



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

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

MATTER OF J-D-O-D-L-R-

DATE: NOV. 19, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an aerospace engineer and structural aviation fatigue researcher, 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 immigrant visa petition. The matter is now before us on appeal. The appeal will be sustained.

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 submits a statement addressing the Director's decision, additional letters of support, and further evidence of his participation in engineering conferences.

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

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services in the sciences, arts, professions, or business be sought by an employer in the United States.

II. ISSUES

The Petitioner received a Master of Science degree (2009) and a Ph.D. degree (2013) in mechanical engineering from the [REDACTED]. 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. (NYSDOT)*, 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 an aerospace engineer and structural aviation fatigue researcher in an area of substantial intrinsic merit and that the proposed benefits of his research concerning structural fatigue, structural reliability, and probabilistic damage tolerance analysis 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. *Id.* 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

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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.

III. FACTS AND ANALYSIS

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on March 25, 2014. At the time of filing, the Petitioner was working as a Special Research Associate in the Department of Mechanical Engineering at [REDACTED]. The Director determined that the Petitioner's impact and influence on his field did not satisfy the third prong of the *NYS DOT* national interest analysis.

The Petitioner seeks to continue his research at [REDACTED] to further develop a probabilistic assessment for determining the reliability of aerospace structures. Regarding his planned research activities, the Petitioner stated: "My work directly affects private and commercial aircraft safety as I have developed and continue to refine [REDACTED], a probabilistic fatigue and damage tolerance software to conduct risk assessments and risk management for small planes." The Petitioner submitted documentation reflecting that his research is funded by grants from the Federal Aviation Administration (FAA) and the U.S. Department of Defense (DOD).

In addition to documentation of his published and presented work, the Petitioner submitted various reference letters discussing his work in the field. For example, [REDACTED] Professor and Chair, Department of Mechanical Engineering, [REDACTED], stated:

[The Petitioner] developed a probabilistic linear damage model, and a probabilistic damage tolerance methodology for the FAA that combined the extreme value theory, the maximum likelihood approach, and the spectrum loading information to estimate the distribution of extreme load during a given number of flights. . . . This information is being incorporated by [the Petitioner] into a computer software program for use by the FAA in assessing the safety of the general aviation fleet. His research has contributed directly to the safety of the flying public.

[REDACTED] Aerospace Engineer, Continued Operational Safety Branch, [REDACTED] explained that the computational methods developed by the Petitioner "allow risk evaluation of in-service fatigue crack findings in a timely manner" while maintaining aircraft safety. Furthermore, [REDACTED] Senior Research Engineer, Vehicle Technology Directorate, [REDACTED] stated that he served as "program manager of the structural integrity [research and development] for small airplanes at the [REDACTED]. [REDACTED] indicated that the Petitioner "has made significant contributions to civil aviation which will help ensure reliability of the aging U.S. aviation fleet."

[REDACTED] Nondestructive Evaluation Division Manager at [REDACTED] asserted: "[The Petitioner] has developed a program that enables entities dealing with commercial aircraft to determine how to maximize the life of the aircraft without jeopardizing

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passengers and crew. The [REDACTED] and [REDACTED] are already using his work.”

[REDACTED] Leader of the Structural Integrity Group, Aerospace Portfolio, [REDACTED] mentioned that the Petitioner “is the primary developer of a probabilistic linear damage code delivered to the [FAA] for structural integrity analysis of aircraft.” In addition, [REDACTED] asserted that the Petitioner’s innovative research findings concerning crack growth and damage tolerance are “of great interest” to the [REDACTED]

[REDACTED] Fatigue and Damage Tolerance Lead Engineer, [REDACTED] stated that the Petitioner “has pioneered research in the probabilistic field” and that he “has been developing and expanding fatigue and damage tolerance tools for [REDACTED] to utilize during production of its [REDACTED]

[REDACTED] Owner of [REDACTED] Kansas, served as the Continued Operational Safety Program Manager, [REDACTED] from 2001 – 2011. [REDACTED] asserted: “The probabilistic tools [the Petitioner] has developed and continues to refine have significant applicability for the safety of American aircraft and the economic development of the aircraft industry (in terms of future aircraft designs).” In addition, [REDACTED] mentioned that the Petitioner’s “research work is being sought after and used by a diverse range of government agencies and private industry concerned with aircraft continued operational safety.” For example, the Petitioner provided letters from the [REDACTED] and the [REDACTED] Service discussing the importance of the Petitioner’s work and their interest in his probabilistic methods for structural risk analysis. Furthermore, the Petitioner submits letters on appeal from [REDACTED] and the [REDACTED] expressing support for the Petitioner’s [REDACTED] structural reliability assessment code and mentioning their interest in applying his “innovative” software to their aircraft systems.

The aforementioned letters of support, the Petitioner’s journal publications and conference presentations, and the implementation and funding of his work by the FAA establish that the Petitioner’s past record of achievement justifies projection that he will serve the national interest to a significantly greater degree than would an available U.S. worker having the same minimum qualifications. In addition, the letters provided by the Petitioner give context to his work and explain its importance in ways that the additional evidence in the record otherwise corroborates. The submitted documentation establishes the significance of this petitioner’s research, as opposed to the general area of research, and identifies specific benefits attributable to his work that have influenced the field.

IV. CONCLUSION

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

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the basis of the evidence submitted, the Petitioner has established that a waiver of the requirement of a job offer, and thus of a 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 been met.

ORDER: The appeal is sustained.

Cite as *Matter of J-D-O-D-L-R-*, ID# 14275 (AAO Nov. 19, 2015)