



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

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

MATTER OF Y-L-

DATE: OCT. 14, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a researcher in the field of synthetic organic chemistry, 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 sustained.

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 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.

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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, 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.*

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on March 26, 2014, at which time he was working as a postdoctoral fellow at [REDACTED]

[REDACTED] The Petitioner asserted in his introductory letter that he has made influential contributions to the field of synthetic organic chemistry through his development of methods for synthesizing various compounds used in the nanotechnology, pharmaceutical, and biomedical industries.

Documentation supporting the Form I-140 included evidence that the Petitioner had authored or co-authored eight scholarly articles in his field at the time of filing, documentation about the rankings of the journals in which he had published work, and evidence that his work had been cited 102 times. The Petitioner also submitted letters from former supervisors and independent researchers in his field describing his research projects and attesting to the significance of his work.¹

The record reflects that the Petitioner’s research at [REDACTED] has focused on the synthesis and improvement of compounds that inhibit NADPH oxidase (NOX) and myeloperoxidase (MPO), enzymes that have been linked to the pathogenesis of cystic fibrosis, Parkinson’s disease, chronic vascular inflammatory disease, and other diseases and infections. In a March 13, 2014, letter, [REDACTED]

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

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██████████ a professor at ██████████ provided details regarding the Petitioner's research in this area, stating in part that he "determined the [structure activity relationship] of Nox inhibitors to reveal the chemical frameworks that are most potent to inhibit Nox." ██████████ a senior scientist at the Centers for Disease Control and Prevention, asserted in a March 14, 2014, letter that "[the Petitioner] has been at the forefront of the design and synthesis of NOX and MPO inhibitors to alter the negative impacts of NOX and MPO to target these diseases at a molecular level." ██████████ further stated, "My group at the CDC is very interested in the new inhibitors derived from his study, and we have plans to use the inhibitors for experiments to treat animal models with diseases such as Parkinson's."

██████████ is a professor who served as the Petitioner's advisor during his work as a doctoral student and graduate research assistant at ██████████. In a March 14, 2014, letter, ██████████ described the Petitioner's graduate research, which involved the invention of advanced procedures for synthesizing bioactive natural products. ██████████ stated that the Petitioner created a new process, ██████████ ██████████ ██████████ for synthesizing alkaloids with cancer-fighting properties, and that this method has been "cited and reviewed by many scientists throughout the world." ██████████ Chief Technology Officer of ██████████ stated in a March 15, 2014, letter that the Petitioner's development of the ██████████ process represents "the first time that a researcher provided a general protocol for synthesis," and that "[h]is study has opened the door for accessing more complex alkaloid skeletons."

██████████ indicated that another significant accomplishment during the Petitioner's doctoral research was his synthesis of huperzine A, an alkaloid with a limited natural supply, but which has been shown to improve the cognitive abilities of patients with Alzheimer's disease and other memory problems. ██████████ stated, "Practically, his synthesis permits pharmaceutical scientists to sufficiently prepare enough huperzine A to unlock the neuroprotective features of this exciting compound." ██████████ also attested to the significance of this work, stating that the Petitioner's original method used to synthesize huperzine A "introduced a valuable paradigm . . . to allow for the formulation of substantially complex structures."

██████████ a professor at ██████████ in China, was the Petitioner's mentor during his Master's degree studies. ██████████ stated in a February 20, 2014, letter that the Petitioner was the "first chemist to accomplish the synthesis of nanomaterial in ionic liquid," an approach that offers increased yield and less environmental pollution compared to other synthesis methods. ██████████ stated, "With dozens of citations to this work alone thus far, [the Petitioner's] synthesis of AEMs has continued to be highly relevant to the chemical synthesis area."

The Director issued a request for evidence (RFE) on September 24, 2014, stating the Petitioner had not submitted evidence to show that his patterns of publication and citation are unusual in the field, and that the submitted evidence did not demonstrate "a record of specific prior achievement with some degree of influence on the field as a whole." In response, the Petitioner submitted a table from ISI Web of Knowledge showing "Average Citation Rates for papers published by field, 2003-2013."

The figures included in the table for the field of chemistry indicated above-average citation rates for the majority of the Petitioner's published papers.

In addition to asserting that the previously submitted letters established how his work influenced the field, the Petitioner provided descriptions of the books and articles that he considered to be the most significant citations of his work, along with copies of those works. Evidence submitted in response to the RFE also included a copy of an additional publication since filing the Form I-140, copies of invitations the Petitioner has received to serve as a peer-reviewer for academic journals, documentation about the journals for which he reviewed articles, and updated citation evidence indicating that the total citations of his work had increased to 128.

The Director denied the Form I-140 on February 25, 2015, finding that the Petitioner had not established sufficient impact and influence on his field to meet the third prong of the *NYSDOT* national interest analysis. On appeal, the Petitioner contends that his previously submitted evidence establishes his eligibility for the benefit sought. The Petitioner submits updated citation data showing 139 citations of his work, and Web of Science documentation showing that some of his articles are among the most cited for their particular topics. In addition, he provides copies of additional selected publications that cite his work along with his explanations of their significance.

III. ANALYSIS

As stated above, the analysis set forth in *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." *Id.* at 219, n. 6.

The submitted letters give context to the Petitioner's past research and explain its importance in ways that the record otherwise supports. The letters, citation records, and documentation regarding the specific journals through which he has disseminated his research findings, provide persuasive evidence that the Petitioner's original synthesis methods have been considered significant and influential in his field. We find this evidence sufficient to demonstrate that his research has had a degree of influence on the field of synthetic organic chemistry. We therefore find that the record justifies projection that the Petitioner 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 Petitioner'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 the job offer and labor certification will be in the national interest of the United States.

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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.

Cite as *Matter of Y-L-*, ID# 14020 (AAO Oct. 14, 2015)