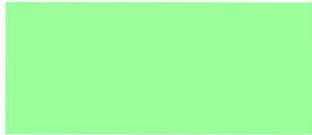




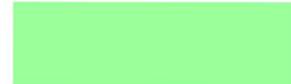
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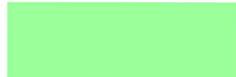


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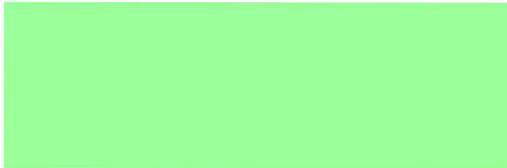


IN RE: Petitioner:  
Beneficiary:



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 (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a quality engineer. At the time he filed the petition, the petitioner had an offer of employment at [REDACTED] North Carolina. 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, most of them submitted previously.

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

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

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

(B) Waiver of Job Offer –

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

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

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

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

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

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

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on April 5, 2013. An accompanying introductory statement reads, in part:

[The petitioner’s] eligibility for the National Interest Waiver classification is predicated on the clear statutory language of §203(b)(2) of the [Act], which states that

“visas should be made available to qualified immigrants 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.” We firmly believe that [the petitioner’s] skills and experience is [sic] of such obvious national interest.

The introductory statement somewhat misquoted the statutory language. The complete wording of section 203(b)(2)(A) of the Act reads as follows:

IN GENERAL. – Visas shall be made available, in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraph (1), 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.

The complete language of the relevant section of the statute shows that an alien whose advanced degree or exceptional ability “will substantially benefit . . . the United States” must also meet the job offer requirement, by showing that his or her “services . . . are sought by an employer in the United States.” The omission of this clause from the quoted passage does not establish or imply that “the clear statutory language” favors approval of the waiver.

The introductory statement described the petitioner’s qualifications:

[The petitioner’s] past, ongoing, and prospective role as an innovative Quality Engineer specializing in [redacted] and Kansei Engineering encompasses unique skills that undoubtedly serve the national interest. . . . As a Quality Engineer, [the petitioner] analyzes data and product specifications to determine standards and establish quality and reliability objectives of finished products. Moreover, [the petitioner] is experienced in the implementation of effective corrective actions to minimize quality issues for advanced manufacturing companies.

. . . In 2010, [the petitioner] was awarded a Doctorate of Philosophy in Industrial Engineering from [redacted] in Wichita, Kansas. . . .

In 2011, [redacted] . . . [,] an advanced materials science solutions provider[,] successfully petitioned for [the petitioner’s] H1-[B] non-immigrant worker visa. There, he used his expertise for the development and implementation of systems manufacturing. He was responsible for improving the quality management system through active interaction with sales and customers on customer quality issues, specification alignment and customer corrective actions.

Currently, [the petitioner] has a confirmed job offer with [REDACTED] is one of the largest engineering companies in the world. [REDACTED] provides power and automation technologies that enable utility and industry customers to improve their performance while lowering environmental impact. [The petitioner] has been offered a position as a Quality Engineer in the Power Products – Medium Voltage Department of [REDACTED] in [REDACTED] North Carolina. . . .

[The petitioner's] eligibility for national interest waiver classification under 8 C.F.R. §202(b)(2)<sup>1</sup> is premised on his demonstrated accomplishments as a quality engineer in his published, presented, reviewed, taught, and implemented works throughout his career. Specifically, his contributions toward the [REDACTED] body of knowledge and implementation of principles of Kansei Engineering have earned him recognition in academia and among prestigious engineering firms in the United States. . . .

The benefits of employment of [the petitioner] are national in scope. Through his unique approach to Rough Set theory in Kansei engineering and [REDACTED] [REDACTED] [the petitioner] makes significant contributions toward improving the quality of products through human-centered design principles. . . . [The petitioner] has been a presenter, contributor, teacher, and panelist in the industry's most qualified conferences. . . . His scientific approach to Industrial Engineering is recognized as insightful and innovative, a foresight to a more productive and consumer friendly future for Industrial Engineering.

. . . As a quality engineer, his enlightened psychological, human-centered, approach to engineering has wide-ranging beneficial impact. His contributions toward the "Detection and Prevention of Carbon Monoxide Exposure in General Aviation Aircrafts" project as well as presenting a new method for customer grouping using the QFD body of knowledge represent two developing aspects of the industry [to] which [the petitioner] has significantly contributed throughout his career.

The petitioner documented his receipt of various academic scholarships. The introductory statement mentioned one of them, stating: "In 2010, [the petitioner] was . . . awarded the [REDACTED] from the [REDACTED] . . . in recognition of his outstanding contributions toward the [REDACTED] body of knowledge." The record documents the petitioner's receipt of the student award, but does not establish its significance. The petitioner submitted copies of articles from [REDACTED] publications about his receipt of the scholarship, but no evidence that the award attracted wider notice.

The petitioner documented his job offer from [REDACTED] to take effect April 29, 2013, several weeks after the petition's filing date. A copy of the job description reads, in part:

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<sup>1</sup> There is no regulation designated 8 C.F.R. § 202(b)(2). The intended reference appears to be section 203(b)(2) of the Act.

The individual in this position is responsible for development and implementation of effective methods and procedures and the use of how to use the equipment properly to effectively respond to requirements for accuracy of products. The individual is responsible for ensuring procedures and documentation is [*sic*] in place to produce a product to meet quality and services specifications.

Under limited direction, perform complex quality assurance assignments requiring diversified knowledge of engineering, manufacturing and quality assurance to cost effectively accomplish the organization's goals and objectives. Proactively seek and implement initiatives to improve operations and increase customer satisfaction.

The record contains no evidence that the petitioner subsequently worked for [redacted] although, beginning in May 2013, he held employment authorization that would have permitted him to do so. A [redacted] submitted in September 2013 does not identify [redacted] as a current or former employer.

The petitioner submitted letters [redacted] all of whom have taught or worked with the petitioner. [redacted] executive director of the [redacted] [redacted] stated:

[The petitioner] began his study with me in 2002 when he attended the [redacted] [redacted] course in Munich[,] Germany, in conjunction with his presentation at the [redacted]. . . . [The petitioner's] work represents new extensions and integrations of statistical and mathematic theory in the fields of product development that are essential to the ongoing competitiveness of U.S. industries in a variety of fields including manufacturing, healthcare, and education.

Two of the letters are from associate professors at [redacted] in Iran, where the petitioner taught from 1998 to 2005. Dr. [redacted] mostly discussed the petitioner's teaching and administrative duties at [redacted] functions that the petitioner would not undertake while employed in industry rather than academia. Beyond academic functions, Dr. [redacted] stated:

As a successful faculty [member] and due to his great understanding and experience in the quality engineering specialty of customer oriented product development such as [redacted] the local industry organizations requested him to hold many practical workshops particularly in his area of [redacted] his expertise. He also provided consultancy services in the same area to these industries.

In research [the petitioner] is very competent. He was the head of the research team of two significant research projects: Feasibility Study of [redacted] in Iran and Investigation of [redacted] Ali's contribution was recognized by experts as instrumental in the success of these projects.

Dr. [REDACTED] provided no further details about the petitioner's research and consulting work.

Dr. [REDACTED] stated:

[The petitioner] worked on a research project entitled "Feasibility study of electric vehicle production in Iran." . . . [The petitioner] served as the head of the technical study group and contributed to the market, economical, and financial studies of the project.

This project was instrumental in increasing the awareness of authorities as well as the engineers and other members of the domestic vehicle industry on the feasibility of vehicles that are environmentally friendly. . . . The role of [the petitioner], among other team members, was remarkable in achieving the project outcomes.

Four of the letters are from current or former faculty members at [REDACTED], where the petitioner earned his doctorate from 2006 to 2010. Professor [REDACTED] now dean of the College of Engineering at [REDACTED] previously chaired [REDACTED] Department of Industrial and Manufacturing Engineering. He stated:

Because of his strong technical background and qualifications, I recruited [the petitioner] to pursue his PhD in Industrial Engineering. . . . Since then, I have been in constant interaction with [the petitioner] in a number of ways. . . . I would rank him in the top 5% of the extensive number of students that I have worked with over the years. . . . The Six Sigma Black Belt certificate (SSBB) as well as the Certified Quality Engineering (CQE) certificate, both from the American Society of Quality (ASQ), are highly prestigious certificates that he has received while completing his PhD education. . . . A person with this level of expertise is certainly unique and an asset that many companies seek in their new employees in the area of quality. . . .

One of the important projects of national significance to which [the petitioner] was a major contributor was the [REDACTED] project, a four year project funded by the [REDACTED]. . . . This was a very important project of national significance as its result[s] were to be used as directives to the general aviation community and to remedy design issues with small airplane[s] to improve their safety. . . . [The petitioner] was instrumental in its success.

In collaboration with other graduate students, [the petitioner] used his expertise in data mining and statistical data analysis to examine the [REDACTED] database to identify cases where CO was a contributor to accidents and to better understand the nature of the problem. The result of this analysis together with the evaluation of existing CO detection technology and two years of field testing enabled us to make solid recommendations to the [REDACTED] to

improve safety in general aviation aircraft. These recommendations are instrumental in the creation of advisory circulars by the [REDACTED] for manufacturers and maintenance personnel of general aviation aircraft to improve their processes and products.

Prof. [REDACTED] letter does not include sufficient details regarding the nature or extent of the petitioner's role in the [REDACTED] project, to establish whether the petitioner's involvement included creative input or was limited to data processing. The petitioner's initial submission included no evidence from the [REDACTED] to show that the [REDACTED] adopted the recommendations, or that the petitioner is a credited author of any resulting report.

Professor [REDACTED] Prof. [REDACTED] successor as department chair, offered his "highest recommendation" but provided no details about the petitioner's work, stating: "[the petitioner's] sophisticated work over the last fifteen years on [REDACTED] and Kansei Engineering is marked by a unique international and multicultural perspective, chronicling the customer usability and feedback approach to engineering."

Dr. [REDACTED], coordinator of [REDACTED] Human Factors Program and an associate professor of psychology, stated:

I first met [the petitioner] when he asked me to serve on his dissertation committee. Intrigued by the measurement of 'user experience,' [the petitioner] and I met numerous times to discuss the psychology of understanding the relationship between user affect, performance, and product usability. . . . [The petitioner] showed that certain classes of users had similar perceptions of websites and from this he was able to generate website design guidelines for each class. This research is important because it established a method for performing perception-based customer classification (rather than function-based customer segmentation) and helped to provide a link between market research and product development. His approach was innovative and one that I had not seen in the HCI literature before. His integration of [REDACTED] into product development appears promising in its potential to help industry be more productive and have more satisfied customers.

Dr. [REDACTED] added that "[t]he importance of [the petitioner's] work has been recognized nationally and internationally with several awards," but the awards she identified were academic scholarships, intended to finance the petitioner's graduate studies. Dr. [REDACTED] did not identify any awards that the petitioner received that were not contingent on his student status. Furthermore, awards and other recognition can form part of a claim of exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii)(F), but exceptional ability alone does not warrant approval of the national interest waiver. Without evidence of their significance, the awards do not demonstrate or imply eligibility for the waiver.

Professor [REDACTED] provided the most information about the petitioner's doctoral research:

The topic of his dissertation research with me involved the application of rough set theory to the development of design rules for products based upon the subjective impressions of potential users. These subjective impressions have been considered in other applications as “Kansei” but have not [been] integrated in the design of products that have multiple users.

During his four years of dissertation research, he researched applications of qualitative methods for reasoning under uncertainty and/or with imperfect information/knowledge to the design and development of services and consumer products, focusing on customers/users’ requirements and needs, functional or psychosocial in nature. He applied a powerful mathematical knowledge discovery approach called Rough Set Theory in Kansei engineering (A tool to map customer’s feeling to product design), especially when there is ambiguity in user performance experience data. The developed approach identified natural product user classifications and then generated design rules for each class. . . .

The rules were verified and validated by design experts and mathematical techniques in terms of their efficiency and accuracy.

\_\_\_\_\_ quality manager for \_\_\_\_\_ described the petitioner’s work at that company:

[The petitioner] was good in Measurement System Analysis, Statistical Process Control, Cpk Analysis and working on the shop floor regarding audits, QC issues troubleshooting, root cause analysis and preparing Corrective Action Report[s]. He managed the New Product Development program . . . efficiently and effectively. . . . For instance, regarding new products’ drawings, he took [a] proactive approach to follow up on the customers’ feedback to operations and engineering, while he diligently worked with multiple individuals throughout the organization to get and implement their feedbacks in manufacturing and control plans in order to ensure the products met the customer requirements.

Mr. \_\_\_\_\_ praised the quality of the petitioner’s work for \_\_\_\_\_ but did not indicate that the benefit from the petitioner’s work there extended beyond the company and its customers. The petitioner held H-1B status permitting him to work for \_\_\_\_\_ until November 2014, but Mr. \_\_\_\_\_ stated that the company terminated his employment in January 2013 “[d]ue to business down time and lack of work.”

The petitioner also submitted copies of his articles and conference papers, but he did not submit documentary evidence (such as citation records) to establish the industry’s reception of his work.

The director issued a request for evidence (RFE) on July 5, 2013. The director acknowledged the petitioner's submission of "memberships and academic awards, letters from peers and colleagues and evidence of publications," but stated that "[a]dditional evidence is requested" to establish the petitioner's impact and influence on his field.

The petitioner's response included a statement claiming that his previously "submitted evidence clearly established his past record as a Quality Engineer with a distinctly innovative and multicultural perspective, which has not gone unnoticed by industry leaders, as evidenced by his prestigious awards as well as presentations and peer reviews at world-renowned conferences." The statement also includes the following passage:

[The petitioner's] contributions toward the [redacted] body of knowledge and implementation of principles of Kansei Engineering have earned him recognition in academia and among prestigious engineering firms in the United States. He developed a unique approach called [redacted], a two-stage customer perception-based product development approach in his dissertation. This approach incorporates customer feedback data into the product development process. [redacted] was implemented in a website design project by the psychology department of [redacted] in 2010. Therefore, we believe that the foregoing documentation establishes unequivocally that the national interest would be adversely affected if US employers were deprived of the services of [the petitioner] by making the position available to U.S. workers.

The record does not support the claim that the petitioner "developed . . . [redacted]". The petitioner submitted an excerpt from his 2010 doctoral dissertation, in which he described [redacted] but did not claim to be the first to apply rough set analysis to Kansei engineering. Because the petitioner did not submit the complete dissertation, the record does not show whether the petitioner made such a claim later in the paper, or cited earlier published work by others discussing the concept.

Also, even if the petitioner did create [redacted] its existence is not evidence of its influence. The petitioner would still have to establish that other quality engineers have adopted [redacted] resulting in demonstrable changes to the field. By statute, possession of an advanced degree does not automatically exempt the petitioner from the job offer requirement, and therefore the petitioner's doctoral dissertation is not, on its face, evidence of eligibility for the waiver. The claimed adoption of [redacted] "by the psychology department of [redacted]" where the petitioner wrote the dissertation, is not evidence of wider influence.

The petitioner submitted copies of three published articles and one thesis containing independent citations to the petitioner's presented work, with three articles citing a 2008 presentation, and the fourth citing a presentation from 2009. The petitioner also submitted printouts showing monthly views of various papers on [redacted] web site. The petitioner provided no evidence to show that his papers are heavily cited, or widely read, compared to the writings of others in his specialty.

The RFE response listed nine “Awards and Accolades,” seven of which date from the petitioner’s graduate studies, while an eighth is a “Graduate Fellowship” that the petitioner received shortly afterward. The ninth listed exhibit is a new job offer, and will be discussed further below.

Five of the “Awards and Accolades” are scholarships, grants, or other awards from entities within [REDACTED] (either academic departments or local chapters of organizations). By nature, these internal honors do not reflect wider recognition.

Included among the items that the petitioner listed as “Awards and Accolades” are various certifications from the American Society for Quality and the [REDACTED] which the petitioner earned by passing a written examination and meeting certain experience requirements or by attending workshops. The record does not show that these certifications amount to “awards” or “acolades.”

The remaining two items identified as “Awards and Accolades” are job offers. One exhibit so identified is a set of job offer letters for short-term, part-time appointments as a graduate research assistant at [REDACTED] in conjunction with the petitioner’s then-ongoing graduate studies. The other job offer is for a position as a quality engineer at [REDACTED] Connecticut. The job offer letter is dated September 9, 2013, and the petitioner accepted the offer on September 14, 2013, with a tentative start date of September 30, 2013. This job offer shows that a prospective employer considered the petitioner to be sufficiently qualified for a particular opening, but the record does not show how this is an “award” or “acolade.”

Although the petitioner accepted job offers from [REDACTED] there is no evidence that he actually worked for either employer. As the petitioner relies on these job offers as evidence of how he will contribute to the field, the fact that he did not work for either company raises questions as to his ability to make those contributions.

The petitioner’s RFE response included letters from five individuals, four of whom had previously provided letters with the initial submission. The exception is [REDACTED] chief executive officer of [REDACTED] who stated that the petitioner “has an innovative approach to Quality Engineering that is a result of a unique perspective that is hard to find amongst U.S. employees.” Mr. [REDACTED] did not elaborate on this point.

[REDACTED] writing as executive director of the [REDACTED] stated:

[The petitioner] has been applying [REDACTED] and related methods in unique applications and approaches that can benefit US industry and competitiveness. Among these are new ways to segment markets and customers based on behavioral and attitudinal characteristics learned from customer choice modeling for both functional and emotional benefits. Work presented by [the petitioner] has been widely disseminated in the [REDACTED] community and followed by senior [REDACTED] practitioners. I believe this work will continue to have a great impact on US companies using [REDACTED] as it provides ways

to identify new market opportunities for US-made products, service, and even software.

. . . His contributions are varied and many, but I am most familiar with his work presented at the 2010 [REDACTED] on market segmentation using . . . very advanced methods that require detailed statistical analyses of subjective consumer responses in order to model and predict consumer behavior.

Mr. [REDACTED] did not identify the “senior [REDACTED] practitioners” said to use the petitioner’s work, or otherwise identify instances of adoption of the petitioner’s methods in the years following his 2010 conference presentation.

Prof. [REDACTED] stated:

[The petitioner] led a student research team to investigate the source of carbon monoxide in general aviation (GA) aircrafts and to develop methods to detect and prevent carbon monoxide exposure. . . . [The petitioner’s] role in this project was truly instrumental as the team utilized his data mining skills . . . to analyze [a] large amount of data from the databases of the [REDACTED] to determine the major causes of incidents. The end result of this analysis was the determination of most effective DO detection technology as well as best locations in the cockpit for its placement. . . .

Ultimately, the team’s final report was submitted to the [REDACTED]. The research was published as an October 2009 [REDACTED] technical report, [REDACTED]. . . . Furthermore, the [REDACTED] issued a Special Airworthiness Information Bulletin to advise owners/operators of general aviation aircraft on the proper maintenance of exhaust systems and use of CO detectors.

The petitioner submitted evidence to show the outcome of the [REDACTED] project, such as copies of Special Airworthiness Information Bulletins regarding the CO research, and several online third-party articles describing the [REDACTED] report (but not a copy of the report itself, which might identify authors and key contributors). An article from a [REDACTED] publication stated:

[S]even undergraduate and graduate students had the opportunity to . . . gain invaluable hands-on research experience. First, they reviewed the [REDACTED] databases and identified cases where CO was a contributor to accidents. . . .

The team went on to review and document a wide range of portable CO detectors in the marketplace that may be suitable for use in a small-engine plane.

The article quoted the petitioner as saying: “The project helped me learn, practice, develop and sharpen my research skills. I learned how to gather real-world data in the field and get familiar with the difficulty, complexity, and challenge of such a task.” A certificate reproduced in the record shows that the petitioner and two colleagues shared the [REDACTED] for [REDACTED] at [REDACTED] 2008 Engineering Open House. The evidence does not show that the petitioner’s involvement significantly affected the outcome of the research, or that the [REDACTED] report is largely a reflection of the petitioner’s work.

Dr. [REDACTED] in her second letter, asserted that the petitioner’s “approach allowed him to identify product characteristics that were related to different levels of satisfaction by different segments of users,” which “is an alternative to the current approach of gathering market data to assess satisfaction.” Dr. [REDACTED] did not show the extent, if any, to which the field has embraced the petitioner’s alternative approach.

Prof. [REDACTED] stated:

Until [the petitioner’s] recent work, the standard approach to segmenting markets based upon customers’ subjective perceptions [has] been through [sic] Semantic Differentials. Semantic Differential is based upon the statistical clustering of rating scales. In comparison, Rough Set Theory is based on set theory and identifies “rough sets” through crisp upper and lower bound sets. These allow the assessment of alternative designs in a way that is not preconditioned on some arbitrary classification of what a class of customers’ [sic] needs.

Prof. [REDACTED] implied that, as a result of the petitioner’s work, Semantic Differentials are no longer “the standard approach to segmenting markets.” The record does not show this to be the case. Rather, Prof. [REDACTED] offered his impression that the “standard approach” will change in the future: “My sense is that there is a coming revolution in our approach to addressing global markets in a way that is both efficient and effective.”

The director denied the petition on October 28, 2013, stating that the petitioner had met the first two prongs of the *NYS DOT* national interest test, relating to intrinsic merit and national scope, but that the petitioner had not established that his work has influenced the field as a whole. The director described and discussed the petitioner’s evidence, and concluded that the materials do not show that the petitioner has served or will serve the national interest to a greater extent than others qualified to work in his field. The director found that the writers of the letters submitted in support of the petition “praise the beneficiary’s work and indicate generally that it has promising possibilities; they do not indicate that the beneficiary’s contributions have enjoyed widespread implementation in the field.”

The petitioner’s appellate brief cites unpublished AAO decisions giving significant weight to third-party letters. The petitioner submits no evidence to establish that the facts of the instant petition are comparable to those in the unpublished decisions. While 8 C.F.R. § 103.3(c) provides that our

precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. According to printouts submitted on appeal, the cited appellate decisions mentioned that the letters were from “independent witnesses.” In the present case, the writers are the petitioner’s professors, employers, and collaborators.

In one of the cited decisions, we determined that the lack of citations was not detrimental to the benefit requested because “the petitioner’s specialty is very much an applied science rather than a theoretical one, and therefore it is appropriate to judge the extent to which other engineers have applied the petitioner’s findings in their work.” This general assertion applies in this case, but it remains the petitioner’s responsibility to establish that others have applied his work.

The brief asserts that the letters contained several references to the influence of the petitioner’s work, referring, for instance, to the [REDACTED] report and to a paper that the petitioner presented at a symposium in 2010. The record does not contain objective documentation to corroborate claims about the influence the petitioner’s work has had on the field. The opinions of experts in the field are not without weight and have received consideration above. 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. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *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”). *See also 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’s references at [REDACTED] can provide their perspectives on the significance of the petitioner’s work, but they cannot directly attest to the influence of that work outside of [REDACTED]. Implying, as Prof. [REDACTED] did, that the petitioner’s work has replaced the previous “standard approach” does not establish that this is, in fact, the case. The letters have received due consideration, but they cannot serve as their own corroboration.

The brief notes that there have been “four citations to two of the Beneficiary’s published papers,” and “that the Beneficiary’s publications have been downloaded 2,473 times as of the date of this brief.” The petitioner submits no evidence that these citation and download rates, or the ratio of citations to downloads, are unusually high in his field. The figures, taken alone, are not evidence of their own significance.

Also, the petitioner’s published and presented work coincides with his graduate studies. The record does not show that the petitioner has continued to engage in such activities. If, in the future, he will not disseminate findings in this manner, then his past activities in that vein cannot justify approving the waiver. The benefit to the United States must be prospective. If the petitioner’s future work will

focus on improving his employer's products in order to help that employer compete against its rivals, including other United States companies, then there is no readily evident basis for granting the waiver.

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.