**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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DATE: JUN 2 5 2012 OFFICE: TEXAS SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as the director of New York City (NYC) Business Solutions, Lower Manhattan Center, for the Structured Employment Economic Development Corporation (Seedco). 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 from counsel, a witness letter, and supporting exhibits.

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 director did not dispute 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." 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).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on January 28, 2011. In an accompanying introductory statement, counsel described the petitioner's work:

> **[The petitioner] works in the field of small business development.** He provides business counseling and conducts workshops in areas such as business planning, human resources, and operations. [The petitioner] gives assistance in matters such as recruitment, financing, training, M/WBE (Minority and Women Owned Business) certification, permits and licensing and business launch. He connects businesses to various financial, technical, and employment services, and informs business owners

> how to access incentives. **[The petitioner's] work is critical for small businesses to start, operate, and grow. He also assists in neighborhood/community economic initiatives and has been actively involved in New York City's Chinatown communities. [The petitioner] has helped many entrepreneurs, with a majority of them engaged in the restaurant industry.**
>
> **[The petitioner] works for the Structured Employment Economic Development Corporation ("Seedco") and was recently promoted as Director of the Seedco-operated New York City Business Solutions Lower Manhattan Center.** Seedco is a national non-profit organization founded in 1986, and works with various networks of local partner organizations to offer financial and technical assistance and management support for community-building efforts throughout the U.S. . . .
>
> NYC Business Solutions is a government agency under the Department of Small Business Services (DSBS). NYC Business Solutions helps businesses start, operate and expand in New York City. It offers its services free of charge and works to stimulate business creation. . . .
>
> **[The petitioner] plays a crucial role to small business development. He creates programs aimed to help budding entrepreneurs and business owners launch and/or expand their business. He knocks down barriers to entry, providing necessary information and assists with securing financing to get businesses off the ground. . . .**
>
> **[The petitioner] is a leader in U.S. small business development. <u>His work stimulates business creation resulting [in] an improved economy and job creation.</u>**

(Emphasis in original.) The petitioner submitted documentation relating to instructional programs offered by Seedco and/or DSBS, such as Restaurant Management Boot Camp and No More Kitchen Drama. Many of these materials are in the Chinese language. The petitioner also showed that he had spoken to various business classes organized by the Chinatown Manpower Project.

The petitioner submitted 15 letters from witnesses whom counsel called "leading individuals working in the field of small business development." The witnesses devoted considerable space to general discussions about the importance of small businesses. Because that overall issue is not in dispute, the AAO will focus on the witnesses' comments about the petitioner specifically. Also, because many witnesses make similar claims, the AAO will discuss representative examples rather than every submitted letter.

[redacted] stated:

> [redacted] . . works with various networks of local partner organizations to offer financial and technical assistance and management support for community-building

> efforts of non-profit organizations and small businesses in targeted disadvantaged communities throughout the U.S. . . . We are a national nonprofit organization and currently lead initiatives in 15 states . . . plus Washington DC with offices in seven states.
>
> For the past six (6) years, [redacted] has been working with the NYC Business Solutions . . . [which] is a program of New York City's Department of Small Business Services (SBS). . . .
>
> From my interactions with [the petitioner] and my personal observations of his work, I can say that he is highly effective and very passionate about his work. [The petitioner] develops and manages the only restaurant/food business centered assistance program in the New York City public service system. . . . From 2005-2010 he has assisted more than 500 food business clients to help them start, operate and expand their businesses. . . . Additionally, [the petitioner] also assists in the development of [redacted] Neighborhood Economic Initiatives by working in . . . New York City's Chinatown communities. He offers business counseling and conducts workshops in the areas of business planning and financing. [The petitioner] has served more than 200 Chinese speaking only clients since 2005 to help them better manage their businesses.
>
> . . . He creates educational materials, conducts seminars and organizes events to inform small business owners of their responsibilities to their employees. From 2007 to 2009, [the petitioner] single handedly produced and managed the workshop series, *No More Kitchen Drama*, to explore job quality for the restaurant industry. . . . Other Seedco offices in the United States have implemented [the petitioner's] policies and work, making his influence national in scope. In particular, our office in New Orleans where the restaurant industry is key to employment has utilized [the petitioner's] training materials.

[redacted], was formerly senior vice [redacted] when he hired the petitioner in 2005. Mr. [redacted] stated that the petitioner "helped to construct a robust business support program for the food/restaurant industry. These programs have been replicated in other Centers." Mr. [redacted] referred to Restaurant Management Boot Camp as the petitioner's program, implying that the petitioner created it, and stated: "From 2005 to 2010, [the petitioner] has helped to launch or expand more than 100 small businesses . . . [and] helped clients to hire 200 new employees."

Numerous witnesses have provided rough numbers of clients whom the petitioner has assisted, but these numbers vary from witness to witness. For example, [redacted], the petitioner's former colleague at NYC Business Solutions who is now a portfolio manager for the Grow America Fund, stated that the petitioner "has since 2005 helped over 500 entrepreneurs and small business owners." [redacted] for the New York State Restaurant Association, stated that the petitioner "has assisted nearly 1,400 New York City based foodservice establishments

since 2005." These numbers do not exactly conflict – a number can be both "over 500" and "nearly 1,400" – but their range demonstrates that at least some writers lack familiarity with the petitioner's specific accomplishments. The only documentation provided in this regard is a list of the petitioner's 2008-2010 clients who speak only Chinese. The list includes 181 entries.

A number of witnesses praised the petitioner's creation of programs such as Restaurant Management Boot Camp and his work assisting clients to obtain loans, comply with regulations, and take other necessary steps to start or maintain their businesses. Among these witnesses are restaurateurs such as [redacted] who stated: "[the petitioner] has helped me develop my restaurant business in so many ways."

[redacted] State of New York, asserted: "For the last six years [the petitioner] has helped over 2000 entrepreneurs start up or expand their businesses," and that the petitioner's "[p]rograms . . . have also served as models for business growth nationwide." [redacted] cited no source for this information, and did not claim direct knowledge of [redacted] activities outside of New York.

The petitioner submitted translated copies of Chinese-language newspaper articles reporting on various aspects of the petitioner's work in Lower Manhattan, and an English-language article from the *New York Times* that identified the petitioner as one of the driving forces behind Restaurant Management Boot Camp. The petitioner also submitted copies of reviews and other articles concerning restaurants whose owners credit the petitioner with providing invaluable assistance.

On July 5, 2011, the director issued a request for evidence, instructing the petitioner to establish that "the impact of the beneficiary's activities will be national in scope" and that he has "a past record of specific prior achievement with some degree of influence on [his] field as a whole." The director stated that the initial submissions, including letters, indicated that the petitioner's work primarily benefited individual businesses in one city. The director acknowledged witnesses' claims that Seedco had used the petitioner's work as a model in other states, but the director found "[t]here is no evidence in the record to substantiate this claim."

In response, the petitioner asserted that [redacted] "is currently **supporting and servicing communities nationwide**" (emphasis in original), and noted that [redacted] had previously asserted that [redacted] had implemented the petitioner's initiatives nationally. The director had acknowledged letters such as Ms. [redacted] the issue was not the absence of a claim, but the absence of evidence to support that claim.

The petitioner stated: "I was . . . actively involved in providing assistance to the Vietnamese region [*sic*] in the [Gulf Coast] area due to my knowledge of the Asian culture and my ability to speak Chinese." Going on record without supporting documentary evidence is 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)). Therefore, it is important to consider what the petitioner has submitted to support his claim.

The petitioner cited a copy of Seedco subsidiary Seedco Financial's 2008 Annual Report, which included a section entitled "Stabilizing Small Businesses in the Gulf Coast." The short piece described a Vietnamese-owned Louisiana shrimping business that received loans and grants from Seedco after "diesel fuel prices escalated." The petitioner stated that he "was instrumental in reviewing this particular business's needs and assisted with securing a loan through Seedco financial on their behalf." The Annual Report, however, offers no support for the petitioner's claim to have personally participated in the case described, or to have been "very instrumental in providing technical assistance to various businesses in New Orleans after the hurricanes devastated the region." The petitioner had previously submitted several letters of support from Seedco officials, describing the petitioner's efforts after 2005, and none of those letters indicated that the petitioner had been directly involved in the Gulf Coast either after Hurricane Katrina in 2005 or in 2008 when fuel prices spiked.

The petitioner stated: "I am a member of the Technical Assistance team that provides expertise nationally." The petitioner cited newly-submitted Exhibit 6 to support this claim. Exhibit 6 is a printout from Seedco's web site, describing "Consulting/Technical Assistance" that Seedco offers. The petitioner's name does not appear in this exhibit. The same exhibit mentioned both Restaurant Management Boot Camp and No More Kitchen Drama, but specifically identified both of them as initiatives in New York City. Thus, Seedco's own web site does not show national implementation of these projects.

The petitioner also submitted evidence of recent activities, such as his "participation in the annual Microfinance USA Conference," which took place after the petition's filing date. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Thus, even if participation in a conference in New York showed the petitioner's influence outside of New York, the May 2011 conference occurred several months too late to affect his eligibility as of the January 2011 filing date.

The petitioner submitted a copy of a report of recommendations by the President's Advisory Council on Faith-Based and Neighborhood Partnerships. The report identified [redacted] as a member of the Economic Recovery and Domestic Poverty Taskforce. The national reach of [redacted], as an organization, is not in dispute. The report does not mention the petitioner or his work, and other materials in the record demonstrate that the petitioner is responsible for [redacted] work only in Lower Manhattan, with a demonstrated emphasis on Chinatown.

The director denied the petition on September 12, 2011. The director acknowledged the intrinsic merit of the petitioner's occupation, and acknowledged at least the potential for national impact. The director found, however, that "the petition lacks evidence that other business professionals nationwide have taken notice of the petitioner's work and have been influenced by that work."

On appeal, counsel repeats the claim that the petitioner has "created unique programs . . . that have been implemented nationally." The director acknowledged that the petitioner has claimed national implementation. Nevertheless, when the director specifically requested documentary evidence to support that claim, the petitioner failed to provide the requested evidence. On that basis alone, USCIS cannot approve the petition. *See* 8 C.F.R. § 103.2(b)(14). Counsel cannot resolve the issue in the petitioner's favor simply by repeating the same claim. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

A similar problem affects counsel's assertion that the petitioner "showed that the programs he has developed have had particular importance in recovering areas such as New Orleans." The petitioner did not substantiate this claim. Instead, the petitioner showed that a [redacted] subsidiary provided loans to Gulf Coast businesses. The evidence submitted did not establish the petitioner's role (if any) in that endeavor, nor did it establish the extent to which [redacted] Financial's assistance helped to restore the Gulf Coast economy.

Counsel contends that the director's decision

> is based on a subjective opinion of the beneficiary's credentials and contributions to the field of small business development. The Service does not clarify in its decision why it believes that the petitioner's contributions have not been significant, given the prior explanations of his work. The Service disregards the substantial contributions that have already been made by the Petitioner.

The burden is on the petitioner to establish eligibility, not on the director to rebut the petitioner's claims. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner cannot simply declare his work to be nationally significant and then challenge the director to prove otherwise.

Counsel states that the petitioner has provided "technical assistance to thousands of entrepreneurs." The record is very vague on this point, because the petitioner has relied on witness letters rather than documentary evidence to establish the impact of his work, and the witnesses have all provided different figures, ranging from "over 500" to "nearly 1,400" to "over 2,000." The petitioner has not provided evidence to show that, as a result of his work, the economic recovery of Lower Manhattan has significantly outstripped progress in other localities. The petitioner has offered no objective basis for comparison between his work and that of his peers. He has simply declared that he merits a waiver by encouraging economic growth.

In a subsequent brief, counsel summarizes previous submissions and again refers to the petitioner's claims as though they were demonstrated or undisputed facts.

Counsel asserts that the petitioner "is considered an expert in microfinance methods for small businesses. The Service did not discuss this area of [the petitioner's] qualifications in its decision." The assertion that the petitioner "is considered an expert" does not answer the question of who

considers the petitioner to be an expert in this way. As is frequently the case in this proceeding, counsel then cites overall statistics about microfinancing and small business, followed by flatly declaring the petitioner to have made substantial contributions in the field. Counsel's statement includes citations to various prior evidentiary submissions, but crucially, when discussing the petitioner's microfinancing work outside New York City, counsel cites only the petitioner's own earlier statement, which has no weight as evidence.

With respect to the director's finding that the petitioner had failed to submit "evidence that other business professionals nationwide have taken notice of the petitioner's work and have been influenced by that work," counsel asserts that the director did not previously request such evidence, and therefore cannot fault the petitioner for failing to submit unrequested evidence.

Review of the request for evidence shows that the director did, in fact, state that the petitioner had submitted no evidence to show that his work "has been widely implemented" or that Seedco had used the beneficiary's work as a model for other locations. The director also stated: "It is reasonable to expect that substantial documentation from well-known United States experts, established institutions, and appropriate United States governmental agencies would be readily available" to support the petition. The petitioner responded to the notice by declaring his work to have been influential, and by submitting exhibits that did not support the claim. Therefore, the record does not support counsel's claim that the director unfairly based the denial on the petitioner's failure to submit evidence that the director had not previously requested.

Much of the remainder of counsel's appellate brief discusses and quotes a newly submitted letter from Professor [redacted] Lubin School of Business, New York, New York. Prof. [redacted] asserts that the petitioner's "practices and policies in the area of training and informational campaigns have been implemented in Seedco offices throughout the U.S.," but the only source he cites for this claim is the previously submitted letter from [redacted] simply repeats rather than corroborates that earlier claim. Prof. [redacted] also points to a printout from Seedco's web site, printed November 9, 2011, that reads: "We look forward to expanding our model programs across the country." This reference to potential future expansion, as of late 2011, does not show that Seedco has already used the petitioner's work as a nationally-implemented model; if anything, it implies the opposite. The web site did not specify the "model programs" or identify the petitioner as their creator.

In all, Prof. [redacted] repeats claims from previous witness letters and describes evidence already in the record. He concludes his letter by stating that his "evaluation relies upon . . . documents provided by" the petitioner. That evidence indicates that the petitioner has narrowly targeted his efforts at Lower Manhattan, and Chinatown in particular. Attempts to show wider significance or impact have relied on general statistics, such as the total number of restaurant employees in the United States, without evidence to demonstrate that the petitioner's work has had a direct, perceptible impact at a national rather than local level.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also 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)).

The letters considered above fail to establish the extent of the petitioner's impact outside of Lower Manhattan and Chinatown, and even then they provide conflicting and uncorroborated figures. Witnesses credit the petitioner with helping a given number of entrepreneurs or businesses, but fail to show the greater significance of those figures beyond the local level. The record contains no reliable means by which to compare the petitioner's achievements to those of others in his field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.