



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

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

MATTER OF H-N-N-B-

DATE: SEPT. 10, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an individual, 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 seeks employment as an Assistant Professor of Geography and Geographic Information Science researcher. 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 brief and additional evidence.

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.

II. ISSUES

The record reflects that 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 Assistant Professor of Geography and Geographic Information Science researcher is in an area of substantial intrinsic merit. In addition, the Petitioner has demonstrated that the proposed benefits of his research concerning applications for remote sensing and geographic information systems (GIS) for land and water resource management 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 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.

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III. FACTS AND ANALYSIS

The Petitioner filed the Immigrant Petition for Alien Worker (Form I-140) on March 3, 2014. 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. Regarding his planned research activities, the Petitioner stated: "I intend to continue my investigations on how we could improve the methods used to characterize land cover[,] land use[,] and water resources by integrating geospatial techniques with landscape spatial complexity metrics and machine learning algorithms."

The Petitioner submits evidence that he remains employed by [REDACTED] of [REDACTED] [REDACTED] where he will continue his research concerning applications for remote sensing and GIS for land and water resource management. The record includes copies of multiple journal articles that the Petitioner has written or co-written, and evidence demonstrating that his published work has been extensively cited. In addition, the Petitioner provided various reference letters discussing his work in the field.

[REDACTED] Visiting Professor of Biology, Center for Science and Computation, [REDACTED] stated:

Innovative approaches, such as [the Petitioner's] use of machine learning classification tree algorithms and GIS techniques to determine optimal lake classes is very critical to developing appropriate reference conditions needed to develop water quality standards in order to alleviate the cost of lake and reservoir pollution in the United States. . . . [The Petitioner's] database became the foundation for a comprehensive Nebraska lakes database that other scientists, like me, as well as water analysts have used for management and research purposes.

In addition, [REDACTED] Professor, Department of Geography, [REDACTED] [REDACTED] discussed the Petitioner's article, entitled [REDACTED] [REDACTED] which describes "a novel machine learning and GIS technique to classify Nebraska lakes." [REDACTED] asserted that the aforementioned article "is listed as one of the most prominent papers on the topic of GIS in the [REDACTED] [REDACTED] In support of [REDACTED] assertion, the Petitioner submitted a webpage printed from the [REDACTED] internet site listing the Petitioner's article among "the most prominent [REDACTED] papers on the topic of GIS" since 1993.

[REDACTED] University Distinguished Professor of Biology, [REDACTED] explained:

[The Petitioner] developed a cutting edge classification technique that employs GIS and [a] machine learning algorithm to group lakes based on their hydrogeological and ecological factors which is an essential step in developing scientifically defensible water quality

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standards to limit nutrient enrichment and subsequent eutrophication in lake[s] and reservoirs.

Water Quality Scientist, asserted that the Petitioner “has made significant contributions to the field of GIS-based classification of lakes and reservoirs as a basis for states to establish water quality nutrient criteria as part of the U.S. Environmental Protection Agency (EPA) mandate under the Clean Water Act.”

Professor of Geography and Geographic Information Science, mentioned that the Petitioner “contributed to research on the observation satellite program operated by the USGS [United States Geological Survey].” further stated: “[The Petitioner] investigated effects of calibrations and corrections on spatial metrics that are used to characterize landscape structure and spatial pattern. The results of this research appeared in a paper . . . that has been cited more than 65 times since it was published.” The record includes a Google Scholar citation index from 2015 reflecting that the aforementioned paper has been cited to 131 times by others in the field.

Assistant Professor, Department of Geology, stated that the Petitioner published a paper entitled “ further explained: “This paper addresses one of the issues that have been dogging the glacier assessment community for years, i.e. the need for accurate and consistent means to delineate and access glacier surface features.” In addition, asserted that the Petitioner’s “semi-automatic glacier lake classification method” has garnered “significant interest” from others in the field. Furthermore, Emeritus Professor of Geography, commented that the Petitioner’s work provides “a methodology for timely monitoring of melt water and glacier lakes from retreating glaciers, which has critical implications worldwide.”

The aforementioned letters of support and extensive citation of the Petitioner’s work by others in the field are sufficient to demonstrate that the Petitioner’s research has had a degree of influence on the field of geographic information science. The evidence in the record 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 as a whole. We therefore find 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.

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 H-N-N-B-*, ID# 14524 (AAO Sept. 10, 2015)