U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: SEP 0 2 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,

for 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 software design engineer for 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, including copies of prior submissions.

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 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 March 21, 2013. An accompanying statement described the petitioner's work and set forth his claim to qualify for the national interest waiver:

> [The petitioner] has been conducting vital and well-respected work in software development. . . . Among his many accomplishments, [the petitioner] is responsible for the development of [redacted] an important software package used by thousands of individuals, companies, and government entities . . . primarily in the field of environmental measurement and research. . . .

> is a global leader in the design, manufacture, and marketing of high quality, innovative instruments, software, and integrated systems for plant biology and environmental research. [The petitioner's] work on software is integral to the development of international networks of stations; the open source nature of the software allows for collaborative efforts between researchers in these fields of endeavor.
>
> In his current role, [the petitioner] utilizes his expertise in complex environmental measurement techniques and software design to provide a state-of-the-art software product that allows for extremely sophisticated measurement with a user-friendly graphical user interface (GUI). . . .
>
> is a powerful software application for processing data. It computes fluxes of momentum, carbon dioxide, water vapor, methane, and other trace gases with the . . .
>
> The program has been requested by numerous agencies within the federal government. . . .
>
> The is also being used by many government agencies and institutions of higher education within the United States. . . .
>
> [The petitioner's] work has been cited . . . in a multitude of professional and academic journals.

The introductory statement mentioned the *Google Scholar* search engine, which can document the existence of scholarly publications as well as citations thereof. *Google Scholar* permits targeted searches of author names, but the petitioner did not submit any printouts from *Google Scholar* to establish that his "work has been cited . . . in a multitude of professional and academic journals." Also, he did not submit any documentation from the federal agencies that are said to have requested Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner identified eight Software Related References," specifically two articles, three conference abstracts, two "Lectures/Presentations/Technical reports," and a graduate thesis. The petitioner provided web addresses for the identified materials, but did not submit them. The petitioner bears the burden of proof in this proceeding. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner does not meet this burden by asserting the existence of supporting evidence and referencing a particular website. While USCIS has the discretion to verify the petitioner's claims, USCIS is under no obligation to obtain supporting evidence on the petitioner's behalf or on the petitioner's request.

The petitioner's initial submission consists mostly of third party letters, six "from individuals who have worked with [the petitioner]," and five from others. (The remainder of the submission documents the petitioner's academic credentials rather than his subsequent employment.)

, managing director of stated that the petitioner "was involved in several tasks and activities" while working for that company, and "was responsible for two main projects," specifically "Development of an measurement instrument for real-time size-segregated particles counting of airborne particulate at low and high-frequency monitoring" and "Application of the above technology to the field measurement technique." Mr. praised the petitioner's "world-class expertise in the area of GUI and application design for scientific computing and instrumentation, particu[l]arly in the domain."

senior research scientist at the at the , stated:

> I have personally known [the petitioner] since 2004 when he started to work in . . . [The petitioner's] main task was to design and develop prototypes of scientific instrumentation, on which we closely collaborated. . . .
>
> One major achievement of [the petitioner] was to design and develop for the Italy, the prototype of an for real-time size-segregated counting of airborne particulate at high-frequency. This instrument was used with great success in field measurements of dust in China and the results of the research efforts involved in this project are available in [a 2007] paper. . . . Following this experience, he started to work on a new generation of software for the application of the method, making it possible to exploit its power to a larger community of scientists.
>
> In my opinion, I can say that [the petitioner's] main work on the software is a major achievement in the scientific community for many reasons. . . . [O]ne fundamental step in any research area is to establish well known, recognized and standard procedures and methods to assure the quality of data collected worldwide. . . . The availability of a well-established software such as in the community will quickly become a 'de facto' standard, thus permitting the ability to considerably speed up feeding models at regional and global scale[s] with the best data available.

Dr. assistant professor at the stated:

> I have known [the petitioner] since 2007 when he was Post-Doc at the University of and worked on a standardized software application for measurements processing; a tool that at the time was missing but was more and more

being requested and important for the international (global) scientific community. During his period in Italy, [the petitioner] worked on the development of , an open source software that had high visibility in the community.

After his working period in my University, the major focus of [the petitioner's] work has been the development of a real, sophisticated and important evolution of that could solve all the limits that ha[ve] precluded a world-wide use of a common software in the global community, a community that today has more than 500 sites globally with thousands of scientists involved. The development of the software has not only significantly contributed to the simplification of the complex data processing needed when these data are collected, but has also helped to move in the direction of a standardization of the methodologies – thanks to the large number of scientists that are now using

administrator of the stated that the petitioner "designed the websites of the University and the publishing house" and performed related functions, such as "the digitalization of one of the University's journals." Prof. praised the petitioner's character and "unique technical expertise," but offered no comment (and claimed no expertise) regarding the petitioner's work with

Dr. applications scientist at Germany, stated that "[t]he Method exist[ed] for many decades in the fundamental research domain," but a lack of adequate computer resources limited its use. He claimed that "the data processing, was till the launch of limited to users with high expert[ise] level and software development capabilities." Regarding the petitioner's contribution, Dr. stated:

The contribution of [the petitioner] to is outstanding. He not only developed the very user friendly , he also contributed to the unique structural design of the software. The introduction of metadata describing the hardware and measurement domain is tremendously improving the quality of measurement results. In addition, the includes a hidden expert layer which enables inexperienced users to process accurate results. . . .

The cutting-edge software is accepted enthusiastically in the market. . . . has the potential to become the world standard processing tool for the Method.

Dr. vice president of Science and Technology and Advanced Research and Development, Environmental, at stated:

I first met [the petitioner] at the . . . where he and his colleagues were developing and using a software package to calculate fluxes of carbon dioxide, water vapor, and energy from terrestrial ecosystems. Such calculations are complex

and often controversial, and they are essential for understanding how natural and agricultural ecosystems function. The work was funded by the with the goal of developing a standard computational software package that would be widely accepted. This is important because data are collected from research sites all over the world and a common accepted computational method is necessary to facilitate accurate data inter-comparisons and interpretations.

is the recognized world leader in providing instruments supporting such measurements and the proposal was made for to support continued development and distribution of this software on a free and open-source basis. . . . To date, we estimate that more than 4000 copies have been downloaded from our website. The software is now in its fourth generation and it is rapidly becoming a world-wide de facto standard.

We are continuing to develop and other products that will interface with it. Some of them will be separate software products that run on external computer and some will be software embedded in our instruments. [The petitioner] is a key developer in both cases.

[The petitioner] brings unique first-hand experience with the scientific and operational demands of our customers and marketplace, along with a rich set of engineering and communications skills that allow him to develop software that serves our market with world-class products. He has demonstrated expertise in developing Graphical User Interfaces that simplify complex operations, as well as strong engineering skills in data management and data compression, networking, and communications. He has made important contributions to the success of and he is helping maintain its world-wide leadership as a United States company in a very international endeavor.

The letters quoted above show the opinions of those who have worked with the petitioner. The petitioner submitted the remaining letters to demonstrate that his work has had a wider impact. a hydrologist at , stated:

I am a sub-contractor for the where my responsibilities are to provide accurate and precise evapotranspiration data to the This data exists as some 18 million records processed monthly for the water budget estimation of the well field. Over the past several years the software package has made several advancements that make it possible to assess data of this scale quickly and efficiently. . . .

The development of the software has not only significantly contributed to the determination of evapotranspiration, (ET) in but for carbon cycling.

Dr. , research associate professor at the University of stated that the petitioner's "cutting-edge expertise has the potential to become universally accepted not only in the United States but in other science flux networks around the world." He also stated:

> The important applications that will result from the use of will eventually result in a new generation of long-term, high quality data that addresses hypotheses that may only be studied with data from several kinds of biomes, provide an integrated database for synthesis and modeling studies, and facilitate distinguishing ecosystem dynamics due to biological and meteorological effects.

Dr. research associate professor at stated:

> The effect of the open release of and software packages on covariance research has been simply groundbreaking. . . . [T]he biggest benefit of this tool is for global synthesis and intercomparison. The formal development framework of allows for clear versioning and documentation of individual reprocessing runs, which allows the incorporation of different generations of data in newer syntheses. Although I have developed my own reprocessing tools for the same purposes . . . , I am currently in the process of transitioning the post-processing to -based workflow because of the greater flexibility, broader developer base, and improved intercomparability with other researchers.
>
> As continues to be developed, and adopted by an increasing number of researchers in [the] United States and abroad . . . , is destined to become a key research tool and play a major role in strengthening the connection between scientists, instrument manufacturers, modelers and government institutions using the data for national and global analyses and forecasting. [The petitioner's] contribution to the development of this powerful tool cannot be overstated.

Dr. a junior professor of geosciences at the University of stated:

> I do not know [the petitioner] personally; however, I and the members of my research group are intensively applying . . . [] for our basic and applied research projects. From this experience, I can without reservation state that the product to whose development [the petitioner] has significantly contributed in the last years is of highest quality and great relevance for the advancement of science in the interdisciplinary field of physical and biogeochemical land-atmosphere interactions.
>
> According to my sources, the major focus of [the petitioner's] work has been the development of . This is a highly sophisticated software product enabling complex data processing for the determination of turbulent fluxes of energy and matter in the atmospheric boundary layer. . . . has impressed me very much by its combination of user-friendliness, scientific soundness and technical stability.

> definitely sets a new "gold standard" for flux processing software and will improve the average quality of flux data processing within the international biogeochemical flux community by allowing also less-experienced researchers to apply the latest developments of micrometeorological flux measurement methodology.

a doctoral student at the stated: " . . . provides a user interface which is easy to use and helps to understand what individual parameters are used for. . . . The software as it is has a great potential to become the bases of globally used software in this field."

Some of the writers asserted that is already in widespread use, while others attested to its potential to become the standard for the field. The petitioner submitted no documentary evidence to establish the extent of use in the field compared to other programs. Individual letters attesting to superiority are, by nature, anecdotal rather than definitive.

The director issued a request for evidence (RFE) on August 7, 2013. The director instructed the petitioner to submit documentary evidence to establish that his past achievements justify predictions of future benefit to the United States. The director stated: "the evidence fails to establish the influence [the petitioner's] work has had on the field. For example, there is no documentary evidence to support the claims made in the submitted letters." This distinction between "documentary evidence" and "letters" indicated that the petitioner could not remedy this deficiency by submitting more letters.

In response, the petitioner submitted a list of 79 employees of various U.S. government agencies, including the and stated that those named on the list have downloaded the software.

The petitioner also submitted a letter from Dr. senior computer scientist at , who stated:

> There are over 100 towers at sites around the United States measuring carbon flux using the technique. In the last year I have become the Data Manager for the . . . , which is responsible for management of the data processing for the towers located in the Americas. Currently, the individual tower teams process their own data to build 30 minute aggregates of their carbon flux data. Processing of data is incredibly complex and wide variation in processing techniques leads to significant variance in the processing results. We are in the midst of moving to a centralized processing infrastructure to enable consistent processing of the tower data. The software has been chosen to be our platform for processing of this data centrally. The reasons why we have chosen is that it is a well-architected and a very sophisticated computer software application that would take many years to recreate and it is already broadly accepted within the community.

The petitioner submitted a statement listing various papers and presentations the petitioner co-wrote, involving the use of the petitioner did not submit the papers themselves or evidence of their publication and/or presentation. The statement also indicated: ' has been available for only about two (2) years. According to Google Scholar, as of September 10, 2013, the was cited in 32 scientific publications. . . . Other available programs . . . have been available for over 6-7 years and have below 200 citations combined." The petitioner did not submit a list of citing publications or a *Google Scholar* printout to support the claim. Unsupported claims have no evidentiary weight. *See Matter of Soffici*, 22 I&N Dec. at 165.

The director denied the petition on November 12, 2013. The director found that the petitioner had satisfied the first two prongs of the *NYSDOT* national interest test, concerning intrinsic merit and national scope. The director quoted some of the letters submitted but concluded that the petitioner failed to submit documentary evidence to support the claims in those letters. The director stated: "The record contains no evidence to establish the beneficiary's work on the significance of or the impact of on the field as a whole." The director noted the petitioner's submission of a list of government employees who had downloaded software, but stated: "The provided list does not include the source of this information or a statement of relevance associated with the names listed. . . . Furthermore, the list does not provide any validation that these individuals are regular users of or that they find the program significant in 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. 165.

On appeal, the petitioner submits a new letter, containing additional uncorroborated statements. senior vice president of sales and marketing for environmental products, stated:

> The major focus of [the petitioner's] work, software, has been quickly adopted globally by the research community as a new standard. Thousands of scientists are using this software for the collection and analysis of ecosystem fluxes of CO_2, H_2O, methane, and other atmospheric trace gases. . . . has been integrated into sophisticated and influential measurement networks in the U.S. and other networks and individual research

> sites. The adoption of this software is proof of the scientific value and technological advances contained in [redacted] software. . . .
>
> [redacted] and the related product that has just been recently developed [redacted] – of which [the petitioner] is also the project manager – has enabled [redacted] and our representative in China [redacted] to win a competitive bid and contract of $1.6 million to the [redacted] would NOT have been able to win this contract without these revolutionary, influential and innovative products - [redacted]

Without corroboration, Mr. [redacted] claims have no evidentiary weight. *See Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner's appellate brief contends that there were "inconsistencies between what was sought in the RFE and the basis of the denial," and "questions whether this denial was meant for another individual given that the denial refers to a different occupation." Regarding the latter issue, the director's denial notice referred, on page 2, to the petitioner as "an engineer in the field of mining." Page 1, however, more accurately called the petitioner "a software design engineer." Later pages refer repeatedly to [redacted] and identify, by name, the writers of several letters in the record. The appellate brief acknowledges as much, stating: "later language specifically referring to letters of support submitted by experts in the field indicates that the content of the decision may be designed for [the petitioner]." The phrase "may be designed" implies that doubt remains, but the discussion of the petitioner's submissions is so specific to the case at hand that it is clear that the denial was not "meant for another individual." The single erroneous reference to "mining" does not nullify or discredit the remainder of the decision, or imply that the director wrote the decision for a mining engineer who, like, the petitioner, claims to have "been influential in the development of [redacted]"

The brief states:

> [The petitioner] addressed concerns in the RFE by submitting information pertaining to his publications related to [redacted] . . . . [The petitioner] then outlined the widespread usage of his software by more than 3,000 individuals representing research institutions, private companies, and governmental agencies. . . . Finally, [the petitioner] cited 32 scholarly works that were the result of a Google Scholar search.

All of the above statements refer not to evidence the petitioner submitted, but to claims offered without supporting evidence in response to the RFE.

The brief further states:

> The government seems to have issue with [the petitioner's] direct contribution [to] the development of [redacted] when it states:

> An individual with such an important and critical role in the development of a product such as should be able to provide documentary evidence of his involvement with the program. However, the record contains no such documentation. . . .

> Again, the issue seems not to be with the creativity, utility, and importance of . . but rather with evidence that [the petitioner] is the person responsible for its mere existence.

> Admittedly and unfortunately, [the petitioner] did not feel proof of his design and authorship of was an issue in this petition. It was assumed to be a given. . . . It should be noted that direct evidence of authorship was not requested in the RFE. . . . [S]creenshots from within sections of the software code could confirm [the petitioner's] authorship of

The petitioner submits printouts of elements of code, each of which identifies the petitioner as its author. This evidence corroborates the claim that the petitioner wrote portions of the program, but it does not address the other concerns specified in the denial notice.

The brief presents an incomplete discussion of the director's concerns. While the director did cite a lack of evidence of the petitioner's authorship of the software, the director also stated (on page 3 of the decision):

> A letter from states, "The effect of the open release of and software packages on research has been simply groundbreaking." Again, the Service notes that a program with such a notable impact should have generated significant documentary evidence that could corroborate the claims of letters such as this one from However, a review of the record shows no supporting documentation.

> Additional letters . . . further discuss the beneficiary and his contributions to the project however none of the claims made in these letters have been supported by documentary evidence. The record contains no evidence to support the beneficiary's work on the significance of or the impact of on the field as a whole.

The denial of the petition did not rest entirely or primarily on a finding that the petitioner failed to show that he helped to write the software; however, this is the only issue that the petitioner addresses on appeal.

The brief contends that the denial notice raised issues not previously asserted in the RFE, but the RFE included this passage: "While the record contains letters from several individuals . . . , there is no documentary evidence to support the claims made in the submitted letters." Thus, in the RFE, the director informed the petitioner that the problem was not the content of the letters, but the lack of

corroborative documentary evidence. The director later denied the petition on fundamentally the same basis. The petitioner's submission on appeal does not remedy this finding or show that it was either insignificant or immaterial. The petitioner's appeal, therefore, does not address or overcome the stated ground for denial of the petition.

The petitioner has established that he played a role in the creation of well-received computer software, but this success, by itself, does not establish eligibility for the national interest waiver. By statute, exceptional ability in one's field is not automatic grounds for exemption from the job offer requirement. The petitioner has claimed that software is such an improvement over prior products that its adoption and continued development is in the national interest, but the petitioner has not submitted documentation to support this claim, or to establish that the petitioner is responsible for the most significant or important elements of

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. *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,; *Matter of Otiende*, 26 I&N Dec. 128. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.