MATTER OF S-J-T-

DATE: NOV. 19, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an oil and gas well field superintendent, 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 and a subsequent motion to reconsider. 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. –
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> > (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.
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> > (B) Waiver of Job Offer –
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> > > (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 Petitioner qualifies as a member of the professions holding the equivalent of 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).

In re New York State Dept 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 beneficiary 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 beneficiary 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 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.*

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 24, 2013, at which time she was working as a completion and well intervention field superintendent for [redacted] In an introductory letter, the Petitioner explained that well completion is the process of making a well ready for production, while well intervention involves all operations required to manage the production of the well. She indicated that her current responsibilities included scheduling and coordination, cost management, supporting field supervisors, sourcing and managing contractors, and "instilling an HSE [Health, Safety, and Environmental] Culture into the operations." The Petitioner described her areas of expertise and her role in several projects at [redacted], highlighting her most significant achievements. She stated that, as a renowned expert in well intervention and completion, she is "playing a crucial role in helping US Oil and Gas Corporations to safely increase their production quota."

In support of the Form I-140, the Petitioner provided evidence regarding her education, training, and her membership in the [redacted] and data showing that she earns a high salary relative to other mechanical engineers. In addition, the Petitioner submitted four letters from colleagues at [redacted] describing her expertise and attesting to the significance of her achievements.[1]

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

The record reflects that the Petitioner served as completion and well intervention foreman and coordinator of hydraulic fracturing (fracking) operations in Wyoming, from 2006 to 2010. for stated in an April 1, 2013, letter that the Petitioner "led the implementation of simultaneously completing 6 wells at one time," and that this "groundbreaking approach" drastically increased operational efficiency. In a March 20, 2013, letter, well operations manager for also discussed the cost saving benefits of this approach and indicated that the Petitioner went on to successfully lead the implementation of multi-well completions for in northern Louisiana.

Both and also discussed the Petitioner's work on a water re-use initiative for fracking operations in stated that the Petitioner "worked closely with the project group to develop a set of end user specifications for a Water Recycle Pump Station that would allow the water produced back from the wells to be treated and sent back to support the intensive hydraulic fracturing operations," and that this resulted in environmental and commercial improvements. In a March 25, 2013, letter, vice president of wells discipline, stated that the Petitioner additionally played a key leadership role on a "successful FEED (Front-End Engineering Design) study, for a temporary 15-mile water source pipeline" serving the , resulting in a "cost effective solution that had an extremely low environmental impact."

As an additional accomplishment at , described the Petitioner's active involvement in the "technical training, mentoring, and overall professional development of our new hires, and inexperienced Field Supervisors." He stated that her "extensive technical and professional expertise play a critical role in rapid development of professionals in her line of work."

The Director issued a request for evidence (RFE) on September 19, 2013, requesting additional documentation to establish "a past record of specific prior achievement with some degree of influence on the field as a whole," and to demonstrate that the Petitioner will serve the national interest to a substantially greater degree than an available U.S. worker having the same minimum qualifications. In a letter responding to the RFE, the Petitioner discussed her "unique wealth of knowledge," and asserted that her achievements at have had "more than 'some' influence" on the oil and gas industry.

The Petitioner submitted new letters from three of her colleagues, each attesting that she has had an influence on the field. In an October 29, 2013, letter, stated that "[the Petitioner's] work on multi-well completions changed the way major oil producers perform drilling and fracking operations," and that her initiatives including the water re-use pump station have been replicated within and among other "major operators" in the industry. stated in an October 31, 2013, letter that the Petitioner's introduction of multi-well completions in the "was an important deliverable for both our own organization and competitors operating in this basin." In a November 1, 2013, letter, indicated that the Petitioner has "share[d] her learning's [sic] through the organization and externally through the industry."

In addition, the Petitioner provided an October 18, 2013, letter from president of , whom she noted has served as an expert witness in oil and gas litigation. expressed his opinion, based on a review of her work history, that the Petitioner has had a "more than nominal" influence on the industry. He stated that her development of "frac" water handling and reuse systems for "impacts our industry as a whole along with benefits to our national wellbeing." He also discussed the Petitioner's work on multi-well completions, saying: "In order to drill and complete multiple wells from a single location it is imperative that thought be given to safety during all operational phases. This is another area that [the Petitioner] has pioneered for that is being adopted industry wide." cited the Petitioner's active membership in the ' as "[a]nother example of her influence on the field." Finally, he asserted that HSE culture and practices are "emulated throughout the industry" and that "[the Petitioner's] training of field personnel in the region is vital to that culture."

The Director denied the Form I-140 on January 13, 2014, finding that the Petitioner had not established sufficient impact on her field to meet the third prong of the *NYSDOT* national interest analysis. The decision acknowledged the supporting statements regarding the Petitioner's contributions, but found that the record lacked "independent objective evidence" to support assertions that she had influenced the field as a whole.

On February 14, 2014, the Petitioner filed a motion to reconsider, asserting that expert opinion constituted independent objective evidence of her influence, and that the Director's analysis held her to a higher standard than that articulated in *NYSDOT*. The Petitioner submitted a February 8, 2014, letter from well operations manager for who indicated that the safety standards implemented by the Petitioner have been applied "across the industry." He stated that a program called which "she insisted on rolling out," has since been published as an industry best practice by the In addition, stated that the six well pads developed by the Petitioner "were replicated by competitors and partners in the Industry."

The Petitioner also provided a January 22, 2014, letter from president of who indicated that he worked closely with her as a specialist service provider. stated that the Petitioner "initiated a very successful business of offering [HSE] training to contract service providers and staff." He attested that her training allowed his organization to improve its safety record and to deliver a safer service to industry clients, including "the largest energy operators in the United States." listed other companies to whom the Petitioner has delivered training, and stated, "A program with such a wide span has a significant industry impact."

The Director denied the motion to reconsider on March 18, 2015, stating that the Petitioner did not cite any pertinent precedent decisions to establish that the decision was incorrect, and finding that the submitted evidence did not establish eligibility. The Petitioner filed the instant appeal on April 20, 2015. She asserts that independent objective opinion that she has influenced her field is alone sufficient to establish her eligibility under a preponderance of the evidence standard,

and that the Director was incorrect to require additional objective evidence to support that opinion. The Petitioner notes that, under *Matter of Caron International, Inc.*, 19 I&N Dec. 791 (Comm'r 1988), U.S. Citizenship and Immigration Services (USCIS) is not required to accept an advisory opinion "when an opinion is not in accord with other information or is any way questionable." She contends that, because the Director has not articulated a reason to question [redacted] opinion, USCIS must accept that opinion.

The Petitioner also asserts that the phrase "some degree of influence," which appears in a footnote in *NYSDOT*, does not require an individual's achievements to be "unusual" or "significant," as implied by the Director. Rather, she contends that the footnote is subordinate to the statement that persons "with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative" are barred from eligibility for a national interest waiver. She states that "[s]ome means more than zero" and asserts that, under a correct reading of *NYSDOT*, "demonstrable achievement takes an alien out of the speculative-benefit-to-the-U.S.-category."

III. ANALYSIS

The *NYSDOT* footnote the Petitioner discusses references a sentence indicating that a petitioner must demonstrate "prospective national benefit" by establishing a past record that "justifies projections of future benefit to the national interest." The next sentence states that the use of the word prospective is not meant to facilitate the entry of an individual "with no demonstrable prior achievements." *Id.* at 219. Footnote 6, which includes the phrase "a past history of demonstrable achievement with some degree of influence on the field as a whole," clarifies the level of prior achievement that would justify a projection of future benefit. Accordingly, the Petitioner's contention that the standard set forth in *NYSDOT* grants eligibility to all advanced degree professionals with "some" demonstrable past achievement is incorrect. As noted above, the requisite level of prior accomplishment is that the individual must have had "some degree of influence on the field as a whole." *Id.* at 219, n.6.

As noted by the Petitioner, *Matter of Caron International, Inc.* held that USCIS need not accept an opinion that is questionable or contradicts evidence in the record. However, that decision did not indicate USCIS must accept all other advisory opinions as fact or that such opinions alone would always be sufficient for meeting the Petitioner's burden of proof. Rather, it stated "[t]his Service may, in its discretion, use advisory opinions" as expert testimony. *Id.* at 795. USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. A 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 truth is to be determined not by the quantity of evidence alone but by its quality. *Id. at* 376.

In this instance, while [redacted] expressed his opinion that the Petitioner has influenced the field as a whole, the content of his letter does not sufficiently demonstrate that influence so as to establish the Petitioner's eligibility without supporting documentation. For instance, he stated that her development of water reuse systems "impacts our industry as a whole," but did not specify the nature of that impact or identify influential aspects of the water reuse systems that are attributable to

the Petitioner.[2] also noted the Petitioner's work on multi-well completions, specifically her attention to safety during all operational phases, and stated: "This is another area that [the Petitioner] has pioneered for that is being adopted industry wide." However, he did not clarify whether he means the adoption of the Petitioner's safety precautions by other companies or the process of multi-well drilling generally. To the extent he meant that other companies are now conducting multi-well drilling, his letter does not state that he credits the Petitioner with creating any method or technique used in that process. Rather, he states only that she "has had a great deal of individual input benefiting her employer and our industry," without specifying the nature of her input. Although other letters also included assertions that the Petitioner's work on multi-well drilling has been replicated outside of neither nor the other authors identify specific companies that are using her work, and the Petitioner submitted no other documentary evidence to support their assertions. Although other letters also included assertions that the Petitioner's work on multi-well drilling has been replicated outside of neither nor the other authors identify specific companies that are using her methods or techniques, and the Petitioner submitted no other documentary evidence to support their assertions.

Several letters discussed the Petitioner's training of field personnel as an area of her work that has influenced the field. stated that her training in the is "vital" to HSE culture, and that practices are "emulated throughout the industry." However, without additional information and evidence, his statements do not demonstrate that the Petitioner is responsible for the practices that have been emulated. Similarly, stated that the Petitioner has "implemented" safety programs that have become standard practice in the industry, but he did not indicate that she was responsible for the development of those programs, nor does the record include evidence to support his statements regarding their industry-wide application. listed several companies to whom the Petitioner has provided safety training, but without further evidence regarding the impact of that training, we find assertions insufficient to demonstrate that is has had a degree of influence on the field as a whole.

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. For the reasons discussed above, we find the record insufficient to demonstrate that the Petitioner's 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 or her influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. Considering the letters and other 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.

[2] Letters submitted with the Form I-140 indicated that the Petitioner assisted in developing end user specifications for the water recycle pump station and played a leadership role on a study for the water source pipeline.

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 S-J-T-*, ID# 14359 (AAO Nov. 19, 2015)