



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JUL 08 2015

FILE #: [Redacted]

PETITION RECEIPT #: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

NO REPRESENTATIVE OF RECORD

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to 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. The petitioner seeks employment as a school psychologist for the [REDACTED] ([REDACTED]). 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.

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.¹ 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.

¹ The petitioner earned a Master's degree in Developmental Psychology from [REDACTED] in 2004.

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.” *In re New York State Dept of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYS DOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that she 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 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.

The petitioner has established that her work as a school psychologist is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the petitioner’s work will be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Although the national interest waiver hinges on prospective national benefit, the petitioner must establish her past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s subjective assurance that she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the petitioner, rather than to facilitate the entry of an individual with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

Furthermore, eligibility for the waiver must rest with the petitioner’s own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner’s area of expertise cannot suffice to establish eligibility for a national interest waiver. *Id.* at 220. At issue is whether this petitioner’s contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she 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. In evaluating the petitioner’s achievements, original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

II. ANALYSIS

A. National in Scope

The petitioner filed the Immigrant Petition for Alien Worker (Form I-140) on June 26, 2013. In a letter accompanying the Form I-140 petition, the petitioner stated: “I am a school psychologist involved in the federally mandated process of identifying school-aged children with special needs.” While helping a municipality comply with the federally mandated process of identifying students with special needs shows that the petitioner’s work meets the “substantial intrinsic merit” prong of *NYS DOT*’s national interest analysis, it is not sufficient to demonstrate the proposed benefits of her employment

as a school psychologist for [REDACTED] will be national in scope. *NYS DOT* provides examples of employment where the benefits would not be national in scope:

For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

NYS DOT, 22 I&N Dec.at 217, n.3. With regard to the petitioner's employment with [REDACTED], she has not shown that the benefits of her work as school psychologist extend beyond the students receiving her services. As the petitioner did not establish that her work identifying [REDACTED] students with special needs was national in scope, the director determined that the proposed benefits of her employment did not satisfy the second prong of the *NYS DOT* national interest analysis.

On appeal, the petitioner challenges the director's determination regarding the national scope of her work. The petitioner asserts that she has "provided workshops and trainings inside as well as outside" of [REDACTED]. The petitioner previously submitted documentation reflecting that she volunteered to serve as a practicum supervisor for psychology students from [REDACTED], her alma mater. The petitioner does not explain how supervising practical training for [REDACTED] students at [REDACTED], [REDACTED] is national in scope. Rather, the benefits of her supervision are limited to the trainees that she was assigned. In addition, the petitioner previously submitted evidence of her participation in the [REDACTED]. The petitioner and [REDACTED] founder of [REDACTED] provided two workshops on the topics of bullying and effective collaboration among educational and mental health professionals. The petitioner, however, has not indicated that she will be employed as a psychology consultant providing such workshops for families and professionals at various locations throughout the United States. Rather, the evidence of record and Part 6 of the Form I-140 petition indicate that the petitioner seeks employment as a school psychologist, specifically for [REDACTED].² Accordingly, the petitioner has not established that the proposed benefits of her employment will be national in scope.

- B. Serving the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications

² Even if the petitioner had proposed to work as a psychology consultant providing professional workshops throughout the United States, which she has not, there is no evidence demonstrating that her influence on the field satisfies the third prong of the *NYS DOT* national interest analysis.

The remaining issue is whether the petitioner's influence on the field satisfies the third prong of the *NYS DOT* national interest analysis. In addition to her academic records, professional credentials, performance evaluations, and awards, the petitioner submitted various reference letters discussing her qualifications and activities in the field.

_____, School Psychology Consultant, _____
_____ Wisconsin Department of Public Instruction, states:

[The petitioner] is proficient in ASL [American Sign Language] and is able to provide intensive psychoeducational evaluations for deaf and hard of hearing children. The qualifications that [the petitioner] possesses as a highly qualified and competent school psychologist are rare, if not nonexistent.

Ms. _____ mentions the petitioner's proficiency in ASL and her ability to provide intensive psychoeducational evaluations for the hearing impaired, but does not explain how the petitioner's work has had an impact beyond the students who she evaluates. In addition, while Ms. _____ asserts that the petitioner "is considered one of the top experts in the field," there is no documentary evidence showing that the petitioner's work as a school psychologist has affected the field as a whole. Ms. _____ further states that the petitioner's qualifications are rare, and that few school psychologists are nationally certified and capable of serving hearing impaired students. The U.S. Department of Labor addresses assertions of worker shortages through the labor certification process, and therefore an asserted shortage alone is not sufficient to demonstrate eligibility for the national interest waiver. *See NYS DOT*, 22 I&N Dec. at 218.

Dr. _____, Director of the School Psychology Program, _____ states:

[The petitioner] was selected as a recipient of the _____
_____ Department of Psychology. . . . The _____
_____ is awarded to an advanced graduate candidate in School Psychology who has demonstrated commitment, enthusiasm, and skill for the provision of school psychological services for deaf and hard of hearing children in schools and whose future work holds the potential for significant contributions in the field. The faculty was confident that [the petitioner] would be a benefit to the field of school psychology through her work with children and their families, and her work and commitment since graduating from the program in 2006 has been evidence of this.

Dr. _____ states that the petitioner was selected as a recipient of the _____
_____ in _____ Department of Psychology. This institutional award for students with "potential" concerns the petitioner's graduate studies at _____ and does not establish a wider influence in the field of school psychology. For example, there is no documentary evidence showing that psychology protocols for students in school systems throughout the country have changed in response to the petitioner's work. We note that

recognition for one's achievements can provide partial support for a claim of exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii)(F), but exceptional ability does not establish eligibility for the waiver, as aliens of exceptional ability remain subject to the job offer requirement at section 203(b)(2)(A) of the Act. Similarly, recognition of one's achievements as an advanced degree professional does not, without evidence of influence on the field as a whole, establish eligibility for the waiver.

Dr. [REDACTED], Psychology Program Manager, Office of Special Education, [REDACTED] states:

With her sub-specializations in deafness and school neuropsychology, [the petitioner] is qualified to work with children with hearing loss and to conduct a school-based neuropsychological evaluation. These are rare attributes and highly valued achievements. [the petitioner] is an indispensable employee. Without a school psychologist like [the petitioner], the district would be adversely affected.

To recognize her unique skills set and extraordinary work, our Psychology Program chose her to be the recipient of the [REDACTED] for "outstanding commitment to promoting the possibilities in students' lives by nurturing their strengths and skills, providing caring relationships, celebrating their individuality, supporting their mental wellness and academic competence, and helping them achieve their best in school, at home, and in life."

Dr. [REDACTED] mentions the petitioner's sub-specializations in deafness and school neuropsychology and her "unique skills set," but does not provide specific examples of how the petitioner's work has influenced the field as a whole. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *NYS DOT*, 22 I&N Dec. at 221. In addition, Dr. [REDACTED] states that the [REDACTED] chose the petitioner as "recipient of the [REDACTED] in [REDACTED]." This award from [REDACTED] for the petitioner's support of students within [REDACTED] reflects internal recognition and does not establish a wider impact in the field of school psychology. There is no documentary evidence demonstrating that the petitioner's work has affected school psychology practices nationally or has otherwise influenced the field as a whole.

[REDACTED] School Psychologist, [REDACTED] states:

With her sub-specializations in deafness and school neuropsychology, [the petitioner] is assigned to high profile and rather complicated cases. . . . Without a school psychologist like [the petitioner], the district as well as our students will suffer a tremendous deficit, as we are required by law to provide appropriate assessments to children with a suspected or identified disability.

Ms. [REDACTED] comments on the petitioner's sub-specializations in deafness and school neuropsychology, and her ability to perform appropriate assessments of students with disabilities in [REDACTED] but any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for labor certification. *NYSDOT*, 22 I&N Dec. at 220-21. In addition, there is no documentary evidence showing the impact of the petitioner's casework beyond her assigned students. Thus, the petitioner has not shown that her work for [REDACTED] is indicative of influence on the field as a whole.

[REDACTED], Occupational Therapist, [REDACTED] describes the petitioner's preparation of psychological evaluations within [REDACTED] including researching best practices, investigating the student's particular situation, and writing a final report that is both comprehensive and understandable. Ms. [REDACTED] however, does not provide specific examples of how the petitioner's work as school psychologist for [REDACTED] has affected the field as a whole.

[REDACTED], an attorney with the [REDACTED] states that she met the petitioner at an Individual Education Plan (IEP) meeting involving a client and representatives of [REDACTED]. Ms. [REDACTED] asserts that the petitioner was "extremely knowledgeable" and that her findings and recommendations were trustworthy and served the needs of the client. While Ms. [REDACTED] expresses admiration for petitioner's interpersonal skills, knowledge, and effectiveness as a school psychologist, she does not explain how the petitioner's work for [REDACTED] has impacted the field as a whole.

[REDACTED] asserts that the petitioner "has the level of expertise and competence needed to contribute, nationally, to addressing the needs" of those who are hearing impaired, but does not provide any examples of how the petitioner's work has already influenced the school psychology field. Mr. [REDACTED] further states that "it is only a matter of time before [the petitioner] will also contribute to the knowledge base by writing articles for national research journals and other publications." Speculation about possible future impact of the petitioner's work does not establish that she had already influenced the field at the time of filing. 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). In addition, Mr. [REDACTED] mentions that the petitioner is capable of training "educators and pupil services providers, administrators, and other school personnel," but does not explain how the petitioner's work has had an impact beyond her trainees or has otherwise influenced the field as a whole.

Furthermore, Mr. [REDACTED] asserts that the petitioner "can give high quality presentations at local, regional, state, and national conferences to share her expertise with others." With regard to the petitioner's participation in the [REDACTED]

[REDACTED] we note that many professional fields regularly hold conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, healthcare organizations, employers, and government agencies promote and sponsor these conferences. Although presentation of the petitioner's work demonstrates that she shared information with others, there is no documentary evidence showing, for instance, frequent independent citation of her work,

or that her findings have otherwise affected the school psychology field at a level sufficient to waive the job offer requirement.

Dr. [REDACTED] Director of Psychological Services, [REDACTED] Pennsylvania, states that his school “district had a need for a school psychologist with very unique training and language skills” to perform a student evaluation and that he conducted “a national search and that search revealed [the petitioner].” Dr. [REDACTED] further states:

Not only was [the petitioner] fluent in Japanese, but she also understood the culture and the unique language and learning needs of our student. [The petitioner] possessed the qualifications and clinical skills that very few individuals possess in the United States. Furthermore, she was able to connect with the student and the parents in a way that none of our staff could. . . . Her findings were detailed and her recommendations were thorough and easy to follow.

Dr. [REDACTED] mentions the petitioner’s “unique training and language skills,” her fluency in Japanese, professional qualifications, and clinical skills. Any assertion that the petitioner possesses useful skills, or a “unique background” relates to whether similarly-trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *NYS DOT*, 22 I&N Dec. at 221. In addition, Mr. [REDACTED] comments on the petitioner’s effectiveness as a school psychologist, but does not provide specific examples of how the petitioner’s work has influenced the field as a whole.

The petitioner submitted letters of varying probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, uncorroborated assertions are insufficient. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS’ decision to give limited weight to uncorroborated assertions from practitioners in the field); *Matter of Caron Int’l, Inc.*, 19 I&N Dec. at 795 (holding that an agency “may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony,” but is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought and “is not required to accept or may give less weight” to evidence that is “in any way questionable”). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the beneficiary’s eligibility. *Id. See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). As the submitted reference letters did not provide examples indicating that the petitioner’s work has influenced the field as a whole, they do not demonstrate her eligibility for the national interest waiver.

In addition, the petitioner submitted a copy of her Master’s degree certificate in Developmental Psychology, Specialist Degree in School Psychology, National Certificate in School Psychology

from the National Association of School Psychologists (NASP), and certification from the American Board of School Neuropsychology (ABSNP). With regard to the petitioner's certifications from the NASP and the ABSNP, the petitioner and her references state that her credentials are nationally recognized, but national recognition of one's credentials alone does not indicate that the petitioner's endeavor is national in scope or that her work has influenced the field as a whole.

The aforementioned educational degrees and professional certifications are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A) and (C), respectively. However, in this instance the petitioner is seeking a waiver of the job offer as a member of the professions holding an advanced degree. We note that 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. Pursuant to section 203(b)(2)(A) of the Act, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. *NYSDOT*, 22 I&N Dec. at 218, 222. Therefore, whether a given individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver. Without evidence demonstrating that the petitioner's work has affected the field as a whole, employment in a beneficial occupation such as a school psychologist, therefore, does not by itself qualify the petitioner for the national interest waiver.

The petitioner also submitted information concerning the economic benefits of higher education, disability categories, special education inclusion in the State of Maryland, the No Child Left Behind Act, the Individuals with Disabilities Education Act, school psychology guidelines, the necessity of comprehensive assessments for students with disabilities, the importance of recruiting culturally and linguistically diverse school psychologists, the National Deaf Education Project, the National Association of the Deaf's (NAD) "Position Statement on Inclusion," the NASP's position on serving the hearing impaired, the challenges facing school psychologists, and the prevalence and incidence of hearing loss in children. The submitted information demonstrates that the petitioner works in a meritorious occupation, but does not demonstrate her work has influenced the field as a whole.

On appeal, the petitioner asserts that the director's decision did not mention the NAD's "Position Statement on Inclusion," which states that, among other things, the learning environment should be "staffed by certified and qualified personnel trained to work with deaf and hard of hearing children." General information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual benefits the national interest by virtue of engaging in the field. *NYSDOT*, 22 I&N Dec. at 217. Such information addresses only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. We do not dispute the importance of having culturally diverse school psychologists trained in American Sign Language in our nation's schools. At issue in this matter, however, is whether the petitioner's

individual contributions in the field are of such significance that she merits the special benefit of a national interest waiver.

Finally, the petitioner submitted copies of her performance evaluations from [REDACTED] reflecting "Effective" ratings and from [REDACTED] reflecting that she "Meets Standards." The petitioner, however, does not indicate how the submitted evaluations demonstrate that she has influenced the field to a substantially greater degree than other similarly qualified school psychologists and how her specific work has had significant impact outside of the school districts that employed her.

III. CONCLUSION

Considering the letters and other evidence in the aggregate, the record does not establish that the benefits of the petitioner's work are national in scope, that she has influenced the field as a whole, or that she will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

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 her 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. Although the petitioner need not demonstrate notoriety on the scale of national acclaim, the petitioner must have "a past history of demonstrable achievement with some degree of influence on the field as a whole." *NYSDOT*, 22 I&N Dec. at 219, n.6. 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.