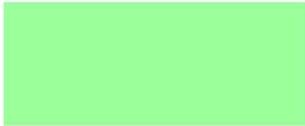




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **OCT 29 2014** OFFICE: NEBRASKA 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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before us at the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a physician specializing in cardiology. The petitioner has been in training at the [REDACTED] Hospitals and Clinics, first as a resident and now as a fellow. 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 statement and additional evidence regarding his ongoing work in his field.

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 January 10, 2013. An accompanying introductory statement indicated that the benefit from the petitioner’s work is national in scope because:

His role as a specialist extends beyond merely attending to a small community of patients or a particular research setting.

He has had his work published in journals and presented at conferences that are national and international. . . .

In terms of his clinical work, [the petitioner] frequently treats patients on referral. Because he is able to perform such advanced medical and diagnostic procedures that only a very small percentage of his peers are able to perform, he is among the top in his field. In addition, he is constantly teaching the use of the skills to both junior and even senior peers. As such, he is creating a ripple effect that is making the performance of these procedures more widespread nationally.

Further, [the petitioner's] peer-review activities for nationally and internationally circulated journals are national in scope. Through this role he helps ensure that no false or redundant information is transmitted to readers, who are practicing physicians and thereby he protects the patients.

Publication and presentation of scientific research produce benefits that are national in scope because of the dissemination of useful new information to the wider scientific community. Therefore, the petitioner's occupation meets the "national scope" prong of the *NYS DOT* national interest test, provided that the petitioner continues to perform research. If those research activities are limited to his ongoing, but temporary, training, then there will be no prospective benefit from future research once that training is complete.

The petitioner's teaching duties likewise appear to be a function of his temporary role as a fellow at a teaching hospital, and the assertion of a "ripple effect" from passing on "advanced medical and diagnostic procedures" would persuade only if the petitioner himself originated or significantly improved those procedures. If the procedures existed before the petitioner learned them, and fellows pass them along to newer students as a matter of routine, then it is arbitrary to attribute the "ripple effect" to the petitioner rather than to the mentors who taught those procedures to the petitioner.

The introductory statement addressed the labor certification issue:

Please note that [the petitioner] has extensive responsibilities as both a clinician and as a medical researcher. However, his contractual services encompass clinical work only. This is customary in the profession. Virtually all academic researchers who are not yet permanent residents are not reimbursed contractually for any research work that they may perform. Furthermore, since the Department of Labor does not allow for a combination of occupations when filing a labor certification, such a combination is not possible. A very significant percentage of the patients that [the petitioner] treats receive Medicare Medicaid [*sic*]. His outstanding diagnostic abilities allow him to diagnose these patients at earlier stages of their illness than [*sic*] the large majority

of his colleagues would be able to. This saves the federal government a great amount of money because the need for later much more expensive and often invasive procedures is avoided. . . .

[The petitioner] is very well-known for his diagnostic ability. He is also known for his ability to deal with tremendous efficiency and precision in emergency situations where there is literally no margin for error and not a minute to waste.

The petitioner submitted no evidence to support the above claims. 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)).

There is no blanket waiver for physicians who treat patients on Medicaid and/or Medicare, and the petitioner has submitted no evidence to show that his work has resulted in nationally significant savings in Medicaid or Medicare costs. The assertion that other doctors would make poorer or later diagnoses, resulting in greater costs, amounts to unsupported speculation.

Regarding the claim that “the Department of Labor does not allow for a combination of occupations when filing a labor certification,” the Department of Labor regulation at 20 C.F.R. § 656.17(h)(3) states:

If the job opportunity involves a combination of occupations, the employer must document that it has normally employed persons for that combination of occupations, and/or workers customarily perform the combination of occupations in the area of intended employment, and/or the combination job opportunity is based on a business necessity. Combination occupations can be documented by position descriptions and relevant payroll records, and/or letters from other employers stating their workers normally perform the combination of occupations in the area of intended employment, and/or documentation that the combination occupation arises from a business necessity.

The quoted regulation shows that “a combination of occupations” is acceptable under certain specified conditions. Furthermore, the record indicates that a combination of clinical, teaching and research duties is customary for medical school faculty members. The petitioner has not shown that the Department of Labor will not approve labor certification applications for medical school faculty positions.

The petitioner submitted several letters with the petition. Dr. [REDACTED] clinical professor at the [REDACTED] called the petitioner “a highly respected cardiologist, who has attained a superior level of proficiency in highly complex diagnostic procedures.” Dr. [REDACTED] is one of several writers who provided details about the petitioner’s treatment of an individual patient, in order to establish his clinical skills.

Dr. [REDACTED] a professor at the [REDACTED] stated:

[The petitioner's] esteem in the field is founded on his exceptional clinical work and research on complex cardiac disorders. His research work has been published in leading journals such as the [REDACTED], and other eminent researchers have cited his work.

Dr. [REDACTED] now an assistant professor at the [REDACTED] received his education and training from the same sources as the petitioner, having studied at the All [REDACTED] and, later, served a residency and fellowship at the [REDACTED]

Dr. [REDACTED] stated that the petitioner's "landmark research on the effectiveness of various syncope (or fainting) treatments is particularly significant," and he provided technical details about that research, concluding: "The significance of [the petitioner's] research is apparent in his numerous publications and presentations throughout the world."

Dr. [REDACTED], director of cardiology at [REDACTED] called the petitioner "a superb cardiologist who is able to perform highly advanced diagnostic and therapeutic cardiac procedures," and "is nationally recognized for his research in the field of cardiology." Dr. [REDACTED] did not comment on the petitioner's research except to identify some of the journals and conferences where the petitioner has published or presented his work.

Dr. [REDACTED], professor at the [REDACTED] stated that the petitioner "has expertise that other cardiologists lack," and "has published findings . . . in the most innovative procedures in the field of cardiology." Like Dr. [REDACTED] Dr. [REDACTED] praised the petitioner's research without describing it or its impact on the field.

Dr. [REDACTED], professor at the [REDACTED] stated that "one of [the petitioner's] most exceptional contributions to the continued advancement of the field of cardiology is his meta-analysis work on syncope (or fainting)" which appeared in the [REDACTED]

Dr. [REDACTED] asserted that there is a "recognized shortage of cardiologists who practice research." The petitioner also submitted an article about "the [REDACTED] Section 203(b)(2)(B)(ii) of the Act has special waiver provisions for physicians in designated shortage areas. The regulations at 8 C.F.R. § 204.12 spell out the requirements for that waiver. The petitioner has not submitted the specialized evidence required to qualify for the physician shortage waiver. General evidence of a shortage in the petitioner's field is not sufficient to qualify him for the waiver under *NYSDOT* because such a shortage would tend to be a favorable factor in the labor certification process, if the petitioner were to receive a permanent job offer that involved both clinical care and research. *See NYSDOT*, 22 I&N Dec. at 218.

Several of the letters referred to multiple citations of the petitioner's published work. The petitioner did not submit evidence to show that his published work has earned a high number of citations in the context of his specialty.

The petitioner submitted copies of his published and presented work, solicitations from recruiters, evidence of peer review activity and the petitioner's evaluations of students. The petitioner did not establish that these activities distinguish him from other fellows at teaching hospitals.

The director issued a request for evidence on July 3, 2013, instructing the petitioner to submit evidence of citation of his published work and other documentation to show his impact on his field. In response, the petitioner listed various achievements which, he asserted, place him near the top of his field. Documentation of those achievements (including publications and peer review) is not documentation of their importance. *See Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner cited "several letters from the [redacted] documenting that he is not only an outstanding cardiologist, but that he has been indispensable to the [redacted] in several ways." Dr. [redacted] professor of internal medicine, called the petitioner "an integral part of the administrative hierarchy at the university," whose "research work is well known across the nation." Dr. [redacted] cited no evidence to support the latter assertion. Dr. [redacted] asserted: "Due to his efforts, norepinephrine is now the first line agent used in our intensive care unit" for patients with cardiogenic shock. Dr. [redacted] did not indicate that the use of norepinephrine originated with the petitioner, or that hospitals across the country have adapted their practices in response to the petitioner's work.

Dr. [redacted] director of Cardiovascular Medicine at [redacted] stated that the petitioner played a significant role for the hospital's cardiology house staff as well as at the [redacted]. These tasks are inherently local in nature. Dr. [redacted] also claimed that the petitioner has earned "national repute" as "one of the leading researchers at the [redacted]" but he provided no data to support that assertion.

Dr. [redacted] professor of epidemiology and internal medicine at the [redacted] School of Public Health, described some of the petitioner's research projects and asserted that the petitioner's "work speaks for itself."

With respect to the petitioner's work at a [redacted] hospital, a full-time job offer from such a facility can be grounds for a waiver under section 203(b)(2)(B)(ii)(I)(aa), provided the petitioner meets certain other requirements. The petitioner has not claimed that such a job offer exists, and he has not attempted to meet the other related requirements. A temporary rotation at a [redacted] facility is not a basis for permanent immigration benefits, and because the petitioner has already performed the work in question, it offers no prospective benefit to the United States.

The petitioner noted his recent appointment as Chief Cardiology Fellow. This appointment took place after the petition's filing date, and therefore could not establish eligibility as of the petition's filing date even if the petitioner had established its significance. 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). Therefore, subsequent events cannot cause a previously ineligible alien to

become eligible after the filing date. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The petitioner repeated the claim that his “work has been cited by several leading researchers in the field.” The petitioner submitted copies of four papers that contained citations to his work, including two “editorial comments” and two peer-reviewed articles. The petitioner did not establish that these materials show a high citation rate, or that the citing authors are “leading researchers in the field” as claimed. The petitioner also submitted a printout from the online publication [REDACTED] subtitled “[REDACTED]” The article, “[REDACTED]” described the findings in one of the petitioner’s articles. The record does not establish the reputation or readership of [REDACTED], or the significance of having one’s work chosen for an article there. In this regard, it is significant that the article did not explain the relevance of the petitioner’s article (which concerned certain fainting episodes) to the practice of dermatology, which is the publication’s self-described focus.

Evidence regarding scholarships shows that the petitioner’s training is proceeding well, but it does not demonstrate “sustained acclaim within the medical community” as the petitioner claimed. At most, the documentation shows that the petitioner’s performance as a trainee compares favorably with that of other trainees.

A letter from Dr. [REDACTED] on the letterhead of the [REDACTED] reads, in part:

I write to thank you for the exceptionally fine quality of your efforts as a reviewer for [REDACTED] during 2012. . . . We grade the quality of each review and our editors gave the top grade to the work you did for [REDACTED]. We know who our best reviewers are and you are one of them.

The director denied the petition on October 30, 2013, stating that the record indicates that the petitioner’s work is primarily clinical patient care, which is local in scope. The director acknowledged the petitioner’s submission of support letters, but found that the letters “do not carry enough weight to establish eligibility for the classification sought.” The director also acknowledged the petitioner’s published work, but found that the petitioner had established only “a minimal degree of interest” from others in the medical community.

The petitioner asserts that he is the “[a]uthor of multiple original research articles” that have “been cited by several leading researchers in the field.” The petitioner has made this claim previously, and has not shown that his publication or citation history distinguishes him in his field.

The petitioner asserts that he has been “[r]ecognized as one of the nation’s top reviewers by the [REDACTED]” The petitioner does not elaborate, but he apparently refers to Dr. [REDACTED] letter, discussed above. That letter indicated that the petitioner received “the top grade” for his reviewing work, but it did not show that the petitioner has influenced the field as a whole through his peer review work. The petitioner has discussed the importance of peer review as a crucial form

of quality control for published research, but peer review is not an occupation. Rather, the record indicates that it is a voluntary, ancillary function performed by those who are active in research. The petitioner has not established that performing peer review in this way is a distinction in the field that qualifies him for the national interest waiver.

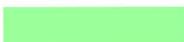
The petitioner asserted that previously submitted letters “made clear that he is highly respected for his clinical abilities in the field of cardiology.” The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is “self-serving.” *See, e.g., Matter of 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.

The petitioner asserts that clinical skills “cannot easily be documented on a labor certification,” but specific achievements that influence the field can be documented in other ways. In this instance, the record fails to support claims that the petitioner has demonstrably influenced the field beyond the institutions where he has trained.

The petitioner submits new evidence, indicating that he has continued to submit manuscripts for publication. Published research can influence the field, but the published material is not evidence of its own influence. The new materials documented on appeal have not yet been published; only one of the three new manuscripts had been accepted for publication at the time the petitioner filed the appeal. The future impact of these writings is, as yet, unknown.

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.