



U.S. Citizenship  
and Immigration  
Services

(b)(6)



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**JUL 24 2015**

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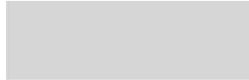


PETITION RECEIPT #:



IN RE:

Petitioner:

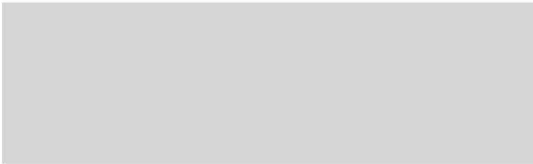


Beneficiary:

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 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](http://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 “general surgery physician scientist.” At the time of filing, the petitioner was working as Chief Surgical House Staff of General Surgery Service (or Chief Surgical Resident), at [REDACTED]. The petitioner currently works as a Breast Oncology Fellow and surgeon at the [REDACTED] at [REDACTED] in [REDACTED] California. 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 asserts that she “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.” Although the petitioner indicated in Part 3 of the Notice of Appeal or Motion (Form I-290B) that a “brief and/or additional evidence will be submitted to the AAO within 30 calendar days of filing the appeal,” as of this date, we have received nothing further.

## 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 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.” *In re New York State Dept of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must 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 surgeon and physician scientist is in an area of substantial intrinsic merit and that the proposed benefits of her research concerning general surgery and breast surgery would be national in scope. It remains, then, to determine whether the petitioner 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

The petitioner filed the Immigrant Petition for Alien Worker (Form I-140) on January 3, 2014. The director determined that the petitioner’s impact and influence on her field did not satisfy the third prong of the *NYSDOT* national interest analysis.

In addition to documentation of her presented work, two manuscripts that the petitioner submitted for publication, and her medical training credentials, the petitioner submitted various reference letters discussing her work in the field.

Dr. [REDACTED] Program Director, General Surgery, [REDACTED] states:

[The petitioner] performs laparoscopic pancreatic surgery which is considered to be one of the most difficult areas to master in the field of general surgery. . . . There are only a handful of institutions in the world where laparoscopic pancreatic surgery is performed and only the best surgeons that can perform such high risk surgeries.

Dr. [REDACTED] mentions the petitioner's ability to perform laparoscopic pancreatic surgery, but any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for labor certification. *NYS DOT*, 22 I&N Dec. at 220-21. In addition, there is no documentary evidence showing the impact of the petitioner's work as a laparoscopic pancreatic surgeon extends beyond her own patients and, therefore, that her influence as a surgeon is national in scope.

Dr. [REDACTED] further states:

Additionally, [the petitioner] is involved in faculty and residents evaluations as well as teaching and academics at the [REDACTED]. She teaches the junior house staff, medical students, and physician assistant students both the theoretical and practical aspects of surgical practice. She is also involved in the monthly discussion of recent clinically relevant articles in both general and vascular surgery.

Dr. [REDACTED] discusses the petitioner's job responsibilities as chief surgical resident at [REDACTED] but does not explain how the petitioner's work has had an impact beyond the patients and staff at the hospital. There is no evidence showing that her work as an evaluator, teacher, or clinical discussion participant has affected the field as a whole.

Dr. [REDACTED] continues:

[The petitioner] has also given various national level presentations such as her poster presentation on intraoperative US [ultrasound] for tumor margin assessment as a guide for optimal breast conservation surgery at [REDACTED] Meeting; poster presentation in [REDACTED] and presentation in [REDACTED] on the research project faculty supervised morning report.

Dr. [REDACTED] mentions the petitioner's medical research presentations, but there is no evidence showing that once disseminated, the petitioner's work has garnered a significant number of citations or that her findings have otherwise influenced the field as a whole. With regard to the petitioner's presentations at various meetings and surgical conferences, many professional fields regularly hold

meetings and 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 meetings and conferences. Although presentation of the petitioner's work demonstrates that she shared her original findings with others, there is no documentary evidence showing, for instance, frequent independent citation of her work, or that her findings have otherwise affected the surgical field at a level sufficient to waive the job offer requirement.

In addition, Dr. [REDACTED] states that the petitioner has "won the first prize for her oral presentation at [REDACTED] resident research day." This institutional award concerns the petitioner's residency at [REDACTED] and does not establish or imply a wider impact or influence in the surgical field. For example, there is no documentary evidence showing that surgical practices in the field have changed in response to the petitioner's presented findings. 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.

Lastly, Dr. [REDACTED] asserts that the petitioner's "exceptional surgical practice and commitment to surgical education are contributing to the advancement of bariatric and laparoscopic surgery in this country," but he does not provide specific examples of how the petitioner's work has influenced the field.

Dr. [REDACTED] Vascular Surgery Assistant Professor at the [REDACTED] [REDACTED] asserts that the petitioner "has utilized her unique clinical background in laparoscopic surgery to conduct cutting-edge studies that have led to groundbreaking advances and improvements in the field," but does not identify the advances or explain how they have resulted improved patient outcomes.

Dr. [REDACTED] further states:

[The petitioner's] ongoing research includes research on the prognostic factors in trauma patients older than 65 with rib fracture. The goal of this study is to identify the prognostic factors and treatment strategies with superior outcomes in rib fracture and trauma patients over 65 years. . . . Another of [the petitioner's] ongoing research focuses on the impact of preoperative breast MRI [Magnetic Resonance Imaging] on management of breast cancer in premenopausal patients. The purpose of this study is to determine the impact on treatment that preoperative breast MRI has in premenopausal women diagnosed with in situ (DCIS) or invasive breast cancer (IDC or ILC). [The petitioner's] goal is to determine the impact of breast MRI findings on additional breast imaging, biopsy and/or surgical management and the added expenses to healthcare costs.

Dr. [REDACTED] comments on the petitioner's research concerning the prognostic factors in elderly trauma patients with rib fracture and the impact of preoperative breast MRI on management of breast cancer in premenopausal patients, but there is no documentary evidence showing that the petitioner's work has been frequently cited by independent researchers or has otherwise impacted the field as a whole. Although the petitioner's medical research may have value, any research must be original and likely to present some benefit if it is to receive funding and attention from the medical or scientific community. In order for a university, publisher or grantor to accept any research for graduation, publication or funding, the research must offer new and useful information to the pool of knowledge. Not every surgical resident or fellow 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.

Dr. [REDACTED] continues: "There is currently a critical shortage of general surgeons in our country. This highlights the urgent need for skilled surgeons like [the petitioner] with valuable expertise in advanced minimally invasive procedures." Similarly, Dr. [REDACTED] Colon and Rectal Surgeon, asserts that "[t]here is an expected general surgery workforce shortfall in the future;" and that "keeping talented surgeons like [the petitioner] benefits this country." 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 *NYSDOT*, 22 I&N Dec. at 218. In addition, the exception for physicians at section 203(b)(2)(B)(ii) of the Act has specific provisions for those practicing in shortage areas or at Veterans Affairs facilities, outlined at 8 C.F.R. § 204.12; however, a physician does not qualify for the waiver just by asserting that there is a lack of physicians in her specialty.<sup>1</sup>

Dr. [REDACTED] Chief, Section of Acute, Trauma, and Critical Care, Department of Surgery, [REDACTED] states:

[The petitioner] is an expert in various laparoscopic procedures, a modern surgical technique in which operations are performed through small incisions. . . . [The petitioner] also has extensive expertise in surgical oncology procedures including the treatment of lung cancer; breast cancer; pancreatic cancer; colon cancer; and gastric cancer. [The petitioner] has performed countless vascular operations and life saving emergency surgical procedures. Those procedures include, but are not limited to: central venous line placement, pulmonary artery catheter placement, chest tube insertion, tracheostomy, and operations for trauma.

Dr. [REDACTED] mentions the petitioner's expertise in various surgical procedures, but does not provide specific examples of how the petitioner's work has influenced the field as a whole. Special or unusual

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<sup>1</sup> Section 203(b)(2)(B)(ii) of the Act describes an alternative waiver for certain physicians who agree to work in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs. The waiver is limited to certain physicians who follow specific requirements set forth in the regulation at 8 C.F.R. § 204.12. The petitioner has not addressed or attempted to meet any of these regulatory requirements.

knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *NYSDOT*, 22 I&N Dec. at 221. There is no documentary evidence demonstrating that the petitioner has developed surgical methods that have been implemented at a significant number of medical centers or hospitals, or that her work has otherwise affected practices in the surgical field.

Dr. [REDACTED] Senior Research Scientist, Department of Radiation Oncology, [REDACTED] New York, asserts that the petitioner's knowledge and expertise place "her in the top 5% of surgeons in the field" and that the petitioner has "contributed greatly to the laparoscopic surgery field," but does not offer examples of how the petitioner's work has affected techniques the surgical field.

In addition, Dr. [REDACTED] describes the petitioner's ongoing research at [REDACTED] concerning prognostic factors in trauma patients older than 65 with rib fractures and the impact of preoperative breast MRI on management of breast cancer in premenopausal patients. While Dr. [REDACTED] identifies the goals and objectives of the aforementioned studies, there is no documentary evidence showing that the petitioner's research work has already attained those outcomes and that the results have influenced the field as a whole.

Dr. [REDACTED] continues:

[The petitioner] is also working on a unique research project which focuses on use of intraoperative ultrasound to assess tumor margin in breast conservative surgery. This study will help in improving cosmetic appearance of breast after surgery by avoiding re-excisions and has a financial impact of saving cost of additional surgery. This study was selected for poster presentation in the annual meeting on [REDACTED] in 2012.

Dr. [REDACTED] mentions the petitioner's research project concerning the use of intraoperative ultrasound to assess tumor margin in breast conservative surgery and notes that her work was presented at the annual [REDACTED] meeting in 2012. The petitioner, however, has not submitted any documentary evidence showing that her work has been frequently cited by independent researchers, has affected treatment protocols at various medical centers with corresponding improvement in patient outcomes, or has otherwise influenced the field as a whole.

In response to the director's request for evidence, the petitioner submitted letters of support from Dr. [REDACTED] Chief of Vascular Surgery at [REDACTED] and Dr. [REDACTED] Assistant Professor of Surgery at [REDACTED]. The second and third paragraphs in Dr. [REDACTED] letter and the third and fourth paragraphs in Dr. [REDACTED] letter are identical in content to the second and third paragraphs in Dr. [REDACTED] letter. The identical paragraphs in the letters suggest that their language was not written independently. While it is acknowledged that Dr. [REDACTED], Dr. [REDACTED], and Dr. [REDACTED] have provided their support to this petition, it is unclear whether the letters reflect their independent observations and thus an informed



and unbiased opinion of the petitioner's work. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In addition, U.S. Citizenship and Immigration Services (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.* Based on the identical paragraphs in Dr. [REDACTED], Dr. [REDACTED] and Dr. [REDACTED] letters, USCIS may accord them less weight. Regardless, their letters do not provide specific examples of how the petitioner's work has affected the field as a whole.

Dr. [REDACTED] Chief of General Surgery at [REDACTED] and Acting Director of the Breast Oncology Fellowship at the [REDACTED] states: "[The petitioner] is unique in the field of surgery as she is a Breast Oncology Surgeon who also practices general surgery." In addition, Dr. [REDACTED] states that the petitioner "is unique in that she also practices minimally invasive techniques" and that the petitioner has "become a master of complicated laparoscopic surgical procedures along with complicated breast oncology procedures." 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.

Dr. [REDACTED] continues:

[The petitioner] is also a physician-scientist who can combine her clinical expertise with top-notch, rigorous academic research. [The petitioner] is currently involved with me in several research projects including clinical trials on the role of acupuncture in the treatment of joint pain induced by estrogen deprivation from aromatase inhibitor therapy and the role of cryoablation as an alternative approach to first line therapy for breast cancer and its impact on immune parameters.

Dr. [REDACTED] mentions that the petitioner's research projects concerning the role of acupuncture in the treatment of joint pain and the role of cryoablation as an alternative approach to first line therapy for breast cancer, but does not provide specific examples of how the petitioner's findings have been implemented by others in the field or have otherwise influenced the field as a whole.

Dr. [REDACTED] Director of the [REDACTED] and [REDACTED] and the Department of Translational Immunology, [REDACTED] states that the petitioner is working on three projects: "Effect of acupuncture on treatment-induced joint pain in patient with breast cancer," "Cryotherapy for treatment of early-stage breast cancer and the impact on the host tumor immunity," and "Development of a predictive system for breast cancer based on an immune score." Dr. [REDACTED] however, does not explain how the petitioner's work on any of the projects has influenced the field. There is no documentary evidence showing that the petitioner's work has been frequently cited by independent researchers or has otherwise affected the field as a whole.



The director denied the petition on November 14, 2014. The director acknowledged the petitioner's submission of reference letters, her professional credentials and memberships, and her presented work, but determined that they failed to show the petitioner's influence on the field was sufficient to demonstrate her eligibility for the national interest waiver.

On appeal, the petitioner mentions the "numerous testimonies" submitted in support of the petition. The testimonial letters discussing the petitioner's clinical abilities as surgeon and research projects have already been addressed above. Again, the submitted evidence does not show that the results from the petitioner's research have been applied outside of the medical institutions where she trained or that her surgical abilities have otherwise affected the field as a whole as to warrant a waiver of the job offer. Furthermore, the petitioner has not submitted any new evidence on appeal.

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 states:

[The petitioner's] original work has been published in [redacted] the official publication of the [redacted]. Her research has also been submitted for publication in [redacted] and [redacted].

The petitioner submitted an abstract for her poster presentation at the [redacted] Annual Meeting that was printed from the "[redacted]" section of the society's website, but there is no documentary evidence of the abstract's publication or her [redacted] publication. 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)). Regardless, there is no evidence showing that her work has been frequently cited or has otherwise influenced the field as a whole. With regard to the petitioner's papers that were submitted for publication in [REDACTED] and [REDACTED] work published after the date of filing does not constitute evidence that the petitioner's findings were already influential as of 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). Accordingly, we cannot consider the petitioner's work that was not yet published as of the filing date and, thus, had not been disseminated in the field, to establish her eligibility at the time of filing.

### III. CONCLUSION

Considering the letters and other evidence in the aggregate, the record does not establish that the petitioner's work 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.