MATTER OF R-L-

DATE: NOV. 3, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an educator and researcher in exercise, nutrition, and preventive health, seeks classification as a member of the professions holding an advanced degree, and 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. *See* Section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed

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.
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> > (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 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).

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the beneficiary 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 beneficiary 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, a petitioner must establish that the beneficiary's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the beneficiary 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 beneficiary, rather than to facilitate the entry of a beneficiary with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on February 17, 2014. At the time of filing, she was working as an assistant clinical professor at having previously earned a Master's degree in exercise physiology from in 1996 and a Ph.D. in exercise and nutrition from in 2008. In an introductory letter, the Petitioner asserted that she has made substantial contributions to the field of behavioral medicine through her research on how specific lifestyle changes can treat and prevent prevalent and deadly diseases. She stated that her research allows fellow scientists and physicians to determine the best lifestyle regimens for long term health management.

Documentation supporting the Form I-140 included evidence that the Petitioner had authored or co-authored 10 scholarly articles, citation data showing 50 total citations of her work, and information about the rankings and impact factors of two of the journals in which she had published articles or abstracts, The Petitioner also provided evidence regarding her participation in conferences. In addition, she submitted letters from current and former supervisors and independent researchers in her field describing her research projects and attesting to the significance of her work.[1]

[1] While we discuss only a sampling of these letters, we have reviewed and considered each one.

In her introductory letter, the Petitioner stated that her first major contribution to behavioral medicine research was "establishing a better understanding of the role of diet and an active lifestyle on the development of atherosclerosis." Her research at the included a study in which she developed a mouse model with pre-atherosclerosis and then studied the effects of exercise. an endocrinologist at , stated in a December 16, 2013, letter that the Petitioner "was one of the first to show that exercise has a preventative effect on atherosclerosis and other metabolic diseases." In a January 2, 2014, letter, , associate professor at and described the Petitioner's study and stated that it "made an important contribution to the understanding and the prevention of atherosclerosis."

The Petitioner indicated that her most well-known research contribution was to identify "diet and exercise strategies best for older overweight and obese women with metabolic disorders." The Petitioner was part of a team of researchers at that studied 466 women to examine the weight loss and health effects of various diets in combination with an exercise program modeled after that of , finding that a high protein diet in combination with exercise had the most benefit. The Petitioner's supervisor at described this study in detail in a December 27, 2013, letter, and stated that it "has already helped many physicians and their women patients looking for the best pathway toward better health." also discussed this research, stating it "has sparked much discussion among physicians treating and advising these patients." In a December 12, 2013, letter, of the stated that the Petitioner's findings "prompted many additional inquiries and studies."

Another research project that the Petitioner discussed was her dissertation study on whether certain combinations of nutrition and exercise could down-regulate the expression of a peptide called myostatin to improve muscle mass, which is especially important in older individuals. She stated that her most significant finding was "that taking carbohydrate with leucine just prior and post resistance exercise has an advantageous effect on protein synthesis and satellite cell regeneration." In a January 14, 2014, letter, , assistant professor at the characterized the Petitioner's work as "one of very few studies" on myostatin signaling pathways during exercise. The Petitioner's former supervisor at , now at stated in a January 18, 2011, letter that her findings "will help us to develop the best possible exercise systems for those who need or want to improve their muscle mass."

The final research contribution noted by the Petitioner was her "most recent work" studying the benefits of resistance training in combination with nutritional supplements for overweight women with osteoarthritis. The Petitioner indicated that her findings "supported past results that exercise is beneficial for those with osteoarthritis, while bringing forth new information on which nutritional supplements can maximize the effects." In a December 15, 2013, letter, stated, "These were groundbreaking findings, and once they

are tested on a larger sample size will have changed the physical fitness recommendations for [osteoarthritis] patients everywhere."

The Director issued a request for evidence (RFE) on September 11, 2014, requesting additional documentation to establish "a past record of specific prior achievement with some degree of influence on [the Petitioner's] career field as a whole," and to demonstrate that she will serve the national interest to a substantially greater degree than an available U.S. worker having the same minimum qualifications. In response , the Petitioner asserted that her research has influenced her field as a whole, stating that her mouse models and exercise regimes have been used by other researchers and in the development of exercise and dietary programs for patients, and that her research "has provoked widespread commentary through its inclusion in clinical reviews and in a major reference book."

The Petitioner submitted a letter from an additional independent reference, assistant professor at , and new letters from In an October 7, 2014, letter, indicated that she has frequently consulted the Petitioner in the course of her own research on cancer survivors because of her expertise in designing and assessing diet and exercise strategies for vulnerable populations. attested that she has "noticed [the Petitioner's work has been beneficial to other researchers as well," stating that her work on osteoarthritis "has especially seen a great deal of implementation" in other studies. As an example, she noted a study in Romania that cited the Petitioner's research as the only other work on the topic. In second letter, dated October 9, 2014, he described ways in which the Petitioner's work has influenced his research. He also stated that "a group of researchers from institutions in the United States and China" cited the Petitioner's work "to illustrate the need for further study on carbohydrate restricted diets" in their own study. did not further identify the study in question. attested in his second letter, dated October 16, 2014, that he has adopted the "atherosclerosis model established by [the Petitioner]" in his own research, and that her atherosclerosis model and research findings "have been widely cited and applied to the field of cardiovascular health and sports medicine."

The Petitioner provided updated citation data and excerpts of published materials that cited her work. She noted that, of the 55 total citations to her work, 41 were independent citations. In her letter responding to the RFE, the Petitioner also asserted that her work has been published in "some of the most important and exclusive peer-review journals in her field, including and and that selection for publication in such journals demonstrated the importance and influence of her work. The record indicates that the Petitioner's 2009 article in had been cited once and her 2008 article in had been cited twice, while her other publications in those journals had not been cited.

As further evidence of the influence of her work, the Petitioner noted that which funded the study on which she worked at has gone on to publicize the results of the study as evidence of the efficacy of its program. The Petitioner submitted a printout

from the website, which states in part: "Under the direction of scientists at have put the fitness and weight-loss program to rigorous testing, scrutinizing its effects on hundreds of women just like you. The results? In addition, the Petitioner submitted evidence that she serves on the editorial board of the

The Director denied the petition on February 20, 2015, finding that the Petitioner had not established sufficient impact on her field to meet the third prong of the *NYSDOT* national interest analysis. The Director stated that the submitted letters asserted the importance of the Petitioner's field and her role in specific projects, but did not indicate the ways in which her work had influenced the field. The decision also stated that the Petitioner had not distinguished between self-citations and independent citations of her work, and that the fact that at least one of the citations to her work had been a self-citation cast doubt on whether the submitted citation data demonstrated influence on other researchers.

On appeal, the Petitioner contends that her previously submitted documentation establishes eligibility for the benefit sought, and that the Director overlooked and mischaracterized evidence in the record. She asserts that, contrary to statements in the decision, the submitted letters do discuss the ways in which her work has influenced others in her field. The Petitioner also notes that her RFE response did in fact distinguish between self-citations and independent citations, and she states that a small number of self-citations are customary in research and do not negatively reflect on a publication. In support of this assertion, the Petitioner submits a article finding that a number not exceeding 30% of total citations is considered "a reasonable level of self-citation."

III. ANALYSIS

As stated above, the analysis set forth in *NYSDOT* requires a petitioner to demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. To do this, a petitioner must establish "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 219, n. 6.

Contrary to the Director's findings, the submitted letters do discuss how the Petitioner's work has impacted others. Several of the letters' authors indicate that her work has influenced their own studies and note examples of other researchers who have cited her work. However, the evidence does not demonstrate that the Petitioner's research has been considered so significant as to have had a degree of influence on the field as a whole. While some of the letters assert that the Petitioner's research has been widely cited, the record does not include documentation to show that her record of citation is noteworthy within her field. Further, although stated that the Petitioner's findings on her research "prompted" many other studies, the submitted excerpts of works citing that research do not indicate such a level of influence. Similarly, while the submitted letters indicate that individual physicians have found the Petitioner's findings useful, the record is not sufficient to support assertions that her research is being widely implemented in clinical settings. In addition, the use of the Petitioner's study by in its advertising

does not demonstrate that her findings were considered significant or influential by others in her field.

As noted above, the Petitioner submitted information about two highly ranked journals in which she has published as evidence of her work's prominence in the field. A journal's ranking and impact factor can provide an approximation of the prestige of the journal, but they do not demonstrate the influence of every article published in that journal. In this instance, the citations of the Petitioner's articles in these journals do not reflect a widespread impact on her field.

IV. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or individual 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. While a petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that his influence be national in scope. *NYSDOT* at 217, n.3. More specifically, a petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole"). Considering the letters and other evidence submitted, the Petitioner has not established by a preponderance of the evidence 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.

Cite as *Matter of R-L-*, ID# 14149 (AAO Nov. 3, 2015)