



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **NOV 07 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 the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner seeks to classify the beneficiary 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, a city department of health and human services, seeks to employ the beneficiary as a senior public health dentist. 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 beneficiary 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.

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 beneficiary 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 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 14, 2013. An introductory statement submitted with the petition indicated:

According to the American Academy of Pediatric Dentistry, tooth decay is the single most common chronic childhood disease. . . . [The beneficiary] created a **revolutionary**, three-prong concept to alleviate the financial, health, and economic costs of treating up to 25% of our country’s children. This three-prong concept includes, 1) dental sealants for erupted molars; 2) fluoride varnish applications for all

teeth; and 3) health education for both parent and child upon assessing tooth decay risk. This novel approach is exemplified by a dental health program implemented by [the beneficiary] – [REDACTED] which began in the fall of 2008, is an initiative [by the petitioner] to drastically reduce dental costs by applying the three-prong approach. The program specifically targeted low-income second graders who are the most vulnerable to dental caries, more commonly known as cavities, because they are not fully mineralized and because the grooves in their teeth tend to retain food that bacteria use[] produce tooth-destroying acid. This groundbreaking concept . . . clearly qualifies [the beneficiary] as an applicant for [the] National Interest Waiver. . . .

[I]n [REDACTED], approximately two thousand second graders participated in [the beneficiary's] research. . . . [REDACTED] may eventually become part of the City of Houston's traditional health services. . . . [The beneficiary] also hopes to extend her three prong approach to 5 years-olds [sic] who are associated with the federally funded [REDACTED] – better known as the [REDACTED] program.

(Emphasis in original.) The petitioner submitted background materials about [REDACTED]. The materials do not indicate that the field of public health dentistry as a whole considers [REDACTED] combination of treatment and preventive education to be a “revolutionary” approach to the issue of pediatric oral hygiene as the petitioner claims. Also, all of the submitted materials date from 2008 and 2009, and therefore, by themselves, they do not establish the extent, if any, to which the program continued after that time. (Letters submitted in support of the petition indicate that the program is ongoing.) The petitioner's materials indicate that each [REDACTED] mission serves between 800 and 1,000 patients, with three missions during the 2008-2009 school year.

The petitioner stated:

[The beneficiary's] underlying passion comes from over 15 years of providing dental care in developing countries and refugee camps. . . .

As Project Manager for [REDACTED] Redevelopment Project from 1991 to 1997 . . . , [the beneficiary] increased the manpower in the dental healthcare program, developed preventative services, and influenced government health policies, which greatly improved preventative dental care for the entire country.

The petitioner submitted no documentary evidence to support its assertions regarding the beneficiary's impact in Cambodia. 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, assuming the beneficiary had the effect claimed in Cambodia,

the petitioner did not show that conditions in Cambodia are so similar to those in the United States that the beneficiary's success in the former country implies future success in the latter.

The petitioner asserted:

A labor certification is **not applicable** in [the beneficiary's] case as it does not take into consideration the experience needed to perform the duties of intrinsic merit. In a labor certification, an employer can **only require the minimum requirements** (20 CFR § 656.17(i) . . .) **for an offered position. [The beneficiary's] skills are far above the minimum.**

(Emphasis in original.) The petitioner asserted that a worker with "minimum requirements" cannot "perform the duties" of the position; but the petitioner did not explain how a worker incapable of performing the duties of the position is minimally qualified rather than underqualified or unqualified. The regulation cited above reads, in pertinent part:

- (1) The job requirements, as described, must represent the employer's actual minimum requirements for the job opportunity.
- (2) The employer must not have hired workers with less training or experience for jobs substantially comparable to that involved in the job opportunity.
- (3) If the alien beneficiary already is employed by the employer, in considering whether the job requirements represent the employer's actual minimums, DOL [the U.S. Department of Labor] will review the training and experience possessed by the alien beneficiary at the time of hiring by the employer, including as a contract employee. The employer can not require domestic worker applicants to possess training and/or experience beyond what the alien possessed at the time of hire unless:
 - (i) The alien gained the experience while working for the employer, including as a contract employee, in a position not substantially comparable to the position for which certification is being sought, or
 - (ii) The employer can demonstrate that it is no longer feasible to train a worker to qualify for the position.
- (4) In evaluating whether the alien beneficiary satisfies the employer's actual minimum requirements, DOL will not consider any education or training obtained by the alien beneficiary at the employer's expense unless the employer offers similar training to domestic worker applicants.

The petitioner did not explain which of the above regulatory requirements precludes labor certification in the present case. The petitioner did not state what the DOL would recognize as the

minimum qualifications for the position, or explain how a worker with those qualifications would be unable to perform the duties of that position. Furthermore, the petitioner's argument presumes, without evidence, that recruitment of United States workers would inevitably result in the hiring of a minimally qualified worker, rather than the best qualified worker out of the entire applicant pool.

The beneficiary's *curriculum vitae* indicates that she has written two published articles: “

2009. A printout from the Google Scholar search engine shows that the 2006 article has earned 27 citations, with five citations for the 2009 article. The abstract of the 2006 article describes a “retrospective study” of 1,102 young patients who visited the emergency department (ED) of Texas Children's Hospital over a four-year period, revealing “a substantial increase in ED visits and hospital admissions during the study period.”

The petitioner submitted ten letters with the initial filing of the petition. [redacted] now executive director of [redacted] was president of [redacted] when the beneficiary worked for that organization in Southeast Asia. Mr. [redacted] described the beneficiary's work for [redacted]

She not only provided dental care to refugees but also trained workers to become her assistants in the clinic. . . . [S]he initiated and developed dental health preventive programs in the schools in the camps as well as in [redacted] . . .

[I]n Pakistan . . . , she established and directed first line dental care and training for Afghan refugees and also provided dental treatment to Pakistani villagers who otherwise had no access to dental care at all. . . . When the government of Cambodia asked [redacted] to help reestablish their [redacted] years, I called on [the beneficiary], the best person for the job, to head up the rebuilding of the dental school and contribute to developing the dental health care system in the country. Her passion and commitment to the people of Cambodia and their dental needs make the dental program in Cambodia a huge success that is now recognized by other dental schools in the region and by the [redacted]

The record contains no documentary evidence to establish the extent or impact of the beneficiary's contributions described above. See *Matter of Soffici*, 22 I&N Dec. at 165.

Dr. [redacted] is a professor at the [redacted] where the beneficiary earned a master's degree. Dr. [redacted] stated:

The United States desperately needs well-trained and committed dentists in public health to combat a major workforce shortage that is detrimentally affecting the oral health of Americans. I believe that [the beneficiary] has the knowledge, skills,

experience, and commitment to help address this critical shortage by providing dental services to the most underserved populations in this country.

The beneficiary, by herself, would not have a significant effect on the claimed shortage Dr. [REDACTED] described. A local labor shortage does not warrant the national interest waiver, because the labor certification process takes the unavailability of local workers into account. *See NYSDOT, 22 I&N Dec. at 218.*

Dr. [REDACTED] stated that the beneficiary's 2006 article "contributed to the growing and important literature on inappropriate and costly use of emergency rooms that indicates underlying problems in accessing primary care," and that [REDACTED] "has been very successful" and "has been shared and showcased in poster presentations in various meetings and conferences."

Dr. [REDACTED] state dental director and chief of the [REDACTED] [REDACTED] "came to know [the beneficiary] while she was a graduate student . . . at the [REDACTED] [REDACTED]" Dr. [REDACTED] stated that the beneficiary "has been . . . running one of [the petitioner's] five safety net dental clinics." Dr. [REDACTED] praised the beneficiary's work with [REDACTED] and [REDACTED] patients as examples of her dedication to Houston's underserved population, but did not state how the beneficiary's work has had a broader impact in the United States.

After completing her master's degree, the beneficiary trained in a residency in dental public health at the [REDACTED] at Houston. Dr. [REDACTED], a clinical professor and former department chair at the [REDACTED], stated:

[The beneficiary] worked as part of the evidence-based dentistry (EBD) working group that I headed. The group investigated and documented evidence-based dentistry practices in the areas of health policy, health promotion, and prevention and management of oral diseases. . . .

[The beneficiary] was one of the three researchers who worked with me in the EBD working group. She did the systematic reviews for prevention, diagnosis, and management of dental caries, water fluoridation, and health policies for injury prevention such as the use of mouth guards in contact sports. . . . The results of our research . . . were used in an oral health planning workshop in Houston in January 2002 which was attended by dentists, other healthcare professionals, and stakeholders who have an interest in the promotion of oral health in the area.

Dr. [REDACTED] also asserted that [REDACTED] had been successful locally, but he did not indicate or establish that the beneficiary's work has had a demonstrable impact outside of the Houston area.

Dr. [REDACTED] visiting professor at [REDACTED] United Kingdom, "first met [the beneficiary] when she was working for the [REDACTED] Cambodia." An

unsigned copy of a 2007 letter from Dr. [REDACTED] indicated that Dr. [REDACTED] “was assisting the [REDACTED] [to] develop a [REDACTED]” and later “was Chair of the [REDACTED] [REDACTED]’ The beneficiary’s efforts in Cambodia included “fostering a good relationship between the American non-governmental organization she worked for, the [REDACTED] leadership and the Ministry of Health,” “contribut[ing to] planning for the dental workforce in the country,” and “conceptualiz[ing] strategic planning meeting[s] for those involved in developing oral healthcare in Cambodia.” Regarding the beneficiary’s work at [REDACTED] Dr. [REDACTED] letter indicated that the beneficiary’s “findings have shown not only that her hypothesis was correct in that a lot of non-traumatic dental problems are being treated in hospital emergency rooms, but that this is an extremely expensive way of managing the dental problems of disadvantaged population groups.” Dr. [REDACTED] was a co-author of the beneficiary’s 2006 article about the last identified issue.

[REDACTED] now executive director of [REDACTED] was previously an associate professor at [REDACTED] where the beneficiary took one of her classes. Ms. [REDACTED] reviewed the beneficiary’s career and called her “a professional who is constantly seeking new avenues to improve the dental health of a given population.”

An unsigned letter attributed to Dr. [REDACTED], professor at [REDACTED] contains this passage:

[The beneficiary] came to me to seek methodological advice related to the design and conduct of her dental public health residency research project, which was concerned with the unmet dental care needs of pediatric patients who seek care for nontraumatic dental problems in emergency rooms. [The beneficiary] successfully developed and implemented the project and published the results in the nationally regarded [REDACTED] [REDACTED] . . .

The findings from [the beneficiary’s] residency project have helped to shed light on the personal and institutional costs of unmet dental care needs of children, as well as the growing problem of emergency room overcrowding and costs in caring for the uninsured and others who do not have adequate access to primary and preventive health and dental care.

Another unsigned letter is attributed to Dr. [REDACTED], an assistant professor of pediatrics at [REDACTED], who was “completing a doctoral degree in Epidemiology at the [REDACTED]” in May 2007, and who worked in the Emergency Department of [REDACTED] while the beneficiary was conducting her research there. Dr. [REDACTED] is a co-author of the beneficiary’s 2006 study on ED visits by pediatric patients for non-emergency dental issues. Dr. [REDACTED] letter indicated that the findings from the beneficiary’s residency project “were so illuminating locally that in response, the [REDACTED] of the Greater Houston Metropolitan Area made access to dental care a priority for the city.” The letter described no impact beyond the local level except to state that the beneficiary’s paper “contributed

to the growing national literature on the burden of non-urgent dental care on emergency departments.”

Dr. [REDACTED] the petitioner’s assistant director of [REDACTED] described the beneficiary’s career history, including the [REDACTED] program, and stated that the beneficiary “is actively training the next public health work force” by working with students from several universities in Houston and “train[ing] dental hygiene and dental assisting students” at [REDACTED]. Dr. [REDACTED] stated that she has been familiar with the beneficiary’s work in Houston since 2001, but did not state what effect that work has had outside of the Houston area during that time.

In a 2008 letter, Dr. [REDACTED] state dental director for the [REDACTED] [REDACTED] described the work the beneficiary performed before her arrival in Texas. Dr. [REDACTED] stated, for example, that the beneficiary “greatly influenced the development and implementation of [Cambodia’s] [REDACTED],” but Dr. [REDACTED] provided no supporting evidence and did not indicate how she had first-hand knowledge of this work. Regarding the beneficiary’s more recent efforts, Dr. [REDACTED] stated: “While her clinical work addresses the restorative care and the relief of suffering of young children, the preventive strategy she is leading is going to have an even greater impact on a much larger number of children.” This assertion is an expectation of future impact, rather than evidence of past impact beyond the local level.

The director issued a request for evidence on July 26, 2013. The director acknowledged key claims in the initial filing, but found that the petitioner had not established the beneficiary’s wider influence on her field. In response, the petitioner submitted letters from three university officials in Texas, a fourth letter from a [REDACTED] alumnus, and background “information regarding the critical importance of dental sealants, particularly in low-income, school-aged children.” The petitioner’s previous background information indicated that Houston already provided sealants to children before the beneficiary initiated PSS.

Dr. [REDACTED] professor at the [REDACTED], asserted: “There is a national need for public health practitioners who are trained and committed to addressing the factors associated with disparities in oral health.” Dr. [REDACTED] described the [REDACTED] program, now expanded to eight missions per year, each of which “aims to reach 1,000 at-risk 2nd graders.” Dr. [REDACTED] concluded that the beneficiary “is a uniquely qualified public health dentist.” Like the previously submitted letters, Dr. [REDACTED] letter did not indicate that the beneficiary’s work has already influenced the field as a whole. Instead, Dr. [REDACTED] asserted: “I know the impact of her work will greatly impact the nation’s oral health given the time.”

Dr. [REDACTED] associate professor at [REDACTED] stated that the beneficiary “is clear[ly] . . . committed to provide population-based oral health care and to serve underserved populations.” Dr. [REDACTED] described [REDACTED] as “a paradigm shift in the delivery of population-based preventive interventions to the target population,” and “an excellent model for local and state governments’ health departments,” but he did not claim that it is in use outside of some

neighborhoods in Houston. Instead, Dr. [REDACTED] stated: “perhaps, the [petitioner] has not sufficiently promoted or marketed the uniqueness of this approach. [The beneficiary] and her [REDACTED] team have focused on tweaking and expanding this program to reach a much larger number of children every year, and not promoting [REDACTED] to others.” Dr. [REDACTED] stated: “[REDACTED] needs to be shared more openly. . . . I look forward to seeing the [REDACTED] model, or facets of it, being carried out within other areas of the U.S.,” but his opinion is not evidence that its wider impact is assured.

Dr. [REDACTED], project director for [REDACTED] “a non-profit collaborative addressing [REDACTED]” called [REDACTED] an “innovative prevention program [that] fills a crucial national need addressing the dental and medical needs of underserved communities.” Dr. [REDACTED] stated: “From 2008-2010, approximately 5,000 children participated in [REDACTED].”

Dr. [REDACTED] now a dentist in [REDACTED] Connecticut, earned a master’s degree in public health from [REDACTED] discussed [REDACTED] and asserted that the beneficiary’s “innovative techniques are economically viable for a national application,” and “ready for national duplication.” Dr. [REDACTED] assertions do not establish that the beneficiary’s work on [REDACTED] has already influenced the field as a whole on a national level. The *NYS DOT* national interest test requires evidence of existing influence, rather than claims that the possibility exists for future influence. Dr. [REDACTED] states: “I professionally model her practice of prevention,” but this is not evidence of wider influence, given Dr. [REDACTED]’s own close connection to the beneficiary via [REDACTED].

It may be that [REDACTED] represents an improvement over Houston’s prior handling of the dental health needs of students in certain high-risk populations, but that does not establish or imply that [REDACTED] is, therefore, an improvement at the national level. The petitioner submitted a partial copy of [REDACTED] a 2013 report by the [REDACTED]. The report included “[REDACTED],” indicating that Texas earned a grade of “D” because only 25% of high-need schools have sealant programs, and the state did not meet the “Healthy People 2010 Sealant Goal.” This data indicates that Texas continues to have a poor statewide record, even some years after the introduction of [REDACTED]. Other states ranked considerably higher, and the petitioner has not shown that [REDACTED] would be an improvement on the programs already in place in those jurisdictions.

The director denied the petition on October 25, 2013, stating that the petitioner had established the substantial intrinsic merit of the beneficiary’s occupation, but had not shown that the benefit from her work will be national in scope, or that the beneficiary has a past history of demonstrable achievement with some degree of influence on the field as a whole. The director also found that “[t]he evidence of record does not explain the beneficiary’s true intentions,” because some materials refer to dental practice and others to “her intention to focus on public health service research.” The director acknowledged the petitioner’s submission of several highly complimentary letters, but concluded that “[n]o substantive evidence was submitted to the indicate the beneficiary would serve [the national interest] to a substantially greater degree as a Senior Public Health Dentist or a researcher, than other United States workers having the same minimal qualifications.”

On appeal, the petitioner asserts that the record establishes that the beneficiary “is an individual with an advanced degree whose specialized area of employment is national in scope.” The petitioner cites statistics showing that poor dental health is a national problem, but the petitioner has not shown how the duties of a public health dentist for a municipal government would produce benefits that are national in scope.

The petitioner asserts that the beneficiary’s “extensive work, testing, and research is national in scope.” The beneficiary has published two articles since 2006, and made occasional conference presentations, but these works appear to be infrequent and incidental to her duties with the petitioning local government entity.

The petitioner maintains that the beneficiary’s “work . . . should be adapted and multiplied on both state and federal levels to improve and equalize dental care for all Americans,” and that her “work and technique . . . can and [are] being applied and duplicated throughout the country as a national model.” The petitioner identifies no jurisdiction outside of Houston that has used the beneficiary’s work as a model. Speculation that other jurisdictions might, one day, adopt [redacted] or other of the beneficiary’s innovations does not establish that the beneficiary’s intended position with the City of Houston meets the national scope prong of the *NYS DOT* national interest test.

The petitioner asserts that “this case can easily be distinguished from Matter of New York State Dept. of Transportation” because the beneficiary “has developed an innovative technique to address a crucial national interest of the deteriorating dental care of the minority children population.” This assertion establishes a difference between the beneficiary in the present proceeding and the beneficiary in *NYS DOT*, but the *NYS DOT* decision addresses the issue of innovation. “[I]nnovation is not always sufficient to meet the national interest threshold. . . . Whether the specific innovation serves the national interest must be decided on a case by case basis.” *Id.* at 221 n.7. The unsupported claim that the beneficiary’s work is “being applied and duplicated throughout the country as a national model” does not meet the petitioner’s burden of proof. *See Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner discusses the credentials of some of the individuals who wrote letters in support of the petition. It remains that all of these individuals have demonstrable ties to the beneficiary, and most of them are concentrated in Texas and in Houston in particular. As shown above, the letters discussed work that the beneficiary performed outside of the United States, and her more recent efforts that have been confined to Houston, under the auspices of an agency of the city government.

Predictions, however sincerely believed, of the future nationwide impact of the beneficiary’s work appear to be premature. While the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. *NYS DOT*, 22 I&N Dec. at 219. 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 beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). Therefore, USCIS cannot approve the waiver now, on the expectation that future

developments will eventually justify the optimism of the beneficiary's colleagues. The petitioner's own evidence shows that Texas continues to perform poorly when ranking states' handling of pediatric dental health, even after the beneficiary has worked in Texas for several years. The evident lack of widespread progress, even at the state level, does not readily suggest that the beneficiary's efforts will imminently produce the national benefits foretold in the submitted letters.

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 the beneficiary's influence be national in scope. *NYS DOT*, 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 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.