



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE **OCT 29 2014**

OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE:

Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (TSC), 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 an unspecific position in systems engineering at [REDACTED]. When the petitioner filed the petition on his own behalf, his most recent claimed employment had been as vice-chancellor of the [REDACTED] Nigeria. 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.

Part 3 of the Form I-290B, Notice of Appeal or Motion, instructs the appellant, “You must check only one box indicating that you are filing an appeal or a motion, not both.” Nonetheless, the petitioner checked both boxes indicating that he was filing an appeal and a motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The petitioner identifies no new facts and submits no new evidence. Therefore, the filing does not meet the requirements of a motion to reopen, and the Form I-290-B is considered an appeal of the director’s decision.

On appeal, the petitioner submits a brief and copies of materials already in the record. The appeal includes a “request for waiver of filing fee due to USCIS error.” The regulations make no provision for such a waiver. The very purpose of an appeal is to allege error by U.S. Citizenship and Immigration Services (USCIS), and the USCIS regulation at 8 C.F.R. § 103.3(a)(2)(i) requires the payment of a fee. Therefore, there is no legal support for the assertion that USCIS error entitles the petitioner to a waiver of the appeal fee.

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

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

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

(B) Waiver of Job Offer –

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

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

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

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

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

In re New York State Dep't of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (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 July 9, 2013. An accompanying introductory statement included the following claims:

- Beneficiary has been extremely successful as a Distinguished Professor and is Internationally Recognized as an Outstanding Researcher;
- Beneficiary served as **President** of the [REDACTED] for four years;
- Beneficiary currently serves as the **Vice-Chancellor/President** of [REDACTED];
- Beneficiary served as **Vice-Chancellor** of the [REDACTED];
- Beneficiary was **twice awarded the best Vice-Chancellor Award** for the [REDACTED]

(Emphasis in original.) Documentation in the record corroborates the titles that the petitioner has held in the past, but the petitioner documented his claimed receipt of “the best Vice-Chancellor Award” only indirectly, by submitting copies of two articles published several years after his claimed receipt of the award. A July 15, [REDACTED] review of a book by the petitioner’s spouse mentioned that the petitioner “twice bagged the award for Best Vice-Chancellor in [REDACTED] by the [REDACTED]” A July 24, 2012 article, from a web site that the petitioner did not identify, stated that the petitioner was named “Best Vice-Chancellor” in [REDACTED], but not in [REDACTED] – the article stated that the petitioner was ranked “second best” in [REDACTED] after which “[i]t took him only two years to reach the very top of the ranking.” The articles are neither contemporaneous nor first-hand evidence that the petitioner received the claimed award, and the two articles offer conflicting information about the petitioner’s claimed receipt of the award in [REDACTED]. The record contains no evidence from the awarding entity, and no explanation for its absence.

The same introductory statement indicated that the petitioner’s “research covers an incredibly wide set of topics, from tiny nano-scale biomedical applications to outer-space,” and that the petitioner “has backed up his research with a truly impressive record of publications. . . . [The petitioner’s] past achievements prove that he is especially qualified to make significant strides that are likely greater than those of his peers.”

The introductory statement indicated that the labor certification process cannot take into account the petitioner’s “proven record of achievement and his unique and innovative set of skills, knowledge and background,” because the “labor certification process is a standardized one that only relates to minimum requirements of education and experience. . . . [A] U.S. worker with minimum

qualifications might be found.” This general objection to the labor certification process would not apply to college and university teachers:

The employer may recruit for college and university teachers under §656.17 or must be able to document the alien was selected for the job opportunity in a competitive recruitment and selection process through which the alien was found to be more qualified than any of the United States workers who applied for the job.

20 C.F.R. § 656.18(b). *NYSDOT* noted this provision, although at the time of that decision the regulatory citation was different. See *NYSDOT*, 22 I&N Dec. at 218 n.4. The Department of Labor regulations at 20 C.F.R. § 656.18 list additional requirements for this alternative labor certification process, such as the requirement at 20 C.F.R. § 656.18(c) that applications for labor certification must be filed within 18 months after the employer makes the selection.

A copy of the petitioner’s *curriculum vitae*, submitted with the petition, stated that the petitioner “has had several international teaching/research exposures as an International Scholar-in-Residence at [redacted] Visiting Research Professor at [redacted] University in Houston USA (2007/8) the [redacted] USA (2001) and the [redacted].” The petitioner submitted no evidence from these universities to establish the nature, extent, or duration of his work there.

The statement indicates that “leading experts from throughout the United States and overseas have submitted letters of support” (emphasis in original). This assertion suggests a breadth of international consensus that the record does not support. All five of the letters submitted with the petition are from Nigerian writers with demonstrable ties to the petitioner. Their letters will receive full consideration, but the writers are not a representative sampling of “experts from throughout the United States and overseas.”

Dr. [redacted] president of the [redacted], has “known [the petitioner] since 1976” and served as “a mentor to him.” He stated:

[The petitioner] is a remarkable scientist who [has] already influenced researchers around the world. . . .

A classic example of his research success is his work concerning Fuzzy Logic. Fuzzy Logic is a mathematical technique for dealing with imprecise data and problems that have many solutions rather than one single solution. . . .

Fuzzy logic has become very relevant in machine, process or systems control, and particularly as a means of making machines more capable and responsive by resolving intermediate categories in between states hitherto classified on bivalent logic. . . . As part of his work on this topic, [the petitioner] derived Fourier series representation for computation of membership functions for . . . more complex

distributions. Furthermore, he established its efficacy by applying it to a Natural Gas Distribution Network based on a fuzzy controller device built on his research. Specifically, he developed an embedded “Fuzzy controller” to measure temperature and pressure and produce an output that can represent input to additional subsystems or systems. The device that [the petitioner] developed has clearly demonstrated that the technique can indeed be incorporated in real-world engineering systems.

Dr. [REDACTED] professor and dean of Engineering at the [REDACTED] (where the petitioner worked from 1983 to 2007), stated:

[The petitioner’s] research focuses on generating advances in the field of systems engineering, including work on robotics and systems integration. . . .

[The petitioner] has generated very interesting findings concerning serial jointed manipulators used in robotic arms. . . .

[The petitioner’s] work on this topic is important because the inverse or reverse kinematics problem for robot arm position placement is a fundamental challenge in everyday robotics. For serial linked manipulators, his solution is a perfect mimic and replication of the dexterity exhibited by the human arm in day to day problem solving. . . . I can attest that [the petitioner’s] work on this topic is truly impressive.

In a letter dated February 14, 2013, Dr. [REDACTED] professor and vice-chancellor of the [REDACTED], stated:

Among the most interesting aspects of [the petitioner’s] systems engineering research is how it crosses so many different fields, from structural engineering such as large-scale dams, to robotics, and even to biomedical research. For example, as part of his research [the petitioner] generated significant findings concerning Huntington’s disease [HD]. . . . [The petitioner’s] work on this topic sought to promote a better understanding of the chorea associated with HD. . . .

What makes his work on this topic so exciting is that science has now reached a stage in the field of nanomedicine where in the near future nanorobots can be introduced into the body system of a patient which will release [a] drug . . . at programmed intervals to curb an ailment. The purpose of [the petitioner’s] research therefore was to design a platform for this mechanism. As a first step he successfully designed a simulation model that captures the excitatory post synaptic presentation . . . resulting in the staccato nature of the gait (i.e., the jerk) in the arm of an HD patient . . . using a novel artificial neural network . . . technique. His success on this project is [a] step in the right direction towards viable electroconvulsive therapy for the management of the Huntington’s Disease.

The above letters included details about some of the petitioner's past research ventures, but did not establish the extent to which the field as a whole has implemented the petitioner's work.

The signers of the remaining two letters were co-authors with the petitioner of [REDACTED]. The letter signed by Dr. [REDACTED] advanced engineering specialist at [REDACTED] is dated February 25, 2013. Apart from biographical information in the introductory paragraphs, the body of Dr. [REDACTED] letter is identical to the body of the February 14, 2013 letter from Dr. [REDACTED] quoted above.

Dr. [REDACTED] now a professor at the [REDACTED] did not discuss any particulars of the petitioner's work, stating instead that the United States needs "to attract and retain great researchers like [the petitioner]" in order "to ensure that our country's research programs are the best in the world."

The petitioner submitted examples of his published work, but no documentation (such as citation figures) to establish the impact that his publications have had on his field, or to show that its impact exceeds that of other researchers' work in the same field.

With respect to the petitioner's claim that he seeks employment at [REDACTED] the initial submission included no documentation from that school to establish that the school intended to employ him, or to identify the decision that he would fill.

The director issued a request for evidence (RFE) on November 21, 2013, instructing the petitioner to "establish that the beneficiary's proposed employment is national in scope" and to "establish that the beneficiary's past record justifies projections of future benefit to the nation" (emphasis in original). The director stated: "The petitioner must establish that the beneficiary's skills or background are unique and innovative and serve the national interest."

In response, the petitioner submitted copies of all the initial exhibits, with a statement protesting that "the RFE issued on this case . . . appears to be almost entirely boilerplate," which "raised concerns that the USCIS may have misplaced the original set of supporting documents submitted with this case." The purpose of the RFE is to solicit further information, rather than to evaluate what the petitioner had already submitted. The lack of discussion of the petitioner's initial evidence does not, by itself, invalidate the RFE or establish that the director had ignored or lost the initial evidence.

The petitioner's response to the RFE included the assertion that his "internationally published research" satisfies the "national scope" prong of the *NYSDOT* national interest test. With respect to his impact on the field, the petitioner's response to the RFE repeated the list of accomplishments and titles from the initial submission, and contested the director's assertion that "[t]he petitioner must establish that the beneficiary's skills or background are unique and innovative and serve the national interest," because the phrase "unique and innovative" does not appear in *NYSDOT*. The precedent decision states:

[T]he petitioner . . . 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. . . . The alien must clearly present a significant benefit to the field of endeavor. . . .

Because, by statute, “exceptional ability” is not by itself sufficient cause for a national interest waiver, the benefit which the alien presents to his or her field of endeavor must greatly exceed the “achievements and significant contributions” contemplated in the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F).

Id. at 218. The petitioner’s response to the RFE quoted and emphasized the first sentence quoted above. In context, it is clearly insufficient for the petitioner simply to show that he possesses qualifications or credentials superior to available United States workers.

The petitioner submitted two letters from Dr. [REDACTED] professor and chair of the Department of Engineering Technology at [REDACTED]. In a letter to USCIS dated December 9, 2013, Dr. [REDACTED] stated:

[The petitioner] has collaborated with [REDACTED] for quite some time, and I look forward to having him work for the university on a full-time and permanent basis once his immigration case has been approved. . . .

Upon arriving in the United States, [the petitioner] will be a member of the Department of Engineering Technology. . . .

[H]aving worked both in the research field and in academia, I am fully aware that being chosen to serve as the President of your country’s [REDACTED] is strong evidence of research and professional success.

. . . [The petitioner’s] achievements rank far above many other researchers who have previously received approvals on NIW [national interest waiver] cases.

The record does not contain evidence to support many of Dr. [REDACTED] claims of fact. 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)). For instance, the record does not describe the process by which the [REDACTED] selects its officials, and therefore the petitioner’s former position there is not necessarily evidence of the significance of his past contributions.

Dr. [REDACTED] other letter, dated December 17, 2013 and addressed to the petitioner, reads, in part: “This letter is to confirm our previous correspondences and conversations regarding our university’s offer to you of a position teaching and doing research within [REDACTED] Department of

Engineering Technology.” As noted above, university teaching positions are subject to different labor certification procedures, provided the employer applies for labor certification within 18 months of the competitive recruitment and selection process.

A second copy of the petitioner’s *curriculum vitae* repeated the list of universities in the United States where the petitioner claimed to have worked, but with a change of dates. Whereas the petitioner had previously claimed to have worked at [REDACTED] in “2007/8,” the revised *curriculum vitae* showed the date as “(2007-),” indicating a still-active, open-ended appointment. The petitioner did not acknowledge or explain the change.

The director denied the petition on February 19, 2014, stating that the petitioner had not established eligibility under the *NYSDOT* standards. The director found that a claim of eligibility under *NYSDOT*, “minus substantive supporting documentation,” is not sufficient to establish eligibility. The director added: “[Y]ou again failed to show how the rationale the court [*sic*] used in the *NYSDOT* case would apply to you in seeking the National Interest Waiver, especially since you are not doing currently working [*sic*] in your field.”

The brief submitted on appeal addresses the issue of the petitioner’s current employment, calling the director’s assertion that the petitioner is not “currently working” “an extraordinary factual error,” and stating:

The 100% boilerplate RFE . . . did NOT specifically ask for evidence that he was “*doing currently working*” in his field. . . . If the [REDACTED] wanted more evidence on that specific issue, then the [REDACTED] had a legal obligation to state such a request *explicitly* so that [the petitioner] could submit more detailed evidence. Nevertheless, the hundreds of pages of documents submitted with this case already satisfied that issue.

Also – without conceding the issue about his current job – even if he was not currently working in his field, the I-140 NIW process is always about the individual’s ability to impact his field *in the years to come*.

(Emphasis in original.) It is correct that there is no specific requirement that the petitioner be employed at the time he filed the petition, but his employment status is relevant when weighing the claim that his expertise is in high demand.

The petitioner does not explain how the previously submitted documents “already satisfied [the] issue” of his current employment, nor does he specify what that employment is. Dr. [REDACTED] letters did not indicate that [REDACTED] already employs the petitioner, but rather that the petitioner will take his position at a future time “[u]pon arriving in the United States” – although the petitioner was already in the United States before Dr. [REDACTED] wrote that letter.

The petitioner’s most recent claimed employment is as vice-chancellor of the [REDACTED] at [REDACTED] in Nigeria, but the petitioner was in the United States when he filed the petition,

and throughout this proceeding he has used a mailing address in Texas. Part 3, line 13 of Form I-140 instructed the petitioner to specify when he arrived in the United States, but the petitioner left this line blank, while also indicating (on Part 3, line 15) that he was in the United States as a B-1 nonimmigrant visitor for business. The record does not specify the nature of the petitioner's claimed temporary business in the United States.

The petitioner claimed to be a visiting scholar at various universities in the United States, but the record contains no evidence from those universities to confirm the claim. See *Matter of Soffici*, 22 I&N Dec. at 165. The December 17, 2013 letter from Dr. [REDACTED] referred to a "position teaching and doing research," but specified no title and included no official university documentation establishing a formal offer of employment.

When he filed the petition, the petitioner had been away from his last claimed employment in Nigeria for an unspecified period of time, with no documented employment (or employment authorization) in the United States. The claimed job offer lacks basic details about the nature of the job. Dr. [REDACTED], the petitioner's past colleague and collaborator, stated that he was "part of the team that has recruited" the petitioner, but the record does not identify the other members of the claimed team, and the petitioner submitted no direct evidence that [REDACTED] has made a job offer. These facts, by themselves, do not prove that the petitioner has no intention of working in the United States, but they are relevant to the issue.

The director was not negligent in failing to raise the issue of current employment in the RFE, because, as the petitioner asserts, such evidence is not a direct requirement for the benefit sought. Even if the director had erred by not requesting evidence of current employment in the RFE, the petitioner has not shown on appeal that this claimed error prejudiced the outcome of the decision. The petitioner does not say what he would have submitted had the director requested evidence of current employment. Any evidence that the petitioner could have submitted in response to the RFE could also be submitted on appeal. On appeal, however, he addressed the issue only indirectly, providing no new evidence or relevant information, and asserting that the answer could be found at some unspecified place within the "hundreds of pages of documents" submitted previously. The petitioner has not submitted any evidence to establish that the director made an "extraordinary factual error" by concluding that the petitioner is not "currently working."

The appellate brief repeats the earlier assertion that the RFE lacked specificity. The requirements of the *NYSDOT* national interest test are, by design, general and flexible, in order to apply to a broad range of occupations. The director did not request specific, identifiable pieces of evidence in the RFE because the *NYSDOT* test does not warrant such a request. Even then, the RFE did identify some examples of evidence that the petitioner could submit, such as "awards for work in the field," accompanied by evidence of their significance.

The list in the RFE also included "peer reviewed articles," which the petitioner had previously submitted and which the director did not specifically acknowledge or discuss. Nevertheless, the burden is on the petitioner to establish eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of*

Otiende, 26 I&N Dec. 127, 128 (BIA 2013). The existence of the petitioner's articles is not, by itself, evidence of eligibility, and their submission did not establish a presumption of eligibility that the director was obliged to rebut. The articles show that the petitioner has published on a range of subjects, but they do not establish the extent, if any, to which those articles have influenced the field as a whole.

The letters that the petitioner submitted discussed some of the petitioner's specific projects, but the record does not establish that the petitioner's work has had a significant effect on the treatment of Huntington's disease, natural gas distribution, robotics, or any other field that his work is said to touch. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

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. 165. When considering the assertion that these letters represent a range of independent opinions, we cannot overlook the petitioner's submission of two letters containing identical language, indicating that at least one of these letters was authored by someone other than the person who signed it.

The petitioner, on appeal, states that the director "claimed that [the petitioner] did not submit 'substantive supporting documentation' for his case. This statement is factually incorrect. . . . [The petitioner] has submitted hundreds of pages of evidence." The director did not simply state that the petitioner failed to submit supporting documentation. Rather, the director stated that the petitioner did not submit "substantive supporting documentation" in response to the RFE. The petitioner claims, on appeal, to have "submitted extensive additional evidence" in response to the RFE, but the only new exhibits submitted at that time were Dr. [REDACTED] two letters. All the other evidence in the RFE response consisted of copies of materials submitted previously. Duplicates of prior submissions are not "additional evidence"; they add nothing of substance to the record.

The petitioner has shown that he has held important academic positions in Nigeria. The record does not show how he attained these positions, and therefore there is no evidence to support the assertion that the petitioner's past titles are, themselves, evidence that his admission will serve the national interest in the future. The petitioner has been a prolific author of research papers, but he has not

shown how these published works have influenced his field. In short, the appellate brief contests several of the director's findings in general terms, but offers no affirmative evidence to rebut those findings.

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. 128. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.