



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **OCT 24 2014** OFFICE: TEXAS SERVICE CENTER

FILE [Redacted]

IN RE: Petitioner:
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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas 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. The petitioner seeks employment as a medical researcher and/or physician. At the time she filed the petition on her own behalf, the petitioner was a fellow at [REDACTED] Texas. She has subsequently relocated to [REDACTED] Connecticut. 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 copies of previously submitted statements.

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) (*NYS DOT*), 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 February 26, 2013. On Part 6, line 1 of Form I-140, the petitioner listed her intended job title as “Medical Researcher.” On lines 8 and 9 of the accompanying Form ETA-750B, Statement of Qualifications of Alien, the petitioner stated that she seeks employment as a “Physician” at [REDACTED], Texas. On line 15a of Form ETA-750B, the petitioner indicated that, since July 2011, she had been a “[REDACTED]” with duties including “[p]atient care,” “surgical procedures,” “research projects” and “teaching of other fellows [and] residents.”

An introductory statement submitted with the petition contends that the petitioner “is an outstanding and superb clinical researcher in the field of Obstetrics and Gynecology” (OB/GYN), who “has produced original scientific contributions that have significantly influenced her field.”

The petitioner submitted 11 exhibits under the heading of “Awards, Recognitions and Memberships.” Such materials can provide partial support for a claim of exceptional ability under the USCIS regulations at 8 C.F.R. § 204.5(k)(3)(ii)(F) and (E), respectively, but by statute, exceptional ability is not presumptive grounds for the waiver. Awards of particular importance can reflect the impact and influence of the petitioner’s contributions, but the submitted awards are all at the student or resident level, from institutions where the petitioner was training at the time of the awards. As such, they show that the petitioner was a good student, but they do not establish influence on the field as a whole.

The petitioner’s initial submission included five letters. [REDACTED] director of Public Health Nursing for [REDACTED] described the petitioner’s work as the coordinator of the [REDACTED] California. Ms. [REDACTED] stated that the petitioner “developed a quality assurance tool for the program . . . to help assess the impact of the interventions made with the participants in the program,” and “developed lesson plans and protocols for the [REDACTED] to address the specific needs of the women” in the program.

A May 1, 2001 article from the [REDACTED] stated that “a four-year campaign to tackle alarmingly high rates of infant mortality and improve children’s health [in [REDACTED] has been a marked success.” The article does not mention the [REDACTED] or the petitioner by name, but the timing of the article coincides with the program’s existence.

When the petitioner began working for the [REDACTED], her only academic degree was a baccalaureate in chemistry; she earned a master’s degree in public health during her time on the project. The petitioner was not a physician or a medical researcher when she worked on the project, and has not undertaken similar work since obtaining a physician’s credentials. Information about the [REDACTED] therefore, is not evidence of the petitioner’s influence on her current field.

Dr. [REDACTED] chairman of the OB/GYN department at [REDACTED] discussed research that the petitioner undertook during her residency training there from 2007 to 2011:

The purpose of her study on Pelvic Floor dysfunction was to further explore the use of Quantitative Sensory Testing (QST), using biothesiometry (the use of vibration to evaluate nerve function and sensitivity), in order to quantify the effects of female genital neuropathies on pelvic floor function. . . . [REDACTED] research group also looked at the effect of bicycle seats and the pressure from sitting on the bike and how it affects the pelvic floor. This information is necessary to help with prevention of pelvic floor dysfunction, and will be used to help develop bicycle seats that are more ergonomic.

[The petitioner] is a valuable researcher whose work has been recognized internationally. . . .

[The petitioner] relishes the opportunity to pioneer new surgical techniques, especially in minimally invasive procedures including robotic surgery. . . . Her research concluded that laparoscopic approach is feasible [for fibroid-related hysterectomy] regardless of uterine size as long as no concern for worrisome diseases, such as sarcoma, exists. The identified surgical learning points were then taught and conveyed to surgeons in order to perform this technically difficult surgery.

Dr. [REDACTED] did not claim or demonstrate that the petitioner's research has had a nationally significant effect on the performance of laparoscopic hysterectomies.

Dr. [REDACTED] professor of obstetrics and gynecology at [REDACTED] and director of fellowship of female pelvic medicine and reconstructive surgery at [REDACTED] stated that the petitioner "has been an invaluable and excellent educator at [REDACTED]. She has taught nurses and our [REDACTED] medical students as well as our OB/GYN residents." Dr. [REDACTED] asserted: "There is a shortage of OB/GYN physicians in our country. . . . Consequently, the education and training of OB/GYN residents and medical students by experts, such as [the petitioner], is of vital importance, in order to address this service gap."

While the collective impact of medical educators is nationally significant, Dr. [REDACTED] did not claim or demonstrate that the petitioner's individual teaching efforts have had, or will have, a significant impact on the claimed shortage of OB/GYN physicians and surgeons. Furthermore, the beneficiary's teaching duties at [REDACTED] were in conjunction with her fellowship there, which is an inherently temporary step in the training process. The petitioner did not establish that any medical school intends to employ her as a teacher once her training is complete.

Dr. [REDACTED] also stated:

[The petitioner] has also developed and facilitated international programs that foster exchanges of knowledge and skill. . . . Specifically, [the petitioner] has travelled with me to India, to conduct pelvic reconstructive training conferences and hands-on clinical teaching sessions to physicians in India. Most notably, [the petitioner] is also the OB/GYN Co-Program Coordinator with the organization [REDACTED] West Africa.

The record contains no documentation regarding the petitioner's claimed work in India and Liberia. Several of the claims of individuals writing in support of the beneficiary lack primary corroboration in the record. 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)). 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").

Dr. [REDACTED], associate professor at the [REDACTED] “first met [the petitioner] during a vaginal surgery course that [she] taught at [REDACTED]” Dr. [REDACTED] discussed some of the petitioner’s research projects:

One research project of which [the petitioner] is Principal Investigator has an educational training focus. . . . [The petitioner] developed a valid and reliable surgical skills and confidence level indicator for doctors performing the Uterosacral ligament suspension (USLS) procedure. . . . [The petitioner’s] teaching module allows for urogynecology educators to effectively evaluate the confidence level and cognitive surgical skills in surgeons learning to perform this procedure for pelvic organ prolapse. The training module is effective in identifying areas that need to be addressed when performing the procedure, ensuring quality control and safety. [The petitioner’s] teaching module has been adapted and used as a model for other surgical procedures in the field of gynecology.

The record contains no documentation about the teaching module, and no evidence to show its implementation beyond [REDACTED]

Dr. [REDACTED] added: “[The petitioner] started the organization [REDACTED] which is a wellness program dedicated to providing preventative healthcare measures for Americans living in underserved communities.” The petitioner’s *curriculum vitae* states that she has been the founder, president, and chief executive officer of [REDACTED] from “2004-Present,” but the petitioner submits no evidence of the entity’s past activity, or evidence that it remains active. Like her work for the [REDACTED] the founding of [REDACTED] predates the petitioner’s graduation from medical school.

Dr. [REDACTED] editor in chief of [REDACTED] published by the [REDACTED] stated that the petitioner has served as a peer reviewer for the journal, an honor reserved for “scientists who have shown remarkable achievements and have attained international acclaim in their respective fields.” Dr. [REDACTED] stated that the petitioner’s “research . . . showed that pregnancy alone, without the effects of labour and delivery, has an effect on the pelvic floor.” Dr. [REDACTED] also asserted that the petitioner’s “leading role as Co-chair of [REDACTED] has been a great contributing factor on the organizing of lectures [sic], presentations, interactive symposiums, workshops, and training programs that influence the fields’ top medical professionals and leads the direction of the research in the field.”

The petitioner did not submit documentary evidence to support the above claims regarding the [REDACTED] peer review policy. The petitioner submitted printouts of electronic mail messages from editors of [REDACTED] asking the petitioner to review submitted manuscripts. The messages read, in part: “If you are unable to perform this review, can you suggest an alternate reviewer for this manuscript.” The messages did not instruct the petitioner to limit her suggestions to researchers with “remarkable achievements and . . . international acclaim.” All of the peer review invitations that the petitioner received before the petition’s filing date are from the same journal, which does not suggest significant demand for the petitioner’s services as a peer reviewer.

Several exhibits in the petitioner's initial submission, such as two published articles, conference presentations, and evidence of institutional research board approval of ongoing projects, concern her research work. The record shows that the petitioner's published and presented research was integral to what, at the time of filing, was her ongoing education. The petitioner did not establish that her research work would continue after she completed her medical education and was no longer required to conduct research as a condition of her fellowship. The petitioner did not submit evidence (such as copies of citing articles) to establish the impact that her published and presented work has had on the field as a whole.

The director issued a request for evidence on April 30, 2013. The director quoted some of the letters submitted with the petition but concluded that the petitioner had not established her "ability to serve the national interest to a substantially greater extent than the majority of [her] colleagues." The director also stated: "the record does not reflect that the [petitioner's] work has resulted in findings in her field which ha[ve] been widely implemented."

In response, the petitioner submitted two new letters; evidence that the petitioner has written new articles and new conference presentations; evidence of further peer review work for the [redacted] and a nomination for a position on the editorial advisory board of [redacted]

The publications, invitations and other events took place after the petition's February 2013 filing date. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). 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). The materials are relevant only to the extent that they show that the petitioner continued to produce research for publication and presentation after the filing date.

A July 11, 2013 electronic mail message inviting the petitioner to speak at the [redacted] reads, in part:

We would like to know your opinion about speaker invitation for [redacted]

We request your kind response to the following email.

Greetings for the Day!!

We are inviting you to avail the Speaker/Delegate opportunity at the [redacted] which is going to be held during August [redacted] at [redacted]

Theme of [redacted]

(Emphasis in original.) The petitioner is not an endocrinologist, and therefore it is not clear why she would be invited as a speaker to an endocrinology conference. Grammatical errors in the message raise further concerns about its origin and legitimacy. For these reasons, even if the invitation had occurred prior to the filing date, its significance is questionable.

A copy of a certificate shows that the petitioner is a member of the [REDACTED] [REDACTED] having been “elected in recognition of exemplary service, integrity, clinical excellence and compassion.” The general wording of the certificate offers no specific information about the factors underlying the petitioner’s election. An [REDACTED] official co-signed the certificate, indicating that the election occurred at the local chapter level. The petitioner did not establish the significance of this membership. The certificate is undated, but the petitioner’s failure to mention or submit it previously suggests that it, like the other newly submitted exhibits, came into existence after the petition’s filing date.

Both of the new letters are from former co-workers of the petitioner. Dr. [REDACTED] now section chief of [REDACTED] [REDACTED] stated:

As her research mentor at [REDACTED] I am very aware of [the petitioner’s] important research work while at [REDACTED] and of her current work at [REDACTED] [The petitioner] has made significant findings in the area of pathophysiology of pelvic floor disorders. . . . [L]ittle is known on the specific effects of pregnancy versus delivery, or childbirth . . . on the pelvic floor muscles. . . .

[The petitioner’s] research group has previously described changes in the pelvic floor associated with pregnancy and vaginal delivery in the squirrel monkey. [Her] most recent study specifically separated the changes that occur in squirrel monkey pregnancy prior to vaginal delivery. Her study results showed, for the first time in the field, that there is a definite change that occurs in the pelvic floor muscles of female squirrel monkeys as [a] result of pregnancy alone, suggesting that the stress of the pregnancy on the muscles incites injury to the pelvic floor muscles. . . .

[The petitioner’s] research is absolutely critical to the study of pathophysiology of pelvic floor disorders. Her current research in human subjects is at a critical stage in helping to understand this condition. . . . [The petitioner] must be granted permanent residen[t] status in order for her to continue this landmark study in the United States of America.

Dr. [REDACTED] associate professor at [REDACTED] stated that the petitioner “is an established and highly productive member of the [REDACTED] research and academic community.” As noted previously, the petitioner has moved from Texas to Connecticut, indicating that she no longer conducts research at [REDACTED]. In wording reminiscent of Dr. [REDACTED] earlier letter, Dr. [REDACTED] asserted that the petitioner “developed valid and reliable surgical skills and a confidence level indicator as a way to assess surgical competency in vaginal procedures treating pelvic organ

prolapse, such as the uterosacral ligament suspension. . . . This has been used . . . nationally, with physicians around the country.”

The director denied the petition on January 9, 2014. The director found that the petitioner had met the first two prongs of the *NYSDOT* national interest test concerning intrinsic merit and national scope, but that she had not established her impact and influence on the field as a whole. The director stated that the petitioner did not show that her published and presented work amount to influential contributions to the field, and that the record does not support claims in the submitted letters regarding the importance and impact of the petitioner’s work.

The document that the petitioner submitted as the appellate brief is actually a newly signed copy of the introductory statement that accompanied the initial filing of the petition; both copies bear the same date, February 21, 2013. This introductory letter described the initial exhibits and quoted from letters in the record. The director addressed the exhibits and the letters, and identified their shortcomings. The resubmitted introductory letter does not address these findings, and therefore it does not rebut or overcome the stated grounds for denial of the petition.

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. *NYSDOT*, 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.