



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

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

MATTER OF B-S-

DATE: SEPT. 16, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a physician researcher in the field of otolaryngology, 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) (*NYS DOT*), 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 April 30, 2014, at which time he was working as a Postdoctoral Research Fellow at the [REDACTED] and the [REDACTED] in [REDACTED] Massachusetts. According to an introductory statement and accompanying evidence, the Petitioner’s research in this position centered on thyroid cancer and his past work, conducted in Iran, included research on head and neck surgeries as well as endocrine-related disorders including diabetes and associated complications.

In support of the Form I-140, the Petitioner submitted evidence of two books and five journal articles that he had written or co-written, data regarding citations of his published work, and copies of additional manuscripts he had submitted for publication. Documentation also included evidence that the Petitioner has held positions on the editorial board of two medical journals, and information about the ranking and impact factors of several other journals for which he regularly serves as a peer-reviewer. In addition, the Petitioner provided evidence and information about several medical conferences at which he has presented his research and evidence of his memberships in various professional associations.

The Petitioner’s supporting materials also included letters from current and former supervisors and colleagues, as well as from independent professionals, describing his research projects and attesting

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to the significance of his research and his role in the field. Each of the letters described ways in which the Petitioner's research findings are currently used by practicing physicians. For instance, [REDACTED] Director of Head and Neck Surgery for the [REDACTED] [REDACTED] stated that the Petitioner's research on nose surgery "has been an essential study" that enables surgeons to select the most appropriate surgical technique for each patient. [REDACTED] Professor of [REDACTED] at [REDACTED] [REDACTED] in Iran, stated that the Petitioner's research on treatment strategies for vocal cord nodules "has provided critical data" to assist practitioners in creating optimal treatment plans, and he attested to personal knowledge that "many leading [REDACTED] researchers have found these results to be of high importance." In addition, [REDACTED] Director of the [REDACTED] [REDACTED] Division and the Thyroid and Parathyroid Surgical Division at [REDACTED] [REDACTED] and Associate Professor of [REDACTED] Head and Neck Surgery at [REDACTED] [REDACTED] stated that the Petitioner's research initiatives related to advanced thyroid cancers have "provided important clinical data to determine optimal thyroid cancer treatment and detection strategies."

The submitted letters also noted the prestige of the conferences and journals in which the Petitioner has presented his findings. [REDACTED] stated that "the prominence of [the Petitioner's] career in otolaryngology" is evidenced by the caliber of the conferences at which he is invited to present his research, and by his "active role" as an editor and reviewer for journals in the field. [REDACTED] Chief of the Division of Preventive Medicine at [REDACTED] [REDACTED] noted that the Petitioner has been invited twice to present his research at the [REDACTED] [REDACTED] and "has been regularly solicited to do peer-review work" for the [REDACTED] which is "one of the most cited general medical journals in the world." The Petitioner submitted letters from the [REDACTED] [REDACTED] recognizing him as one of "our best reviewers."

The Director issued a request for evidence (RFE) on November 22, 2014, requesting additional documentation to establish a "demonstrable record of previous field-wide influence." In response to the RFE, the Petitioner submitted evidence showing that he completed his research fellowship on May 31, 2014, and had since been working as a research scholar at [REDACTED] [REDACTED] also affiliated with [REDACTED] [REDACTED]. The Petitioner provided evidence of additional publications since filing the Form I-140, including a chapter of a medical textbook on diabetes, and updated citation documentation for all of his publications. He also submitted copies of invitations he has received to present his work at conferences and to serve as a reviewer for medical journals; several of the invitations reference his specific research and/or his reputation and expertise.

Additional letters submitted in response to the RFE echoed previous statements regarding the high caliber of the journals and conferences with which the Petitioner has been involved, and the prominence of the Petitioner's work and its current use in clinical practice. [REDACTED] [REDACTED] Associate Director of Interventional Endoscopy at [REDACTED] [REDACTED] and Assistant Professor of Medicine at [REDACTED] [REDACTED] stated that the Petitioner has a "very strong history of leadership and engagement in the world of academic journals," and attested to the

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significance of his editorial board memberships. With regard to the recent medical textbook for which the Petitioner authored a chapter, [REDACTED] characterized the book as “a major and important new medical textbook, which will be purchased and read by students nationwide and globally.” In addition, [REDACTED] Assistant Professor at [REDACTED] Oncology Division, stated that “[t]extbook authorship is without doubt one of the more influential components of scholarship, and here [the Petitioner] has played a key role in one of the most important new books this year.” Many of the letters also stated that [REDACTED] is the top-ranked medical school for research, and that the Petitioner’s selection for employment as a researcher at that institution is an additional indication of the prominence and influence of his work in the field.

The Director denied the Form I-140 on June 10, 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. Accompanying the appeal, the Petitioner submits evidence of his recent research, publications, conference presentations, and peer-review work, as well as updated citation data regarding his publications. In addition, the Petitioner submits a May 15, 2015, letter from [REDACTED] documenting his current appointment as a Research Fellow for that organization.

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 letters submitted by the Petitioner provide specific descriptions of how his research has influenced others in the field, and explain the importance of his work. These statements are supported by documentary evidence in the record, including citation records as well as evidence and information regarding the specific conferences and journals through which the Petitioner has disseminated his research findings. The record also includes documentation to support statements regarding his leadership and engagement with regard to medical journals. We find the evidence sufficient to demonstrate that the Petitioner’s research has had a degree of influence on his field of research as a whole, and that his current ongoing research stands to benefit the national interest. 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.

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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.

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 B-S-*, ID# 15361 (AAO Sept. 16, 2015)