MATTER OF C-N-R-

DATE: NOV. 23, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a singer, seeks classification as an alien of exceptional ability in the sciences, the arts, or business. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, initially approved the petition. The Director subsequently issued a notice of intent to revoke (NOIR) the approval of the petition. In a notice of revocation (NOR), the Director ultimately revoked the approval of the petition. The matter is now before us on appeal. The appeal will be dismissed.

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 an alien of exceptional ability, 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. –
>
> > (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.

Section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

II. ISSUES

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)). By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

The issue in contention in this matter 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." *Matter of New York State Dep't of Transp. (NYSDOT)*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), 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 demonstrate that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must show 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 singer 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 addition, the regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The Petitioner did not execute this required document for the petition, and therefore she has not properly applied for the national interest waiver. For this reason alone, the Petitioner has failed to establish eligibility for the benefit sought.

III. FACTS AND ANALYSIS

A. National in Scope

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on May 9, 2011. The Petitioner asserted that her work as a singer is in the national interest of the United States. In response to the Director's NOIR, the Petitioner stated:

> Upon relocating to the United States, I plan on continuing to perform nationally in same manner that I have performed nationally all over Canada. My presence in the United States will enrich the cultural, and artistic well being of the United States through music. I will also demonstrate that it is in the National Interest of the United States . . . since I will be contributing towards the economic advancement of the country through job creations.

The Petitioner also asserted that her "extensive job creations will be National in Scope since [her] performances will be nationwide," but there is no documentary evidence demonstrating that the number of jobs created by the Petitioner would be substantial. In addition, the Petitioner mentioned that her wearing fashion apparel provided by Canadian designer [redacted] will stimulate "economic growth within Canada and the United States." The Director determined that the proposed benefits of her employment did not satisfy the second prong of the *NYSDOT* national interest analysis. The

Director's NOR stated that the Petitioner had not shown that her "work will benefit the U.S. on a national scale."

On appeal, the Petitioner mentions her participation in the [redacted] television series amateur Canadian national singing competition [redacted], her performance and Master of Ceremonies duties at the Citizenship and Immigration Canada [redacted] national video competition awards ceremony [redacted] her performances with the [redacted] touring musical production [redacted] two performances at the [redacted] her [redacted] musical performances at [redacted] her performance at an event at the National Basketball Association (NBA) All-Star Weekend festivities [redacted] and her performance for the [redacted] video music show on the Black Entertainment Television network [redacted] The latter three performances post-date the filing of the Form I-140. 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 any performances after May 9, 2011, as evidence to establish the Petitioner's eligibility at the time of filing.

With regard to the Petitioner's performance engagements, she has not shown how they translate into benefits for the United States which are national in scope. While several of the Petitioner's performances appear to have reached a national audience and garnered her some national exposure, the submitted evidence does not demonstrate that the Petitioner has positioned herself to provide national benefits concerning job creation, the economy, artistic cultural interests, or the U.S. music industry. For example, there is no indication that the Petitioner has signed a contract with a major record label who might distribute her recordings nationally or that her performances will otherwise attract a substantial national audience in the United States. Entering regional talent competitions [redacted] and performing the Canadian national anthem at various sporting events and gatherings do not demonstrate prospective benefits on a national level. The Petitoner's assertion that her music performances could have a national impact does not sufficiently demonstrate the national scope of her proposed benefit. The record does not show that the Petitioner's proposed employment is within a framework that has a national impact, such as the proper maintenance of bridges and roads already connected to the national transportation system that was the subject of *NYSDOT*. *See NYSDOT,* 22 I&N Dec. at 217. Accordingly, the Petitioner has not established that the proposed benefits of her work will be national in scope.

B. Serving the National Interest

The Petitioner initially submitted documentation pertaining to her exceptional ability as a singer. For example, the Petitioner provided her Bachelor of Arts degree; a letter from the Vice President of [redacted] stating that the Petitioner has "over a decade of singing experience"; payroll information for her performances and rehearsals; her membership in the [redacted] and recognition received by the Petitioner at the [redacted] and in the [redacted] Academic records, letters from employers detailing job experience, salary information, memberships, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (D), (E), and (F), respectively. However,

in this matter, the Petitioner must also demonstrate eligibility for the additional benefit of the national interest waiver.

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 showing that the Petitioner's work has affected the field as a whole, we cannot conclude that she has demonstrated eligibility for the national interest waiver.

The Petitioner provided various reference letters discussing her activities in the field. For example, Manager, Public Education and Promotion Unit, Citizenship and Immigration Canada, indicated that her agency "contracted [the Petitioner] to take part in the National Video Competition as Master of Ceremonies as well as to perform twice during the ceremony." asserted that the Petitioner "played a significant role in the success of the ceremony" and that "[h]er friendly manner and stage presence as Master of Ceremonies made the winners feel at ease." In addition, stated: "Through [the Petitioner's] performances her strong vocal skills and energy was clearly appreciated by the audience of nearly 500 that included not only the winners but their chaperones, partners, local youth and Members of Parliament." While comments reflect that the Petitioner contributed to the success of the ceremony, there is no documentary evidence showing that the Petitioner's work has influenced the field as a whole.

President and Chief Executive Officer, stated that he met the Petitioner "in as one of the participants on the third season of the series entitled noted that the Petitioner auditioned and was selected for the which consisted of finalists from nine Canadian cities. further stated:

> The show followed the contestants through various elimination rounds. During the course of the program, [the Petitioner] demonstrated extraordinary ability in the area of singing. Her powerful vocal chords impressed the judges through each step of the boot-camp phase. As a result she rose to the top of the field and received national acclaim by finishing as one of the top finalists of Canada.

asserts that the Petitioner performed impressively in the amateur singing competition, but there is no indication that qualification as a finalist demonstrates the

Petitioner's artistic influence on the pop music field or that her performances have otherwise affected the field as a whole.

Head of Returns for mentioned that his company has "been providing [the Petitioner] with haute couture pieces for her various performances all over Canada and the United States." In addition, asserted that the Petitioner has given the brand "international" visibility. also stated that "[s]ince most of [the Petitioner's] performances are televised internationally, it has allowed our brand to be seen by a much broader demographic. It has contributed to the expansion of our brand to new customers and the growth of our business." does not identify the Petitioner's internationally televised performances, or provide sales figures or financial statements showing a significant increase in new customer purchases resulting from any of the Petitioner's televised appearances. USCIS need not rely on unsubstantiated statements. *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). Furthermore, does not provide specific examples of how the Petitioner's work has influenced the music field.

. Producer, explained that "Amateur night is where singers, dancers and musicians come to compete in hopes of becoming the next discovered phenomenon. It is also considered as a starting point for upcoming artists . . . ." continued:

> During the season, I had the opportunity of meeting [the Petitioner] as she auditioned in . . . The Petitioner has extraordinary ability as a singer because of her strong vocals and great stage presence. Not only does she possess the vocal capability to succeed in this industry but she is punctual, professional and understands the importance of discipline. She is also very respectful, courteous and is able to take direction and criticism from her peers.

commented favorably on the Petitioner's singing talent and personal qualities, but did not explain how her work has affected the music industry or has otherwise influenced the field as a whole.

further stated:

> This opportunity allowed her to perform at the for the tribute on 2009 where she and the other performers had a critical role in making the night a success. [The Petitioner] was also asked to represent the by performing live on in and on . Most recently, she was invited back to the on 2011 to perform during our night special where she won .

While indicated that the Petitioner was among multiple acts who performed at the and that she won at the there is no documentary

evidence showing that her performances there have influenced others in the music industry or have otherwise affected her field at a level that would justify a waiver of the job offer requirement.

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.*, 745 F. Supp. at 17. 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 petitioner'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 to the letters of support, the Petitioner mentions the recognition that she has received as a singer. The Petitioner points to her associate membership in the 2014), her Grand Prize in the 2014), her prize from the music video contest to attend the and her "Senior Division" prize at the The Petitioner also submits three local articles entitled "[The Petitioner] is a singer who has the same voice as [the Petitioner]" (2013), and (November 2011). The Petitioner received the aforementioned honors and was mentioned in the preceding articles after the Form I-140 was filed. Again, 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. at 49. Accordingly, we cannot consider any honors received or material published after May 9, 2011, as evidence to establish the Petitioner's eligibility at the time of filing. Regardless, the submitted awards and published material do not show the Petitioner's impact on the field as a whole.

IV. 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, she must have "a past history of demonstrable achievement with some degree of influence on the field as a whole." *See 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 a job offer, and thus of a labor certification, is in the national interest of the United States.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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). The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); *Matter of Estime*, 19 I&N Dec. at 452, n.1; and *Matter of Ho*, 19 I&N Dec. at 589. Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of C-N-R-*, ID# 14537 (AAO Nov. 23, 2015)