



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

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

MATTER OF A-M-

DATE: DEC. 23, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a physician in pulmonary and critical care medicine, seeks classification as a member of the professions holding an advanced degree, and 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. *See* Section 203(b)(2) of the Immigration and Nationality Act (the Act), 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.

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) Subject to clause (ii), 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.

(ii) The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if –

Matter of A-M-

(I) (aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and

(bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

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).

Matter of New York State Department 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 demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she 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, a petitioner must demonstrate a past record justifies projections of future benefit to the national interest. *Id.* at 219. A petitioner's assurance that he or she 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 petitioner, rather than to facilitate the entry of a foreign national with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on July 14, 2014, at which time he was working as a clinical fellow in pulmonary and critical care medicine at the [REDACTED] in New York. In an introductory letter, he indicated that his current and ongoing work involves clinical treatment, medical research, and teaching duties. He stated that his research, which focuses on the treatment of respiratory diseases, has had a national impact on his field.

(b)(6)

Matter of A-M-

Documentation supporting the Form I-140 included evidence regarding the Petitioner's credentials, professional memberships, awards, research activities, and service as a peer reviewer in his field. The record indicates that he had authored six articles and several conference presentations at the time of filing, and that his work had been cited once. The Petitioner also submitted letters from current and former supervisors and independent professionals attesting to his clinical expertise and the significance of his medical research.¹

_____ is a professor at the _____ Florida, where the Petitioner completed an elective rotation in pulmonary and critical care medicine during his residency. In a June 16, 2014, letter, _____ praised the Petitioner's research contributions to the medical field, noting a study in which the Petitioner correlated clinical features of chronic obstructive pulmonary disease (COPD) with the bacteria causing the exacerbation. He stated that "[s]uch an analysis has never been conducted in the past and will have bearing on our clinical management [of] COPD exacerbation." The same study was discussed in a June 20, 2014, letter from _____ associate professor at _____ attested that the Petitioner is "well-known" for this research, and that the findings "will have implications on our clinical management of this disease such [as] use of appropriate antibiotics."

_____, professor at the _____, indicated in a June 8, 2014, letter that the Petitioner's research "has unequivocally improved methods of COPD assessment," and that he has also contributed to the "fledgling field of interventional pulmonary." He stated that the Petitioner published the first description of a lung abscess with bronchial fistulation found during an endobronchial ultrasound, and that the accompanying image "will provide pulmonologists with a visual reference." He also described a study that has been "accepted for publication," in which the Petitioner offers a new minimally invasive diagnostic approach to diagnosing "previously difficult-to-reach" substernal thyroid lesions.

Several of the letters asserted that the Petitioner's influence on the field is evidenced by the prestige of the journals and conferences through which he has disseminated his work. For instance, in a June 13, 2014, letter, _____ fellowship director for pulmonary/critical care specialist training at _____ stated that the importance of the Petitioner's research is reflected by his publications in "premier medical journals," his presentations at "top-ranked, high-impact conferences," and his invitation to co-author a review article for the journal _____

_____ In addition, _____ noted that the Petitioner has won awards for his presentations at multiple conferences. As supporting evidence, the Petitioner provided information about the ranking and impact factor of journals in which he published work, and documentation relating to awards he has received, including: a _____ from the _____

_____ "Poster Presentation" from the _____ from the _____

¹ While we discuss only a sampling of these letters, we have reviewed and considered each one.

Matter of A-M-

_____ a _____ award from _____ and a 2011 Junior Resident of the Year from the _____

The Director issued a request for evidence (RFE) on December 17, 2014, requesting additional documentation to establish the Petitioner's eligibility under the analysis set forth in *NYS DOT*. He was asked, in part, to confirm that his work "will impart national-level benefits," and to show that he has a past record of specific prior achievement with some degree of influence on the field as a whole.

In response, the Petitioner submitted an additional support letter, documentation regarding his recent peer review and research activities, and evidence that he was hired in December 2014 as a clinical assistant professor of pulmonary, critical care, and sleep medicine at _____. _____ associate division chief of pulmonary, critical care, and sleep medicine at _____ stated in a January 22, 2015, letter that after a year-long national recruitment process, the Petitioner was selected for the position based on his "tremendous track record in research" and his expertise in Obstructive Lung Disease. _____ letter and an accompanying employment contract indicated that the Petitioner would continue to perform research in addition to clinical care and teaching duties.

In a March 2, 2015, letter responding to the RFE, the Petitioner provided detailed information about his areas of clinical and procedural expertise. He also summarized each of his past and present research studies and, in some instances, described the impact it has had on the field. For example, he asserted that one ongoing study "has redefined the role of Streptococcus in COPD and this will have implications on COPD immunization recommendations." Regarding his publication of an article investigating a new treatment modality for obstructive sleep apnea, he indicated that "[r]ecommendations of second line treatment options can be made based on our study." In addition, he discussed his publication on a new substernal thyroid biopsy technique and stated, "As this technique gains popularity providers will turn to our publication for guidance."

The Director denied the petition on May 12, 2015, finding in part that the Petitioner did not establish that he meets the second prong of the *NYS DOT* national interest analysis. The Director stated that the Petitioner is primarily engaged in clinical practice rather than research, and that such work is not national in scope. The decision also stated that the Petitioner did not demonstrate sufficient impact and influence on his field to meet the third prong of the *NYS DOT* analysis.

On appeal, the Petitioner contends that the previously submitted evidence establishes his eligibility for the benefit sought. He states that the record demonstrates that his work has been featured in "prominent forums" and has been incorporated into the clinical practice of other physicians. He provides copies of his recent publications and presentations, and additionally submits a copy of a report to congress by the U.S. Department of Health and Human Services about the increasing demand for critical care physicians.

Matter of A-M-

III. ANALYSIS

The record, including documentation from his current employer, indicates that the Petitioner will continue conducting medical research in addition to his clinical practice and teaching duties. The benefit from medical research has national scope, as the results from such research are disseminated to other practitioners through conferences and journals. Accordingly, we find that the prospective benefits of the Petitioner's work are national in scope, and we withdraw the Director's finding on this issue. We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

As stated above, the analysis set forth in the third prong of *NYSDOT* requires a petitioner to demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. To do this, a petitioner must establish "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.

The Petitioner provided letters attesting to the importance of his work, and many of these letters describe the potential of his findings to affect clinical practice. For instance, [REDACTED] stated that the Petitioner's research correlating bacteria and COPD "will have implications on our clinical management of this disease such [as] use of appropriate antibiotics," and [REDACTED] stated that his study on substernal thyroid lesions will offer physicians a new diagnostic approach. However, these prospective statements do not indicate that the Petitioner's findings have already influenced clinical treatments of such conditions. While [REDACTED] also stated that his work "has unequivocally improved methods of COPD assessment," the record does not include documentary evidence to support a finding that his research has been widely implemented in clinical settings or has otherwise affected the field as a whole. Statements made without supporting documentary evidence are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

As noted previously, several of the submitted letters attested to the prominence of the journals in which the Petitioner has published articles and the conferences at which he has been invited to present his work. Selection of the Petitioner's work for presentation or publication shows that his research may be acknowledged as original and has been shared with others, but it does not establish that his findings have had an impact on the field. A journal's ranking and impact factor can provide an approximation of the prestige of the journal, but they do not demonstrate the influence of every article published in that journal. In this case, the Petitioner has not presented a record of citation or other evidence reflecting that his work has had a widespread impact on his field. While particularly significant awards may serve as evidence of influence on his field, the Petitioner did not demonstrate that his awards are indicative of such influence. For these reasons, we find the record insufficient to establish that the Petitioner has had some degree of influence on the field as a whole.

Regarding the evidence submitted on appeal about the demand for critical care physicians in the United States, we note that Section 203(b)(2)(B)(ii) of the Act describes an alternative waiver for certain physicians who agree to work in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs. To qualify for that waiver, it is not sufficient for a petitioner to submit evidence regarding a shortage of physicians in his or her field of practice. Rather, the waiver is limited to certain physicians who follow specific requirements set forth in the regulation at 8 C.F.R. § 204.12. The Petitioner has not addressed or attempted to meet these regulatory requirements.

IV. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or individual of exceptional ability should be exempt from the requirement of a job offer based on national interest. In this instance, 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. While a petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, a petitioner “must clearly present a significant benefit to the field of endeavor.” *Id.* at 218. *See also id.* at 219, n.6 (the individual must have “a past history of demonstrable achievement with some degree of influence on the field as a whole”). Considering the evidence submitted, the Petitioner has not established 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.

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.

Cite as *Matter of A-M-*, ID# 14863 (AAO Dec. 23, 2015)