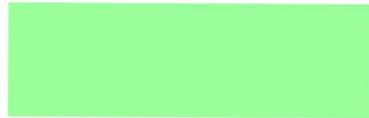
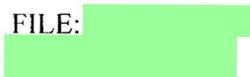




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **OCT 10 2014** OFFICE: NEBRASKA SERVICE CENTER FILE: 

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 pursuant to 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 computational linguist. When he filed the petition, the petitioner was a junior database analyst/programmer 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 had 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 personal statement, two letters (one previously submitted), and background evidence.

Before the filing of the appeal, attorney [REDACTED] represented the petitioner in this proceeding. There is, however, no evidence that Mr. [REDACTED] participated in preparing or filing the appeal. Form I-290B, Notice of Appeal or Motion, advises that attorneys “must attach a Form G-28, Notice of Entry of Appearance as Attorney or Representative” to the appeal, as required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a). The appeal does not include this form. We therefore consider the petitioner to be self-represented.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The 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 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 March 21, 2013. An accompanying introductory statement discussed the petitioner’s work and his claim of eligibility for the national interest waiver:

At the [REDACTED] the Petitioner is currently a lead architect and a key team member on the [REDACTED]. Concurrently, he also is providing his expertise in computational linguistics, natural language processing, and linguistics to build a standard reference platform on language relationships. . . . [H]is expertise in scripts, information extraction, multilingual lexicon development and machine translation will yield cutting-edge language technologies that cover several important national goals. His expertise may be utilized [in] building [a] computational database for critical languages, preserving endangered languages and cultural information by [a] centralized website that is accessible to all researchers around the world and advancing research and development of software methods and tools for language related analysis and education. Conceivably, his efforts and contributions on development of computational and linguistic resources serves an important national interest of ensuring that the US leadership role in language and information technologies would not be compr[om]ised in this globally competitive field.

The introductory statement identified two conference papers that the petitioner had presented, stating that “[t]he petitioner’s achievement in computer application and linguistic[s] is exceptional.” The statement concluded with the assertion that “the petitioner has established a record of distinguish[ed] achievement and contribution in his research and development endeavor in computational linguistics.”

In his personal statement, the petitioner stated:

I have extensive knowledge in computational analyses of such languages as Thai, Burmese, Khmer, Lao, Pashto and Farsi in addition to English. . . . My expertise and research contributions have applications in many areas including building machine translation technologies, and developing cybersecurity software for automatic detection of phishing emails and websites. I have unique qualifications and important contributions in several areas of natural language processing including compiling digital dictionaries for language learning, text data mining and electronic archiving of language documentations. The following are evidence of my achievements in the area of natural language processing:

- A published paper on the automatic part-of-speech tagging of Pashto (the language of Afghanistan). . . .
- A published thesis on the automatic sentence alignment of English and Southeast Asian languages. . . .
- Monolingual and bilingual dictionaries for Thai, Burmese, Khmer, Lao and Vietnamese at the [REDACTED]
- [REDACTED] at the [REDACTED] to document data about endangered languages and to preserve those languages.

- The software to automatically index important linguistic papers, which are essential to help scholars study and understand Southeast Asia's history, culture and political economy.

All of my contributions are internationally recognized among linguists and computational linguists, and applicable to machine translation technologies, data mining, text analysis, and language documentation. . . .

In addition to all the academic research activities, I am investing in [REDACTED] a text analysis software company in [REDACTED] Michigan, with my colleagues who are working in text mining and natural language processing. . . . As an Information Technology (IT) expert with specialized knowledge and expertise in computational processing of many languages, I am approached for consultation and advisement in the development of text data with linguistic information.

The record contains no evidence regarding [REDACTED] and the petitioner has not mentioned the company in subsequent submissions.

The petitioner submitted copies of two published papers and excerpts from his master's thesis, and a partial copy of another student's doctoral thesis, showing a citation to the petitioner's master's thesis. The petitioner identified no citations to his published work, and no citations that appeared in peer-reviewed journals.

The petitioner submitted several letters from third parties. [REDACTED] is the executive director of the [REDACTED] where the petitioner worked from 2005 to 2009. He stated that the petitioner "has exactly the skill set that has been in critical demand in the United States for the past decade or more," and that the petitioner "would be one of a handful of experts with desperately needed skills" in the event of "natural disaster, local insurgence, [or] conflict at any point along the long southern China border." The scarcity of the petitioner's specialized skills is not grounds for approving the waiver. The labor certification process exists to test the local labor market and verify claims of worker shortages. *See NYSDOT*, 22 I&N Dec. at 218. Also, USCIS does not designate blanket waivers for particular occupations or skill sets. *Id.* at 217.

[REDACTED] Khmer language lecturer at the [REDACTED] and Khmer language coordinator at the [REDACTED] stated:

[The petitioner] is one of the rarest scholars with unique academic training and exceptional research experience in natural language processing and computational processing of many languages. . . .

[The petitioner] has unique expertise and important contributions in several areas of natural language processing including compiling digital dictionaries for language learning and electronic language documentation. . . .

All of [the petitioner's] contributions are internationally recognized among Southeast Asian linguists and computational linguists. . . .

While at the [redacted] I worked with [the petitioner] building the [redacted]. . . [which is] widely used by the scholars who are studying those languages. In his work on this project, [the petitioner] developed software and other tools for computer-assisted language learning for complex script languages such as Thai, Khmer, Lao and Burmese. . . .

In addition to the [redacted] [the petitioner] also developed computational tools for the online archive of [redacted] papers. . . . The software and indexing of the materials in the archive are important tools to help scholars study and understand Southeast Asia's history, culture and political economy.

Dr. [redacted] a fellow at the [redacted], stated that the petitioner "has assisted [him] in various projects" "for the past eight years," and that the products of much of this work appears on "sites maintained by the [redacted]" Dr. [redacted] letter is similar to [redacted] letter, even including some of the same wording, such as the assertion that "All of [the petitioner's] contributions are internationally recognized among Southeast Asian linguists and computational linguists"

Dr. [redacted] assistant professor at the [redacted], stated that the petitioner's "computing skills are coupled with a rare awareness and sensitivity for linguistic details, combined fortunately with a respect for the need to build electronic resources for languages which are important . . . but which . . . have been left behind in the process of digitization." Regarding the petitioner's work at [redacted] Dr. [redacted] stated that the petitioner's "contribution to [redacted] project and [redacted] project are important because they visualize how languages are related to each other and document endangered languages of the world to preserve humanity."

Dr. [redacted] associate professor at [redacted], was the petitioner's advisor during his graduate studies there. She stated: "[redacted] is a truly interdisciplinary area of research, which is situated between linguistics (the study of language), computer science, and cognitive science (the study of the mind)." Dr. [redacted] asserted that the petitioner's "major assets can be characterized as follows:"

- 1) He is singularly qualified to work on [redacted] problems involving critical languages such as Burmese, Khmer, and Pashto.
- 2) He has the ability to extend [redacted] techniques to languages other than English.

Dr. [redacted] described the petitioner's graduate work:

[The petitioner] has collaborated with other students at [REDACTED] to transfer linguistic knowledge from Farsi to Pashto. . . . This is a highly challenging task because Farsi has languages [*sic*] characteristics that are different from the characteristics of Pashto. However, once this technology has been developed, it can be used to also analyze other related language pairs, if there are resources for one of the languages. . . .

Another problem of extending [REDACTED] techniques to languages other than English is that . . . we need large, manually annotated resources in order to train the machine learners. If we want to extend the methodology to other languages, we not only need to annotate these resources, but we also often need to come up with description schemes that describe the languages in questions [*sic*]. [The petitioner's] expertise in developing lexical resources for languages from Southeast Asia is of utmost importance, and it is extremely difficult to find people with the [REDACTED] expertise and language skills to perform this kind of work.

The above assertions amount to a variation of the claim that there is a shortage of qualified workers with the petitioner's specific skills, in this case relating to his fluency in certain Asian languages.

Dr. [REDACTED], an assistant professor at [REDACTED] stated that the petitioner's fluency in "four critical languages from various Asian countries . . . is an enormous asset for this country." Dr. [REDACTED] praised the petitioner's technical papers and stated that the petitioner's "role as a lead technical architect of the [REDACTED] seems to be a crucial role in that endeavor."

The final two letters are from [REDACTED] faculty members. Dr. [REDACTED] project director at [REDACTED] and the petitioner's immediate supervisor, stated:

[The petitioner] has been the lead technical architect and a valued team member on the [REDACTED] project . . . that has gathered unprecedented worldwide attention for the cause of endangered languages. . . . Much of the success of this initiative can be attributed directly to [the petitioner's] competence; as the programmer and technical lead for the [REDACTED] [the petitioner] worked on high-pressure deadlines to create the database and interface for the researchers and work through the data exchange with the [REDACTED] technical and design teams. [The petitioner's] qualifications and significant experience in linguistics as well as computer science are not easily found in today's workforce, and were essential to the success of the technical side of the Project. His solutions to export the [REDACTED] data for the [REDACTED] website, for example, include the development of scripts that have great potential in the areas of automatic processing and extraction of language information.

[The petitioner's] expertise in information extraction has also contributed to the development of linguistic resources of use not only in the Institute's work on endangered languages, but of potential application in industry or government, e.g., in the area of multilingual lexicon development and machine translation. For example,

he has contributed to our [REDACTED] project by instituting a conversion process to transform lexicons from Shoebox format (. . . which is no longer supported) into an interoperable XML format. . . .

[The petitioner] has also had a key role in the success of [REDACTED] project [which] . . . has become the standard reference on language relationships. As team leader, [the petitioner] directed the work of student interns and graduate students to add to the data available on language relationships in the [REDACTED] site. . . . [T]here is a relatively small pool of persons who have this intersection of expertise in computer science, natural language processing, and linguistics.

Dr. [REDACTED], assistant professor and associate director of [REDACTED], stated that the petitioner's work "lays the groundwork for more advanced computational analysis of the [Pashto] language," and that "[h]e is also extremely valuable in the development of language technologies for the languages of the Tibeto-Burman and [REDACTED] language families, which are structurally very different from Indo-European languages such as English." Dr. [REDACTED] added: "I have recommended him to the best PhD-programs in the country."

The director issued a request for evidence on August 7, 2013. The director instructed the petitioner to establish his influence on his field. The director noted: "there is no evidence [the petitioner's] publications have been independently cited by other members of the discipline."

The petitioner's response did not include any evidence of citation of his published work. Instead, the petitioner submitted background documentation about his past and present work, and four new letters. The background evidence includes web printouts showing that the petitioner performed "extensive work in establishing consistent [REDACTED] orthography for all entries and examples" in the [REDACTED] and served as a "Technical Consultant/Programmer" on [REDACTED]. Printouts from an electronic slide presentation regarding [REDACTED] identified the various participating institutions, and named the petitioner as one of seven then-current participants on the "[REDACTED] team." The petitioner submitted statistics showing the usage of the [REDACTED] web site (for instance, 10,125 unique visitors in September 2013), but these figures concern the site as a whole, which tracks thousands of languages around the world, only a fraction of which appear in southeast Asia.

Dr. [REDACTED] former professor at [REDACTED] and former director of the [REDACTED] described the cultural importance of preserving endangered languages, and asserted "it is critical that we have the services of the most qualified people" for the project. She stated:

[The petitioner] makes an outstanding contribution to the [REDACTED] at the [REDACTED]. His contribution to the project is unique because of his background in computer science and his previous research experience with resource-poor languages from Southeast Asia. His previous research on Thai and other Southeast Asian languages, as well as his dual degrees in Linguistics and Computer Science, make him invaluable as a developer on the research projects here at the Institute of

[REDACTED] In fact, I would go so far as to say that he is irreplaceable: certainly, I have never met another computational linguist with his extensive experience in the documentation of endangered languages.

. . . [H]is knowledge of computational issues involving endangered languages is extremely valuable for the success of the project. We will not be able to easily replace him because a researcher with both a strong background in computer science and expertise in endangered and resource-stricken languages is extremely rare in the U.S.

[REDACTED] stated:

I am an attorney licensed in New York State and a Ph.D. candidate at the [REDACTED] Department of Political Science. I conduct research on judicial politics in Southeast Asia using statistical models and natural language processing to analyze judicial behavior.

I have invited [the petitioner] to co-author a chapter in a book titled [REDACTED]. . . . I was working on the chapter using latent topic models on Burmese Supreme Court decisions when I encountered some difficulties adapting natural language processing tools to [REDACTED] texts. I consulted an expert on computational linguistics in the [REDACTED] of Information, Dr. [REDACTED] who recommended I contact [the petitioner] as one of the few linguists who work on applying computerized language analysis to Burmese. . . . [W]e agreed to co-author the chapter together because of his unique expertise with computer processing of Southeast Asian languages, particularly Burmese. We are preparing to submit our paper to the book editors and have already submitted the paper to the [REDACTED].

[The petitioner's] expertise in the computer processing of Southeast Asian languages has been essential in the completion of this book chapter. . . . After this project, [the petitioner] and I could adopt the technology to other types of Burmese texts. . . .

The fact that renowned computational linguists, political scientists, lawyers, and [REDACTED] officials have all expressed an interest in [the petitioner's] work suggests that [the petitioner] has already become well-known as an – if not the – expert in natural language processing for Southeast Asian languages in the United States.

The record contains no direct evidence to support the assertion that [REDACTED] officials have . . . expressed an interest in [the petitioner's] work.” 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)).

Professor [REDACTED] chair of the Political Science Department at the [REDACTED] [REDACTED] stated:

Even though I do not know [the petitioner] personally, I am familiar with his work on the computer processing and documentation of Southeast Asian languages. Researchers with a background in Southeast Asian natural language processing (NLP) are extremely rare in the US. [The petitioner] is one of the outstanding researchers and has a unique understanding of issues involved in Southeast Asian NLP. . . . His research on parallel text alignment and word segmentation serves as a foundation for analyzing political texts as more and more documents are available in electronic form online and offline. . . .

[The petitioner's] previous work on language resources for Southeast Asian languages at [REDACTED] is essential for understanding the history and culture of mainland Southeast Asia. . . . [M]ost of [the petitioner's] contributions are in the development of information technologies that have immediate utility, so we do not expect notable publications from his efforts nor extensive citation to his work. Nonetheless, his outstanding scholarship and research . . . are important as groundwork to process Southeast Asian political texts for automatic analysis. Colleagues in my field have high respect for [the petitioner] when it comes to language technology expertise and resources for Southeast Asian languages.

[REDACTED] research associate and teaching fellow (and retired lecturer) at the [REDACTED] stated that he does not know the petitioner personally, but is aware of his work from "communication with some of the well-known figures in the field" and from his own use of the [REDACTED] database. He stated:

[The petitioner's] contribution to the Southeast Asian Languages Archive at the [REDACTED] is outstanding. The projects at the Centre, funded by the [REDACTED] in the US, are essential for scholars around the world pursuing to understand social, linguistic, and cultural issues of the region. Particularly, the online availability of a comprehensive collection of dictionaries and text corpora for many mainland Southeast Asian languages benefits other scholars in the field. [The petitioner's] contribution to language resources from Burma such as Burmese, Mon, Karen, and Shan are extremely valuable because electronic resources for those languages are not readily available on the Internet due to expensive and scarce Internet resources in Burma. [The petitioner's] contribution towards computer encoding issues of those languages is also unique and serves as a foundation for automatic processing of the languages.

. . . His research work on language technology tools and resources helped tremendously as a reference source for scholars in Southeast Asian studies.

The director denied the petition on November 26, 2013, stating that the petitioner “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 director stated that the petitioner meets the first two prongs of the *NYS DOT* national interest test, pertaining to intrinsic merit and national scope, but that the petitioner had not established his influence on the field as a whole. To support this conclusion, the director noted the minimal citation history of the petitioner’s research, and stated that “the petitioner’s only conference presentation was over a decade ago.” The director acknowledged the third-party letters in the record, but stated that the letters “do not indicate that the beneficiary’s contributions have enjoyed widespread implementation in the field.” The director found that the petitioner’s other evidence establishes his participation in various projects, but does not show the nature or extent of the petitioner’s contributions.

On appeal, the petitioner states that “the adjudicator erroneously relied on the broad assumption that publishing record and citation history is crucial in gauging the influence of the petitioner’s work when in fact, the petitioner’s individual contribution is emphasized on the computational side of developing digitalized database resources.” The petitioner asserts that he has established his contribution to projects that are “widely used by Asian Study scholars around the world.”

The petitioner provides additional details about his participation in various projects, including the book chapter discussed by [REDACTED]. The petitioner also claims to have helped to develop Burmese character fonts that conformed to the Unicode text encoding standard. He states that, when he began working at [REDACTED]

there was not a mature Unicode standard to represent Burmese text on the Internet. . . . As a result, the dictionary data were typed in non-standard fonts incompatible with the Unicode standard.

Without my work on the project, the Burmese dictionary would not have been available on the Internet and [the] Burmese Unicode standardization process would [have] take[n] longer than it did. I wrote software to convert dictionary data to the partially-defined Unicode standard because I was the only one capable and the only Burmese working on the [REDACTED] project. . . . Our dictionary data were used by developers from [REDACTED] for testing their Padauk font. It was the first Unicode font that renders Burmese characters correctly.

The petitioner claims to have made what may have been a valuable contribution to the project described above, but he did not submit any evidence to support this claim. The petitioner’s own assertions do not meet his burden of proof. *See Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner submits a 20-page printout from the [REDACTED] web site, identifying various updates to the Unicode system. Page 5 states: “Unicode 3.0 was released September [REDACTED]. It was a big update and encoded 49,259 characters.” The description of the “New Blocks” in the update included the assertion (highlighted in yellow on the petitioner’s printout) that “Myanmar, containing 78 characters for the Burmese script, was added.” Other additions included “71 characters used for writing in Syriac script,” “214 radicals from the Kangxi dictionary,” and “81 characters for the

Germanic runes.” The printout does not identify the petitioner, specify the nature or extent of his contribution, or establish that the “78 characters for the Burmese script” represented a more important contribution, or a substantively different technical challenge, than the thousands of other new characters introduced in Unicode 3.0.

In addition to a copy of Mr. [REDACTED] earlier letter, the petitioner submits a letter from Dr. [REDACTED] [REDACTED] associate professor and associate director of [REDACTED]. Dr. [REDACTED] stated:

[The petitioner’s] contribution to the [REDACTED] project has benefited . . . documentary linguists, members of indigenous communities and speakers of endangered languages, educators, and humanity in general by making it possible to access data about endangered languages throughout the world, disseminating information on these languages, and . . . allow[ing] users to share information, data and materials on endangered languages with the world through this site. The database that [the petitioner] designed, the methods and techniques he created for the project data collection, input and interface have been essential for the smooth operation of the site, are essential to the continuation of the projects, but what is even more, will be useful for our future projects and for the documentary linguists around the world.

Dr. [REDACTED] statements are consistent with Professor [REDACTED] earlier assertion that the petitioner’s work is not the kind that produces peer-reviewed articles, the influence of which can be tracked through citations. Eligibility for the waiver is not limited to scientific or academic researchers who produce heavily cited journal articles; section 203(b)(2) of the Act shows that the waiver is available to foreign workers in the sciences, the arts, business, and the professions. The unavailability or inapplicability of citations, however, does not change the petitioner’s burden of proof; it only rules out one type of documentary evidence through which the petitioner can meet that burden. The documentary evidence that the petitioner has submitted establishes his involvement in various projects, but, as the director observed, it provides little information about that involvement.

A recurring assertion in the record, from the petitioner and from other writers, is that few computational linguists are skilled in Southeast Asian languages, and therefore he would be difficult or impossible to replace. Dr. [REDACTED] in her letter submitted on appeal, acknowledges that “it is not a basis to grant a waiver of labor certification just because it is difficult to find an ideal US worker to fill the position,” but maintains that the [REDACTED] project would suffer grave setbacks if [REDACTED] were to replace the petitioner mid-project. (The record does not show how the petitioner’s subsequent relocation to Fort Wayne has affected his employment in [REDACTED]) The Department of Labor regulation at 20 C.F.R. § 656.17(h)(2)(i) provides that the nature of some occupations (*e.g.*, translators) can justify a foreign language requirement in an application for labor certification as a matter of business necessity. Southeast Asian languages may be underrepresented in some linguistic databases, but this does not make the petitioner’s national origin (from a country in Southeast Asia) an affirmative factor in granting the national interest waiver.

The asserted scarcity of the petitioner’s skills would appear to be a favorable factor in granting labor certification, provided those skills are required for the job. Labor certification would not be available for temporary employment, and Dr. [REDACTED] assertion that he has recommended the

petitioner to various doctoral programs indicates that the petitioner's education and training are not yet complete. If the petitioner's engagement with the project at [REDACTED] is temporary as the above information suggests, then the question arises as to why it is in the national interest to grant him permanent immigration benefits for temporary employment that his H-1B nonimmigrant status already authorizes him to perform.

The director correctly observed that letters alone cannot establish eligibility for the waiver. 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. *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 writers can attest to their own knowledge of the petitioner's work, within the confines of their own interactions and collaborations with the petitioner or familiarity with his work. They cannot, however, establish broader claims of fact, such as the assertion that the petitioner's work has attracted significant international attention, or has been the subject of inquiry from [REDACTED]. The petitioner has not relied exclusively on letters, but there is a gap between the information in the letters and the facts established by the other evidence. As a result, the record establishes the overall importance of the projects to which the petitioner has contributed, but not that the petitioner's work on those projects have influenced the field as a whole.

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. 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.