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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JAN 0 9 2015 OFFICE: NEBRASKA 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 (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, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office 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. The petitioner seeks employment as a physician. At the time she filed the petition, the petitioner was a fellow at the 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 statement, asserting that the petitioner had previously submitted sufficient evidence to establish eligibility.

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. –
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> > (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, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 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.

In re New York State Dep't 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 the alien 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 alien 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 alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the alien 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 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. *Id.*

The 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, Immigrant Petition for Alien Worker, on August 8, 2013. An introductory statement established the intrinsic merit of the petitioner's occupation and the national benefit from research into transplant nephrology, and asserted that the petitioner's clinical work has a wide-reaching impact because she "frequently treats patients on referral" and "is constantly

teaching the use of the skills to both junior and even senior peers. As such, she is creating a ripple effect that is making the performance of these procedures more widespread nationally."

At the time she filed the petition, the petitioner was on the house staff at the and as such her specialty training, though at an advanced stage, was not yet complete. Responsibility for less-experienced residents and students does not amount to a leading role for the hospital or the wider medical community. As for the claimed "ripple effect," the record does not show that the petitioner created or improved the methods that she teaches to residents and students. The petitioner's role in passing on existing medical knowledge appears to be routine.

The petitioner submitted no evidence to show the extent to which she "treats patients on referral." Clinical patient treatment is inherently limited in scope because of basic limitations on the number of patients that a physician is capable of treating within a given period of time.

The introductory statement addressed the labor certification issue:

> Please note that [the petitioner] has extensive[ ]responsibilities as both a clinician and as a medical researcher. However, her contractual services encompass clinical work only. This is customary in[ ]the profession. Virtually all academic researchers who are not yet permanent residents are not reimbursed contractually for any research work that they may perform. Furthermore, since the Department of Labor does not allow for a combination of occupations when filing a labor certification, such a combination is not possible. A very significant percentage of the patients that [the petitioner] treats receive [*sic*]. Her outstanding diagnostic abilities allow her to diagnose these patients at earlier stages[ ]of their illness then [*sic*] the large majority of his colleagues would be able to.[ ]This saves the federal government a great amount of money because the need[ ]for later much more expensive and often invasive procedures is avoided. . . .
>
> [The petitioner] is very well-known for her diagnostic ability. She is also known for her ability to deal with tremendous efficiency and precision in emergency situations where there is literally no margin for error and not a minute to waste.

The petitioner's initial submission included no evidence to support the above claims. 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)).

There is no blanket waiver for physicians who treat patients on and the petitioner has submitted no evidence to show that her work has resulted in nationally significant savings in costs. The assertion that other doctors would make poorer or later diagnoses, resulting in greater costs, amounts to unsupported speculation.

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Regarding the claim that "the Department of Labor does not allow for a combination of occupations when filing a labor certification," the regulation at 20 C.F.R. § 656.17(h)(3) provides:

> If the job opportunity involves a combination of occupations, the employer must document that it has normally employed persons for that combination of occupations, and/or workers customarily perform the combination of occupations in the area of intended employment, and/or the combination job opportunity is based on a business necessity. Combination occupations can be documented by position descriptions and relevant payroll records, and/or letters from other employers stating their workers normally perform the combination of occupations in the area of intended employment, and/or documentation that the combination occupation arises from a business necessity.

The quoted regulation shows that "a combination of occupations" is acceptable under certain specified conditions. Furthermore, the record indicates that a combination of clinical, teaching and research duties is customary for medical school faculty members. The petitioner has not shown that the Department of Labor will not approve labor certification applications for medical school faculty positions. In the event that the petitioner does not seek (or is not offered) such a faculty position, the petitioner must demonstrate that her work will still, nevertheless, involve both research and teaching, in order for the above assertion to have any relevance in this proceeding. The petitioner's fellowship training is inherently temporary, and therefore duties that are linked to that training are not a basis for permanent immigration benefits.

The introductory statement indicated that the petition included "letters of support from independent experts nationwide . . . both from institutions at which [the petitioner] has worked and at institutions at which she has not worked." The petitioner trained as a resident at the where three of the five individuals who provided letters are on the faculty. The fourth letter is from a physician in New York. The only individual writing from outside New York State is Dr. now an associate professor at Dr. provided no information about his own background (such as where he trained), and he did not explain how he knew of the petitioner's work. Therefore, Dr. current employment in Louisiana is not evidence that the petitioner has earned a significant reputation outside of upstate New York. We note that, in a March 19, 2013 electronic mail message to Dr. , the petitioner stated: "I came to know of your journal through Dr. " This message implies an existing acquaintance.

Dr. professor at and chief of described a case in which the petitioner successfully treated a patient, and asserted that the petitioner "is also an accomplished researcher. Her research has been published in high-impact factor periodicals."

Dr. also a professor at , claimed that the petitioner "is well regarded for her ability to diagnose and treat diverse [kidney] conditions," and "is an exceptional

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research scientist." Dr. named some of the petitioner's published papers, but identifying the petitioner's work does not establish that it stands out in the field.

Dr. an assistant professor at , praised the petitioner's "uncommon expertise in diagnosing and treating the most acute kidney disorders," and called her "an expert physician monitoring the pre and post operative care of transplantation patients." Even if the petitioner had objectively established this level of expertise at a point when her own training as a nephrologist was not yet complete, her clinical skill is of direct benefit only to her necessarily limited patient base, and exceptional ability, defined at 8 C.F.R. § 204.5(k)(2) as a degree of expertise significantly above that ordinarily encountered, is not grounds for approving the waiver.

Dr. asserted: "The U.S. is currently experiencing a shortage of nephrologists." Such shortages are not grounds for the national interest waiver under *NYSDOT*, because the Department of Labor takes the availability of United States workers into account in the labor certification process. *See id.* at 218. Section 203(b)(2)(B)(ii) of the Act created a special waiver for physicians in designated shortage areas, but such physicians must meet certain conditions described in the statute and in the regulations at 8 C.F.R. § 204.12. The petitioner has not met, or claimed to have met, those conditions. Therefore, assertions of a shortage in her field are without consequence to the petition, except insofar as the lack of competition for jobs would make it more likely, rather than less likely, that an employer would be able to obtain a labor certification on the petitioner's behalf.

Dr. attending physician for New York, claimed that the petitioner "has held leading roles at distinguished medical institutions around the world." The only two institutions he named were and the The petitioner held no leadership position at either of those institutions. Rather, she was a trainee, first as an internal medicine resident and nephrology fellow in and then as a transplant medicine fellow in The record contains no evidence to support the general claim that the petitioner, still a trainee at the time of filing, "has held leading roles at [unidentified] distinguished medical institutions around the world."

Dr. signed a letter that is identical to the one signed by Dr. As such, this duplicate letter contains no new information requiring separate discussion.

The petitioner submitted a lengthy description of her career to date. The petitioner identified her published work, but the document includes a passage reading: "Cited 0 times in the following major journals......not cited yet."

The petitioner also stated that she is an "expert reviewer" for three journals, but she also acknowledged that she had not yet reviewed any submissions for them. The petitioner implied that peer review activities further set her apart from her peers, but the record does not show that publishers specifically sought out the petitioner due to her expertise. Rather, electronic mail messages in the record show that the petitioner contacted several publishers in the spring of 2013,

asking to be added to their lists of available reviewers. None of the responses to the petitioner's messages indicated that one must meet any particular criteria to qualify as a reviewer.

The petitioner submitted copies of abstracts of conference presentations and other products of her work, such as printouts of electronic slides, but no evidence to show that these materials distinguish her from others at a similar stage of training at university-affiliated teaching hospitals. Background information regarding the residency and fellowship programs at indicate that research and teaching are integral parts of the training process, rather than special privileges extended only to the elite.

The director issued a request for evidence on October 21, 2013, instructing the petitioner to submit additional evidence to establish that she meets the third prong of the *NYSDOT* national interest test.

In response, the petitioner submitted documentation of her ongoing research work. The only documentation of its impact is a printout from the *Google Scholar* search engine, indicating that there was one citation to her published work. The printout did not identify the citing article, but in an updated version of her résumé, the petitioner asserted that the citation appeared in an article by

The petitioner submitted two letters from faculty members. Dr. professor and director of the expressed the opinion that the petitioner "is one of the top specializing in transplant medicine in the United States," and "also has significant teaching responsibilities." Dr. asserted that "[a]pproximately fifty percent of the patients treated at the patients," and that the petitioner's expertise resulted in "a significant savings to the government." The petitioner supplied no figures to establish how significant the claimed savings were. Dr. letter contains passages that appeared almost verbatim in Dr. previously submitted letter.

Dr. assistant professor at the asserted that the petitioner "is one of a handful of physicians at who is capable of managing complicated and combined solid organ transplant recipients" and "is one of a select group of physicians with expertise in plasmapheresis, a procedure that is needed to treat acute rejection of the transplant." There is no claim that the petitioner created these procedures herself. The petitioner does not qualify for the waiver by learning existing medical procedures from others. *See NYSDOT*, 22 I&N Dec. at 221. The petitioner's own use of those procedures is limited to her patients, and she has learned those techniques at institutions in the United States that already teach the methods to other medical students.

The director denied the petition on May 14, 2014. The director noted: "Congress created a special national interest waiver for those [physicians] destined to [practice medicine in] a medically-underserved geographical area or for service at VA hospitals." Physicians who do not meet these requirements remain subject to the *NYSDOT* requirements.

The director noted the earlier request for "evidence that . . . the petitioner had a degree of influence on her field that distinguishes her from other clinical instructors of transplant medicine/transplant [redacted]" such as evidence of significant citation of her published work. The director concluded that the petitioner had not submitted sufficient evidence to support the claim that she "has conducted especially influential research in transplant nephrology." The director acknowledged the letters that the petitioner had submitted, but found that the letters indicated that the petitioner's impact is predominantly local.

On appeal, the petitioner submits a statement which reads:

> Please note that with the initial submission . . . clear evidence was submitted that [the petitioner] has made significant contributions to the field, that her work has impacted the national interest, and that she has distinguished herself from her peers, thereby justifying the waiver of labor certification.
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> Evidence has been submitted regarding publication of her research as well as presentation of her research before prominent forums in the field of nephrology.
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> Numerous testimonies . . . made clear that she is highly respected for her clinical abilities in the field of nephrology, abilities which of course cannot easily be documented on a labor certification. She has practiced at numerous top institutions and her ability to utilize the most advanced clinical technology in the most difficult situations where there is literally no margin for error has been attested to by prominent peers from around the country. Furthermore, she is known to possess special expertise in the clinical treatment of transplant patients, which is among the most difficult clinical work in the field of nephrology.
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> Furthermore, the documentation shows that she has held numerous prominent teaching positions, which we also respectfully argue impact the field nationally as she is instructing the next generation of nephrologists in the performance of the most advanced clinical technology in the field. She has held Clinical Instructor roles at both the [redacted]

The director, in the denial notice, acknowledged the petitioner's publications and presentations. The petitioner, on appeal, does not rebut or address the director's finding that the petitioner had not established the impact of that work. Asserting the existence of the material does not establish its impact. The director found that the petitioner had established only one citation of her published work, and the petitioner does not address this finding on appeal or establish that other evidence overcomes this deficiency.

The director also acknowledged that the petitioner had submitted letters from various individuals. The petitioner, on appeal, does not address the director's findings about those letters. Most of the

letters are from individuals in New York and Wisconsin, where the petitioner trained, with the exception of Dr. whom the record shows the petitioner already knew.

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) (citations omitted). 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. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *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"). *See also Matter of Soffici*, 22 I&N Dec. 165. The documentary evidence in the record offers no support for the claim that the petitioner is among the nation's "top nephrologists."

The director did not dispute that the petitioner has held teaching positions. The assertion that the petitioner's teaching work produces national benefits is not supported by verifiable, documentary evidence. Furthermore, duties connected to a temporary fellowship are not a basis for permanent immigration benefits, and the record identifies no medical school or other institution that seeks to employ the petitioner as an instructor once her fellowship is complete.

The petitioner has established that her medical training is progressing satisfactorily, but she has not submitted documentary evidence to support the claim that, even before completing that training, she has already become a well-known and respected expert in transplant nephrology. Congress has created no blanket waiver for nephrologists, and the petitioner has provided no objective evidence that would distinguish her from others in her medical specialty to an extent that would justify the special immigration benefit of a national interest waiver.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYSDOT*, 22 I&N Dec. 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").

As is clear from 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.

We will dismiss the appeal for the above stated reasons. 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 not met that burden.

ORDER: The appeal is dismissed.