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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUL 2 4 2015

FILE #:
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) 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 an alien of exceptional ability in the sciences, the arts, or business, and as a member of the professions holding an advanced degree. The petitioner seeks employment as a marriage and family therapist. 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.

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. –
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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 –
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> > > (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 petitioner earned a Ph.D. in Family Therapy from [redacted] in Florida in 2011. Thus, the record reflects that the petitioner qualifies as a member of the professions holding an advanced degree. (An additional finding of exceptional ability would be moot.) 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 marriage and family therapist 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 January 13, 2014. In a letter accompanying the Form I-140 petition, the petitioner, through counsel, stated:

> [The petitioner] would like to provide ongoing consultation and work with school systems, especially the [redacted] the fourth largest school district in the country, as an independent contractor. . . .

* * *

> [The petitioner's] research has national implications. Dr. [an Associate Professor of Family Therapy at noted that [the petitioner's] work is "useful and valuable nationally[,] especially considering that every state in the Union has low income and underserved school systems."

A review of Dr. January 25, 2013 letter, however, indicates she was not referring specifically to the petitioner's "research." Rather, she was commenting on the petitioner's "skill, expertise, and experience" as a family therapist. Regardless, while a researcher who disseminates her findings in the field through journal publications and presentations at national conferences may produce benefits that are national in scope, there is no documentary evidence demonstrating that the petitioner will work in such a research capacity. Rather, the petitioner asserts that she seeks to work as a family therapy independent school consultant. According to the petitioner's Biographic Information (Form G-325A) dated February 14, 2013, the petitioner was recently employed as the Lead Program Therapist at Florida. The "Position Summary" for the job states: "Assists in assessment and treatment planning, provides both didactic and therapeutic individual and group sessions to patients and families." Presently, the petitioner is a "Registered Marriage and Family Intern" with " " in Florida and she specializes "in therapeutic treatment with adoption, medical cases (children and families), depression, addiction, and couples counseling."[1]

Regarding the assertion that the petitioner will "work with school systems," we find that helping a school system allocate resources and services to troubled youth meets the "substantial intrinsic merit" prong of *NYSDOT*'s national interest analysis. The record, however, does not demonstrate that the proposed benefits of petitioner's work as an independent school consultant or family therapist will be national in scope. *NYSDOT* 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.

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[1] *See* accessed on June 25, 2015, copy incorporated into the record of proceeding.

NYSDOT, 22 I&N Dec.at 217, n.3. With regard to the petitioner's consulting work for she has not shown that the benefits of her work would extend beyond the school system or the students receiving her services. As the petitioner did not establish that the proposed benefits of her work as an independent school consultant or family therapist will be national in scope, the director determined that the proposed benefits of her employment did not satisfy the second prong of the *NYSDOT* national interest analysis.

On appeal, the petitioner asserts that her "work is national in scope because low-income or underserved school districts suffer from the same problems." Aside from there is no documentary evidence reflecting that any other school systems will utilize the petitioner's family therapy consulting services. While the problems confronting low-income or underserved school districts may be national in scope, the petitioner does not explain how the proposed benefits of her work as a family therapy consultant will have implications beyond the school systems or families receiving her services. Accordingly, the petitioner has not established that the proposed benefits of her work 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

The remaining issue is whether the petitioner's influence on the field satisfies the third prong of the *NYSDOT* national interest analysis. The petitioner submitted various reference letters discussing her qualifications and activities in the field.

Dr. , the petitioner's graduate research supervisor at states:

> [The petitioner] has completed ground breaking research on what works in low income schools in interviewing successful principals of at risk schools, thus combining her interests in leadership, education, and solution focused therapy, and this research project looks likely to lead to ongoing consultation and work with school systems. Her dissertation was our first to use the ground breaking Appreciative Inquiry methodology, and this has inspired several subsequent dissertations.

As stated by the director, the Appreciative Inquiry methodology was originally "developed at Case ' by in the 1980s, and his published work on the methodology has garnered "well over 1500 citations." On appeal, the petitioner acknowledges that she is not the first to use the Appreciative Inquiry methodology, only that she was the first to use it at her university. There is no documentary evidence showing that the petitioner's dissertation has been frequently cited by independent researchers, that her research findings have had an impact on school programs outside of , or that her work has otherwise affected the field as a whole.

Dr. further states: "[The petitioner's] work has been so important that I routinely teach it in my Systemic Family Therapy I classes, featuring [the petitioner's] research for one entire class the past two years (on 2012 and 2011 syllabus, and on upcoming 2013 syllabus as well)." While the

petitioner's work has been utilized in a course offered by her mentor and research collaborator at there is no evidence demonstrating that the petitioner's findings have influenced the field beyond Dr. students at the petitioner's alma mater or

Executive Director, Student Support Initiatives, states that she first met the petitioner in 2009 while serving as an Area Director of School Improvement. Ms. continues:

> [The petitioner] became part of my research team in the The main goal of the Initiative, for the was to coordinate community resources in the area to address issues that bar low-income and minority youth from succeeding academically.
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> * * *
>
> [The petitioner] provided an eye-opening perspective to our research by having an unbiased opinion about the school system and dissecting educational data in order to provide school leaders with valuable information on what is truly working in such as a site based analysis of program implementation and its effect on the outcome of the program and staff morale. This data has served to shape our educational research-based practices allowing to invest in programs and school interventions that are yielding true results, increasing student-learning outcomes, and improving education. . . . Future research could even be replicated across the state, because the U.S. looks at Florida, Texas, and other big school districts to see what programs are being implemented.

Ms. discusses how the petitioner provided valuable input and data analysis for the but does not provide specific examples of how the petitioner's work has influenced the field as a whole. In addition, Ms. asserts that "future research could even be replicated across the state," but there is no documentary evidence showing that the petitioner's work has already had such an effect. 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).

Ms. further states:

> After completion of the research project, [the petitioner] went on to write her own dissertation focusing on the strengths and resources of the neighborhoods in most need. Her dissertation has been used by educators in Professional Learning Communities - discussed, after its completion, in the District meetings - in order to analyze new methodology and remain current with educational research.

While Ms. mentions that the petitioner's dissertation has been utilized by educators, there is no documentary evidence demonstrating that the petitioner's work has affected educational practices nationally or has otherwise influenced the field of family therapy as a whole.

In addition, Ms. asserts that the petitioner's "unique combination of skills and expertise are highly unusual in comparison to others in her field." 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. *NYSDOT*, 22 I&N Dec. at 221. On appeal, the petitioner asserts that her qualifications and job prospects are not amenable to the labor certification process. The inapplicability or unavailability of a labor certification, however, cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that she will serve the national interest to a substantially greater degree than do others in her field. *NYSDOT*, 22 I&N Dec. at 218, n.5.

, Dropout Prevention Specialist, Student Support Initiatives, states that the petitioner "researched the to gain perspective on the programs that were working for this governmental agency in order to provide the School System with a framework for utilizing community resources within Innovation Zones for greater impact," and that "[s]ince this study, Broward Schools put in place several initiatives to address the needs of high risk and underachieving students in economically depressed areas." Ms. further states that the petitioner's study "serves as a guide for what works, therefore giving schools direction on distributing resources into programs and strategies that will yield the best results." Although Ms. describes how the petitioner's study has affected initiatives for high risk and underachieving students in economically depressed areas, there is no evidence showing that the petitioner's work has affected educational initiatives outside of or has otherwise influenced the field of family therapy as a whole.

In addition, Ms. asserts that the petitioner's study "can be used as a model for education systems nationwide," but there is no documentary evidence reflecting that the petitioner's work has already had such an effect or has otherwise affected the field as a whole.

who leads the professional a consulting firm, states:

> [The petitioner] completed a dissertation focused on providing schools with feedback on the effectiveness of school initiatives, specifically for students in low-income and underserved areas. . . . The petitioner's study[] helps schools put their time and energy into initiatives that will yield the best results, allowing schools to provide interventions which will rapidly impact student learning.

Ms. mentions the dissertation that the petitioner completed to earn her Ph.D. at There is no documentary evidence showing, however, frequent independent citation of the

petitioner's work or that her findings have otherwise affected the family therapy field as a whole. Although the petitioner's Ph.D. research may have value to and her alma mater, any research must be original and likely to present some benefit if it is to receive funding and attention from the academic 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 graduate student who performs 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.

Ms. further states: "[The petitioner's] dissertation was the first to use the groundbreaking Appreciative Inquiry Methodology, has inspired several subsequent dissertations and is included in graduate curricula at School of Humanities and Social Sciences." The petitioner admits on appeal that she was not the first to use the Appreciative Inquiry methodology and there is no documentary evidence demonstrating that the petitioner's use of the method in her dissertation has been frequently cited by independent researchers, that her research findings have had an impact outside of or beyond Dr. students at , or that her work has otherwise affected 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 evidence of her Ph.D. in Family Therapy, Bachelor of Arts degree in Psychology, official academic transcripts, documentation reflecting her experience as a family therapist, and memberships in the American Association for Marriage and Family Therapy (Pre-Clinical Fellow designation) and . Academic records, occupational experience, and membership in professional associations are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (E), respectively. However, in this instance the petitioner already qualifies 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 family therapist, therefore, does not by itself qualify the petitioner for the national interest waiver.

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.