the industry.

[The petitioner’s] past accomplishments are one of the reasons his processes for attracting new clients and wealth to the United States are well known among international financial experts who manage and invest money from abroad. He is regularly turned to for advice by others within his group and his work is emulated by investment advisors interested in increasing their amounts under management. . . . As many in the industry have done, I too have emulated his practices. These changes that [the petitioner] was the first to employ in the way financial managers attract clients have altered the way out part of the industry operates.

. . . [H]is reputation is such that it spans the globe, as evidenced by his past track record of success in the industry.

[REDACTED] letter also includes a passage identical to counsel’s earlier introductory letter: “[the petitioner] owes a duty of confidentiality to his clients, and accordingly, his work is not written about in disseminated journals or periodicals.” Invoking the confidentiality of bank transactions does not relieve the petitioner of his burden of proof or entitle him to a lower standard of evidence. Furthermore,

objective evidence of the petitioner's standing in the field need not consist of individual clients' private financial records. Such records, by themselves, would be of little use because they would not establish the petitioner's impact or influence on his field relative to that of his peers.

Leonardo Cervantes, Senior Vice President, stated:

Throughout my career, I have regularly turned to [the petitioner] for investment advice and have sought to model my strategies after his work. He has left a lasting mark in our profession which has positively impacted the entire United States financial system. He has my highest recommendation.

Throughout the financial services industry, [the petitioner] is known as one of the top producers. His innovative skill set far exceeds fellow financial managers. . . .

Fellow investment managers frequently look to [the petitioner] for advice on attracting clients and successfully investing funds. His work is emulated throughout our exclusive and confidential industry, a fact that places him substantially above others in the field. . . . [The petitioner] has altered the way our industry operates on an international scale.

The above claims, like those that preceded them, are very general and lack verifiable detail. The record contains no information about the petitioner's practices that others in the field are said to have adopted. Witnesses claim that the petitioner has altered international banking practices but given no information as to how he has done so.

The petitioner submitted a copy of his 2012 Internal Revenue Service Form W-2 Wage and Tax Statement and a printout from the Foreign Labor Certification Data Center Online Wage Library, indicating that the petitioner's annual income is more than five times the local "Level 4 Wage" for "Financial Managers." The petitioner filed the petition not as a financial manager, but as the vice president of a bank. The petitioner has not shown the two terms to be synonymous.

The director denied the petition on July 30, 2013, stating that the petitioner had met only the first two prongs of the *NYSDOT* national interest test, pertaining to intrinsic merit and national scope. The director quoted from the submitted witness letters, and found them deficient. Regarding [redacted] letter, for instance, the director concluded that the witness "provides no specific information of any sort and does not identify a contribution or impact which the petitioner made upon his field." The director found that, however the petitioner's work benefits his clients, the record contains no evidence of wider benefit to the United States or influence on the field.

The petitioner's appeal includes an affidavit in which the petitioner states:

I created a unique process for attracting and managing foreign investments in the United States. My process involves studying local dynamics and investor motivations and preferences of affluent regions of Brazil and focusing my client management on specific professions, such as professional athletes and business leaders. . . . There are only a few

individuals in the private banking field who are able to work with professional athletes in Brazil.

My process also involves developing knowledge of relevant political issues, family situations, and other factors which allow me to design a customized investment strategy for each client.

I am aware that others in my field utilize my original process for attracting and managing foreign investments in the United States. I have regularly been told by my peers that my process is emulated throughout the private banking industry, and I am also regularly consulted by my colleagues for my investment advice and strategy.

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)). The petitioner cannot establish his influence on his field by claiming such influence.

Counsel states that the petitioner's "reputation . . . spans the globe, as evidenced by testimonial letters" submitted throughout this proceeding. The appeal includes three more such letters.

follows up his previous letter, stating:

[The petitioner] has developed a groundbreaking process for attracting and securing investments from high net worth Brazilian investors. I believe his work is emulated by some of his peers who look to his methods as a guide in their own work. [The petitioner's] past record of accomplishments in International Private Banking are truly extraordinary. Specifically, [the petitioner's] private banking process involves focusing on certain professions in affluent regions of Brazil, including professional athletes. [The petitioner] also extensively studies family and situational, political and unique dynamics of investors to best understand motivating factors of this elite investor class. This original process for attracting funds from Brazilian investors to the United States is emulated throughout the field by fellow private bankers looking to expand their assets under management.

The above passage is similar to portions of the petitioner's affidavit, and to a letter from , a partner at

[The petitioner] successfully attracts and secures investments from high net worth Brazilian investors to the United States. Specifically, his method involves focusing his client relationship management on affluent regions in Brazil, targeting at successful professionals. [The petitioner] studies these investor's [sic] motivations and has amassed a comprehensive understanding of the mindset of high net worth Brazilians, which has allowed him to develop deep-rooted relationships with this class of elite investors.

. . . He pioneered in focusing on specific types of investors in Brazil and in advising them, utilizing his extensive knowledge of investment strategies in U.S. markets.

██████████ financial superintendent at ██████████, “one of the largest utilities in Brazil,” states that the petitioner “is widely regarded as the leading expert in International Private Banking, and his network of contacts and reputation is simply unmatched. His deep knowledge of his client’s [sic] needs enables him to provide them with the most appropriate financial product.”

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 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. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). *See also Matter of Soffici*, 22 I&N Dec. 165 (unsupported assertions cannot suffice to meet the petitioner’s burden of proof).

The letters in the record primarily contain bare assertions regarding the petitioner’s reputation and influence without specifically identifying innovations and providing specific examples of how those innovations have influenced the field. The witnesses offered only general assertions, such as the claim that the petitioner attracts larger investments by focusing on wealthy clients in “affluent regions in Brazil.”

Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The same logic applies to repetition of key phrases from precedent decisions such as *NYSDOT*. Similarly, 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). The petitioner did not submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

Counsel cites an unpublished appellate decision, indicating that “the high caliber of the witnesses was such that INS must give considerable weight to their expertise when evaluating the relative significance of the petitioner’s work.” Counsel has furnished no evidence to establish that the facts of the instant petition are comparable to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that

AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Counsel claims that the petitioner's witnesses are "highly placed in the field," but the record does not establish this claim. The witnesses' claimed titles alone are not sufficient in this regard. Also, a number of the witnesses are not in the petitioner's field at all (one, for instance, is a former professional athlete).

The petitioner has not submitted verifiable evidence to confirm the amount of the investments he claims to have procured, or to show how that amount compares to the sums accumulated by others in his field. Witnesses claim that the petitioner has influenced his field through his methods of soliciting investments, but they offer no information about those methods except to state that the petitioner seeks wealthy clients and learns about their investment goals and other circumstances that may affect investment performance. The petitioner has not shown how this information distinguishes him from others in his line of work.

The lack of detail in the petitioner's claim, and the lack of corroborating evidence for those details that the petitioner has provided, preclude a finding that the petitioner has met his burden of proof.

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. *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.").

As is clear from a plain reading of 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.

The AAO 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.