



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

DATE: NOV 05 2014 OFFICE: TEXAS SERVICE CENTER [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

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 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 an alien of exceptional ability in the sciences, the arts, or business. The petitioner seeks employment as a physician specializing in neonatal-perinatal medicine. At the time he filed the petition, the petitioner was a fellow at the [REDACTED] U.S. Citizenship and Immigration Services (USCIS) records identify his latest employer as the University of Iowa, although USCIS records include no corresponding change of address notice from the petitioner. 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.

Although the petitioner had claimed exceptional ability, the director made an alternative finding that the petitioner qualifies for classification as a member of the professions holding an advanced degree. This alternative finding does not affect the outcome of the petition or the petitioner's eligibility for related benefits, because section 203(b)(2) of the Act encompasses both classifications. The director found 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, asserting that key evidence was "not duly considered."

For a time, attorney [REDACTED] represented the petitioner in this proceeding before the director. There is, however, no evidence that the attorney participated in preparing or filing the appeal; the petitioner signed the appeal on his own behalf. The instructions to Form I-290B, Notice of Appeal or Motion, advise that attorneys "must attach a Form G-28, Notice of Entry of Appearance as Attorney or Representative" to the appeal, as required by the regulation at 8 C.F.R. § 292.4(a). The appeal does not include this form, and there is no evidence that the attorney participated in the preparation of the appeal. We therefore consider the petitioner to be self-represented.

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 sole question on appeal 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 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 25, 2013. An accompanying introductory statement indicated that the petitioner “is one of a few that can boast of expertise in the use of [REDACTED], which is a very unique and complex neonatology procedure used to provide oxygen to the whole body when the lungs and heart of the newborn infant are so severely diseased or damaged that they cannot function properly on their own.” The treatment of individual patients is inherently local in scope. Furthermore, the record does not show that the petitioner created or significantly improved [REDACTED] only that he has learned the technique. Exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an application for a labor certification. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *See NYS DOT*, 22 I&N Dec. at 221.

The petitioner asserted that he also serves the national interest through conducting research in pediatric medicine. The benefit from medical research is national in scope, because the dissemination of original research findings through publication and presentation allows important new information to influence the field. The petitioner submitted copies of abstracts and other evidence of research presentations, review copies of two prepublication manuscripts, and other documentation of his involvement in research in conjunction with his ongoing medical training. Research is an avenue toward national influence, but not every researcher qualifies for the national interest waiver. To justify the prediction of future benefit, the petitioner must establish the importance and influence of his past research endeavors.

The petitioner submitted letters from [REDACTED] faculty members. Dr. [REDACTED] professor and chief of the Division of Neonatology, stated that the petitioner “has expertise in the most complex neonatal procedures, those performed by a small percentage of experts and skilled[] physicians at the top of the field. . . . [The petitioner] has made a significant impact on his specialty.” Rather than explain the significance of the petitioner’s achievements, Dr. [REDACTED] described some of them and asserted that only top physicians are capable of those achievements.

Dr. [REDACTED] professor at [REDACTED], stated: “[The petitioner’s] significant contributions and expertise are critical to the completion of our research work. I anticipate that his research activities in the following years will remain instrumental to the improvement of neonatal health in the United States and indeed worldwide.” Dr. [REDACTED] praised research projects by the petitioner that led to poster presentations at conferences, and he stated that the petitioner “belongs to the top, very small group of

physicians who have the knowledge, and the ability to combine research work with clinical training.”

Dr. [REDACTED], assistant professor at [REDACTED] stated that the petitioner’s “findings have provided a better understanding of infectious disease processes in the newborn infant,” and that the petitioner “is also renowned for [his] remarkable ability to manage very sick newborn babies.”

Dr. [REDACTED], affiliate assistant professor at [REDACTED] as well as infection prevention and control officer at [REDACTED] described some of the petitioner’s research projects, calling them “very significant in the medical community” and indicating that their publication, as abstracts, “clearly indicates [the petitioner] is a physician-scientist at the top of his field.”

Other letters are from writers outside of [REDACTED]. Dr. [REDACTED] now an assistant professor at [REDACTED] previously worked with the petitioner at [REDACTED]. He stated that the petitioner’s projects appeared at “distinguished academic forums” for which “[o]nly the top articles are selected out of thousands.” The record does not document the selection process for the conferences in question.

Dr. [REDACTED] professor at [REDACTED] described a recent conference presentation by the petitioner:

[The petitioner], and his fellow physician-scientists at the [REDACTED] evaluated the impact of diagnostic Group B Streptococcus (GBS) DNA PCR use during delivery as a preventive strategy for early onset GBS sepsis in newborn babies. He, with his colleagues, highlighted a remarkable decline in the incidence of GBS disease in newborn infants since this strategy was introduced in 2008 revealing the effectiveness of this relatively newer method of neonatal GBS disease prevention. [The petitioner’s] impressive results were very well received and have encouraged the use of this GBS disease-limiting method in various neonatal-perinatal units across the United States.

Dr. [REDACTED] did not indicate that the petitioner was responsible for developing the method, only that the petitioner gave a report about its effectiveness. The assertion of “a remarkable decline . . . since this strategy was introduced in 2008” indicates that the improved method was already in widespread use. As for the petitioner’s role in further promoting the method, Dr. [REDACTED]’s letter is dated May 23, 2013, 16 days after the petitioner gave the presentation on May 7, 2013. The petitioner has not established that his presentation was responsible for an effect of such immediacy and magnitude that Dr. [REDACTED] would have been aware of the effect barely two weeks after the presentation.

Dr. [REDACTED] also commented on one of the petitioner’s then-ongoing research projects, saying: “This study will not only help in early diagnosis of necrotizing enterocolitis but will certainly help to separate out infants that have merely bowel milk intolerance.” Comments on what the study will accomplish, before the results of that study are known, appear to be premature.

Dr. [REDACTED], associate professor at the [REDACTED] stated:

I had the opportunity to judge and evaluate [the petitioner's] research work . . . at the [REDACTED] . . . His work on newborn infections and immunology was not only well received, but his presentation was logical and excellent. I was very happy his was selected as one of the best presentations. . . .

He is also a distinguished member of highly selective and respectable research societies, namely: [REDACTED] and the [REDACTED]. Only scientists and researchers with outstanding achievements, with research work that have significant impact in the United States are accepted into these societies. Few of hundreds of applications are granted.

The petitioner submitted welcome letters from the two named societies, but no evidence to support Dr. [REDACTED] claims regarding the difficulty of joining those organizations. 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 director issued a request for evidence (RFE) on August 19, 2013. The director noted that the petitioner had not documented any full article publications, and asserted that the petitioner had not established the national scope of his fellowship at [REDACTED]. The director instructed the petitioner to submit additional evidence to show that his past record justifies projections of future benefit at a level that would warrant approval of the national interest waiver.

In response, the petitioner submitted background evidence about diseases and disorders relating to his research and clinical practice. The director did not question the intrinsic merit of clinical practice and medical research, and therefore these materials do not rebut any material element of the RFE.

The petitioner asserted:

[REDACTED]

(Emphasis in original). The petitioner submitted a printout of an electronic mail message, inviting the petitioner to review abstracts for the meeting, but this documentation does not support the

petitioner's claims about the significance or prestige of the invitation, or the number of people invited to serve as reviewers. The petitioner received the invitation on September 24, 2013, three months after he filed the petition. Therefore, the invitation could not retroactively establish eligibility even if the petitioner had supported his claims about the importance of the invitation. 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),(12). 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).

The petitioner submitted copies of several invitations to peer-review manuscripts, but he did not establish that this involvement in peer-review work distinguishes him within his profession in any relevant way. Similarly, the petitioner documented grant funding of his research projects, but he did not show that such grant funding is a distinction rather than the norm among researchers in his specialty.

The petitioner repeated the assertion that he belongs to societies whose membership requirements are "extremely competitive," and that therefore his membership "evidences his exceptional research achievements." The petitioner submitted evidence of the memberships, but not of the membership requirements. Without that evidence, claims about the significance of the memberships have no weight in this proceeding, whether those claims come from the petitioner himself or from third parties whom the petitioner has selected (but who have no authority to attest to the societies' membership requirements).

The director denied the petition on March 26, 2014. The director quoted from some of the submitted letters and discussed the petitioner's research, concluding that the petitioner had not established that his work has influenced the field as a whole. The director found, therefore, that the petitioner had not met the national scope prong of the *NYS DOT* national interest test, but that prong relates to the underlying occupation rather than to the petitioner's individual achievements within that occupation. Medical research produces benefits that are national in scope. Nevertheless, the director's basic finding stands: the petitioner has not shown the influence of his existing work.

On appeal, the petitioner states:

[A] proper evaluation of my prior contributions and standing in the field of [redacted] medicine was not performed. This is evidenced by the fact that my respectable position as a distinguished reviewer for the [redacted] academic societies, my multiple publications and outstanding presentations of research work all across the world were not duly considered in the making of this decision.

I would like to further assert that my work and contributions in the field of neonatal medicine are demonstrably in the interest of the United States of America and have been of significant intrinsic merit.

The director, in the denial notice, found that the petitioner had submitted evidence of only one published article (an article in the [REDACTED], with the petitioner's other claimed publications being either abstracts of conference presentations or unpublished manuscripts. The petitioner does not rebut this finding on appeal by stating that his "multiple publications . . . were not duly considered."

With respect to consideration of the petitioner's conference presentations, the director acknowledged those presentations several times in the denial notice. Such presentations do not establish eligibility for the national interest waiver; the petitioner must establish their influence on his field. The petitioner, on appeal, claims that the director failed to conduct "a proper evaluation" of his "outstanding presentations of research work," but failed to explain how the director's discussion was deficient.

The petitioner correctly asserts that the director's denial notice included no discussion of the petitioner's work as a "reviewer for the [REDACTED] academic societies." The petitioner, however, does not explain why that discussion should have led to the approval of the petition. As noted previously, the petitioner has not supported his claims about the significance of this reviewing work. Furthermore, he received the invitation several months after the petition's filing date, too late to establish eligibility as of that filing date.

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*, 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.