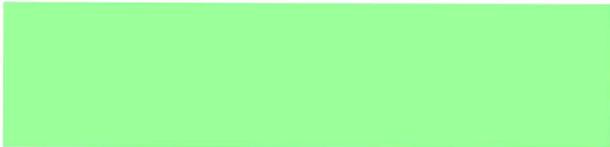


(b)(6)

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: **MAY 27 2014** OFFICE: NEBRASKA SERVICE CENTER 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,

9 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 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 progressive post-baccalaureate experience equivalent to an advanced degree. The petitioner seeks employment as a network and computer systems administrator for [REDACTED] California. 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 the defined equivalent of 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 personal statement regarding the importance of his occupation.

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 the defined equivalent of an advanced degree under the 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, 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 September 14, 2012. Asked, on Part 4, line 6 of the petition form, whether any previous immigrant visa petition had been filed on his behalf, the petitioner answered “no.” This answer is incorrect; on May 22, 2009, a previous employer, [redacted] Inc., had filed a Form I-140 petition seeking to classify him as a multinational executive or manager under section 203(b)(1)(C) of the Act. USCIS denied that petition on April 28, 2010, and we dismissed the appeal from that decision on July 27, 2012.

In a statement accompanying the petition, the petitioner explained his reasons for requesting the national interest waiver:

My job role is to serve and provide the doctors, professors, pharmacists, clinical research and nursing students with all the IT [information technology] services they would need and to make sure that all the classroom computers, printers, Cisco Phones, Internet and Network access, and other IT equipments such as interactive whiteboards, [and] projectors were all operational and functioning to their fullest use.

I am also the administrator of the School's online Learning Management System called [REDACTED] . . . [I]t is an online learning management tool which [is] used by many schools and universities in the United States and other countries. . . .

I would like to point out that my employment at [REDACTED] is deemed to be of national interest, as my job role is important in helping to educate future nurses, doctors, pharmacists of the United States.¹ I am able to provide technical assistance to the educators, professors, and teachers of the [REDACTED] an institution of higher education.

The record contains no evidence that the petitioner would directly participate in the education of health care providers. Furthermore, the basic nature of the petitioner's position (such as its affiliation with a nursing school) is not sufficient to establish eligibility for the national interest waiver. There exists no blanket waiver for IT specialists at schools and universities. The third prong of the *NYS DOT* national interest test, concerning influence on the field, is specific to the alien seeking the waiver. See *NYS DOT*, 22 I&N Dec. at 217.

A copy of the petitioner's résumé, submitted with the petition, provided the following dates regarding his employment at [REDACTED] "Date Hired: May 2012 Joining Date: October 2012." If these dates are correct, then the petitioner had not yet begun working at [REDACTED] when he filed the petition on September 14, 2012. (When the petitioner filed the petition, his B-2 nonimmigrant visitor status did not permit him to work in the United States.) The petitioner claimed previous employment in IT back to January 2002, but none of his previous employers were schools for health care providers. He claims to have performed the same basic duties (centering on the maintenance and operation of communications and computer systems) for his various employers.

The petitioner documented his past employment and his professional credentials, but he did not explain why it would be in the national interest to ensure that he, rather than a qualified U.S. worker, filled the position at [REDACTED]

¹ The record does not show that [REDACTED] trains physicians. A printout of an electronic slide presentation indicated that [REDACTED] intended to submit an application to the Accreditation Council for Pharmacy Education in January 2013. The presentation listed three "Future Programs": "Pharm D Program – July 2014," "Doctor of Nursing – September 2013," and "Doctor of Medicine – September 2019." The record contains a program from [REDACTED] 2013 commencement ceremony, which identified only two types of degrees that the school awarded that year. Fifty-three graduates received "Bachelors of Science in Nursing" degrees, and four received "Masters of Science in Clinical Research" degrees.

The director issued a request for evidence on May 8, 2013. The director instructed the petitioner to establish that the benefit from his employment would be national in scope, and that he has “a past record of specific prior achievement that justifies projections of future benefit to the national interest.”

In response, the petitioner established the approval in November 2012 of a petition permitting him to work for [REDACTED] as an H-1B nonimmigrant worker. The petitioner also asserted that [REDACTED] is A [sic] progressively growing higher education institution” that is “preparing for a major expansion of its physical facility, expansion of computer network and IT systems, and additional hiring of employees.” The petitioner stated that he will manage the university’s “IT department.”

The petitioner submitted information regarding various charitable activities undertaken by the [REDACTED] an organization affiliated with [REDACTED]. The petitioner did not show that these activities extend beyond the local level, or that his responsibilities regarding [REDACTED]’s IT infrastructure were related to these charitable ventures. Furthermore, there exists no blanket waiver for employees of organizations such as [REDACTED]. The only employer-based blanket waiver created by Congress pertains to physicians at hospitals operated by the Department of Veterans Affairs. See section 203(b)(2)(B)(ii)(I)(aa) of the Act.

The director denied the petition on August 14, 2013, stating:

A review of the evidence submitted does not show how the beneficiary’s proposed employment would be national in scope. The position of Information Technology administrator at a local university would not affect the nation as a whole.

Further, the beneficiary has not established that he has a prior record of achievement that justifies projections of future benefit to the national interest.

On appeal, the petitioner states: “Learning has evolved through Information Technology. . . . [A]lmost everyone uses computers, internet, computer system and network on learning [sic].” The petitioner states that, as [REDACTED]’s IT administrator, he is responsible for the computer systems on which the university’s faculty and students rely. These assertions address the intrinsic merit of the petitioner’s occupation, but they do not meet the other prongs of the *NYS DOT* national interest test. The statutory job offer requirement routinely applies to members of the professions, including IT administrators at universities. The inherent importance of IT administrators at educational institutions does not entitle foreign IT administrators to a collective waiver of the job offer requirement, nor does it exclude qualified U.S. workers in that field from the protection afforded by the labor certification process.

The petitioner contends that the benefit from his intended employment will be national in scope because “[t]he nurses and pharmacist[s] that graduated from [REDACTED] will be employed . . . in various places in the United States,” and that his “contribution as the IT administrator of the school will surely stay on the work ethics of our students and professors.” The petitioner submits no evidence

that his work as an IT administrator will have any effect on future nurses and pharmacists. 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)). Furthermore, [REDACTED] is a small school; the 2013 commencement program lists 57 graduates. Any impact on those particular graduates would seem to be heavily diluted throughout the respective fields into which they had graduated.

The petitioner does not show that any of his past achievements have influenced his field as a whole. Instead, he relies entirely on the assertion that the IT administrator of a school that trains health care workers should be exempt from the job offer requirement. The petitioner cites no support in the statute, regulations, or case law for this assertion. Even if the petitioner had established that this claim has merit, the petitioner did not begin working at any such school until after he filed the petition. 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).

In the absence of a statutory blanket waiver for IT administrators at schools like [REDACTED] and with no evidence to distinguish the petitioner from other qualified IT administrators, the petitioner has not established that it would serve the national interest to waive the statutory job offer requirement that normally applies to the immigrant classification that the petitioner has chosen to seek.

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.