



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF K-B-T-

DATE: DEC. 4, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a physician specializing in hematology and oncology, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

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 a waiver of a job offer would be in the national interest. On appeal, the Petitioner submits a brief and additional evidence.

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.

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II. ISSUES

The Petitioner received a Master of Public Health degree (2009) from the [REDACTED] at [REDACTED] and holds the foreign equivalent of a Doctor of Medicine degree. Accordingly, 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.” *Matter of New York State Dep’t of Transp. (NYS DOT)*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998), 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 demonstrate that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must show 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 a physician is in an area of substantial intrinsic merit and that the proposed benefits of his hematology and oncology research 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 show that 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. *Id.* at 220. At issue is whether the 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 exhibit 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.

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III. FACTS AND ANALYSIS

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on August 14, 2014. At the time of filing, the Petitioner was working as Chief of Hematology/Oncology House Staff at [REDACTED].¹ The Director determined that the Petitioner's impact and influence on his field did not satisfy the third prong of the *NYSDOT* national interest analysis.

In addition to documentation of his presented work, authorship of three published case reports, peer review activities, and medical training credentials, the Petitioner submitted various reference letters discussing his work in the field. [REDACTED]

[REDACTED] in which the Petitioner received specialty medical training, stated:

[The Petitioner] currently is focusing his efforts on his original research, which includes areas such as incidence and prognosis of solid tumors in HIV patients; and an important placebo-controlled trial studying the efficacy and safety of [REDACTED] for patients with acquired thrombotic thrombocytopenic purpura. The first results of this trial have just been announced and it is spectacularly successful and will be followed by further trials to bring this medical advance into clinical use.

[REDACTED] mentioned that the results of the Petitioner's placebo-controlled trial studying the efficacy and safety of [REDACTED] were "spectacularly successful," but did not explain the Petitioner's role in the trial or how his work has influenced the medical field. Similarly, while [REDACTED], Distinguished Professor of Medicine and Oncology at the [REDACTED], indicated that the Petitioner's current work involves a "multi-national trial that includes 51 participating centers focused on an improved treatment method for Thrombotic Thrombocytopenic Purpura," he did not discuss how the Petitioner's medical trial has affected treatment protocols or has otherwise had an impact on the field as a whole. In addition, [REDACTED] asserted that the Petitioner has "significantly advanced Hematology research as he produced an important study showing the use of hormonal agents such as conjugated estrogens in treating gastrointestinal bleeding in hemodialysis patients," but did not provide specific examples of how the Petitioner's work has influenced the field.

[REDACTED] Chief of the Division of Hematologic Malignancies and Cellular Therapy, and Director of the Adult Blood and Marrow Transplant Program at [REDACTED] stated:

An example of [the Petitioner's] important research is his work treating Isolated Factor V deficiency in a patient with elevated PT and aPTT. Isolated Factor V

¹ As a member of [REDACTED] house staff, the Petitioner was a physician engaged in specialty training who cares for patients under the direction and supervision of the attending staff.

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deficiency (Owren's disease, parahemophilia) is a very rare autosomal recessive disorder with an incidence of about 1 in 1 million [The Petitioner's] was one of the first work [*sic*] showing treatment of such a patient, and therefore helps provide a roadmap for later clinicians.

_____ asserted that the Petitioner's work "was one of the first" showing treatment of Isolated Factor V deficiency. _____ appears to be referencing a case report coauthored by the Petitioner that was published in _____ entitled "_____". The Petitioner's case report indicates that the disease was first described in 1943 by _____ and that "approximately 150 cases" have been "reported in the literature since 1943." In addition, the case report concludes that fresh frozen plasma "remains the mainstay of treatment" and that "patients are generally treated after bleeding episodes or in preparation for surgery." While the Petitioner's case report affirms pre-existing treatment practices and adds to the general pool of knowledge in the field, there is no documentary evidence demonstrating that his findings have influenced the field of hematology as a whole.

With regard to the Petitioner's clinical experience in treating and caring for cancer patients, _____ Professor of Medicine, _____, stated that the Petitioner has the ability "to care for an increasing number of patients by utilizing newer and more effective technologies and treatment modalities" and that he is "well versed in the use of the latest medicines and technologies" for fighting cancer. 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. *NYS DOT*, 22 I&N Dec. at 221. In addition, _____ asserts that the Petitioner has "advanced scientific research through his publications and presentation" and mentions the Petitioner's "recently published work focusing on innovative treatment of a patient whose surgery was complicated by a rare blood disorder, isolated Factor V deficiency (published in _____)." In regard to the Petitioner's published and presented work, there is no presumption that every published article or conference presentation demonstrates influence on the field as a whole; rather, the Petitioner must document the actual impact of his article or presentation. In this instance, there is no evidence showing that once disseminated through publication or presentation, the Petitioner's medical research has garnered a significant number of citations or that his findings have otherwise influenced the field as a whole.

With respect to the documentation indicating that the Petitioner has presented his findings at various meetings and medical conferences, we note that 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

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findings have otherwise affected the fields of hematology or oncology at a level sufficient to waive the job offer requirement.

_____ stated that the Petitioner “has produced outstanding research innovations that influenced how Hematologists and Oncologists practice and treat patients nationwide” and that the Petitioner’s work has “demonstrably benefited and advanced the national and scientific medical communities,” but did not mention any specific innovations or explain how they have influenced the field as a whole. Similarly, _____

_____ asserted that the Petitioner “has made substantial scientific contributions to his specialty fields through original research, and his influence has been felt throughout this nation and internationally.” 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). _____ further stated that “Isolated Factor V deficiency in a patient with elevated PT and aPTT during routine pre-operative laboratory screening” is “an important baseline work that provides guidance for peri-operative management and monitoring for patients with Isolated Factor V deficiency,” but did not provide specific examples of how the Petitioner’s work has affected treatment protocols at various medical centers or has otherwise influenced the hematology field as a whole.

_____, stated:

[The Petitioner] was selected to serve as a peer reviewer for our journal based on an exceptional background and expertise related to the focus of our journal. Applying up-to-date knowledge, [the Petitioner] provides critical feedback that helps the editors of our journal to identify whether an article is research worthy of publication, as well as feedback for the authors related to refining the study measures, study design, and statistical analysis, resulting in overall improvement of the article.

With regard to the Petitioner’s service as a peer reviewer for _____ and various other journals, it is common for a publication to ask multiple reviewers to review a manuscript and to offer comments. The publication’s editorial staff may accept or reject any reviewer’s comments in determining whether to publish or reject submitted papers. Thus, peer review is routine in the field, and there is no evidence demonstrating that the Petitioner’s occasional participation in the widespread peer review process is an indication that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

In response to the Director’s request for evidence, the Petitioner provided additional letters of support. _____

_____, mentioned the Petitioner’s research concerning “the role of alternate chemotherapeutic protocol for initial treatment of patients with Hodgkin lymphoma presenting with severe abdominal liver function.” _____ stated that she is aware of the Petitioner’s research

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██████████ Program Leader and Senior Member, Senior Adult Oncology Program, ██████████ stated:

[The Petitioner] is a leader in clinical research having produced several important studies. His research has addressed several unique issues including a novel treatment protocol for Hodgkin[']s lymphoma patients with unusual presentation with liver involvement. [The Petitioner] also pioneered use of conjugated estrogens in patients with renal failure on dialysis who develop uncontrolled gastrointestinal bleed, not responding to standard treatment options. Also, distinct is his paper on "Isolated Factor V deficiency" which is a very rare condition.

██████████ commented on the Petitioner's clinical research studies, but there is no documentary evidence showing that the Petitioner's findings have been frequently cited by independent researchers or have otherwise affected the field as a whole. In addition, ██████████ asserted that he has seen the Petitioner's work "being utilized frequently" in his practice and by colleagues, but did not offer any specific examples.

██████████ Chair of the Department of Hematology and Hematopoietic Cell Transplantation, ██████████ mentioned the Petitioner's article entitled "Use of conjugated estrogens in life-threatening gastrointestinal bleeding in hemodialysis patients – a review." ██████████ indicated that the Petitioner's article offered "substantiating evidence for the use of this approach in management of people in renal failure who have life-threatening bleeding who are on dialysis, which is very common in the United States" and that the Petitioner's "research was important in helping the care of patients with these types of problems." While the Petitioner's findings validated a treatment approach developed by others, ██████████ did not explain how the Petitioner's findings have resulted in improved patient outcomes or provide specific examples of how the Petitioner's work has influenced the field as a whole. In addition, ██████████ mentioned the Petitioner's "research in the management of patients with atypical Hodgkin's disease and also the rare Isolated Factor V deficiency" and asserted that the Petitioner's "contributions are used both in the U.S. and around the world," but did not identify the actual contributions or explain how they have affected the field as a whole.

The Director denied the petition on April 9, 2015. The Director acknowledged the Petitioner's submission of documentation reflecting his service a peer reviewer, published and presented work, and reference letters discussing his medical skills and activities in the field, but determined that they did not show the Petitioner's influence on the field was sufficient to demonstrate eligibility for the national interest waiver.

On appeal, the Petitioner asserts that the "testimonials from peers" are "primary evidence of his elite clinical skills." In addition, the Petitioner mentions his "unique" and "critical" roles "within major academic teaching hospitals." With regard to the Petitioner's hospital duties and clinical skills as a hematology and oncology specialist, any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for labor certification. *NYS DOT*, 22 I&N Dec. at 220-21. The testimonial letters discussing the Petitioner's skills as a physician and

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research projects have already been addressed above. Again, the submitted evidence does not show that the Petitioner's work has affected the field as a whole as to warrant a waiver of the job offer. With respect to the Petitioner's positions as Chief of Hematology/Oncology House Staff, a house staff physician participating in a hematology and oncology fellowship program, and a medical resident, there is no indication that the Petitioner's roles had an impact beyond the patients and staff at his hospital. Furthermore, there is no evidence showing that the Petitioner's work as an evaluator, teacher, or clinician has influenced the field as a whole.

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. 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). In addition, uncorroborated assertions are insufficient. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *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"). As the submitted reference letters did not establish that the Petitioner's work has influenced the field as a whole, they do not demonstrate his eligibility for the national interest waiver.

In addition, the Petitioner asserts that the Director's "mere reliance on such statistics as citation to gauge the influence of one's work is flawed." The Petitioner submits an article entitled [REDACTED]

[REDACTED] While the article discusses the limitations of popular bibliometric indicators, such as the h-index and the impact factor, and concludes that those indicators are not reliable in making "accurate between-field comparisons," it does not undermine the value of citations for assessing research performance. For example, the article notes that "citation analysis is widely used in the assessment of research performance in the medical sciences." Furthermore, the Director's decision did not include any between-field comparisons, or rely upon the h-index or impact factor as bases for denial. Rather, the Director noted a lack of citations to the Petitioner's research work. The aforementioned article's findings do not disprove that a high citation count in the clinical medical research area is a reliable indicator of significant impact in the field. It remains that a substantial number of favorable independent citations for an article is an indicator that other researchers are familiar with the work and have been influenced by it. A lack of citations, on the other hand, is generally not probative of an article's impact in the field.

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. 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 he seeks.

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. Although a petitioner need not demonstrate notoriety on the scale of national acclaim, he must have "a past history of demonstrable achievement with some degree of influence on the field as a whole." *NYSDOT*, 22 I&N Dec. 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.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.

Cite as *Matter of K-B-T-*, ID# 14646 (AAO Dec. 4, 2015)