(b)(6)

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

DATE: MAY 07 2015 OFFICE: NEBRASKA SERVICE CENTER

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner[1] filed Form I-140, Immigrant Petition for Alien Worker, on April 16, 2010, seeking to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences, the arts, or business. The petitioner, a manufacturer and distributor of recycled toner cartridges and inkjets, seeks to employ the beneficiary as a senior research and development technician. 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 beneficiary qualifies for classification as an individual of exceptional ability in the sciences, but that the petitioner had 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 brief and supporting exhibits.

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 director determined that the beneficiary qualifies as an individual of exceptional ability in the sciences. 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.

[1] The petitioner on appeal is the successor-in interest to the organization that filed the petition,

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 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 beneficiary's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the beneficiary 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 beneficiary, rather than to facilitate the entry of a beneficiary with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given beneficiary seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that beneficiary cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

II. Facts and Analysis

An introductory statement submitted with the petition on April 16, 2010, reads, in part:

> [The beneficiary] is a highly skilled inventor and researcher of demonstrated exceptional ability, whose track record of achievements has been recognized and acclaimed in a "green" technology field of science that involves the redesign and remanufacturing of printer cartridges. . . .
>
> [The beneficiary's] technical contributions to the field of cartridge remanufacturing (have enabled [the petitioner] to produce and distribute remanufactured cartridges, reusing up to 80% of its customers' original printer cartridge components and extracting significantly more printed paper per cartridge, thereby reducing the amount of waste disposal into the environment. Given the urgency and priority the U.S. government has placed on environmental research and preservation, together with [the beneficiary's] patented work in cartridge remanufacturing which has already enabled

> [the petitioner] to eliminate over 1.2 million cartridges into landfills each year, it is without doubt in the national interest to waive the requirement that [the petitioner] seek a U.S. worker to fill his position.

The director, in the denial notice, acknowledged that the petitioner met the first two prongs of the *NYSDOT* national interest test by establishing that the beneficiary's occupation has substantial intrinsic merit and produces benefits that are national in scope. The issue is whether the petitioner has satisfied the third *NYSDOT* prong by establishing that the beneficiary has a past history of demonstrable achievement with some degree of influence on the field as a whole.

In a March 5, 2010, letter submitted with the petition, president of the petitioning company, stated that the petitioner's "entire remanufacturing process is driven by [the beneficiary]," whose efforts "have earned numerous awards for our company from further stated that the beneficiary was listed as an inventor on two approved patents involving and had three additional pending patent applications. The petitioner submitted evidence of the beneficiary's patents.

The petitioner submitted several industry/trade publication articles highlighting the petitioning company's success as an innovator in the toner cartridge remanufacturing industry. While they do not mention the beneficiary by name, the articles attribute the petitioner's success to several key innovations, some of which correspond to the beneficiary's approved and pending patent applications. For instance, an article that appeared in and discusses an innovative method for

As additional evidence of the significance of the beneficiary's work, the petitioner submitted letters from representatives of companies with whom the petitioning company does business, attesting to the beneficiary's expertise and the importance of his work. The petitioner also submitted letters from experts in the field providing opinions on the beneficiary's work based on a review of his patents and other materials provided by the petitioner. In one such letter, Professor of Industrial and Manufacturing Engineering at stated that the beneficiary's "widely adopted" patents and extensive experience "render him among the very few world-wide professionals to lead in this critical area of the U.S. infrastructure vis-à-vis waste management." Many of the letters expressed the opinion that the beneficiary's past innovations had significantly impacted the field of printer cartridge recycling and remanufacturing.

In a May 28, 2010, Request for Evidence (RFE), the director requested additional documentary evidence that the beneficiary has a past record of specific prior achievement, including some degree of influence on the field as a whole, that would justify projections of future benefit to the national interest. In response, the petitioner submitted an updated letter form including a detailed discussion of the beneficiary's approved and pending patents, and stating that the

beneficiary has "a level of contribution well above others holding comparable research or technical positions in the industry."

The director denied the petition on February 15, 2011, acknowledging that the beneficiary "has received several patents in the field" and that the submitted reference letters indicate he is "highly qualified," but concluding that the beneficiary's "impact has been limited." On appeal, the petitioner contends that "the beneficiary's multiple patented innovations have resulted in profoundly beneficial effects upon the U.S. national interest." The petitioner submits a table showing estimates for the costs saved and reduction in landfill use resulting from each of the beneficiary's innovations, which included four approved U.S. patents as of the time of appeal. In a separate statement, the petitioner's CEO, provides technical details about each of the beneficiary's innovations, including relevant patent information, the beneficiary's role in developing the innovation, and an estimate of the innovation's financial and environmental impact. For example, stated that one of the beneficiary's patented inventions "[a]llows [the petitioner] to further states that the beneficiary's innovations are critical to the company's ability to employ approximately 808 U.S.-based employees while remaining competitive with "manufacturers from China, Mexico and other low cost countries."

The petitioner submits updated letters from some of the individuals who wrote previous reference letters on the beneficiary's behalf, offering additional expert opinions regarding the economic and environmental impact of the beneficiary's innovations. In addition, the petitioner submits a March 18, 2011, letter from a registered patent attorney, states that, based on his research into the number of U.S. patents in the remanufactured toner cartridge industry, the number of patent applications from other inventors that cite the beneficiary's patents and applications, and uniqueness of the area in which the beneficiary has patented inventions, the beneficiary is "an especially prolific and accomplished inventor . . . in relation to his peers in [the] remanufactured toner cartridge industry."

The record includes evidence, including patent documentation, expert letters, and trade publications, which supports the petitioner's assertion that the beneficiary's innovations have had a degree of influence on the toner cartridge remanufacturing industry. Further, the letter from discussed above, indicates that the beneficiary has achieved of a high level of success as an inventor in relation to others in his field. We find that this record justifies projection that the beneficiary will serve the national interest to a significantly greater degree than would an available U.S. worker having the same minimum qualifications.

III. Conclusion

As discussed above, the evidence in the record establishes that the benefit of retaining this beneficiary's services outweighs the national interest that is inherent in the labor certification process. Therefore, on

the basis of the evidence submitted, the petitioner has 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, the petitioner has met that burden.

ORDER: The appeal is sustained.