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

(b)(6)

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

Date: APR 22 2015 Office: TEXAS SERVICE CENTER FILE:

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We 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. According to Part 6 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner, who holds a doctorate in Information Security, seeks employment as a Security Software Engineer. 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. Upon review of the entire record, we agree with the director's findings.

## 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 record reflects that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue on appeal 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).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service 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.

*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 he 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 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.

Although the national interest waiver hinges on prospective national benefit, the petitioner must establish that his past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that he will, in the future, serve the national interest cannot suffice to establish prospective national benefit.

Further, assertions regarding the overall importance of a petitioner's area of expertise are relevant, but cannot by themselves suffice to establish eligibility for a national interest waiver without a review of the petitioner's own qualifications. *Id.* at 220. As stated by the director in his decision, the petitioner has established that his work as an engineer in the field of information and software security is in an area of substantial intrinsic merit and that the proposed benefits of his research would be national in scope. It remains, then, to determine whether the petitioner has presented "a national benefit so great as to outweigh the national interest inherent in the labor certification process." *Id.* at 218. Assurances of the petitioner's future contributions will not establish eligibility for the third prong of the national interest waiver test absent a past record that justifies projections of future benefit to the national interest. *Id.* at 219.

The overall importance of a petitioner's area of expertise carries weight but must be examined in the context of a review of the petitioner's own qualifications. *Id.* at 220. At issue is whether the 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. We evaluate the petitioner's original innovations, such as demonstrated by a patent, on a case-by-case basis. *Id.* at 221, n. 7.

## II. ANALYSIS

The date of filing of the instant petition is October 17, 2013. The petitioner initially submitted copies of his academic credentials, including his dissertation, information regarding his position performing postdoctoral research, his resume, an "Invention Patent Application – Specification Summary," and five publication abstracts, including evidence that two independent research teams have cited one of his articles. The director issued a request for evidence [RFE] on November 22, 2013. The director specifically informed the petitioner that, "[p]ursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language...shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." The director also provided numerous examples of the types of evidence which the petitioner could submit to establish "a past record of specific prior achievement with some degree of influence on the field as a whole."

In response to the RFE, in addition to previously submitted evidence, the petitioner submitted additional information about the previously filed patent, evidence of a new patent application, an updated resume and additional citation information. The petitioner did not provide certified translations as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The director denied the petition on July 16, 2014. The director found that, after a review of the submitted evidence, "the record lacks evidence that the beneficiary's innovations have already influenced the field as of the date of filing." The director concluded that the petitioner had 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 two reference letters and information regarding the petitioner's patent applications, including a third patent application. The petitioner also provides a statement which asserts that the director (1) overlooked "[t]he status of the invention patents," (2) neglected "[t]he significance of the invention patents in the field" and (3) neglected "[t]he influence of the invention patents."

Regarding the patents, the petitioner filed two of the patent applications (one on June 19, 2014 and the other on December 27, 2013) after the October 17, 2013 date of filing and, therefore, they are not probative of the petitioner's eligibility on that date. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, adopting *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

Regarding the remaining patent, according to information the petitioner submitted in response to the director's RFE, it has passed a preliminary examination. Applying for, or even receiving, a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See NYSDOT*, 22 I&N Dec. 221 n. 7. Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* As will be discussed in more detail below, the petitioner has not provided evidence of the implementation of his pending patent, new deep packet inspection method and apparatus, beyond his employer. The petitioner, therefore, has not established the pending patent's impact on his field.

As stated in the director's decision, the petitioner "has authored/coauthored three (3) journal articles and two (2) conference papers...[and] has been minimally cited." All of the papers date from between 2006 and 2007 when the petitioner was pursuing his doctorate. In order for a university, publisher, or conference to accept any research for graduation or publication, the research must offer new and useful information to the pool of knowledge. Not every researcher who performs original research that adds to the general pool of knowledge has inherently impacted the field as a whole. Regarding the conference papaers, many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. These meetings and conferences are promoted and sponsored by professional associations, educational institutions, and government agencies. Although presentation of the petitioner's work demonstrates that his research findings were shared with others and original based on their selection to be presented, the petitioner has not provided documentary evidence to establish that his findings have influenced the field as a whole.

Regarding the citations of the petitioner's work, the petitioner indicates in his list of exhibits submitted in response to the director's RFE that two of his articles have garnered two citations twice and that a third article garnered one citation. The petitioner did not, however, provide independent evidence and certified English translations for all of the foreign language citations. Further, the evidence does not establish the authors of two of the citing articles. Regardless, the value of the citations must be viewed on a case-by-case basis. Generally, citations are reflective of the petitioner's original findings and that the field has taken some interest regarding the petitioner's work. However, citations are not always an automatic indicator that the petitioner's work has affected the field as a whole. The petitioner has not established that the limited number of independent cites per article for his published works is indicative of his influence on the field as a whole.

On appeal, the petitioner submitted two reference letters, both of which speak very highly of the petitioner's research. Dr. [redacted] the petitioner's doctoral research advisor at [redacted] of Posts and Telecommunications and coauthor of four of the petitioner's articles, discusses the petitioner's research during his internship at [redacted] and indicates that his "[redacted]" Dr. [redacted] does not, however, provide examples of others adopting the petitioner's methods or provide specific information to establish that his research has already impacted the field, rather than his employer. For example, the petitioner has not submitted evidence that [redacted] product has garnered media or other attention in the field for its innovation.

According to [redacted] Chief Engineer at [redacted], where the petitioner is a postdoctoral researcher, the petitioner's "innovative method has been successfully used in [redacted] and greatly improved its classification precision, recall and accuracy while keeping [a] low false positive rate." Mr. [redacted] also indicates that the petitioner's "multiple identification method...has been partially applied to [redacted] so far." Mr. [redacted] does not indicate that the petitioner's work has influenced the field beyond his employer and the record contains no evidence that [redacted] has garnered media or other attention in the field for projects to which the petitioner contributed on a notable level.

Mr. [redacted] also states that the petitioner "has been leading several projects" which have received funding from the [redacted], the [redacted] and the [redacted]. While the nature of the funding for the petitioner's projects can be a relevant consideration, we will consider any funding in the context that scientific research generally relies on outside funding. The petitioner did not provide the grant applications or any other evidence to establish that the petitioner was one of the primary recipients of the funding. 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 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Not every scientist who performs original research that adds to the general pool of knowledge in the field inherently serves the national interest to an extent that is sufficient to waive the job offer requirement. Again, the petitioner must establish that his work has had some degree of influence on the field as a whole. *NYSDOT,* 22 I&N Dec. at 219, n. 6. The record does not contain documentary evidence to establish the impact of the petitioner's work on the field. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

## III. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. The petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. While the petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that his influence be national in scope. *Id.* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole"). 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.

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 not been met.

**ORDER:** The appeal is dismissed.