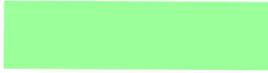


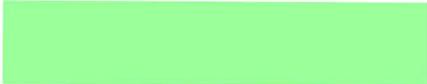


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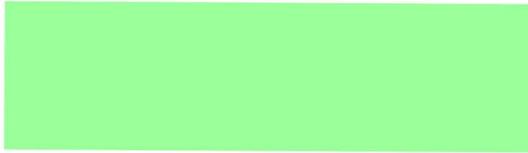


DATE: **OCT 10 2014** OFFICE: NEBRASKA SERVICE CENTER 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, 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 to classify the beneficiary under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in business and as a member of the professions holding an advanced degree. The petitioner, a commercial bank, seeks to employ the beneficiary as a vice president and credit analyst at its [REDACTED] County office in [REDACTED] California. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the beneficiary “holds the requisite U.S. 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 brief and copies of previously submitted letters.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(k)(3)(i) states that, to show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of

letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The beneficiary claims no degree above a baccalaureate in business administration from [REDACTED], which she earned in January 2006. Therefore, the petitioner's implied contention is that the beneficiary's subsequent six years of post-baccalaureate experience are equivalent to a master's degree.

In the introductory letter submitted with the petition, the petitioner stated that the beneficiary "meets the criteria for an advance[d] degree holder." In the denial decision, the director concluded that "the petitioner [*sic*] holds the requisite U.S. advanced degree or foreign equivalent degree." The statutory classification is not "advanced degree holder," but "member of the professions holding an advanced degree." *Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2). One can hold an advanced degree without being a member of the professions.

Section 101(a)(32) states: "The term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." This list does not include bank officials. In addition, the petitioner has not shown that a baccalaureate degree is the minimum requirement for entry into the beneficiary's occupation. Rather, the beneficiary claims to have served as an "Assistant Vice President/Credit Executive" at [REDACTED] from April 1989 to March 2007 (according to Form ETA-750B, Statement of Qualifications of Alien), several years before she earned her bachelor's degree in 2006. A copy of the job announcement for the beneficiary's position, included in the record, does not indicate that the position requires any academic degree, baccalaureate or otherwise.

The petitioner has not established, or even directly claimed, that the beneficiary's occupation meets the regulatory definition of a profession. Therefore, the petitioner has not shown that the beneficiary qualifies for classification as a member of the professions with post-baccalaureate experience equivalent to an advanced degree. The record presents a stronger claim of exceptional ability in business, a change that has no substantive effect on the outcome of the petition.

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

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 August 28, 2012. In an accompanying letter, [REDACTED] president of the petitioning bank, stated:

[The beneficiary] is a[n] exceptionally able Commercial Loan Credit analyst whose innovative and highly skilled contributions have earned her the position of Vice President . . . and the responsibility of supervising a loan portfolio worth \$165 million. . . .

Ours is a relatively young bank, founded in 2006 with \$27.5 million in capital. **In its six years of existence, it has grown to an asset level of approximately \$567 million.** . . . For comparison, it should be noted that roughly 50 banks opened in California during the period 2006-2009, and their average asset level as of this writing is only \$116 million.

What's behind this Bank's recognized performance is our team of top-notch executives and managers. . . .

[T]he Beneficiary in this case[] is a critically important executive on our Bank's highly talented leadership team. . . . I must emphasize that she is at the center of the Bank's lending operation. Without her on board and without her highly exceptional set of skills, the Bank would certainly not have attained its current remarkable level of asset growth. Nor would our customers have expanded their businesses and thus succeeded in the creation or preservation of American jobs across the United States. **Nor would our clients that export have been able to expand their exports to many countries around the world.**

[The beneficiary] performs world-class credit analysis that is essential to our success.

. . . In short, credit analysts must predict the probability that a borrower will or will not default, and if a default were to occur, the severity of losses.

. . . Through her extensive and wide-ranging experience and skills, [the beneficiary] has become the linchpin for virtually all of the Bank's most significant loan business. Although we have two other credit analysts, [the beneficiary] is the leader.

(Emphasis in original.) Mr. [REDACTED] pointed to various immigration policies and initiatives intended to support "[t]he enlargement of the national economy through the support of entrepreneurship." Mr. [REDACTED] did not claim that the beneficiary is an entrepreneur, investing her own assets into the creation and expansion of employment-creating enterprises. Rather, he asserted that, by making loans, the beneficiary allows customers to expand their businesses and increase employment. Citing a table of information regarding "a small sample of [the petitioner's] clients," Mr. [REDACTED] asserted that the beneficiary's "loan approvals have added **274 new jobs and saved 171 existing jobs.** These clients project[s] will also lead to an **additional 163 new jobs** created from our Bank's loans in the near future. These clients further estimate that **216 indirect new jobs have been created** by their suppliers or subcontractors." Mr. [REDACTED] also credited the beneficiary with the petitioner's "outstanding record of increased lending to small businesses." The petitioner submitted no evidence to support most of the figures stated in the table. 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)).

The petitioner submitted seven additional letters: three from other current officials of the petitioning bank, three from individuals who have worked with the beneficiary in the past and one from a client. [REDACTED], chief executive officer of [REDACTED] stated:

[REDACTED] makes parts and processes parts for the aerospace industry. Our main office is [in [REDACTED] California]. But we have recently, thanks to the outstanding leadership and assistance of [the petitioning] Bank, opened a brand new plant in Wichita. That would be Premier Processing. . . .

[The new plant] covers 36,000 square feet and employs 30 workers; *these are all brand new jobs.* If we stay on the growth path we foresee, Premier Processing will eventually have 75 workers. . . .

We would never have been able to open that new plant and hire those new employees without [the petitioner] and its very intelligent credit-analysis department headed by [the beneficiary]. Nineteen out of 20 banks would have turned us down – these days nobody’s willing to back a new venture. But [the beneficiary] as VP in charge of credit analysis took a good look at the business, at its fundamentals, and came to understand the logic of the enterprise and, understanding it, to provide the loans that would allow us to expand. Without [the beneficiary’s] outstanding ability as an analyst for [the petitioner] to pave the way for the loans we needed, our new plant in Wichita would not exist. . . .

I cannot stress how rare this kind of courageous underwriting really is in this economy. . . .

It’s worth noting that a year or so before our Wichita expansion, the people at [the petitioning bank] stepped forward and arranged loan packages to help us expand our California operations. We acquired two smaller companies with that help, and thus added 40 jobs to the California economy.

(Emphasis in original.) Mr. [REDACTED] did not specify whether or not the beneficiary was involved in the earlier loan that allowed [REDACTED] to acquire the “two smaller companies.” Also, the table in Mr. [REDACTED] letter indicated that [REDACTED] added 110 new jobs due to the loans from the petitioner, not counting projected future jobs. Mr. [REDACTED] also claimed that the loan saved all 60 existing jobs at the company. Mr. [REDACTED] letter does not corroborate these claims.

[REDACTED] executive vice president of commercial banking for the petitioner, stated:

[The beneficiary] is a Vice President of this bank and our top Credit Analyst. She has conducted her credit career in a way that displays a unique combination of innovative thought and outstanding management ability. . . . Her contributions and her expertise go far beyond the routine. . . .

To put it simply, she is at the center of a lending operation that makes things happen. As a result, smart loans are made, smart people build new factories, and men and women go back to work.

. . . After a recession of remarkable length and depth, anyone who plays a critical role in getting money out into the economy, so that people can be hired, is worth hanging on to.

regional vice president of the petitioning bank, praised the beneficiary's "exceptional skill in loan origination matters, including the all-important investigation of a business so that the true risk of a loan can be assessed. . . . She is without peer in her crucial role at this bank."

the petitioner's executive vice president and chief credit officer, stated:

[The beneficiary] does full-scale investigations in great detail of individuals, small businesses and medium sized businesses to see how these firms will hold up under future economic forces. The quality of her analysis is expert and advanced. . . .

Seeing her contributions in her weekly and monthly reports has convinced me that she really sets herself apart from many lesser prepared credit analysts.

chairman of the board at and a former senior advisor at the petitioning bank, stated that the beneficiary "is an outstanding analyst of credit data, and such work is key to the origination of loans that will for both the bank and the customer." Mr. speculated that "scores and perhaps hundreds of women and men owe their current employment to business expansions funded by [the petitioner]; behind those loans is the highly talented work of [the beneficiary]."

vice president and senior credit executive at where the beneficiary worked from 1989 to 2007, stated that the beneficiary "was instrumental in developing the Quality Control process and procedures for the small business department" and "was also a major contributor on the task force charged with development of policies[,] procedures and guidelines for implementation of several important Compliance Programs required by Regulatory agencies." Mr. provided no other details or explanation of the significance of the beneficiary's work.

a reporting analyst at stated that the beneficiary "has stood out in the banking industry as an outstanding analyst with a remarkably wide range of experience." He also asserted that "the unusually large size of the loan portfolio she manages . . . would put her in the top few percent of commercial loan portfolio managers in the country." Mr. indicated that his information about the beneficiary's achievements comes from his "reading of her portfolio" and the beneficiary's résumé.

The petitioner submitted background information about the petitioning bank, the [REDACTED] [REDACTED] which provided some of the petitioner's lending capital at advantageous rates of interest) and the state of the banking industry. These materials show that the petitioner is a stable and successful bank that has exceeded [REDACTED] lending goals, but they do not establish the beneficiary's influence on her field or that she has played a role in national economic recovery that would warrant the national interest waiver.

On May 28, 2013, the director issued a notice of intent to deny the petition. The director stated that the petitioner had satisfied the first two prongs of the *NYS DOT* national interest test, concerning intrinsic merit and national scope, but that the petitioner had not established "that the beneficiary presents 'a national benefit so great as to outweigh the national interest inherent in the labor certification process.'" The director stated that the petitioner had not submitted objective evidence to support claims about material factors such as the significance of the size of the portfolio that the beneficiary manages for the petitioning bank.

The petitioner responded to the notice with two letters. The first of these letters included the claim that the director "overlooks or ignores mounds of evidence" which "overwhelmingly establishes that a national interest waiver is justified." The letter did not include any details about this evidence or an explanation as to how it "overwhelmingly establishes" the beneficiary's eligibility for the benefit sought. The letter repeated earlier assertions, such as the claim that the beneficiary's work has "led to the creation of approximately **274 new, permanent jobs** at the business sites of her customers" (emphasis in original), but it did not corroborate those claims.

The first letter also contained the claim that the director's notice lacked specificity. The notice, however, raised several specific points, such as the following examples:

Counsel for the petitioner argues that the beneficiary has grown and managed a portfolio of \$165 million on behalf of the petitioner. While the petitioner has provided letters that state that this is an unusually large portfolio size, the record is absent objective evidence to support those claims. . . .

[T]he evidence does not demonstrate that [the claimed job creation] could not have been possible if a competent and available U.S. worker served in the same role as the beneficiary. Further, this indirect impact appears to be more of a result of the loans provided by the petitioner and not the direct work of the beneficiary herself.

The response letter quoted previously offered no response to these specific points, relying instead on the contention that "[t]here is simply no credible argument that [the beneficiary] does not serve the national interest to a substantially greater degree than a minimally qualified U.S. worker who may emerge during the labor certification process."

In the petitioner's second response letter, Mr. [REDACTED] stated: "in the initial submission, industry expert after industry expert attests to [the beneficiary's] incomparable skill and achievements and the

advanced, not minimal, skills necessary to perform them.” The initial submission included six letters from writers in the banking industry, all of whom had worked with the beneficiary, and half of them were officials of the petitioning bank. The writers therefore do not represent a cross-section of industry experts, and their letters do not represent a consensus in the field.

Mr. [REDACTED] states that if the beneficiary “is performing work of substantial intrinsic merit and doing so with effects felt that are national in scope . . . at a level that outpaces minimally qualified U.S. workers, then she is, by definition, serving the national interest to a greater degree than those hypothetical, minimally qualified U.S. workers. That should be the end of the analysis.” The third *NYS DOT* prong, however, is not simply that the beneficiary should outperform minimally qualified United States workers. 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 field, and section 203(b)(2)(A) of the Act holds aliens of exceptional ability to the job offer requirement. Therefore, the statute and regulations, taken together, demonstrate that it cannot suffice for the petitioner to show that the beneficiary displays a degree of expertise significantly above that ordinarily encountered in her occupation.

Mr. [REDACTED] noted that USCIS, through the Entrepreneurs in Residence program, “has made economic recovery a keystone of its own work,” attempting to attract “foreign investors, entrepreneurs and workers with specialized skills, knowledge, or abilities.” The program in question created no new immigration benefits for entrepreneurs. Rather, it provides guidance on ways that existing immigration policies and regulations can encourage their immigration. Furthermore, the beneficiary herself is not an entrepreneur, investing her own assets into job-creating enterprises. Rather, she is a bank official, overseeing the lending of the bank’s assets (and government funds loaned through [REDACTED] to outside businesses. The existence of the Entrepreneurs in Residence program does not establish or imply expanded eligibility of the national interest waiver to bankers who approve loans for entrepreneurs.

Mr. [REDACTED] repeated prior assertions regarding the beneficiary’s role in job creation at a national level, but repetition is not corroboration. Mr. [REDACTED] named several clients, but only one of those clients ([REDACTED]) provided a letter, and that letter did not substantiate the petitioner’s claims about that company.

The director denied the petition on October 15, 2013, repeating the grounds for denial previously stated in the May 2013 notice of intent to deny the petition.

On appeal, the petitioner submits a legal brief, the first half of which largely duplicates or paraphrases Mr. [REDACTED] previous statements submitted with the initial petition and in response to the notice of intent to deny. Because we have already discussed these assertions above, further discussion would be redundant here.

The petitioner, via the legal brief, contends that the director “either ignores or recklessly overlooks substantial evidence of [the beneficiary’s] contributions to the national interests of the U.S. . . .

[D]ue exclusively to [her] irreplaceable skills and experience, these loans have added **274 new jobs** and saved another **171 existing jobs**” (emphasis in original). As noted above, the petitioner has submitted no evidence to support these claimed numbers, and therefore they cannot meet the petitioner’s burden of proof. *See Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner, in the brief, states that the director misapplied *Soffici* and other precedent decisions, because the petitioner submitted “a *voluminous record*” rather than relying on unsubstantiated claims. Elsewhere in the brief, the petitioner asserts that the denial of the petition “violates Petitioner’s Fifth Amendment right to equal protection” because it “characterize[d] objective evidence as mere arguments of counsel and as otherwise non-existent.” The petitioner identifies no specific piece of objective evidence that the director mischaracterized as an unsupported claim. Many of the exhibits submitted with the petition are background evidence about the petitioning bank or the state of the economy, and do not corroborate case-specific claims of fact material to the petition. Key assertions, including the number of jobs created by the beneficiary’s work, appear only in the petitioner’s own statements.

In response to the director’s statement that the “indirect impact [of the beneficiary’s work] appears to be more of a result of the loans provided by the petitioner and not the direct work of the beneficiary herself,” the petitioner states: “That statement reflects a serious misunderstanding about what [the beneficiary] does. . . . She isn’t just stamping a piece of paper.” This assertion, and the ensuing description of the beneficiary’s specific duties, does not address the director’s point. The director found that the job creation arises from the petitioner’s loans to its clients, rather than from the beneficiary’s efforts. Additional details about the nature of the beneficiary’s work do not rebut that finding or establish that the petitioner’s loans would have created fewer jobs if approved by a United States worker instead of the beneficiary.

The petitioner, in the brief, stated that the director’s “decision[] provides, at best, an insufficient articulation of the reasons for denial. . . . The denial is remarkable for its utter disregard of the record evidence and the lack of articulated statement that that evidence was actually considered.” The record does not support this characterization of the denial notice. The director noted the petitioner’s claims “that the beneficiary has grown and managed a portfolio of \$165 million” and that “over 200 new, permanent jobs were created.” The director acknowledged the petitioner’s submission of “a number of articles . . . , certificates . . . , and letters of support from the petitioner, former employers and former co-workers.” The director did not deny the petitioner’s submission of this evidence. Rather, the director found that the evidence “establish[es] that the beneficiary is a highly qualified and competent credit analyst,” but did not meet the higher threshold of showing that “a competent and available U.S. worker could not also” achieve similar results in the same position at the petitioning bank.

The petitioner states that the beneficiary’s “contributions far exceed those which Congress has said justify waiver of the labor certification process in comparable jobs-based immigration programs.” Specifically, the petitioner cites “the EB-5 employment-creation visa, which is likewise exempt from labor certification.” The EB-5 program, established under section 203(b)(5) of the Act, is not a

waiver of the job offer/labor certification requirement. It is an entirely separate immigrant classification that requires a foreign entrepreneur to engage in a job-creating commercial enterprise in which he or she has invested a substantial sum of his or her own funds. The beneficiary has not done so, and the existence of the EB-5 program does not imply ancillary immigration benefits for bank employees.

The petitioner identifies several other “Executive Branch initiatives” intended to support job creation, but does not show that any of them include immigration benefits for credit analysts among their policies or recommendations.

The petitioner contends that the director denied the petitioner’s right to due process by “applying *ad hoc* criteria” rather than “following *uniform* criteria in the adjudication of all similar EB-2 petitions” (emphasis in original). In the discussion of due process rights, the petitioner does not directly identify the *ad hoc* criteria upon which the director supposedly relied, but from the context of other sections of the brief, the petitioner appears to refer to two points in the denial notice:

The Decision at bar contains several presumptions unsupported by any binding source of legal authority, including the following: (1) though the beneficiary manages a portfolio of \$1645 [*sic*] million and provided letter [*sic*] that it is an unusual portfolio size, [the director stated] “the record is absent objective evidence to support these claims,” [and] (2) though the beneficiary’s work produced over 200 new permanent jobs, “this indirect impact appears to be more of a result of the loans provided by the beneficiary [*sic*] and not the direct of work [*sic*] of the beneficiary herself.”

Regarding point (1) above, the petitioner submitted no documented statistics from any objective source to establish the relative size of portfolios managed by credit analysts in commercial banking. The petitioner submitted, instead, letters from its own officials and from the beneficiary’s former colleagues at another bank, calling the size of the portfolio “unusual.” Even then, the director did not state that stronger evidence of the portfolio’s “unusual . . . size” would have secured approval of the petition.

With respect to point (2), the petitioner faults the director for not defining the terms “direct” and “indirect,” and asserts that the director’s finding is impermissibly arbitrary. From the context of the decision, the director appears to have meant that the beneficiary herself did not create any new jobs, but rather, in her function as a credit analyst, she arranged bank loans to businesses that, in turn, created jobs within their own companies. In terms of the petitioner’s equal protection claim, the petitioner has not shown that USCIS otherwise routinely approves national interest waivers for bank employees who approve loans for employment-creating enterprises, or that the director has otherwise imposed standards that do not exist in other national interest waiver proceedings.

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 her 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.