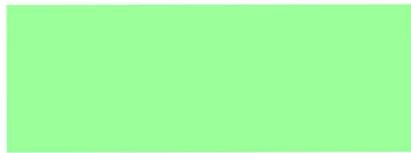


(b)(6)

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



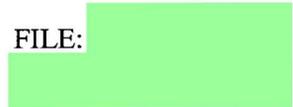
U.S. Citizenship  
and Immigration  
Services



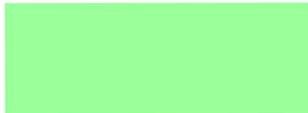
DATE: OFFICE: TEXAS SERVICE CENTER

**MAY 27 2014**

FILE:



IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

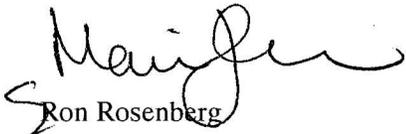
SELF-REPRESENTED

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 us 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 systems ecologist. The petitioner is currently a postdoctoral research associate in the [REDACTED] at the [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 a statement and exhibits regarding her ongoing research activities.

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 May 15, 2013. In an accompanying introductory statement, the petitioner stated:

[M]y aim is to be able to advance important research regarding the development of novel models and techniques for predicting climate and land use change effects on commercially important species and natural systems. My work will play the main role in protecting economically important forestry and fishery products and other ecosystem services in U.S. under changes in climate and land use. . . .

My national interest research, in the area of systems ecology, concerns the study of forest and coastal systems in relation[] to global climate change and land use change. . . . Related to this, I am an expert in: ecological modeling, spatial landscape modeling, environmental network analysis, various field and laboratory experiments, data analyses and biogeochemical analyses. . . .

[F]or protecting natural systems and improving ecosystem services and resource management[], it is essential to understand how climate and land use changes affect the structures and processes of ecosystems. For this, systems ecologists have applied a holistic approach . . . [and] also have developed more efficient methods for integrating knowledge and information from multiple disciplines. . . .

[M]y PhD work was focused on predicting climate change effects on tree growth and geographical distribution by developing a tree growth systems model and a species habitat landscape model. . . . Based on this work, I have two publications, one submitted manuscript and two additional manuscripts in preparation. . . .

In addition, I have been involved in a project . . . [in which] I explained how climate and land use change affected estuarine ecosystems health and shellfish industry by developing a new technique to analyze field data and applying systems modeling and landscape modeling approaches. This work can be applied for other shellfish and will help further our understanding of the effects of climate and land use change on the US shellfish industry and estuarine ecosystem health in the future. This work [was] presented in the internationally leading conferences and has been prepared for publication. . . .

As a recognized expert in the field, I believe I am making significant and original contributions to the US environmental research and natural resource management and my research has substantial intrinsic merit. . . .

I am a key research team member conducting the following four separate projects. . . .

1. Project 1: Estimating clam growth by applying shell-ring analysis and oxygen stable isotope ration and developing shell growth models. My work focused on developing novel, pioneering techniques to estimat[e] annual grow[th] rate of clams. . . .

2. Project 2: Understanding spatiotemporal variation of *Mya arenaria* biomass and diet and identifying the effectiveness of softshell clams, *Mya arenaria*, in reducing the negative effects of eutrophication by filtering phytoplankton from the water column in the [REDACTED] MA. . . .

3. Project 3: Predicting spatiotemporal dynamics of clam distribution under climate change and land use change by developing clam habitat model. . . .

4. Project 4: Predicting global climate change effects on spatiotemporal dynamics of tree communities at regional scales. . . .

From 2005 to 2009, I worked with Dr. [REDACTED] and Dr. [REDACTED] for my Ph.D. dissertation. During this time I worked on research for predicting climate change effects on tree growth and geographical distribution by developing a tree growth systems model and a species habitat landscape model. . . .

Red spruce habitats at higher elevations were recovered when air pollution decreased. Our current work suggests that a species distribution model coupled with an ecosystem model could improve accuracy in projecting habitat suitability and ranges and predicting climate change effect on them for species at local scales. Our complex-systems modeling approach is general, and extendable to other species and regions.

This research has made [a] national[ly] significant contribution to the fields [of] systems ecology, forestry and landscape ecology, in important ways. This research is core to our understanding of natural systems affected by human activities and climate change. My work is critical to maintaining healthy ecosystems in the United States. . . .

The attached letters from top experts working at leading research institutions all speak directly to my major contributions to research. . . . The letters discuss how my investigations are considered to be exceptionally important research, as is indicated by publications of my work in the high quality peer-reviewed journals. . . .

The likelihood that a recruitment effort would identify a qualified U.S. [worker] to fill my unique position is remote, especially in light of the global recruitment in which the University of Georgia already engaged to fill my position.

With respect to the petitioner's assertions about filling her position, she holds H-1B nonimmigrant status valid through September 19, 2016, regardless of the outcome of the present proceeding. A postdoctoral position is inherently temporary, and there is no evidence that [REDACTED] intends to continue to employ the petitioner after her postdoctoral training ends, whatever her immigration status. The petitioner has not documented [REDACTED]'s claimed "global recruitment" effort. 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)).

Five witnesses, all of them [redacted] faculty members or the petitioner's collaborators, provided letters in support of the petition. [redacted] Emeritus Professor [redacted] stated:

[The petitioner] is my former Ph.D. student. I served as [the petitioner's] advisor and chair of her doctoral committee. . . . In modeling for her dissertation work she innovated an approach that let her treat together many environmental variables with different dimensions as causal agents in growth and distribution of an important North American tree species, Red Spruce (*Picea rubens* Sarg.) in the Great Smoky Mountains National Park. Among all of my systems ecology students she has been one of the most innovative and successful in representing real ecological complexity in modeling. . . .

The major achievement of her dissertation work was successful linking of complex, zero-dimensional systems simulation models with two-dimensional landscape models expressed in GIS [geographic information systems] technology. In making this achievement of linking the two fields, she fulfilled an objective – distributing complex simulation models at local scales to wider geographic scales. In my opinion, her dissertation work stands as a milestone along the road to achieving this possibility. To my knowledge, nothing like she has done has appeared yet in the ecological modeling or GIS literature. . . .

[The petitioner's] dissertation work makes significant contributions to our understanding of the spatial and temporal dynamics of growth and geographical distributions of local tree species under climate change. . . . [The petitioner's] skills (systems modeling and landscape modeling) and knowledge (broad and deep knowledge of trees and system theory) are quite unique and potentially important for US resource management. These types of models can be extended to other tree species. . . .

Her current employment is . . . not in forest ecology but in estuarine ecology focusing on an important food species, the marine clam *Mya arenaria*. That [the petitioner] was able to make this jump to a new field and work in it effectively, is testimony to her breadth and flexibility as a scientist able to take her basic philosophy of ecological systems complexity and associated methods to other fields. . . .

To my knowledge, other US workers (including myself) cannot really carry out the kind of work she has done and is doing.

[redacted] Professor [redacted] stated that the petitioner's "dissertation demonstrates a unique methodology that integrates ecological process models with geographic remote sensing and GIS analysis to study impacts of global climate change on remnant sub-alpine spruce-fir communities in the biologically diverse southern Appalachian." Prof. [redacted] asserted that the petitioner's "research is core to our understanding of natural systems affected by human activities and climate

change. Her work is critical to maintaining healthy ecosystems in the United States, as well as the world.”

Professor [REDACTED] of [REDACTED] London, Canada, stated:

I have worked with [the petitioner] to study how red spruce growth declines interact with environmental factors in the Smoky Mountains National Park, USA. . . . Using tree-ring data that my colleagues and I collected, [the petitioner] and I published a peer-review article in the [REDACTED] in 2011. [The petitioner] and I also studied climate change effects on red spruce growth. This research was recently submitted to the [REDACTED] . . . . Currently, [the petitioner] and I are preparing another manuscript, which studies climate change effects on red spruce distribution in the Great Smoky Mountains.

[The petitioner’s] most important research contribution has been developing a red spruce growth systems model that integrates multiple factor interactions and data from various disciplines. . . . [S]he created a framework that could be used in other forests. . . . Her work is a unique take on systems ecology that is not being investigated by any other researcher in the United States.

[The petitioner’s] work is essential for red spruce management in the United States. She found that there are different mechanisms of effects on growth at high elevations (air pollution) vs. low elevations (climate change) using the red spruce growth model. . . . This type of model can be used on other tree species to provide a comprehensive understanding of the effects that environmental change will have on trees with industrial and environmental benefits to the United States.

Professor [REDACTED] stated:

In 2010 [the petitioner] started to work for me as a postdoctoral associate. She has been overseeing an [REDACTED] project that I have in partnership with scientists from the [REDACTED] and [REDACTED] [The petitioner’s] and my research on this project has been to assess the ecology of soft shell clams (*Mya arenaria*) in the [REDACTED] in northeastern Massachusetts. We are asking the question how land use change, climate change and municipal water use in the future will impact water quality and clam productivity in the estuary. . . . On this project [the petitioner] has combined her expertise in geographic information sciences (GIS), geography, systems ecology, and stable isotope biogeochemistry to better understand clam growth rates, factors controlling the distribution, diet and productivity of clams and to forecast whether claims will be able to mitigate the impact of nitrogen enrichment from humans living in the watershed. . . .

The overall approach she has developed to study natural resource populations, including developing models to predict future impacts of human activities, will provide natural resource managers with the information they need to wisely manage our fish and shellfish stocks in all coastal regions of the U.S. Indeed [the petitioner] has brought several new approaches and techniques to better understanding clam biology and ecology that should be of great value to shellfish biologists in all our national coastal systems. . . .

I actually know of no other coastal scientists that combine the unique skills that [the petitioner] brings to coastal resource management.

Prof. [REDACTED] added: “She is currently in the process of writing 4 scientific research papers on clam ecology and management. . . . I fully expect the research results that [the petitioner] has found to be incorporated into new shellfish studies around the country and to be immediately incorporated into new shellfish management plans.” Prof. [REDACTED] did not indicate or demonstrate that the petitioner’s past work has been widely adopted in this way. Therefore, his stated expectations about the future impact of the petitioner’s then-unpublished work amount to speculation.

Dr. [REDACTED] senior scientist at the [REDACTED] at the [REDACTED] Massachusetts, “interacted with [the petitioner] a great deal” during the petitioner’s research. Dr. [REDACTED] stated:

[The petitioner’s] contribution to our project has been considerable. [The petitioner’s] study on shellfish identified important factors that need to be taken into account when establishing [a] new site for shell fish culture. Her work was done in the broad context of food availability, salinity, substrate type and temperature. By applying a spatially explicit model . . . she was able to create a framework that must be used in nation-wide estuaries, not just those in the [REDACTED] . . .

[The petitioner’s] work is indispensable to our understanding of how climate and land use change impact species as a whole. She has continued to be involved in research examining how changes in climate will impact the growth and distribution of commercially important tree species.

The above mention of “tree species” is the only deviation from what is otherwise a letter about the petitioner’s work with shellfish.

The petitioner submitted information about her presentations at conferences and copies of some of her published work, but no documentary evidence concerning the field’s reception of these works.

The director issued a request for evidence on June 21, 2013. The director stated: “The petitioner must establish that the beneficiary has a past record of specific prior achievement with some degree

of influence on the field as a whole.” In response, the petitioner submitted three further witness letters, evidence of citation of her published work, and other supporting materials.

In a supplement to his earlier letter, Prof. [REDACTED] stated:

To date [the petitioner] has finished writing and submitting for publication 2 papers, has outlines/first drafts of 3 others, and is in the planning stage of organizing/planning/writing 2 other papers. This level of productivity for a post-doctoral scholar is amazing; I would rank her in the top 5% of postdocs in a similar branch of science. . . . Thus, I believe [the petitioner] is an invaluable and irreplaceable scientist in my laboratory and in our research community.

It is also important to add that [the petitioner] is beginning to write research proposals to state and federal agencies in order to continue to work with me on coastal resource and resource management issues . . . and she will have the primary responsibility for conducting the research should we be successful in our proposal applications. I would not be able to do this research without her.

. . . The results of her research will be of tremendous value to resource managers in New England. This work will also be extremely relevant to the nascent shellfish aquaculture industry in the Southeast. . . .

Prof. [REDACTED] repeated this assertion from his first letter: “I fully expect the research results that [the petitioner] has found to be incorporated into new shellfish studies around the country and to be immediately incorporated into new shellfish management plans.” The record identifies no such usage of the petitioner’s work in shellfish management plans.

Professor [REDACTED] of [REDACTED] editor in chief for the journal [REDACTED] stated:

[The petitioner] has one scientific research article accepted for publication in the journal [REDACTED] has submitted two additional scientific articles which are currently under review, and has completed one article review for the journal. . . .

We expect to receive over 800 manuscripts this year and our acceptance rate is around 40% at present. Acceptance of research articles in the journal is an indication of scientific expertise. Thus, [the petitioner’s] published research article shows her standing in the field and her ability to serve in the national interest at a high level. . . .

[The petitioner’s] research uses sophisticated modelling techniques that provide a whole ecosystem analysis useful for forest manager[s] to understand complex ecological interactions. This uses a novel approach called an [REDACTED] . . .

[The petitioner's] publication and review demonstrate her competence and track record of success in the scientific fields of ecological modelling and systems ecology.

Dr. [REDACTED] assistant professor at [REDACTED] Toronto, Canada, encountered one of the petitioner's articles on red spruce growth while conducting research for a paper of his own. Dr. [REDACTED] stated that the petitioner's "article was a unique and innovative contribution to the field providing an analysis of natural factors . . . from the perspectives of systems approach." Dr. [REDACTED] deemed the petitioner to be "a researcher with significant scientific potential."

The petitioner submitted copies of her published articles and a printout from the Google Scholar search engine, indicating that the petitioner had published eight articles since 1999, three of which had accumulated a total of nine citations. A 2001 article had four citations; a 2009 article had three; and an article from 2011 had two citations. The 2011 article is the one which captured Dr. [REDACTED]'s attention. All of the identified articles related to forest growth; the petitioner's subsequent work with shellfish had not yet reached the published literature. The Google Scholar printout did not identify the citing articles, and therefore it did not show the number of independent citations as opposed to self-citations.

The director denied the petition on October 30, 2013, stating that the petitioner's "evidence appears to be very similar to what most postdoctoral researchers would present. Specifically, this includes a small number of published articles with minimal citations, a small amount of peer reviews, and a few conference presentations." The director quoted from some of the witness letters, but found that "[t]he letters fail to identify any specific achievements that have ha[d] an influence on the field."

On appeal, the petitioner states that the director "focus[ed] obsessively on numbers" but "overlooked the meaning behind [those] numbers." She stated:

I admit that my published articles have minimal citations. However, according to the AAO, counting citations is not the only means of measuring the impact of a researcher's work. . . . A citations count is not automatically disqualifying by itself, but it does mean that the petitioner must submit other credible verifiable evidence to show how his work has influenced his field.

The above assertions are correct, but the burden remains on the petitioner to establish that her evidence warrants approval of the petition. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

The petitioner notes: "I am the first author of all my publications. . . . Thus, I did the majority of the work on the research or project." The petitioner submits information showing that the [REDACTED] which published one of her articles, was the tenth-ranked forestry journal in [REDACTED]. This ranking, however, is itself citation-based, as is evident from the numerous references to citations in the table of ranking data. The petitioner has not shown or claimed that frequent citation of her own article in the [REDACTED]

contributed to the journal's high ranking. Rather, the previously submitted Google Scholar printout did not show that the article had earned any citations at all. The petitioner, in effect, has relied on the frequent citation of other articles to compensate for the lack of citation of her own article.

The petitioner quotes Dr. 's assertion that 's "acceptance rate is around 40%." The petitioner submits no comparative evidence to show how that figure ranks with other journals in the specialty. Furthermore, acceptance is not synonymous with impact. The acceptance of an article allows it an opportunity to influence the field, but the act of publication itself is not inherently influential.

The petitioner states that her "new article is under consideration for publication in . As evidence, she submits a copy of an October 7, 2013 electronic mail message from the journal manager of stating that one of the petitioner's manuscripts "will be reconsidered for publication after major revision."

The petitioner states: "The purpose of the waiver is to secure prospective (future) benefit for the United States. The waiver is not simply a reward for past work. Rather, the director should have looked at the impact of my past work as a guide to what one could reasonably expect from me in the future." The director had considered the evidence submitted, and found that the petitioner had not established "the impact of [her] past work." The petitioner claims "a track record of success with some degree of influence on the field as a whole," and then lists her various articles (including those still under preparation) and conference presentations. These materials, in their own right, are evidence of activity rather than influence. The petitioner's claims regarding how difficult it is to be invited to participate in a particular conference do not establish that the petitioner has influenced the field to an extent that would warrant approval of the national interest waiver.

The petitioner describes her research and quotes from some of the witness letters. 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. at 165.

Most of the witnesses are her own mentors and/or collaborators. The witnesses expressed confidence in the petitioner's ability to influence her field, but did not show that she has already done so. Predictions of imminent adoption of the petitioner's methods, however confident and

whatever the source, do not have the same weight as evidence that the field actually has adopted those methods.

Prof. [REDACTED] had earlier stated that the petitioner has prepared grant proposals. The petitioner submits descriptions of two proposed projects, for which [REDACTED] researchers seek state funding, and which identified the petitioner as a principal investigator. Copies of two letters from [REDACTED] of the [REDACTED] of the [REDACTED], both dated mid-November 2013, acknowledged the submission of letters of intent and stated that final grant proposals were due on January 17, 2014. This documentation shows that future research will take place, but not that the extent to which the petitioner's past work has influenced her field.

The exhibits submitted on appeal postdate the May 2013 filing of the petition. Therefore, they establish that the petitioner remains active in her field, but they cannot establish eligibility as of 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'1 Comm'r 1971). Furthermore, the materials do not show that the petitioner satisfies the three-pronged *NYSDOT* national interest test. They show only that the petitioner's supervisors intend to pursue future grant funding, and that one of her manuscripts was unpublishable without "major revisions."

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 her influence be national in scope. *NYSDOT*, 22 I&N Dec. 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.

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; *Matter of Otiende*, 26 I&N Dec. at 128. Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.