



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-Z-

DATE: DEC. 12, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a corrosion science engineer, seeks classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(A). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner had not established his eligibility for the underlying immigrant classification nor did he establish that a waiver of the job offer requirement is in the national interest. The matter is now before us on appeal.

In his appeal, the Petitioner maintains that he is eligible for classification as a member of the professions holding an advanced degree, but that the Director did not address this and instead evaluated the petition based upon the exceptional ability requirements. He further contends that he established eligibility for a national interest waiver and that "the law and precedent decision regarding a national interest waiver were consistently misapplied or ignored" and the evidence submitted was "carelessly reviewed if it was reviewed at all."

Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

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) National interest waiver. . . . the Attorney General^[1] 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.

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).

Matter of New York State Department 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 demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must demonstrate that the national interest would be adversely affected if a labor certification were required by establishing 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. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner’s assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective

¹ Pursuant to section 1517 of the Homeland Security Act of 2002 (“HSA”), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

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national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

The Petitioner asserts that he is eligible for classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director found that the Petitioner was not eligible as an individual of exceptional ability under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), and that he did not establish that a waiver of the job offer requirement is in the national interest. The Director did not address the Petitioner's eligibility as an advanced degree professional.

The Petitioner submitted a copy of his Ph.D. in mechanical engineering from the [REDACTED] [REDACTED] earned in 2008. Thus, we find that he qualifies as an advanced degree professional. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). Since the Petitioner is already eligible for the underlying immigrant classification and an additional finding of exceptional ability would serve no meaningful purpose in this matter, we need not address that issue.

Thus, the remaining 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 according to the three-pronged analysis set forth in *NYSDOT*.

A. Substantial Intrinsic Merit

At the time of filing, the Petitioner was employed as a corrosion engineer by [REDACTED]. He states that he is responsible for developing "corrosion mitigation systems" for bridges and infrastructure and that he has developed and applied "cathodic protection systems" "electrochemical chloride extraction (ECE) procedures" and other services and systems that "guard bridges against corrosion processes" or gauge the vulnerability of those bridges to such deterioration." He maintains that his work has "directly contributed" to the country's infrastructure preparedness strategy. The Petitioner submitted documentation showing that his work as a corrosion engineer is in an area of substantial intrinsic merit. For example, the record includes information from the [REDACTED] explaining the importance of highway bridge conditions and the burden of corrosion, along with information from the [REDACTED] explaining the financial costs and risks associated with oxidative and non-oxidative corrosion on the United States' bridge infrastructure. Accordingly, we find that the Petitioner meets the first prong of the *NYSDOT* national interest analysis, and the Director's determination on this issue is withdrawn.

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B. National in Scope

The second prong of the *NYSDOT* national interest analysis requires that the benefit arising from the Petitioner's work will be national in scope. The Director determined that the Petitioner had not met this requirement because his work "may be of benefit locally," but it "does not impart the United States on a national level." We disagree.

The Petitioner provided evidence indicating that the proposed benefit of his corrosion engineering research has national and international scope. He submitted evidence that he has "created and guided the installation of corrosion mitigation technologies that bolster bridge and roadway function in localities throughout the United States." His work has extended to [REDACTED] the [REDACTED] over the [REDACTED] in [REDACTED] Illinois, and various field-based bridge inspection projects in other states. He also submitted evidence that his research was incorporated into [REDACTED] reports associated with the [REDACTED]

In addition to his field work, the Petitioner provided evidence that his scholarship and publications have been disseminated nationally and internationally. According to the report submitted from [REDACTED] the Petitioner has authored peer-reviewed journal articles which have been cited by independent researchers in Germany, Iran, Brazil, Italy, Japan, China, Egypt, Saudi Arabia, and throughout the United States.

On appeal, the Petitioner notes that the precedent decision, *NYSDOT*, concerned bridge engineering work generally limited to New York State and yet, the decision found that the bridge work performed by the beneficiary was critical to connect New York to the national transportation system, and therefore, served the interests of other regions in the country. The Petitioner draws a compelling nexus between the facts of his case and the *NYSDOT* precedent decision, stating that, like the beneficiary in *NYSDOT*, his bridge work "serves the interests of other regions in the country." He has provided evidence that his work extends beyond one particular "locality" or state as it involves inspecting, maintaining, and repairing bridges and infrastructure that connect the national infrastructure and "serve the interest" of many regions throughout the United States.

Accordingly, we find that the Petitioner meets the second prong of the *NYSDOT* national interest analysis, and the Director's determination on this issue is withdrawn.

C. Serving the National Interest

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. The Director determined that the Petitioner's impact and influence on his field did not satisfy the third prong of the *NYSDOT* national interest analysis. The Director stated that the evidence did not support a finding that the Petitioner's work "has been of major significance in the field."

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On appeal, the Petitioner indicates that his influence on the field as a whole is demonstrated through both his scholarship and his field work, and he maintains that the Director applied the wrong standard of law. Specifically, the Petitioner asserts that he is not required to prove that his work has been "of major significance," rather the correct standard is whether his work has had a degree of influence on the field as a whole. We agree.

At the time of filing, the Petitioner was working as a corrosion science engineer for [REDACTED]. The Petitioner seeks to continue his research in the corrosion science field and has submitted documentation of his published work, conference presentations, peer review activities, research projects, professional memberships, and educational credentials. The record also includes evidence demonstrating that his published and presented work has been frequently cited by independent researchers. A substantial number of favorable independent citations for an article is an indication that other researchers are familiar with the work and may have been influenced by it. While the fact that the Petitioner's research has been cited does not necessarily mean that it has impacted the field, here it is accompanied by evidence that the individuals citing the work have found it impactful and have used it.

The Petitioner submitted various reference letters discussing his scholarship. Several authors describe how the Petitioner's findings are "critical" and "novel," and explain how they have served as an impetus for their own research. For example, [REDACTED] co-owner of [REDACTED] a company providing evaluation and consultation on materials problems, described how the Petitioner's "novel study" of the corrosive behavior of aluminum matrix composites, "provides [a] great framework for the field of engineering to carefully reassess the optimal way of using these composites, as well as finding the best way to further reinforce these composites for greater resistance to corrosion." She stated that the Petitioner's work is "laying vital basis to the exploration of several prototypical models" that are "essential to the development of metal coatings with improved corrosion resistance and reduced environmental impact."

Similarly, [REDACTED] an engineering professor at [REDACTED] Nigeria, indicated that he has directly implemented the Petitioner's findings into his own research. He stated that the Petitioner's "novel analysis" regarding the deterioration vulnerability of alumina-reinforced composites is "incredibly important to the deployment of this composite for use in a variety of engineering designs." Furthermore, [REDACTED] professor of chemistry, [REDACTED] Colombia, explained that he directly utilized the Petitioner's research developing novel ceramic-polymer silane-based outer coatings for aluminum and other metallic substrates. He described how the Petitioner's work "provided us with a key extant success to which we could turn in our own development of a similar yet importantly distinct silicone-based coating with comparable applications." [REDACTED] also stated that the Petitioner's research "represents a high watermark in that area of corrosion science," and attested that several of his colleagues have also "gained" from the Petitioner's research. He further explained how the use of his work "indicates that [the Petitioner's] peers consider his efforts authoritative in the discussion of that topic, signifying his importance to the field as a whole." These

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letters satisfactorily chronicle the Petitioner's degree of influence in the field through his scholarship and publications.

In addition to demonstrating a strong citation and publication history, the evidence in the aggregate supports the Petitioner's affirmation that his work has also found practical application in industry and government settings. The submitted letters describe with specificity how his work has been used by the employer that recruited him, as well as by state departments of transportation, and they also attest to its wider application in the field.

For example, [redacted] state corrosion mitigation technologist for [redacted] stated that the Petitioner's 2011 design of cathodic protection systems for the 11 bridges located throughout [redacted] and [redacted] counties will "significantly preserve the life span of the bridges, giving them 25-75 additional years of activity before they would need further corrective efforts." [redacted] went on to describe how the Petitioner's success with the 2011 project led [redacted] to recruit him for a 2012 project to rehabilitate the [redacted] bridge spanning the [redacted]. He described how the Petitioner's work "has been significant to Florida, but also has great value to the rest of the country." He further stated that the Petitioner's work on the corrosion control of structures in coastal areas "went a great ways towards improving the public safety and increasing the sustainability of the regional economy."

In addition, [redacted] national practice leader, bridge instrumentation and evaluation, [redacted] described how the Petitioner led a team of engineers to evaluate the structural integrity of the [redacted] in [redacted]. [redacted] stated that the Petitioner evaluated the corrosion vulnerability of 120 steel columns that would be susceptible to corrosion over time. [redacted] explained that "[the Petitioner] proposed synthesized corrosion inspection and monitoring methods" at different levels for the fully enclosed columns that will enable engineers to "appropriately monitor and assess the corrosion of the camouflaged steel columns." [redacted] indicated that the Petitioner's proposal was approved by the [redacted] and that he was "critical to the success of this endeavor."

For these reasons we find the record sufficient to demonstrate that the Petitioner has had a degree of influence on the field as a whole through both his scholarship and his work on major corrosion mitigation projects throughout the United States. We therefore find that the Petitioner's past record of achievement justifies a projection that he will serve the national interest to a significantly greater degree than would an available U.S. worker having the same minimum qualifications.

III. CONCLUSION

As discussed above, the Petitioner has established that he qualifies as an advanced degree professional and that a waiver of the requirement of a job offer, and thus of a labor certification, will be in the national interest of the United States.

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Accordingly, the Petitioner has met his 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).

ORDER: The appeal is sustained.

Cite as *Matter of J-Z-*, ID 67841 (AAO Dec. 12, 2016)