

(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: **OCT 10 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:  
[REDACTED]

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 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. At the time he filed the petition, the petitioner was a research programmer for the [REDACTED]. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a legal brief and supporting exhibits, some of them copies of previous submissions.

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

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on August 23, 2013. An introductory statement submitted with the petition described the petitioner’s role in some of the projects that he has undertaken with [REDACTED]

- [REDACTED] This study seeks to determine “how deployment affects the health and well-being of military families over the course of three years.” The petitioner “is responsible for setting up the surveys so the participants can easily access this information and also so the researchers can analyze the data and then help the military to make public policy changes to improve the lives of our military personnel.”
- [REDACTED]: “The tool is to help any state planner assess, select, and implement measures to reduce the traffic accidents and casualties for the state in question. . . . [The petitioner] is designing the web display and input-output connectivity of this tool.”
- [REDACTED] “is dedicated to improving the well-being of the Latin American population and conducts objective, independent research on topics relevant to Latin Americans living and working at home and in the United States.” The petitioner is a data collection specialist using [REDACTED] to develop the survey format for the [REDACTED] which asks questions relating to a range of socioeconomic and health issues.

The introductory statement included an explanation for the reasoning behind the waiver application:

The filing of a Labor Certification . . . would be inappropriate because [the petitioner] has been hand selected by top researchers in the country to assist them in the design and implementation of their computer programs or computer generated tools. . . . The testing of the labor market would not find an individual able to meet all of the different demands of the best researchers in the world working at [REDACTED]. . . .

Careful reviews of all the letters of support indicate that these top researchers in the nation are specifically requesting [the petitioner] in order that he can provide his expertise and services. They have indicated that at [REDACTED] there are only a few programmers who can even do the work that he does and that he has been chosen to be the primary programmer on many of these projects. . . .

The work that he does for so many governmental research projects is critical to meeting the needs of our military families, health and safety decision makers, and longitudinal studies on aging. . . . Unless researchers have the technical tools to extract the information and data that they need, they are unable to make recommendations on the best course of action. . . .

[The petitioner] truly possesses unique skills and technical expertise above even those more credentialed programmers in the field. The military has recognized that he rises above the other programmers by asking for his assistance. His employer, [REDACTED] has recognized him as well for his expertise. Not only do researchers at [REDACTED] rely on his expertise, but also other researchers around the world using the surveys developed

by [REDACTED] require that he be available. The bilingual survey work could not be done without his combined technical and bilingual abilities.

Most of the aforementioned “letters of support” are from [REDACTED] officials and employees. Dr. [REDACTED] senior operations researcher at [REDACTED] stated:

[The petitioner] is my “go to” assistant for implementing my computational statistics, artificial intelligence, machine learning, text mining, and data mining designs. Together, [the petitioner] and I have explored and created applications on the cutting edge of artificial intelligence. His knowledge and his working ability are extraordinary compared to the best of doctoral candidates and postdoctoral researchers in our field. . . .

With respect to applications, [the petitioner] has been my number one assistant for applying these methods for clients important to national security. . . . [The petitioner] has been instrumental in Army senior leadership talent management and special operations training and planning. Together we have designed and implemented important artificial intelligence applications that identify human relationships, skills, and connections.

Dr. [REDACTED], director of [REDACTED] stated:

[The petitioner] has been the primary systems programmer on the [REDACTED] funded [REDACTED] for almost 3 years. His initial responsibility was setting up the infrastructure that would allow for the transfer of information between [REDACTED] and our data collection subcontractor conducting our baseline phone interviews. . . . [The petitioner] also set up and maintains a comprehensive sample management system for this complex study design. . . . [The petitioner’s] contributions to the project are critical and unique. . . . It is worth noting that [the petitioner’s] immediate supervisor at [REDACTED] has left [REDACTED] in the past year leaving back-up currently non-existent.

[REDACTED] senior management system analyst, stated that the petitioner “played a critical role on an important project to develop civilian personnel management software for the United States Army. His tasks included software architecture design, graphical user interface creation, search engine implementation, and Hadoop map/reduce and Mahout set up.” He added that the petitioner “is one of a very few people within [REDACTED] who have mastered these tools.”

Dr. [REDACTED] now executive director of the [REDACTED] was previously director of [REDACTED] Labor and Population Division. Dr. [REDACTED] stated:

At [REDACTED] we have developed a new computer assisted [REDACTED] [REDACTED] that we use for complex surveys around the world, but also for advanced Internet data collection. [REDACTED] leverages up-to-date programming trends to provide a multi-platform, multi-language, multi-mode, object oriented environment for survey development. One application is the [REDACTED] which regularly interviews 6000 households about a wide array of topics. . . . [REDACTED] is only one of two such panels in the United States and is heavily used by researchers from many top-universities. [The petitioner] contributes in a number of ways to the development of the [REDACTED]. He develops new surveys, builds systems that allow us to recruit new panel members such that the panel remains representative of the US population, and he optimizes the underlying software. Importantly, the panel has both English and Spanish speaking respondents, which makes it imperative that some of the programming staff is fluent in Spanish.

. . . [REDACTED] is carrying out a large scale social security experiment in the state of [REDACTED] Mexico, involving large scale repeated surveys of the older population. [The petitioner] plays a crucial role in the system development, including procedures for user friendly efficient data production. We expect him to play similar roles in large scale surveys elsewhere (currently we are conducting large scale surveys in India and China, while new projects will soon start in Paraguay and Ecuador). His role in these projects will be indispensable.

Regarding the aforementioned project in India, the petitioner submitted information about the [REDACTED] in February 2009. The information identified Dr. [REDACTED] as a member of the council.

[REDACTED] economist with [REDACTED] stated:

[The petitioner's] main contributions to [REDACTED] agenda of research have been endless. He is working in the [REDACTED]. . . data collection specialist and he has helped streamline the data exchange between the team members in [REDACTED] and their counterparts at [REDACTED]. His help has been crucial to identify and correct numerous data related issues. He is one of the few [REDACTED] programmers at [REDACTED] and the only one who is a bilingual Spanish speaker. In addition, he possesses a unique skillset that makes him essential for the [REDACTED] projects. . . .

Among his continuing tasks on the [REDACTED] project are:

- Programming updates to the surveys.
- Sample management system upgrades.
- Training and technical advisor for the programmers.
- Liaison between the programmers on site and abroad.
- Data set construction.

Dr. [REDACTED] a policy researcher at [REDACTED] described a “randomized controlled trial . . . to evaluate a \$1 million pilot program that [REDACTED] [REDACTED] has funded to promote housing mobility in the [REDACTED] region.” In terms of the petitioner’s role in the trial, Dr. [REDACTED] stated that the petitioner had written code to send and track daily automatic electronic mail messages “to staff who work in any one of seven public housing authorities in the [REDACTED] region.”

Dr. [REDACTED], senior physical scientist in [REDACTED] stated:

I am currently leading an effort to develop an online tool for the [REDACTED] . . . to help any state planner assess, select and implement measures to reduce the traffic accidents and casualties for the state in question. . . . I was very careful to select the person in designing the web display and input-output connectivity of this tool. I chose [the petitioner] because of his ability to quickly absorb the information, to offer a specific plan to implement my idea, and most impressively to provide me with suggestions better than my idea. Through my interviews with him and another candidate even more experienced and academically qualified than him, I found [the petitioner] more innovative and capable. . . .

[The petitioner] is a rising star and he will make even more contributions to [the] national interest especially at [REDACTED]

Dr. [REDACTED] an associate economist at [REDACTED] stated:

I have the pleasure of collaborating with [the petitioner] on an ongoing research project . . . [that] focuses on consumer choice in the forthcoming US health insurance exchanges, a key provision of the Affordable Care Act (ACA) that will impact the lives of millions of US citizens. Our project investigates how consumers make choices and how they can best be supported in making sound financial decisions when selecting health plans. [The petitioner] has an important role in this project: designing, implementing and operating the experimental environment. . . . This component is the cornerstone for the project.

[The petitioner’s] work has been outstanding. He has quickly grasped not only the technical issues but also the policy significance and intersection with the ACA. This broader understanding and a keen sense of potential stumbling blocks for consumers has allowed him to design and implement a design that precisely and reliably replicates the choice environment that consumers will face. His quick grasp of the policy issues has helped to improve the project and experimental approach. [The petitioner] has also identified productive and low-cost means to recruit participants for the study using [REDACTED] platform. . . . [The petitioner] very correctly identified that informing the debate on this very important piece of US legislation would require a very fast turnaround. . . . Overall [the petitioner] has been

a critical member of this project team and has significantly contributed to the project's success.

██████████ president of ██████████, one of the petitioner's former employers, stated:

[T]he United States would be served rightly through [the petitioner's] intellectual contributions through (among others) his unique timed response experiments, call center enhancements, sample management and mass mailing capabilities of a computer-assisted ██████████ . . . , an environment for comprehensive survey development. This survey software package has been utilized in a widely diverse range of domains and is currently used in several of the most important health and retirement data collection projects in the world.

In addition, [the petitioner] is an extraordinary software engineer able to implement solutions in innovative . . . technologies in the highly sought out field of Machine Learning and Data Science using his expertise at leveraging technologies such as ██████████

I've had the pleasure of working with [the petitioner]. During his time at ██████████ he helped implement a system that allowed us to process pricing data magnitudes faster as well as a system to do reverse bidding. His contributions were extremely valuable and improved overall the functionality of the system.

██████████ chief executive officer and president of ██████████ provided a similarly-worded letter, including the following passage:

I've had the pleasure of working with [the petitioner] on multiple occasions. On one occasion, we had essentially given up on a large contract because we didn't have any in-house expertise on those technologies...when [the petitioner] heard of that, he spent a week of his own time bringing himself up to speed and then helped us re-engage the client. As a result, we were able to acquire the contract and still continue to serve the client.

The petitioner did not identify ██████████ among his past employers on Form ETA-750B, Statement of Qualifications of Alien, as required by 8 C.F.R. § 204.5(k)(4)(ii), and the letters did not specify when this employment took place.

The petitioner submitted a printout of an electronic mail (email) message from ██████████ of the ██████████ The message reads, in part:

I'd like to thank you for sending [the petitioner] out to help us right the ship on the survey project. His single-handed work of creating and modifying the Linux based

server for our test survey was outstanding. If not for his help and tenacity, we'd still be struggling with our Windows based server and this project. His Linux server literally smoked our server and quite possibly saved the survey test project.

The letters and messages submitted with the petition show that the petitioner's role at [REDACTED] is not as a researcher who conceives and conducts surveys, but as a provider of technical support to facilitate those surveys. The information provided does not show the petitioner's impact on his field as a whole. Furthermore, while several of the [REDACTED] projects have wider implications in terms of health care, social services, and other areas, the petitioner did not show the existing impact of those projects, or establish the extent to which his involvement shaped that impact. Assertions of exceptional ability (*i.e.*, a degree of expertise significantly above that ordinarily encountered) are not sufficient to qualify for the waiver, because aliens of exceptional ability are subject to the job offer requirement at section 203(b)(2)(A) of the Act

Apart from letters, the petitioner's initial evidence included background information about [REDACTED] and some of the specific projects described above. These background materials generally do not identify the petitioner or discuss his roles in the projects, except for a list of "Staff for [REDACTED]" that identified the petitioner as one of seven research programmers.

The petitioner submitted printouts of several email messages from recruiters. The petitioner appears to have received all of the messages via the social network [REDACTED]. The record does not show whether the petitioner received these messages because of his reputation in the field, or due to the skills he listed on his [REDACTED] profile. The printouts of the messages are difficult to read in full, owing to formatting anomalies, but several of the messages include specific references to the petitioner's profile.

The director issued a request for evidence on September 19, 2013. In that notice, the director stated that the petitioner had established the intrinsic merit of his occupation, but had not met the other two prongs of the *NYS DOT* national interest test:

[The evidence establishes that the scope of [REDACTED] survey projects, which are conducted for various governmental/military organizations . . . can reach a national level. However . . . , your position as a Research Programmer cannot be determined to be national in scope. Essentially, your position is of substantial benefit to your employer, [REDACTED], who conducts the surveys and analyzes the results.

Please submit documentary evidence to establish that the benefits of your proposed employment will be national in scope.

Although [the submitted] letters are persuasive in your abilities to perform your duties as a Research Programmer, they have not sufficiently established that you have had an impact on your field of employment as a whole, or that you will serve the national interest to a greater extent than the majority of your peers. Further, you have

submitted a list of emails received in regards [sic] to possible employment offers. It is noted that these emails were received based on your [REDACTED] profile. Although these emails show an interest in your possible employment, they have not established that you have been offered a position with any of the requesters.

The petitioner's response to the request for evidence included a statement asserting that the national scope of [REDACTED] activities necessarily gives the petitioner's work national scope, and that, because [REDACTED] does not have any other programmer who can do the work that [the petitioner] does, he in fact serves the national interest to a substantially greater extent than the majority of his peers." The statement also indicated that a recent pay raise reflects the petitioner's "importance to [REDACTED] given he is the only individual who is working on the enhancements to [REDACTED] and given that it is being used worldwide by a variety of institutions." An accompanying copy of an October 14, 2013 letter from [REDACTED] confirms a 16.7% increase in salary.

The petitioner submitted four new letters, all from current or former [REDACTED] employees. [REDACTED] vice president of Human Resources, provided background information about the [REDACTED] but did not mention the petitioner except to confirm his employment there.

A letter co-signed by [REDACTED] co-principal investigators on the [REDACTED] reads, in part:

The findings of the [REDACTED] will impact federal policies and programs that serve to support military families across the deployment cycle – it is by design, execution, and impact of national scope. To conduct this study, [REDACTED] relies upon a small staff of individuals with sophisticated and discrete research programming skills. [The petitioner's] role is a hybrid between research programmer and data engineer (data management and transformation). He has been with the project since its inception. His unique contribution has been essential to creating and maintaining the complicated infrastructure that the entire longitudinal survey relies on as well as handling day to day sample management operations that keep the survey running smoothly and participant attrition low. The nature of his "behind the scenes" work on this study means that he is not in direct contact with sponsors and that makes it difficult to ask parties outside of [REDACTED] to vouch for the importance of his work or the scope of his contribution. However, from our perspective we know he plays a pivotal role facilitating this important study of national significance. . . . [W]e are concerned that in [the petitioner's] absence the team would lose integral institutional knowledge that is critical to the project's success and our ability to produce timely, nationally relevant policy recommendations.

The remaining two letters are from former [REDACTED] employees now employed at the [REDACTED] information technology director, stated:

[The petitioner's] work has extended [redacted] to provide researchers with different methodologies to elaborate online experiments using social media, real time reaction surveys and mobile applications. [redacted] is currently used in several of the most important health and retirement data collection projects in the world. . . .

I had the pleasure to have [the petitioner] as part of my team during my tenure at the [redacted]. At [redacted] [the petitioner] quickly became an essential member of the team on which I could rely to work independently and efficiently. He would always come with innovative solutions and new ways to tackle problems. His work, implementing enhancement to [redacted] increased survey response and retention, facilitated the management of longitudinal surveys and scraped new territory setting foot into other domains such as social media and smart phones. [The petitioner] is one of three programmers that have had a part in the development of [redacted] enhancements and is the only one still working on it.

[redacted] senior information analyst, provided a similarly-worded assessment of the petitioner's work with [redacted]

I had the pleasure to work alongside [the petitioner] during my time at the [redacted]. [the petitioner] hit the ground running becoming an essential member of the team with his work implementing enhancements to [redacted] which increased survey response rates, facilitated the management of multi-year studies and extended the tool into new domains such as social media and smart phones.

The director denied the petition on January 11, 2014, determining that the petitioner had established the intrinsic merit and national scope of the petitioner's employment, but not his influence on the field. The director quoted from letters submitted in response to the request for evidence and, relying on *NYSDOT*, stated:

The employer's assertions regarding the overall importance of an alien's area of expertise cannot suffice, however, to establish eligibility for a national interest waiver. 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 as they relate to the job to be performed.

Any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for alien labor certification; the fact that the alien is qualified for the job does not warrant a waiver of the job offer/labor certification requirement. It cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold.

Noting the petitioner's earlier submission of email messages from recruiters, the director stated that the messages did not establish that any of the communications had resulted in job offers; they merely advised the petitioner of job openings.

On appeal, the petitioner resubmits copies of previously submitted letters describing his value to the [REDACTED] and indicating that the national interest waiver would enable him to remain there. The appeal, however, also includes evidence that he has already left [REDACTED] or will soon do so. The petitioner submits a copy of a January 29, 2014 job offer letter from [REDACTED] for a senior research programmer position to begin February 10, 2014. An accompanying legal brief describes the projects that the petitioner will work on at the [REDACTED] including the [REDACTED]. The brief, therefore, indicates the petitioner will leave [REDACTED] if he has not done so already.

The petitioner's principal claims in support of the waiver application rested on the assertion that the [REDACTED] was engaged in specific, important projects, and that the petitioner's continued involvement was necessary or highly desirable to ensure the successful completion of those projects, as well as the maintenance of [REDACTED] proprietary [REDACTED]. Even the appellate brief emphasizes that certain researchers at [REDACTED] specifically recruited the petitioner for certain projects because his continued involvement would further ensure their success. The petitioner's departure from the [REDACTED] would make those claims moot. If, on the other hand, the petitioner does not actually intend to leave [REDACTED] then the petitioner errs on appeal by stating that he "will be working" at [REDACTED].

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1). At the time the petitioner filed the petition in August 2013, the waiver application relied on a specific fact pattern involving employment at [REDACTED] and the petitioner's involvement in specific, identified projects there. The waiver request was predicated on the assertion that it was important for the petitioner to remain at [REDACTED]. The appeal makes it clear that this fact pattern no longer applies. The job offer from [REDACTED] did not exist until January 2014, and therefore cannot form the basis for immigration benefits with an August 2013 priority date. USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). *See also Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998) (a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements).

The petitioner, via the appellate brief, asserts: "The Director erred in finding that the beneficiary must have job offers to show that he is one of a few." The director made no such finding. Rather, the director observed that the petitioner had received notifications of job openings rather than job offers. This assertion is relevant because the petitioner had submitted the email printouts in an effort to establish that "his services are widely sought after." Recruitment messages without follow-up job offers establish a general demand for qualified workers in a particular field, but a shortage of qualified

workers is not grounds for waiving the job offer requirement. *See NYS DOT*, 22 I&N Dec. at 218. Generally, the labor certification process is the means by which an employer documents such a shortage. *Id.* at 221. The petitioner did not establish that it is unusual for workers in his field to receive email solicitations via [REDACTED]

Also in the brief, the petitioner states: “the Director failed to give any weight to the statements of . . . professionals and internationally and nationally renowned researchers.” The director did not ignore the letters, or state that they had no weight. The director, in the denial notice, commented on the letters and quoted from some of them, concluding that “they do not sufficiently document that [the petitioner has] a history of achievement with a documented influence over [his] field of employment as a whole.” The petitioner, on appeal, does not address or rebut this finding.

The record shows that the petitioner provided important support services while at [REDACTED] but the appeal does not indicate that he is still there performing the functions on which the waiver claim rested. Also, the record shows the importance of several of the [REDACTED] studies and surveys, but the record does not show that the petitioner’s involvement has affected their outcome, or that he has influenced the field of research programming.

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.