



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: NOV 05 2014 OFFICE: TEXAS SERVICE CENTER

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:

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 at the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a pathologist. At the time he filed the petition on his own behalf, the petitioner was a surgical pathology fellow at the [REDACTED]. He is currently a clinical fellow in hematopathology at the [REDACTED] a division of 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 legal brief, employment letters, citation evidence, and background materials.

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, 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 August 21, 2013. An accompanying introductory statement included the contention that the petitioner:

has made substantial contributions to the field of Toxicology and Pathology. His work has focused specifically on investigations in lipopolysaccharide and smoke

models of lung injury and evaluating the efficacy of novel strategies for various lung disorders that can contribute to future clinical studies and therapeutic treatment of human inflammatory lung diseases. . . .

His specific contributions are above what can be expected from others with similar education and experience; these consistent discoveries and breakthroughs suggest that he will likely continue to make substantial contributions to the field of endeavor. . . .

[I]t will be extremely difficult, if not impossible, to find another researcher who can mirror [the petitioner's] contributions to this nationally imperative area of research.

The petitioner's introductory statement also included a discussion of his "impressive record of authorship," including 20 articles and six book chapters, which "**have been cited a total of [68] times** according to Google Scholar . . . [by] leading researchers around the world" (emphasis in original). The petitioner submits evidence showing 68 citations of his published work, most of them independent. The most-cited article had 14 citations, including two self-citations. Google Scholar indicated that the petitioner's work has an h-index of 7, meaning that seven of his articles each have seven or more citations, and an i10-index of 1, meaning that one of his articles has ten or more citations.

The petitioner cited an unpublished appellate decision from 2002, which reads, in part:

The record demonstrates 19 worldwide citations of the petitioner's published work, primarily of a single article of which the petitioner was the primary author. . . . [The 16 independent] citations show that the petitioner's past work has had widespread and lasting influence on liquid crystal research.

The petitioner, at the time, did not submit evidence to permit a comparison between citation rates in liquid crystal research and the petitioner's own field of pathology. The petitioner submitted no evidence to establish that the facts of his 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.

The assertion below concerns the claimed significance of the petitioner's research work:

[The petitioner] has made, and continues to make, significant contributions to the field of Toxicology and Pathology, all of which place him among the top scientists working in his field of endeavor. . . . [W]hen performing a Google Scholar database search using the keywords "endothelin converting and lipopolysaccharide induced," **[the petitioner's] (first-authored) article on the subject appears [6]th out of [10,900] scholarly articles on this highly-specialized research topic. . . .** Thus, based on the search logic of Google Scholar, **[the petitioner's] publication is one of**

the most important and influential articles when it comes to the research of the use of endothelin antagonists in acute lung injury.

(Emphasis in original.) The Google Scholar search described above was for five independent words, rather than a phrase or a combination of words and phrases. Thus, the search engine result would include every article that includes all of the keywords, whatever their context. The relatively high placement of the petitioner's article among those results appears to be because the article title includes the phrases "endothelin-converting" and "lipopolysaccharide-induced." The petitioner submitted only the first page of the search results, and therefore the record does not show that all of the search engine's "hits" relate to the "highly-specialized research topic . . . of the use of endothelin antagonists in acute lung injury," or that the petitioner's article "is one of the most important and influential" in that area.

Furthermore, of the ten articles identified on the Google Scholar printout, the petitioner's article has the smallest number of citations (7). Eight of the other nine articles have 30 or more citations, and three of them have over 100 citations each, with the most-cited article having 214 citations.

The petitioner submitted several letters from third parties. Dr. [REDACTED] is a professor at [REDACTED] where he "served as [the petitioner's] mentor throughout his MS and PhD programs in toxicology." He stated:

[A]mong the many professionals I have worked with and mentored, [the petitioner] is amongst the most outstanding in terms of technical proficiency, innovation, and dedication. . . . [The petitioner] has been the leading mind behind . . . many worthwhile advancements in lung health. . . .

One work I would like to discuss is [the petitioner's] book chapter, [REDACTED] . . . [The petitioner], in his chapter . . . , emphasizes the relationship between [REDACTED] in terms of acute effects. . . . [The petitioner] described his own efforts towards developing a treatment for pulmonary emphysema. . . . The availability of a newly developed test for emphysematous lung disease has helped confirm the effectiveness of this treatment, but the need for further testing of this assay is delaying development of the therapy. . . .

A separate aspect of [the petitioner's] research . . . is his work on [REDACTED] with respect to Pathogenesis and Diagnosis. . . . [The petitioner], in order to emphasize the need for early detection of [REDACTED], and to limit the development of [REDACTED], proposed the use of elastic fiber breakdown products in sputum as a means of identifying those at risk for [REDACTED] . . . This hypersensitive marker for [REDACTED] injury is only one of [the petitioner's] remarkable innovations.

Dr. [REDACTED] is the first author of the book chapter identified above.

The petitioner identified as an “Independent Advisory Opinion” the letter from Dr. [REDACTED] chair of the [REDACTED] and an associate adjunct professor of pathology at [REDACTED]. The petitioner was a resident in pathology at [REDACTED] for three and a half years from [REDACTED]. Dr. [REDACTED] stated:

[The petitioner] has reported two cases of a severe delayed hemolytic transfusion reaction (in which there is destruction of the transfused red blood cells after months [sic] of the transfusion). . . . [The petitioner] used multiple serological techniques to elucidate the antibody specificities, a technique that requires sophisticated skills and knowledge. By these two cases, [the petitioner] explained the importance of increasing the clinical awareness of identifying the phenomenon of hemolysis with negative antibody workup in a post-transfusion patient as this scenario may be overlooked. . . .

[The petitioner] has served to educate professionals on the molecular diagnosis of prostate cancer through his primary authorship of a book chapter, published in the seminal [REDACTED]. . . . [The petitioner] has brought it to the community’s attention that there is an urgent need for molecular markers that can accurately identify men with prostate cancer at an early stage. . . .

There is one other project that bears discussion in presenting an accurate cross-section of [the petitioner’s] work. [The petitioner] has worked on a comprehensive study involving nearly 10,000 patients to assess the predictability of urinalysis parameters . . . used in dipsticks in the diagnosis of urinary tract infection in a case study. . . .

In the current practice, most physicians are utilizing the positive results of two dipstick parameters, leukocyte esterase (LE) and nitrite (NT), as evidence of infection. . . . [The petitioner] has demonstrated that the uses of LE and/or NT are poor screening parameters as predictors of urinary tract infection. . . .

[The petitioner] has presented this study as a poster in the annual meeting of the [REDACTED]. Of note, researchers in the field of microbiology have requested copies of [the] poster and there has been much expectation to read the full article that is submitted [to] the [REDACTED].

The record does not identify the researchers who “requested copies of [the petitioner’s] poster” or show their numbers, nor does the record quantify the “expectation to read the full article.” The record does not show that the [REDACTED] accepted the petitioner’s article, or that significant numbers of physicians throughout the field have changed their reliance on LE and NT in response to the petitioner’s work.

Dr. [REDACTED] staff scientist at the [REDACTED] referred to:

A study of [the petitioner's] that has gained widespread recognition, resulting in definite improvements in intratracheal administration of endothelin-suppressing agents for the treatment of respiratory disorders. . . . He has demonstrated that the use of such agents can significantly cut down the health care costs and ensur[e] a higher standard of care for victims of such diseases.

The record contains no documentary evidence to show that the petitioner's research has, in fact, influenced patient care throughout the field. Other statements by Dr. [REDACTED] refer to future potential rather than existing impact, indicating that the petitioner's "research is leading directly to the development of novel therapeutic treatments" and "will ultimately limit economic costs."

Dr. [REDACTED] toxicologist at the [REDACTED] and editor in chief of [REDACTED] met the petitioner at a 2008 meeting at [REDACTED]. Dr. [REDACTED] did not indicate that the petitioner's work has had an impact on the field; rather, he stated that they might possibly have such an impact in the future. He stated that the petitioner's "cutting-edge research studies . . . have the potential to le[a]d to groundbreaking improvements in the field," and that the petitioner's findings regarding "a novel drug delivery system . . . pave[] the way for future clinical studies to prevent and/or treat bacterial infections."

Dr. [REDACTED] deputy chief medical examiner for the City of [REDACTED] and an associate professor at [REDACTED], stated:

[The petitioner] is a renowned pathologist with an expertise in toxicology, who has distinguished himself by demonstrating an extraordinary ability to lay the groundwork for the development of new therapies and diagnostic modalities for various medical disorders, especially in the field of inhalational toxicology due to tobacco smoke. What we learned from his research is critically important for the development and application of new drugs targeting reduction of inflammation in many lung disorders.

Rather than provide any further information about the above subject, Dr. [REDACTED] described two autopsies that he stated the petitioner had performed.

Dr. [REDACTED] assistant professor at the [REDACTED] discussed two of the petitioner's case reports, concerning tumors of the spleen and the lymphatic system. Dr. [REDACTED] stated that the petitioner's diagnoses are "landmark achievement[s]" but, because the disorders diagnosed "are very rare entities . . . , these case reports . . . get cited limitedly."

Dr. [REDACTED], senior scientist at the [REDACTED] stated that the petitioner “has published an incredibly expansive amount of scientific literature, ranging a wide breadth of relevant topics in healthcare research,” including book chapters “that evaluated the crucial role of the compound endothelin in magnifying lung inflammation” and a study finding that “individuals exposed to ‘second-hand’ cigarette smoke are more prone to lung infections.” Dr. [REDACTED] asserted that the petitioner’s “research has been used as a starting point by others for further research into the prevention of lung disease,” but did not elaborate except to state that the citation of the petitioner’s work shows that his “novel research has been relied on by the scientific fraternity.”

In all, the letters attested more to the petitioner’s potential impact than his existing influence on the field.

The petitioner submitted other evidence regarding factors (such as memberships) intended to establish exceptional ability in the sciences. Because the petitioner readily qualifies as a member of the professions holding an advanced degree, and an additional finding of exceptional ability would not establish eligibility for the waiver, these materials do not require detailed discussion here.

The director issued a request for evidence (RFE) on September 30, 2013. The director stated that the petitioner had established the intrinsic merit of his occupation, but otherwise had not met the requirements set forth in *NYS DOT*. The director also noted that the majority of the letters submitted with the petition were from New York and Philadelphia, where the petitioner has trained, and therefore did not represent a geographically wider reputation.

In response, the petitioner expanded on previous assertions regarding the citation of his published work. The petitioner showed that the number of citations had grown to 81, and singled out facts relating to specific articles:

[The petitioner] has published in [REDACTED] a truly impressive feat given that the journal has an impressive **Impact Factor of 4.408**. . . .

[The petitioner’s] articles have also been cited much more often than those of other researchers in the field. For instance, [one such] publication . . . appeared in [REDACTED] in 2009, and has since been **cited at least 15 times**. . . . However, articles published in the field of pharmacology and toxic[ology] in 2009 have averaged just **10.08 citations**. . . . [The petitioner’s] work has thus been among the most cited in the field in the past several years.

The impact factor of a given journal, calculated from the citation rates of individual articles, does not establish the impact or influence of a given article in that journal. More relevant is the assertion that the petitioner’s 2009 article has earned more than the average number of citations for articles in the same field, published the same year. The petitioner supported this claim with a printout from ISI Web of Knowledge Essential Science Indicators, showing a table of “Average Citation Rates for

papers published by field, 2003-2013.” The line for “Pharmacology & Toxicology” included the following figures:

2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
23.79	23.91	20.34	19.47	16.57	13.38	10.08	6.72	3.65	1.09	0.11

The above figures show that the number of citations of a given article is expected to increase over time, and therefore, when counting citations, it is important to consider not only the number of citations but also the age of the cited article.

The same table shows much lower numbers for materials science, with an average of 14.46 citations after ten years, as compared to the 23.79 ten-year figure for pharmacology and toxicology. Therefore, while we will not revisit, here, whether the previously cited appellate decision was properly approved, 19 citations is a more significant number for a materials scientist working with liquid crystals than for a researcher in pharmacology. The petitioner is a pathologist, rather than a pharmacologist, but his 2009 paper appeared in a pharmacological journal and therefore the figures for pharmacology appear to apply. The table does not show figures for pathology, but the figures for “Clinical Medicine” are roughly comparable to those listed under “Pharmacology & Toxicology”:

2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
25.38	24.16	22.14	19.11	16.69	12.87	10.06	7.24	3.83	1.13	0.13

The 15 documented citations of the petitioner’s 2009 article do, as claimed, exceed the average citations for that year, whether the relevant field is pharmacology or clinical medicine. It presents an incomplete and inaccurate picture, however, to compare only the petitioner’s most-cited article to the average in his field. When considering the impact of the petitioner’s published work as a whole, we must compare the petitioner’s overall average citation rate to the average for the field. As exceptional ability, defined as “a degree of expertise significantly above that ordinarily encountered,” does not suffice to qualify the petitioner for the waiver, a single example of above-average citation does not establish influence on the field as a whole.

The petitioner’s updated citation figures, listed in a Google Scholar printout submitted by the petitioner, identified 31 of his publications, listing publication dates for 27 of them:

Year	Articles published	Total citations	Avg. citations per article	Avg. citations in the field
2006	1	0	0	19.11
2007	2	9	4.5	16.57
2008	3	21	7	13.38
2009	2	15	7.5	10.08
2010	4	21	5.25	6.72
2011	7	13	1.86	3.65
2012	8	2	0.26	1.09

When taking into account all of the petitioner's published work, rather than his single most successful article, the figures provided by the petitioner show that the average citation rate of his published work is lower than the average citation rate of all articles published in the field of pharmacology (the field in which he sought to make the comparison). It is also significant that the petitioner wrote his most-cited paper while he was a graduate student studying toxicology; it predates his medical training as a pathologist, and therefore is not an indication of his impact and influence in the field of pathology.

The petitioner submitted data showing the number of page views for some of his online papers, but he did not provide evidence to give context to the numbers or allow comparison with the work of others in his field.

The petitioner's response also included the claim that "[t]he importance of [his] original findings has also been recognized through invitation for peer-review, editorial board membership, pending patents, and invitation for conference presentations." The petitioner did not submit any evidence that identified him as a member of any editorial board, or any evidence that the claimed editorial board membership in question involved duties beyond peer review.

The petitioner referred to "pending patents," but the record documents only one pending patent application. An approved patent is not automatic evidence of eligibility for the waiver. *See NYSDOT*, 22 I&N Dec. at 221 n.7. The petitioner's documentation is even less persuasive, because the petitioner did not claim that the U.S. Patent and Trademark Office (USPTO) approved the patent. The petitioner referred to the application, filed on July 5, 2007, as "pending," but submitted no evidence to show that the USPTO was still actively considering the application six and a half years later when the petitioner responded to the RFE.

Regarding the invitations to make conference presentations, the petitioner has not established that these invitations are a hallmark of existing influence on the field.

The petitioner submitted three further letters, each of which discussed statistical evidence such as the materials described above. Like the writers of the earlier letters, these writers combined general praise of the petitioner with details about specific examples of the petitioner's work. Dr. [REDACTED] director of urologic pathology at [REDACTED] stated that the petitioner "has recently conducted a valuable review of the state of prostate cancer diagnosis technology and methodology. . . . Specifically, he has authored a book chapter in [a] recently published volume of [REDACTED] [REDACTED] is a bimonthly journal, not a book. The petitioner's paper in that publication is a literature review, compiling previously published information rather than reporting new, original research.

Dr. [REDACTED], associate professor at the [REDACTED], praised the petitioner's "impressive record of publication in the field of toxicology" and called him "a highly influential toxicology researcher," although the petitioner's work after 2009 has not been in the field of toxicology.

Dr. [REDACTED], associate professor of biochemical engineering at [REDACTED], stated: "I am particularly familiar with [the petitioner's] work on the development of a new and effective option for treating bacterial infections associated with [REDACTED] . . . [H]is research on [REDACTED] has been an important reference point for my own work." Dr. [REDACTED] indicated that he had cited the petitioner's work in two of his own recent articles, and asserted that the petitioner "is on a trajectory to quickly accumulate an impressive citation record" – an indication that the petitioner does not already have such a record, but shows the potential to do so in the future.

The petitioner submitted copies of the job offer letters for his then-current position and the one that followed it. Dr. [REDACTED] director of surgical pathology the [REDACTED] described the petitioner's duties there:

[Y]ou will be responsible for intraoperative consultations and direct interaction with the surgeons and operating rooms. You will be asked to provide first line instruction to residents in gross pathology and the handling of tissue. . . .

[Y]ou will review cases and construct reports with the assigned residents.

Dr. [REDACTED] hematopathology fellowship program director at the [REDACTED] stated that the "fellowship . . . comprises one year of clinical rotations and a second year mainly focused on research and scholarly activities."

The director denied the petition on March 5, 2014, stating that the petitioner has not demonstrated the national scope of his work because (1) the writers of the letters represent only a small geographic area of the United States, and (2) the petitioner's then-current job duties focused on clinical practice and instructional duties. The director also concluded that the petitioner had not established his influence on the field.

On appeal, the petitioner, via the appellate brief, contests the director's finding regarding national scope. While clinical patient care and instructional duties do not produce benefits that are national in scope, the record shows that the petitioner continues to conduct research and to disseminate his findings through presentation and publication. The record supports these assertions, and therefore we withdraw the director's finding that the benefit from the petitioner's work lacks national scope.

There remains the third prong of the *NYS DOT* national interest test. The petitioner submits a copy of an article from [REDACTED] stating that "citations are considered as a measure of the impact a publication has on science" and that the "number of publications and citations . . . have become the most important tools for evaluating individual researchers quantitatively." As previously demonstrated, the petitioner's own evidence indicates that his overall citation rate is below average. The occasional individual article with above-average citation does not establish a consistent pattern of influence in the past or likely to occur in the future.

The petitioner has established a diverse publication history, and letters in the record demonstrate some amount of interest in the petitioner's work. The objective documentation in the record, however, fails to substantiate claims that the petitioner (to date, still a trainee at the [REDACTED]) is already an influential figure in his field. There is a discrepancy between the third-party letters and the documentary evidence with respect to the significance of the petitioner's work and the notice it has attracted; the letters contain claims that the record fails to corroborate. In other instances, the letters refer to the petitioner's future potential rather than his existing impact on his field. The writers did not identify procedures or practices that the field has widely adopted as a result of the petitioner's efforts. 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").

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.