



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

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

MATTER OF E-A-H-

DATE: MAY 27, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a scholar in the field of educational technology, seeks classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Nebraska Service Center, denied the petition. The Director found that the Petitioner established her eligibility as an advanced degree professional, but did not establish that a waiver of the job offer requirement is in the national interest.

The matter is now before us on appeal. On appeal, the Petitioner contends that record demonstrates her eligibility for a national interest waiver. The Petitioner submits a brief and additional evidence.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

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) National interest waiver. . . . 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.^[1]

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).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish 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. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner’s assurance that the beneficiary will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

The Director determined that the Petitioner qualifies as an advanced degree professional, and that her proposed work in the field of educational technology has substantial intrinsic merit. The two

¹ Pursuant to section 1517 of the Homeland Security Act of 2002 (“HSA”), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

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findings at issue in this matter are (1) whether the Petitioner established that the benefits of such work are national in scope as required under the second prong of the *NYS DOT* national interest waiver analysis, and (2) whether she demonstrated that her past record of achievement is sufficient to meet the third prong.

At the time of filing the Form I-140, Immigrant Petition for Alien Worker, the Petitioner was a doctoral student in educational leadership at [REDACTED] having previously earned a bachelor's degree in communication studies (digital media) and a master's degree in education (educational technology). The record reflects that the Petitioner had also worked in the [REDACTED] at [REDACTED] as an information technology consultant for faculty members. The Petitioner did not specifically identify her intended occupation or endeavor on the Form I-140 or in her initial evidence.

Accompanying the Form I-140, the Petitioner submitted letters from colleagues and faculty members at multiple institutions attesting to her expertise and dedication and describing various projects on which she had worked.² For instance, [REDACTED] president and professor at [REDACTED] stated that the Petitioner worked on several educational technology projects for his school in exchange programs with [REDACTED] including designing an interactive online course called [REDACTED]. In addition, he indicated that she had helped a colleague, [REDACTED] to showcase interactive exercises, group projects, and tests online using authoring tools, and that this approach was "recognized as an outstanding teaching tool and course preparation model" and adopted by the [REDACTED] for its own international exchange courses with [REDACTED]. In a separate letter, [REDACTED] discussed the high quality of the Petitioner's work on that project and stated that "[s]he has the unique capability to not only attract faculty in developing online instructional support for their courses and creating multimedia classroom presentations but also to give advice based on her life and educational experience."

[REDACTED] an art professor at [REDACTED] indicated that the Petitioner had assisted her with several projects, including the design of a well-received educational website for [REDACTED] in [REDACTED] France. In addition, [REDACTED] described a collaboration between herself, the Petitioner, and [REDACTED] from the [REDACTED]. She stated that they used a software called [REDACTED] to initiate projects in which students created websites to follow their progression in an art course, and that they presented this work at the [REDACTED]. She also maintained that the project "has been recognized many times as an outstanding teaching and learning model; it was most recently recognized at the [REDACTED] at [REDACTED]."

Another [REDACTED] professor, [REDACTED] indicated that the Petitioner has helped her to create several hybrid and web-only religious studies courses. Beyond praising the Petitioner's expertise

² While we discuss only a sampling of these letters, we have reviewed and considered each one.

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and character, she stated: “All of my classes are global in scope. Consequently, [the Petitioner’s] international background allowed her to contribute invaluable material that enhanced the content of my global courses.” In addition, [redacted] adjunct professor at [redacted] attested that the Petitioner’s help in using technology to enhance her course “allowed me to transform my class, triple student population, and support [redacted] goals of offering the highest quality education to their students.” She further indicated that the Petitioner “was awarded the [redacted] in [redacted] 2011 in recognition of her commitment and contributions to the quality of life at [redacted].”

In addition to reference letters, the Petitioner’s initial submission included a conference abstract for a [redacted] that she co-authored entitled [redacted]. The document did not indicate at which conference the paper was presented, nor did the Petitioner submit documentation regarding the conference presentation mentioned in [redacted] letter as discussed above.

The Director issued a request for evidence (RFE), asking for additional documentation to establish eligibility under the analysis set forth in *NYS DOT*. The Petitioner was requested to submit further information and evidence about her proposed employment including letters from current or prospective employers, employment contracts, or a statement detailing her plans for continuing her work, as well as evidence that the benefits of the proposed work are national in scope. In addition, the Director requested documentation that the Petitioner has a past record of specific prior achievement with some degree of influence on the field as a whole.

In response to the RFE, the Petitioner submitted a statement regarding her career plans after completion of her Ph.D. She indicated her intent “to work as an administrator, in a technology related field, and a faculty member coordinating technology services, as well as teaching assigned classes helping educational stakeholders to fulfill their maximum potential.” She also expressed her goal to “develop educational stakeholders’ technology skills with keen awareness of international and intercultural diversity.” The Petitioner provided samples of job postings to demonstrate the types of positions that she might pursue. The postings included: a “Student Success and Support Program Faculty Coordinator” for [redacted], a “Director, Curriculum Program Development” for [redacted], a “Director of Field Services and Professional Development Schools & Assistant/Associate Professor of Education” for [redacted], a “Course Mentor, [redacted] Curriculum and Instruction” for [redacted], and “Faculty – Teacher Education (Curriculum & Instruction)” for [redacted].

Regarding her past influence, the Petitioner stated that her “unique educational technology instructions have contributed to STEM (Science, Technology, Engineering, and Mathematics), intercultural competency, and the arts in the past.” She also indicated that her past projects “have contributed to faculty and students successes nationally.” The Petitioner submitted additional letters that detailed her work developing interactive technologies for specific university courses and distance learning programs. [redacted] professor at [redacted] and [redacted] in Brazil, described how the Petitioner helped him to create a “mathematics trail map,”

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accessible from any technology device, which has been used by his students in several countries. [REDACTED] associate dean of the [REDACTED] at [REDACTED] discussed the Petitioner's work for the college as a graduate level student assistant. She stated that, "[o]n a daily basis, [the Petitioner] collaborates with faculty members who desire to put courses and materials into an online format" and that she also contributes to process activities for the department and organizational activities "at the college level."

In denying the Form I-140, the Director found that the Petitioner had not the second prong of the *NYS DOT* analysis. He stated that USCIS "cannot conclude that any benefits would be national in scope since the [P]etitioner has failed to provide any probative evidence that [her] proposed employment is realistic and obtainable." He noted that the Petitioner had not established "that she is eligible, qualified, or likely to be hired for any of the job postings provided." The Director further found the record insufficient to demonstrate that the Petitioner had achieved a degree of influence on the field as a whole under the third prong of *NYS DOT*.

On appeal, the Petitioner acknowledges that *NYS DOT* listed a teacher as an example of a meritorious occupation that lacks national scope. *See id.* at 217, n.3. However, she notes that much of her work "uses the Internet, which surely reaches more people in more places than that single elementary school teacher." The Petitioner also contends that the Director erred in analyzing her job prospects, as she seeks a waiver of the job offer requirement. She nevertheless indicates that she has received "several actual job offers." She provides evidence that she has been offered a contractor position at [REDACTED] and she states in an accompanying email that she will design instructions to teach [REDACTED] marketing personnel around the world to promote its products. In addition, she submits a letter from [REDACTED] indicating its desire to hire the Petitioner to design programs, develop curriculum, and assist the school's international students in their educational pursuits. The letter indicates that there are currently 80 students in the international students "and that number will continue to grow." Finally, the Petitioner presents a letter from [REDACTED] stating that the company intends to hire her as a marketing consultant to support its expansion to [REDACTED] Africa.

With regard to the third prong of the *NYS DOT* analysis, the Petitioner indicates that the record demonstrates that her work has been implemented "around the world." She also contends that educational technology is a new, "cutting-edge" field, and as such, it takes relatively few individuals adopting her work to constitute widespread adoption within the field. She contrasts a "mature industry" such as automobile manufacturing, in which widespread adoption "would mean most car manufacture[r]s had adopted the person's work."

As evidence of her [REDACTED] online course designs, the Petitioner submits screenshots of some of her projects. In addition, she provides a letter from [REDACTED] a student at "the [REDACTED] in Germany who took part in an "intercultural short course" at [REDACTED]. He indicates that he works for an American company, and that the [REDACTED] course has been very helpful in his interactions with colleagues nationally and internationally.

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A. National Scope

Under the second prong of the *NYSDOT* analysis, the relevant question is not whether a petitioner is likely to find employment in her intended occupation, but whether the benefits of the proposed occupation are national in scope. *See id.* at 218. Accordingly, as stated by the Petitioner, the Director was incorrect to focus on the attainability of her job prospects in his analysis of this prong. We find the record insufficient, however, to demonstrate the national scope of the Petitioner's proposed work.

As discussed above, the evidence regarding the Petitioner's intended work includes the statement about her future plans submitted in response to the RFE, the sample job postings showing the types of positions she might seek, and the job offer letters submitted on appeal. This evidence indicates that the Petitioner intends to develop educational technologies that will be used by an individual institution or organization. The Petitioner has emphasized that because the courses and websites she develops are on the Internet, they can be used by students around the world. However, the Petitioner has not demonstrated that the benefits of her work will extend beyond the set population of faculty and students associated with a single institution. Regardless of the location of the individuals served, we do not find this range of benefit satisfies the "national scope" requirement as described in *NYSDOT*. The finding of national scope in that case was based on the determination that the beneficiary's bridge maintenance and engineering work, while limited to a particular region, served the interests of many regions of the country as part of the national transportation system. *Id.* at 217. The Petitioner has not demonstrated that her work will similarly offer benefits at a national level.

B. Influence on the Field

We find that the Petitioner did not demonstrate sufficient influence on her field to satisfy the third prong of the *NYSDOT* analysis. As stated above, that prong 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 record reflects that the Petitioner has developed online courses, websites, and interactive activities that have been used by faculty members at [REDACTED] and at affiliated institutions.³ While the Petitioner contends on appeal that the field of educational technology is so new that this implementation constitutes a degree of influence on the field as a whole, she has not provided sufficient documentation to support that statement. Statements made without supporting documentation are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

³ The submitted reference letters indicate that each of the Petitioner's projects was for an institution related to [REDACTED] or for a program involving a [REDACTED] faculty member.

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Beyond the Petitioner's work on specific projects, her reference letters indicate that she has disseminated her work through presentation at conferences, but she did not provide evidence showing that her presentations have been widely cited or have otherwise been considered influential in her field. In addition, the letter from [REDACTED] stated that the Petitioner's work "has been recognized many times" as outstanding, including at a [REDACTED] symposium, and the letter from [REDACTED] maintained that she received the [REDACTED] for her work at [REDACTED]. However, the Petitioner did not submit documentation regarding the referenced recognition of her work, nor did she establish that such recognition would be indicative of having had a degree of influence on the field as a whole. For the reasons discussed above, we find the record insufficient to establish that the Petitioner has satisfied the third prong of the *NYS DOT* national interest waiver analysis.

III. CONCLUSION

The burden is on the Petitioner to show 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). The Petitioner in this case has not established by a preponderance of the evidence that the benefits of the proposed work are national in scope or that she has a past record of demonstrable achievement with some degree of influence on the field as a whole. Therefore, the Petitioner has not demonstrated that a waiver of the job offer requirement will be in the national interest of the United States. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of E-A-H-*, ID# 17247 (AAO May 27, 2016)