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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 28 2014 OFFICE: TEXAS 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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a physician specializing in neonatology. When he filed the petition, the petitioner was a fellow at [REDACTED], New York. [REDACTED] is affiliated with [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 asserts that he has established eligibility for the benefit he seeks.

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, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dep’t of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term “prospective” is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 27, 2013. An accompanying statement indicated that the petitioner’s work is national in scope because “[h]e has had his original research work presented at conferences that are national and even international.” The petitioner documented two such conferences, both in conjunction with his ongoing fellowship training. These materials do not show that the petitioner’s research career would

continue after his training was complete. The petitioner submitted several communications from recruiters seeking pediatricians for clinical practice, but no indication of similar interest from research-oriented institutions.

The petitioner claimed:

[The petitioner] is known in the medical community to possess clinical skills that cannot be objectively quantified. He is very well-known for his diagnostic ability. . . .

[T]he labor certification process . . . is not able to take into consideration the unique skills he has developed as a neonatologist, the tremendous national impact of the research work that he has done, and the reputation that [he] has sustained amongst his peers nationally.

To support claims regarding his reputation, the petitioner submitted six letters. The petitioner claimed: “these letters come from experts in the field from around the country both from institutions at which [the petitioner] has worked and institutions at which he has not worked.” The *curricula vitae* of the individuals who provided the letters show that all of them trained or worked at institutions where the petitioner has trained.

Five of the six letters are from individuals at institutions in southeastern New York. The sixth letter is from Dr. [REDACTED], who was a resident at [REDACTED] from 2006 to 2009, and a fellow at [REDACTED] from 2009 to 2012. Dr. [REDACTED] now an assistant professor at the [REDACTED] Health Science Center, called the petitioner “an exceptional neonatologist whose contributions to the medical community are valuable, necessary as well as immeasurable.” Dr. [REDACTED] did not describe those contributions except to identify the conferences where the petitioner had presented his work, and to assert that the petitioner practices medicine as well as trains medical students and house staff at [REDACTED]

Dr. [REDACTED] an assistant professor at [REDACTED] and an attending neonatologist at [REDACTED] claimed that the petitioner’s “reputation . . . has enabled him to attract patients from across the region who seeks his [*sic*] out specifically for the rare level of care she [*sic*] can provide.” Dr. [REDACTED] claimed that the petitioner “has garnered significant acclaim for his pioneering research,” but the record contains no objective evidence to support this claim. 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] assistant professor at [REDACTED] stated that the petitioner “has been responsible for coordinating the resuscitation and stabilization of delivered infants,” and has had “immense success” in this area. Dr. [REDACTED] asserted that the petitioner “is also recognized throughout the medical community for his important research,” but the record contains no evidence of this recognition outside of physicians with ties to the institutions where he has trained.

Dr. [REDACTED] professor at [REDACTED] and associate director of the [REDACTED] [REDACTED] stated that the petitioner's "combination of incredible aptitude and his ability to diagnose and treat neonatal patients . . . make him an elite physician."

Dr. [REDACTED], now [REDACTED] site director at [REDACTED] New York, was a fellow at [REDACTED] from 1999 to 2002, and an assistant professor there from 2002 to 2005. Dr. [REDACTED] had previously collaborated with Dr. [REDACTED] as shown by their shared authorship of a 2008 paper listed on Dr. [REDACTED] *curriculum vitae*. Dr. [REDACTED] stated that the petitioner "has garnered many honors and awards due to his clinical and research expertise. For example, [the petitioner] is a Board Certified pediatrician who has won earned [sic] highly coveted roles at prominent health centers such as [REDACTED] Hospital in competition with his peers." The petitioner's roles at those hospitals were those of a trainee on house staff. A house staff appointment, however competitive, is not an "award." Rather, it represents continued training within a medical specialty.

Dr. [REDACTED] is an attending neonatologist at [REDACTED] New York, where the petitioner was a resident from 2008 to 2011. Dr. [REDACTED] stated that the petitioner is a coordinator of [REDACTED]" in which role "he directs pertinent data collection, improves patient logistics and conduct[s] cool cap workshops at their affiliate[d] neonatal units." A [REDACTED] article about the cooling program indicates that several hospitals are involved in a clinical trial of the cap, and that "[t]he trial was sponsored by [REDACTED] which is now developing the cap for general medical use." Thus, the petitioner's involvement consists of testing a novel medical device developed elsewhere.

A section of the record labeled "Significant Contributions to Field" includes several documents, none of which identifies any significant contribution that the petitioner has made to his field. One document shows that the petitioner is board certified in pediatrics, but board certification is a credential, rather than a contribution to the field. The remaining exhibits identified as contributions are all background materials about various medical procedures. The petitioner's name does not appear in these materials, and there is no indication that the petitioner developed these procedures. Learning how to perform an already existing procedure is not a substantial contribution to the field of medicine.

The director issued a request for evidence on July 30, 2013. The director stated that the petitioner had not established the national scope of his proposed employment or established "a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, the petitioner claimed: "We have unmistakably demonstrated that the benefit of [the petitioner's] work is national in scope.

The petitioner also asserted: "Requiring [the petitioner] to obtain a labor certification would result in an interruption of his clinical work, potentially on a permanent basis." The petitioner did not explain

or elaborate. At the time of filing, the petitioner was in an inherently temporary house staff position, with no documentary evidence showing he was guaranteed an ongoing position with the same employer.

The petitioner claimed: “the Department of Labor has recently held in several prevailing wage requests that where a physician will provide patient care, education, and research, that this constitutes a combination of occupations, which is deemed inappropriate for labor certification.” The petitioner submitted no evidence and cited no sources to support this claim, and did not show that the Department of Labor had denied labor certification applications (as opposed to and as distinct from prevailing wage requests) for the reason identified. The record indicates that medical school faculty members routinely perform patient care, education, and research, and the petitioner has not shown that the Department of Labor will not approve labor certifications for medical school faculty positions. If the petitioner seeks employment outside of a medical school (or if no medical school seeks to employ him), then the petitioner would need to show how his intended employment would involve a combination of patient care, education, and research. A stated intention to combine those duties is not sufficient, because the petitioner’s own intentions do not establish that employment opportunities exist which match those intentions.

The petitioner stated that his “original research work has proven to be influential – his research has been accepted for presentation at esteemed scientific/medical forums and information used by later practitioners and researchers.” Conference presentation affords an opportunity for a researcher to influence the field, but the presentation is not, itself, evidence of that influence. The petitioner has not shown that he has influenced the field by, for example, creating or improving a medical procedure, or introducing new knowledge that affects the way other physicians diagnose or treat a given disorder.

The petitioner claims to have held “leading roles with prominent institutions based on his demonstrated record of accomplishment.” The petitioner’s roles at hospitals in the United States have been as house staff, who are, by definition, trainees whose medical education is not yet complete. To assert that the petitioner held a leading role because he supervised lower-level trainees is unwarranted by the evidence. The petitioner has submitted no reliable evidence to show that his ongoing medical training has been anything other than routine, or that his involvement in research has exceeded what is expected of a physician training for a specialty at a university-affiliated teaching hospital.

The petitioner described his ongoing research studying the effectiveness of granulocyte stimulating factor on necrotizing enterocolitis (NEC), “the most dreaded infection a neonatologist could dream of.” A progress report in the record shows that the Food and Drug Administration approved this project in 2007, before the petitioner had begun working in the United States. This information indicates that the project would have taken place with or without the petitioner’s involvement; the petitioner did not explain how his participation altered the outcome of the project.

The petitioner submitted letters from the parents of two former patients, expressing gratitude for the care that the petitioner provided for their premature infants. The value of the service that the petitioner provides to these families is not in dispute, but this value is inherent in his occupation. Physicians, including neonatologists, are subject to the statutory job offer requirement. Congress could have exempted all such physicians from the requirement, but instead they created a limited exemption for physicians in designated shortage areas and Veterans Affairs facilities, as described in section 203(b)(2)(B)(ii) of the Act. By limiting the parameters of the waiver in this way, Congress indicated that there is no blanket waiver for physicians or neonatologists.

The director denied the petition on January 14, 2014. The director discussed the letters that the petitioner had submitted, and the petitioner's claims regarding the importance of his accomplishments. The director concluded that the petitioner had not provided evidence to support claims regarding the significance of his work or the extent of his reputation in the field. The director found: "The description of the self-petitioner's duties is more consistent with the simple tasks of training new medical students who may be doing their internship at his place of employment."

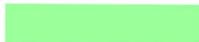
On appeal, the petitioner does not specifically address the director's discussion of the record. The petitioner instead asserts that he previously submitted "substantial evidence demonstrating and establishing that he has distinguished himself from his peers and therefore should not be deemed subject to the labor certification process." The petitioner makes several unsubstantiated claims on appeal, such as: "Only the foremost members of his field have had their work presented at" the conferences he attended, and that "the medical community eagerly anticipates the results of [research] studies" now underway at [redacted]

The petitioner asks that we "take into consideration his unique roles within major academic teaching hospitals." The director addressed these roles in the denial notice, finding them to be within the expected duties of an advanced trainee. The petitioner does not address or rebut this finding, instead repeating the unsupported claim that the petitioner's role has been somehow unique or demonstrative of high standing in his specialty, rather than indicative of the status of an aspiring physician whose training in a particular specialty is not yet complete.

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

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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.