



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: APR 22 2015

Office: TEXAS SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an ophthalmology researcher. The petitioner submitted documentation indicating that he intends to work in the [REDACTED], California pediatric clinic of Dr. [REDACTED] M.D. “for purposes of conducting collaborative research in the sphere of pediatric ophthalmology.” 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 asserts that he has submitted sufficient evidence to establish eligibility for the benefit sought. Although the petitioner indicated in Part 3 of the Form I-290B, Notice of Appeal or Motion, that a “brief and/or additional evidence will be submitted to the AAO within 30 calendar days of filing this appeal,” as of this date, we have received nothing further.

I. LAW

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 record reflects 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.” *In re New York State Dept of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that he 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 he 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.

The petitioner has established that his work as an ophthalmology researcher is in an area of substantial intrinsic merit and that the proposed benefits of his research concerning prevention and treatment of Diabetic Retinopathy and [REDACTED] would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

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

Furthermore, eligibility for the waiver must rest with the petitioner’s own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner’s area of expertise cannot suffice to establish eligibility for a national interest waiver. *NYSDOT* at 220. At issue is whether this petitioner’s contributions in the field are of such significance that he merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification he seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner’s achievements, original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

II. ANALYSIS

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on March 8, 2013. The director determined that petitioner’s impact and influence on his field did not satisfy the third prong of the *NYSDOT* national interest test.

In addition to documentation of two patents registered with the Intellectual Property Agency of the Republic of [REDACTED] his publications, conference presentations, and medical training credentials,

the petitioner submitted various reference letters discussing his work in the field. The petitioner asserts that he has made "important discoveries in the field of ophthalmology."

Dr. [REDACTED] Head of the [REDACTED], states:

I am impressed by the following 2 discoveries made by [the petitioner] concerning ophthalmic complications in patients with Diabetes Mellitus:

- [REDACTED]
- [REDACTED]

Dr. [REDACTED] mentions that the petitioner presented the results of his work at an ophthalmology conference at [REDACTED] and that the petitioner authored a manuscript published in [REDACTED], but there is no documentary evidence showing that the petitioner's published and presented work has been frequently cited by independent researchers or that his discoveries have otherwise affected the field as a whole.

Dr. [REDACTED] Department of Traumatology, Plastic-Reconstructive Surgery, and Ocular Prosthetics, [REDACTED] states that he met the petitioner in 2003 at the [REDACTED]. Dr. [REDACTED] continues:

I was greatly impressed by [the petitioner's] scientific achievements in the sphere of ophthalmology, both alone and as a member of a research team led by Dr. [REDACTED] Ph.D. Specifically, I was presented with two of [the petitioner's] research papers – [REDACTED] [REDACTED] which immediately caught my interest and later found a practical use in my career as a surgeon ophthalmologist. The papers were also published in journals in Russia and Poland, which I also introduced to my colleagues in [REDACTED] Russia.

Dr. [REDACTED] asserts that the petitioner's two research papers caught his interest and later found a practical use in his career as a surgeon ophthalmologist, but there is no documentary evidence demonstrating that the petitioner's surgical methods have been implemented at a number of eye care centers or hospitals, that the petitioner's research papers are frequently cited by others in the ophthalmology field, or that his work has otherwise influenced the field as whole.

Dr. [REDACTED] further states:

[The petitioner] was researching surgical and prophylactic treatment methods for diabetic patients with DVR [diabetic vitreoretinopathy], and discovered that intravitreal injection of

medication ‘ [redacted] ’ significantly reduces surgery duration and its complications, and in some specific cases of the disease prevents it from developing in the first place. These exceptional findings awarded [the petitioner] a Ph.D. degree

Dr. [redacted] comments on the petitioner’s discovery that an intravitreal injection of the medication ‘ [redacted] ’ significantly reduces surgery duration and its complications, but there is no documentary evidence showing that the petitioner’s Ph.D. findings are frequently cited by independent researchers or have otherwise impacted the field as a whole. Although the petitioner’s graduate research may have value, any research must be original and likely to present some benefit if it is to receive funding and attention from the medical or scientific community. In order for a university, publisher or grantor to accept any research for graduation, publication or funding, the research must offer new and useful information to the pool of knowledge. Not every ophthalmologist who performs original research that adds to the general pool of knowledge in the field inherently serves the national interest to an extent that is sufficient to waive the job offer requirement.

Dr. [redacted], Urologist, Urology Department, [redacted] states:

As I came across two different articles, printed in Armenian and Russian scientific journals, I was astonished to find that numerous top notch research studies are being conducted by [the petitioner] to fight diabetic eye complications in [redacted] These articles were: (1) [redacted] [redacted]”

Dr. [redacted] asserts that the petitioner’s “top notch” articles entitled ‘ [redacted] [redacted] ’ were printed in Armenian and Russian scientific journals. The petitioner, however, has not submitted documentary evidence showing that his journal articles have been frequently cited by independent researchers, have affected treatment protocols at various ophthalmology centers with corresponding improvement in patient outcomes, or have otherwise affected the field as a whole.

Dr. [redacted] Professor of Ophthalmology at [redacted] and Head of the Traumatology Department at the [redacted], has supervised the petitioner’s research since 1998. Dr. [redacted] states:

[I]n 2010 [the petitioner] presented his Ph.D. thesis at Specialized Scientific Council in [redacted], titled ‘ [redacted] ’ for which the Supreme Certifying Commission of the Republic of [redacted] . . . has awarded him the degree of Doctor of Philosophy in Medicine (Ph.D.).

* * *

He has published nine scientific studies in different [REDACTED] and international journals, has participated in more than 20 conferences and is a registered author of two inventions in the field of ophthalmic surgeries.

Dr. [REDACTED] comments on the petitioner's Ph.D. research, his nine journal publications and participation in 20 medical conferences, and his authorship of two inventions in the ophthalmic surgery field, but does not provide specific examples of how the petitioner's work has been applied by others in the field or has otherwise influenced the field as a whole.

Dr. [REDACTED] Ophthalmologist, [REDACTED], states that the petitioner joined his center's ophthalmology department "for 3 months as a guest practitioner ophthalmologist." Dr. [REDACTED] asserts that the petitioner broke "new ground in studying the mechanisms underlying disorders in eye fundus: Age related macular degeneration; Diabetic angioretinopathy; Hypertension disorders, etc.," but does not offer examples of how the petitioner's findings have had a specific effect on ophthalmological diagnostic and treatment protocols in the field. Dr. [REDACTED] continues:

In [REDACTED] he conducted a critical project involving the simultaneous evaluation of liquefaction of vitreous and the behavior, during each phase of posterior hyaloid membrane detachment.

Based on [the petitioner's] findings, [a] surgical and prophylactic new method of treatment for patients with diabetic proliferative vitreoretinopathy was achieved.

Although Dr. [REDACTED] asserts that the petitioner's eye research resulted in a "[REDACTED]" he does not provide specific examples of how the petitioner's results have been implemented at ophthalmology care centers or how surgical practices in the field have changed in response to his findings.

Dr. [REDACTED] further states:

Because of his direct interaction with patients as a surgeon, he is better equipped and better qualified than other researchers in the field. The exceptional combination of highly specialized and sophisticated knowledge, technical abilities, experience and discipline makes him uniquely qualified to conduct the extremely complex research studies. A scientist of his caliber with his unique combination of skills and practical experience, is absolutely indispensable for the success of any research group, laboratory or research facility.

Dr. [REDACTED] comments on the petitioner's "unique combination of skills," knowledge, and practical experience as an eye surgeon and research scientist, but special or unusual knowledge or training does not inherently meet the national interest threshold. *NYS DOT* at 221. Any assertion that the petitioner possesses useful skills, or a "unique background" relates to whether similarly-trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *Id.*

Dr. [REDACTED] Director, [REDACTED] Alabama, states that he worked with the petitioner on the [REDACTED]. Dr. [REDACTED] continues:

I was present at the [REDACTED] September, [REDACTED], when [the petitioner] gave a brilliant speech about his scientific accomplishments. I was simply amazed by the amount of work he puts into research, understanding the etiology and pathogenesis and treatment of eye diseases.

Dr. [REDACTED] mentions the petitioner's presentation at the [REDACTED] but there is no evidence showing that once disseminated the petitioner's work has been frequently cited by others or that his findings have otherwise influenced the field as a whole. With regard to the petitioner's presentations at various medical conferences, many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, healthcare organizations, employers, and government agencies promote and sponsor these meetings and conferences. Although presentation of the petitioner's work demonstrates that he shared his original findings with others, there is no documentary evidence showing, for instance, frequent independent citation of his work, or that his findings have otherwise affected the ophthalmology field at a level sufficient to waive the job offer requirement.

Dr. [REDACTED] further states: "During the preparation of his Ph.D. thesis, throughout his extensive theoretical and practical work, he had described several methods and techniques for the treatment of proliferative diabetic retinopathy. Those methods have been implemented by many vitreo-retinal specialists." Dr. [REDACTED] however, does not identify the vitreo-retinal specialists who have utilized the petitioner's methods or provide specific examples of how the petitioner's techniques have affected proliferative diabetic retinopathy treatment protocols in the field. USCIS need not rely on unsubstantiated statements. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications); *see also Visinscaia*, 4 F.Supp.3d at 134-35 (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field).

Dr. [REDACTED], a vitreo-retinal surgeon with [REDACTED] states that he met the petitioner while doing volunteer medical missions in [REDACTED]. Dr. [REDACTED] continues:

One of the noteworthy details of [the petitioner's] career is the fact that he was part of a research group in [REDACTED], along with [REDACTED] M.D., Ph.D. and [REDACTED] Ph.D., which existed for more than 10 years This research team has published dozens of scientific studies in different journals worldwide, and its members underwent training in various leading teaching hospitals in the U.S. and Europe. For instance, [the petitioner] underwent a three-month training in Posterior Segment Surgery at [REDACTED] Germany ([REDACTED]), attended an Observation Program at [REDACTED] with an invitation from [REDACTED] and attended numerous conferences in New York [REDACTED] Russia [REDACTED] Georgia ([REDACTED]), and [REDACTED] NV ([REDACTED]).

Dr. [REDACTED] asserts that the petitioner was part of a research team that “published dozens of scientific studies in different journals worldwide,” but, again, there is no documentary evidence showing that the petitioner’s findings have been frequently cited by independent researchers or have otherwise influenced the ophthalmology field. In addition, Dr. [REDACTED] mentions the petitioner’s surgical and ophthalmology training in Germany, the United States, Russia, and Georgia. Advanced training in ophthalmology or specialized medical knowledge, while attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *NYSDOT* at 221.

Dr. [REDACTED] Associate Professor, [REDACTED], and the petitioner’s colleague at the [REDACTED], states:

[The petitioner] is an expert in [REDACTED] (performed 2000+ angiographies), is a classified Vitreo-retinal surgeon (performed several thousand Vitreo-retinal surgeries, Vitreo-retinal injections and surgeries on anterior segment of the eye), and is currently the only [REDACTED] surgeon in [REDACTED]

Dr. [REDACTED] mentions the petitioner’s surgical skills and experience, and comments that the petitioner has performed a large number of surgical procedures, but any objective qualifications which are necessary for the performance of his occupation can be articulated in an application for labor certification. *NYSDOT* at 220-221. In addition, while Dr. [REDACTED] asserts that the petitioner is “currently the only [REDACTED] surgeon in [REDACTED],” she does not explain how the petitioner’s [REDACTED] surgical training differentiates him from U.S. ophthalmologists or serves the national interest to an extent that is sufficient to waive the job offer requirement.

Dr. [REDACTED] continues:

[The petitioner] started a research study with hundreds of subjects, the results of which not only granted him a Ph.D., but also became registered and patented as innovations under his name in the sphere of ophthalmology. The findings from [the petitioner’s] study were (1) surgical and prophylactic methods of treatment for patients with diabetic proliferative vitreoretinopathy, and (2) methods of removing of the Posterior Hyaloid and Internal Limiting Membranes, which were new to science at a time. Through these results he has gained worldwide recognition and published numerous papers in [REDACTED] and abroad.

Dr. [REDACTED] asserts that the petitioner’s research findings earned him a Ph.D., “became registered and patented as innovations under his name in the sphere of ophthalmology,” gained him “worldwide recognition,” and resulted in numerous papers published in [REDACTED] and abroad. The petitioner, however, has not submitted documentary evidence showing that his patented innovations have been well utilized beyond the medical center where he works, that his journal articles have been frequently cited by others in the field, or that his work has otherwise affected the field as a whole. Moreover, with regard to Dr. [REDACTED] assertion that the petitioner “has gained worldwide recognition,” USCIS need not accept unsubstantiated assertions. *See 1756, Inc.*, 745 F. Supp. at 17; *see also Visinscaia*, 4 F.Supp.3d at 134-35.

Dr. [REDACTED] Chief of the [REDACTED] and Director of the [REDACTED] states:

In addition to group projects and his every-day tasks as a surgeon, [the petitioner] managed to find time for his individual research, which studied Retinopathies caused by Diabetes Mellitus – a task only the most enthusiastic and committed physicians will tackle. For several years he studied treatment methods for diabetic Vitreoretinopathies and yielded results so innovative, that both prophylactic and surgical methods became patented inventions under his name. The study also served as his Ph.D. dissertation.

Dr. [REDACTED] mentions the petitioner's retinopathy research and patented inventions, but does not provide specific examples of how the petitioner's work has affected the ophthalmology field as a whole. In response to the director's request for evidence, the petitioner submitted a July 11, 2013 letter from Dr. [REDACTED] stating that the petitioner's employer, the [REDACTED] has implemented his [REDACTED]. Although Dr. [REDACTED] asserts that the petitioner's methods have been implemented at the ophthalmologic center where he has worked since 2008, Dr. [REDACTED] does not provide specific examples of how the petitioner's research findings have been implemented beyond his employer to an extent that demonstrates influence on the field as a whole.

Dr. [REDACTED], Anesthesiology, Spine Intervention and Pain Management Physician, [REDACTED] Massachusetts, states:

[The petitioner], along with his research team, is one of very few researchers and physicians in the world who became authors of patented inventions in the field of medicine. For instance, his study "[REDACTED]" published in various scientific journals in Germany, Russia, [REDACTED] was registered by the [REDACTED] and has since become the basis for further research by other scientists. What makes this study so special is the fact, that it is directed towards patients who have the disease Diabetes Mellitus, since they are under great risk of developing certain Retinopathies.

Dr. [REDACTED] mentions that the petitioner's study, entitled "[REDACTED]" received a patent, but Dr. [REDACTED] does not provide specific examples of how the petitioner's innovation has been implemented by other ophthalmologists to improve treatment of [REDACTED] or has otherwise influenced the field. In addition, although Dr. [REDACTED] asserts that the petitioner's work has "become the basis for further research by other scientists," Dr. [REDACTED] does not identify any of those scientists and there is no independent citation evidence demonstrating that other researchers have relied upon the petitioner's findings in their work.

Dr. [REDACTED] a pediatrician in a private medical practice in [REDACTED] California, states that she previously worked with the petitioner at a hospital in [REDACTED] and that they collaborated on a research project. Dr. [REDACTED] continues:

The petitioner submitted letters of varying probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc.*, 745 F. Supp. at 17. In addition, uncorroborated assertions are insufficient. *See Visinscaia*, 4 F.Supp.3d at 134-35; *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency “may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony,” but is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought and “is not required to accept or may give less weight” to evidence that is “in any way questionable”). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner’s eligibility. *Id.* *See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”).

In addition, the petitioner states that the director erred in applying the “*Kazarian* standard.” *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), involved a different immigrant visa classification than the one the petitioner seeks in the present matter. Specifically, *Kazarian* involved an individual seeking classification as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A). The director’s analysis of the submitted evidence did not cite to the *Kazarian* decision or rely on any of its findings. In *Kazarian*, the court held that USCIS may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian*, 596 F.3d at 1121, *citing Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir. 2008). The petitioner does not identify any part of the director’s decision that imposed novel requirements and erroneously applied the *Kazarian* standard.

The petitioner further states that the director imposed “a higher burden of proof upon the petitioner.” The standard of proof in this matter is preponderance of the evidence. In most administrative immigration proceedings, the petitioner must prove by a preponderance of the evidence that he or she is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The *Chawathe* decision states:

[I]f the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “more likely than not” or “probably” true, the applicant or petitioner has satisfied the standard of proof. *See INS. v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987) (discussing “more likely than not” as a greater than 50% chance of an occurrence taking place).

Id. at 376. The truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* The petitioner does not explain how the director applied a higher standard of proof or offer any specific examples from the director’s decision. The director’s decision properly considered the petitioner’s evidence as it related to the *NYS DOT* factors. In the present matter, as discussed above, the submitted documentation does not demonstrate by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

III. CONCLUSION

Considering the letters and other evidence in the aggregate, the record does not establish that the petitioner's work has influenced the field as a whole or that he will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. The petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. Although the petitioner need not demonstrate notoriety on the scale of national acclaim, the petitioner must have "a past history of demonstrable achievement with some degree of influence on the field as a whole." *NYS DOT* at 219, n.6. 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.

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, that burden has not been met.

ORDER: The appeal is dismissed.