

(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: NOV 18 2014 OFFICE: NEBRASKA SERVICE CENTER FILE: [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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The director reopened the matter on the petitioner's motion, and affirmed the denial of the 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 researcher. At the time he filed the petition, the petitioner was a doctoral student at [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 and copies of previously submitted exhibits.

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 consider the petitioner's claim of exceptional ability in the sciences, the arts, or business. Instead, the director concluded that "the petitioner holds the requisite U.S. advanced degree or foreign equivalent degree," effectively concluding that the petitioner qualifies for classification as a member of the professions holding an advanced degree. We will revisit this issue further below.

I. National Interest Waiver

The director's only stated ground for denial is that the petitioner has not established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

The regulation at 8 C.F.R. § 204.5(k)(4)(ii) requires that a petitioner seeking to apply for the exemption must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate. Form ETA-750B is now obsolete, but sections J, K and L of the successor form, ETA Form 9089, Application for Permanent Employment Certification, fulfill the same purpose. The record does not contain either version of this required document, and therefore the petitioner has not properly applied for the national interest waiver. The director, however, did not raise this issue. We will, therefore, review the matter on the merits rather than leave it at a finding that the petitioner did not properly apply for the waiver.

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 August 6, 2013. A statement submitted with the petition reads, in part:

It is in the National Interest that [the petitioner] works permanently in the United States as there is an ongoing shortage of researchers in the United States and the benefits of his proposed employment will be national in scope.

[The petitioner’s] work on the Medulloblastoma tumor has greatly benefited many people in the United States. . . . [The petitioner] sorted through various databases and literature to find ways on how this condition is being treated by other physicians. This project has helped many physicians in the United States by providing them a more detailed look at this brain tumor that occurs in children. . . .

[The petitioner] has worked with many physicians that have made major contributions to the field.

The assertion of “an ongoing shortage of researchers” is not grounds for waiving the job offer requirement. A basic purpose of labor certification is to verify that qualified United States workers are not available for a given position. *See NYS DOT*, 22 I&N Dec. at 218.

In the statement quoted above, the petitioner did not claim to have developed any new treatment for medulloblastoma, only to have combed the published literature for descriptions of existing treatments.

Four letters accompanied the initial submission. Dr. [redacted] now a professor at [redacted], previously taught at [redacted] University when the petitioner was an undergraduate student there. Dr. [redacted] praised the petitioner’s abilities as an undergraduate teaching assistant, but provided no information about his subsequent activities as a researcher.

[redacted], assistant professor at [redacted], stated:

I came to know [the petitioner] during a project he develop[ed] with some students on Human Immunodeficiency Virus (HIV/AIDS) . . . to develop a microcredit program in [redacted] regions of Calleria and [redacted] Peru, a region where socioeconomic status of the population is very high. The essence of the microcredit program would not only enhance the economic growth of this region but also reduce the incidence of

communicable diseases such as malaria, tuberculosis and HIV/AIDS. . . . [The petitioner] was essential in the grant writing process. Having received a Masters in Global health, [the petitioner] exhibited an assemblage of vital skills needed for this grant writing process. [The petitioner] was very articulate and a great strategic planner. His ability to use various software programs . . . was highly important. In addition, he was also able to collaborate with other stakeholders and leaders within the academic sphere to complete the grant writing process.

The record does not reveal the outcome of the grant writing process or the microcredit program described above.

Dr. [REDACTED], physician at the [REDACTED] stated:

During the year of 2008, I was working on [a] rare form of tumor called Medulloblastoma. . . . Based on [the petitioner's] expertise in global health and also having an advanced degree in the field, I invited him to work with me on this research project for two years (2008-2010). With his proven capability to sort through databases such as the (World Health Organization database) and literature, [the petitioner] was able to compile the number [of] cases worldwide, [and the] morbidity and mortality rates of this disease. He did not only bring to bear his knowledge on this disease but also how other physicians and public health officials combat/treat this disease. He was an irreplaceable member of this project. His talents, knowledge, great communication skills and acumen on scientific matters [were] essential in publishing this research in the [REDACTED]. In addition, his contribution to this research included write-up, formatting histology slides and also determining which journal this research was suitable for. He has also worked on several other publications including his work with another neurosurgeon on spinal hydatidosis (another global health disease). The global impact of this research is evident from the fact that it has been cited in various journals, and scientific conferences in the US and around the world.

The petitioner submitted a copy of the article on medulloblastoma, but no published article on hydatidosis. The petitioner submitted an abstract of a conference presentation entitled [REDACTED] but no evidence of its publication or citation. 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)).

Dr. [REDACTED] described the petitioner's work as a research assistant:

His first task required him to be teamed up [with] various graduate and medical students in order to carry through with a study looking at animals injured by bleeding

strokes. The project included conducting surgery, testing the animals using neurobehavioral cognitive testing, and western blot data gathering and analysis. [The petitioner] excelled in each one of these areas. . . . He was usually the first one in the lab in the morning and the last to leave in the evening. . . .

I was especially taken by [the petitioner's] creative mind and independent work ethic. He continued to read the literature independently and generate interesting hypotheses. . . .

In summary, [the petitioner] is clearly the best research assistant I have worked with in the last 10 years.

The letters primarily described the petitioner's role as a research assistant, providing technical support, rather than as a researcher in his own right.

The director issued a request for evidence on September 9, 2013, requesting evidence to show that the benefit from the petitioner's work will be national in scope and reflecting the impact of his past work. The director requested "copies of any published articles by other researchers citing or otherwise recognizing [the petitioner's] research and/or contributions." The director acknowledged the letters submitted with the petition, but found that "they do not give specific examples of how the [petitioner] has influenced his field of endeavor as a whole."

In response, the petitioner stated:

[The petitioner's] benefits of his work as a Researcher will be national in scope. [The petitioner] will continue to conduct health-related research. His work in the field of Sciences will help in the prevention, early detection and early intervention of diseases which is the most feasible means of controlling healthcare costs.

[The petitioner] will be working on the lifestyle education program. This program will aim to educate and improve health among populations around the United States where disease[s] such as cancer, neurological diseases, coronary heart diseases, diabetes and influenza are prevalent. In the long-run, this program will become a lifestyle prevention program in the United States. The program will start by performing a series of clinical trials. Patients detected with any of these conditions will go through a series of health assessments and screenings. Blood samples will be collected from the patients to identify blood markers, tumor markers of certain disease types. [The petitioner's] extensive background in public health and basic sciences will be essential for the success of this program.

The petitioner submitted no evidence that the "lifestyle education program" described above already exists, or that he has any experience administering such a program. Instead, the petitioner appears to have provided a general sketch of a speculative idea, still in its early, formative stages.

The petitioner submitted a copy of an article by researchers in Poland, citing the 2010 article on medulloblastoma that the petitioner wrote with Dr. [REDACTED] and three others. The petitioner submitted a copy of a revised letter from Dr. [REDACTED]. The letter is essentially identical to Dr. [REDACTED] first letter, quoted earlier, but with an added passage which reads:

As a result of our research, the prognosis of medulloblastoma (type of brain tumor) is better. Today, many children that suffer from this type of tumor can now be properly diagnosed by their physicians and attain a better treatment before it is too late. Some physicians from Brazil, China and Russia contacted me on this research for collaboration in treating their patients. Our research has broadened the knowledge of medical experts about this particular disease.

The petitioner submitted no evidence to establish that the 2010 article has improved the prognosis for medulloblastoma as claimed. If statistical evidence to support this claim does not exist, then it is not evident that Dr. [REDACTED] had any factual basis to make such a claim. The anecdotal reference to unnamed "physicians from Brazil, China and Russia" is not sufficient to meet the petitioner's burden of proof. See *Matter of Soffici*, 22 I&N Dec. at 165. Also, the petitioner has not shown that he has produced any new information that is useful in treating medulloblastoma. Rather, his role in the project, as described by Dr. [REDACTED] consisted of compiling existing information from previously published sources.

The director denied the petition on January 9, 2014, stating that the petitioner had established the intrinsic merit and national scope of his intended work, but that the petitioner had not shown "a history of achievement with some degree of influence on the field as a whole."

The petitioner filed a motion to reopen on February 7, 2014, submitting a brief, a personal statement, and copies of new letters. The petitioner again stated that he intends to develop "a lifestyle intervention research program," which "will lead to major reduction in healthcare cost while improving health outcomes and reduction in mortality rate in the United States." The petitioner stated: "It has been officially estimated that more effective lifestyle prevention program such as our lifestyle research program could save \$218 billion in treatment expenditure annually in 2023 to United States government." As a source for this figure, the petitioner cited [REDACTED] a 2007 report by the [REDACTED]. The petitioner indicated that his program would focus on brain cancer, whereas the cited report refers to all "Chronic Disease" in general. The petitioner submitted no evidence that he has had any prior experience or success in designing or implementing the type of program that he described.

The petitioner also stated that his "research is a breakthrough in understanding the characteristics of some types of brain cancers. Now with findings from my [article], physicians are able to definitively diagnose the different types of brain cancers and treat affected patients. This research has not been done before." The petitioner did not establish that his article has, in fact, had this effect on the diagnosis and treatment of brain cancer.

The petitioner also claimed: "In the past, the conventional wisdom in neuroscience circles believed that different types of brain cancers cannot be transformed into other brain cancers. Our research findings have now shown that brain cancer such as medulloblastoma can be transformed into gangliocytoma" (emphasis in original). The petitioner's article, quoted below, does not show that the idea of transformation originated with that article:



The three references cited in the above passage date, respectively, from 2000, 1987, and 1999, reflecting decades of published research showing brain cancers transforming from one type to another.

In his third letter, Dr. [redacted] stated that the petitioner played a major role in the research that led to the 2010 article described above, through "his proven ability in biostatistics to sort through databases such as the World Health Organization to show the morbidity and mortality of this type of brain cancer."

Dr. [redacted] "a licensed physician and a dentist currently practicing Oral and Maxillofacial Surgery" at [redacted] stated:

In an age of increasing emphasis on evidence based medical practice and cost control, [the petitioner] has become a necessity in the industry. The research he conducted with his colleagues on Medulloblastoma adds pertinent knowledge to the physicians' treatment handbook. . . . Researchers such as [the petitioner] are the foundation of the medical community and their work is essential to the future of medicine.

Dr. [redacted] writing as a cardiovascular fellow at the [redacted] stated:

I worked by [the petitioner's] side in both the laboratory and classroom throughout my undergraduate education at [redacted] and constantly noticed his strong desire to further the field of medicine via innovation and research. . . .

His research studying medulloblastomas . . . will hopefully provide novel therapies to treat these malignant tumors by inducing maturation and therefore transforming them into more easily treatable entities. His [article in [redacted] describes this in great detail. This new treatment paradigm could potentially save the country millions of healthcare dollars by eliminating the numerous courses of chemoradiation that patients with medulloblastomas currently require.

The record does not support the assertion that the petitioner's article "describes . . . in great detail" the process of "inducing maturation" to transform medulloblastomas into more easily treated

cancers. The article in question contains three pages of text, mostly devoted to case-specific facts regarding the treatment of one patient. The article concludes with a discussion of how mature gangliocytomas are more easily treated than medulloblastomas; the final sentence reads:

' The article treats the possible existence of "novel therapies to . . . induc[e] maturation" as a matter of speculation, with no detailed discussion of how this might be accomplished.

Another alumnum, Dr. , director of the stated:

It is clear that the business of delivering the latest treatments – e.g. the new biologics for cancer patients – drives the engine of research innovation in medicine, an area in which we still lead the world. However, maintaining our contribution to the progress of medicine while expanding coverage to underserved demographics and simultaneously containing costs, is quite a challenge. [The petitioner] is in a unique position to contribute here, as his understanding of the biology of high tech science is matched only by his understanding of the economic issues.

The director reopened the petition on the petitioner's motion, and affirmed the denial on March 16, 2014, stating: "While the letters give high praise they fail to give any specific examples of how your research has had an effect on your field of employment as a whole." The director added that, without evidence of past impact, assertions regarding "[t]he potential of [future] impact" have no evidentiary weight.

On appeal, the petitioner submits copies of previously submitted exhibits, and an appellate brief that is essentially identical to the brief submitted with the motion to reopen. That brief describes the letters submitted with the motion, and states: "the letters show that the [petitioner's] contributions are considered to have had an impact on the field of endeavor as a whole and that his work elevates [the petitioner] above other students pursuing their PhD's." The director already addressed the letters, and the petitioner, on appeal, identifies no flaws in the director's discussion of the letters.

The brief also indicates that the petitioner's "work on Medulloblastoma . . . has had a great impact on his field of endeavor as a whole." The petitioner does not identify this impact or provide any verifiable, documentary evidence to show how his work has had an effect on the field as a whole. Letters from collaborators and alumni do not establish wider impact.

The petitioner's claim of eligibility for the national interest waiver rests in part on his assertion that he will establish a prevention program, but the petitioner has provided no details about his plans and no evidence that he has had any past success with such programs, which might inspire confidence that he will have such success in the future. The claim also rests in part on the assertion that the petitioner's review of literature on a specific type of brain tumor has changed medical practice regarding that type of tumor, and "could save \$218 billion in treatment expenditure annually," although that figure appears to pertain to all chronic illness rather than medulloblastoma specifically.

The petitioner submits no evidence that medulloblastoma, or brain cancer in general, currently results in costs at such a level that his work will save hundreds of billions of dollars each year.

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. 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.

II. Member of the Professions Holding an Advanced Degree

Because we review the record on a *de novo* basis, we may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

As noted above, the petitioner claimed eligibility as an alien of exceptional ability in the sciences, the arts, or business, but the director considered the petition under the parallel classification of a member of the professions holding an advanced degree. On appeal, the petitioner has not contested this reclassification of the petition. The record, however, does not contain sufficient evidence to support the director’s finding that the petitioner qualifies as a member of the professions holding an advanced degree.

If the petitioner intends to work in an occupation that requires a doctorate, then he was not qualified to work in such an occupation at the time he filed the Form I-140 petition, because he was still a doctoral student. 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). A precedent decision from 1971 includes language that is almost precisely on point:

A petition may not be approved for a profession for which the beneficiary is not qualified at the time of its filing. The beneficiary cannot expect to qualify subsequently by taking additional courses and then still claim a priority date as of the date the petition was filed, a date on which he was not qualified.

. . . It is clear that it was the intent of Congress that an alien be a recognized and fully qualified member of the professions at the time the petition is filed. Congress did not

intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts. To do otherwise would make a farce of the preference system and priorities set up by statute and regulation.

Matter of Katigbak, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The petitioner holds a Master of Public Health Degree from [REDACTED]. This, however, is not the end of the inquiry. The definition of an "advanced degree" at 8 C.F.R. § 204.5(k)(2) includes this provision: "If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree."

On Part 6 of Form I-140, the petitioner indicated that his intended position was permanent and full-time, and an existing position rather than a new one. The petitioner did not identify any prospective employer or provide other details about his intended employment. Public health research involves a level of specialization that appears to be compatible with the definition of a profession, but the lack of detail about the petitioner's intended employment is relevant because of the clause in the definition of an "advanced degree" dealing with doctorates.

It is here that the lack of information about the petitioner's intended employment is directly relevant to the question of eligibility. The petitioner did not hold a doctorate when he filed the petition. Therefore, if his intention is to complete his doctorate and then engage in employment that requires a doctorate, then he filed his petition prematurely; he was not eligible for such employment at the time of filing. The national interest waiver would exempt the petitioner from certain technical requirements, such as labor certification, but it would not exempt him from the basic requirement that he be eligible for the occupation sought on the date of filing.

Because the petitioner has not provided sufficient details about his intended employment, USCIS cannot determine whether that employment would require a doctorate. The petitioner's failure to provide this information does not entitle him to a presumption of eligibility. 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).

The petitioner has described, albeit with minimal detail, the employment that he wishes to pursue in the United States. It is the petitioner's burden to show that such employment opportunities exist in the United States, which do not require a doctorate; USCIS is not required to affirmatively establish the contrary. We add that graduate study is not "employment" as such, and therefore the performance of such research by graduate students is not evidence that those students, lacking a doctorate, would be able to continue to engage in that research outside of an academic setting.

Because the petitioner did not yet hold a doctorate when he filed the petition, and because he has not provided sufficient information about his intended employment in the United States to allow a conclusion as to whether or not that employment would require a doctorate, we find that he has not

established that, as of the filing date, he met the regulatory requirements for classification as a member of the professions holding an advanced degree.

III. Exceptional Ability

As noted above, the petitioner initially claimed eligibility as an alien of exceptional ability in the sciences, the arts, or business. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) states that, to show that the alien is an alien of exceptional ability in the sciences, arts, or business, the petition must include at least three of the following:

- (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
- (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
- (C) A license to practice the profession or certification for a particular profession or occupation;
- (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
- (E) Evidence of membership in professional associations; or
- (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(k)(3)(iii). An introductory statement submitted with the petition cites two evidentiary criteria, as well as the "comparable evidence" clause.

The petitioner submitted documentation of his degrees from [REDACTED] which satisfy the plain wording of regulatory criterion (A). The petitioner then combined elements of the wording of criteria (B) and (F):

LETTERS FROM PREVIOUS EMPLOYERS AND RECOGNITION FOR YOUR ACHIEVEMENTS AND SIGNIFICANT CONTRIBUTIONS TO YOUR INDUSTRY OR FIELD BY PEERS, GOVERNMENT ENTITIES, PROFESSIONAL OR BUSINESS ORGANIZATIONS.

(Emphasis in original.) The petitioner has not established ten years of experience as required by 8 C.F.R. § 204.5(k)(3)(ii)(B). It appears, therefore, that the petitioner submitted the letters as evidence of recognition under 8 C.F.R. § 204.5(k)(3)(ii)(F).

The petitioner claimed only two of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii). Even without considering the relative merits of the evidence the petitioner submitted under those two criteria, such evidence is insufficient to establish exceptional ability unless the petitioner also satisfies the “comparable evidence” clause at 8 C.F.R. § 204.5(k)(3)(iii). The plain wording of that clause indicates that it applies only “[i]f the above standards do not readily apply to the beneficiary’s occupation.” If the standards do readily apply to his occupation, the petitioner’s own individual failure to meet those standards is not sufficient to trigger the “comparable evidence” clause. Here, the petitioner has not explained why criteria (B), (C), (D) and (E) do not readily apply to public health researchers. Therefore, he has not shown that the “comparable evidence” clause applies to his occupation.

The petitioner listed two exhibits under the heading “Other Comparable Evidence.” First, the petitioner submitted “additional information on the Medulloblastoma tumor”; second, the petitioner submitted biographical information about one of the physicians with whom he previously worked. This evidence has nothing directly to do with the petitioner, and therefore it cannot be construed as evidence of his exceptional ability.

The petitioner’s claim of exceptional ability is inadequate on its face, and therefore does not merit more detailed discussion of the two standards that he claims to have met. The petitioner has not met the regulatory requirements to establish exceptional ability in the sciences, the arts, or business.

We will dismiss the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. at 128. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.