(b)(6)

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

U.S. Citizenship and Immigration Services

DATE: MAY 27 2014 OFFICE: TEXAS SERVICE CENTER FILE:

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 please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition and certified the decision to the Administrative Appeals Office (AAO) for review. The AAO will affirm the denial of the petition.

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 and as a member of the professions holding an advanced degree. A statement submitted with the petition indicates that the petitioner "is currently a professor in the Histology and Cell Biology Division of the Department of Anatomical Sciences at [redacted]." 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. The director also found that the petitioner did not submit sufficient information to establish the nature of his intended employment in the United States.

In response to the certified denial, the petitioner submits a personal statement, a legal brief, and supporting exhibits.

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 director found that the petitioner had not 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).

Supplementary information to regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dep't 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 alien 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 alien 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, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the alien 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 alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The USCIS 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. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on March 15, 2013. The petitioner left Part 6 of the petition form, Basic Information About the Proposed Employment, blank. The petitioner provided an introductory letter, which stated:

> [The petitioner] is currently a professor in the Histology and Cell Biology Division of the Department of Anatomical Sciences at [redacted] [The petitioner] currently focuses on the evaluation of animal systems (*in-vivo* and *in-vitro*) for toxicological effects of alcohol and some natural plant products.
>
> . . . Academically and professionally, [the petitioner] has contributed to the training and development of several generations of Medical, Nursing, Dental and Medical rehabilitation students from Nigeria, Grenada, USA, Canada and several other countries. . . . He has contributed to the generation and promotion of [redacted] awareness in Grenada targeting the youths in secondary schools through the Grenada [redacted] events that he pioneered and had the unique opportunity of bringing Grenada as a Nation to the International arena in [redacted] for the [redacted] time in the history of the country in [redacted] . . .
>
> Not only is [the petitioner's] field of employment in the national interest, but he in particular, to a greater extent tha[n] the few U.S. workers who have a background in both mechanical engineering [*sic*], plays a significant role in the furtherance of his field. There are few qualified US professionals with comparable academic or professional qualifications. He is, therefore, more skilled than others who perform similar work. . . . It is my professional opinion that [the petitioner] possesses a degree of expertise significantly above that ordinarily encountered in his field. He is the recipient of several honors, fellowships and awards. . . . Several of his publications in reputable and scholastic international journals have been cited and referenced, in addition to his contributions as reviewer to several international journals and a consulting Editor to the [redacted].

The record lacks evidence to corroborate many of the above claims regarding the petitioner's past experience and achievements (such as the petitioner's claimed receipt "of several honors, fellowships, and awards"). 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 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The supporting evidence submitted with the petition consisted of copies of the following:

- The petitioner's master's and Ph.D. diplomas from [redacted] Nigeria;
- The petitioner's Nigerian "Certificate of Full Registration as a Medical Practitioner";
- A January 29, 2013 letter from the chancellor of [redacted] informing the petitioner of his promotion "to the rank of Professor";
- Documentation of the petitioner's participation at various scientific conferences; and

- Published articles, some written by the petitioner, others citing his work.

In some instances, the record offered only partial support for the petitioner's claims. The petitioner, for example, claimed to have documented ten or more years of experience in his field, thereby satisfying the USCIS regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B). That regulation requires the petitioner to submit "[e]vidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought." The petitioner's introductory letter contained the claim: "During the years 1994-2007 [the petitioner] held many positions and served in several diverse capacities with the [redacted]" and that the petitioner had worked at various hospitals from 1990 to 1994. The only evidence cited in support of this claim was an article that the petitioner co-authored in 2003. The petitioner's initial submission did not include that article. Apart from the aforementioned January 2013 letter regarding the petitioner's promotion, the petitioner submitted no employer letters specifically attesting to his prior employment, as required by the above regulation.

Regarding the assertion that the petitioner "possesses a degree of expertise significantly above that ordinarily encountered in his field," the quoted phrase is a close match for the regulatory definition of "exceptional ability" at 8 C.F.R. § 204.5(k)(2). By statute, aliens of exceptional ability in the sciences, the arts, and business remain subject to the job offer requirement at section 203(b)(2)(A). Exceptional ability neither implies nor demonstrates eligibility for a waiver of that requirement.

The introductory letter stated:

> [The petitioner] may not [seek classification under section 203(b)(2) of the Act] through a sponsor for two additional reasons. First, the inability to articulate the requisite skills in a Labor Certificate is because [the petitioner's] work requires a combination of formal education and practical experience in both biomedicine, neuroscience, and animal care. Such a combination of qualifications cannot be articulated in a Labor Certification. Second, being tied to a single employer would preclude [the petitioner] from doing even part-time training of medical nursing, dental and medical rehabilityation [*sic*] students as he has been doing due to the facts that EB-2 self sponsorship and part-time employment are precluded by the Department of Labor.

The petitioner cited no statutes or regulations to support or explain the above assertions regarding Department of Labor policy. Regarding the assertion that employment for a single employer would preclude the training of students, the petitioner claims to be a professor at a medical school. The petitioner did not explain why a professor at a medical school would be unable to pursue research while also training medical students. The petitioner also did not establish which, if any, of his past achievements took place outside of his employment, or with multiple simultaneous employers.

Furthermore, the claimed unavailability of labor certification is not, by itself, grounds for approving the waiver. *See NYSDOT* at 218 n.5 and 223. The statutory threshold for the waiver is the national

interest, not the alien's inability or unwillingness to pursue labor certification through a petitioning employer.

The introductory statement did not specify the occupation in which the petitioner seeks employment. The statement referred to neurochemistry, training of students in medicine and related fields, mechanical engineering, the petitioner's degrees in anatomy, and his "license to practice medicine." Some of the petitioner's earlier published research work indicated that he was on the "Faculty of Pharmacy" at the Nigeria. Most of these elements all deal with medicine or medical research in various ways, but those fields encompass a broad variety of individual occupations.

A printout from the Google Scholar search engine identified 14 published articles by the petitioner, and indicated that ten of the articles had earned a total of 87 citations. Eight of the ten cited articles appeared between 2002 and 2007. With respect to his more recent work, an article from 2009 showed four citations and an article from 2011 showed one citation. The petitioner submitted copies of some of the citing articles.

The petitioner requested that, if the director judged the petitioner's evidence to be insufficient, the director "issue a Request for Evidence [RFE] compliant with the February 16, 2005 Yates memo entitled 'Requests for Evidence and Notices of Intent to Deny." In that memorandum, William R. Yates, USCIS's Associate Director of Operations, stated:

> Generally it is unacceptable to issue a RFE for a broad range of evidence when, after review of the record so far, only a small number of types of evidence is still required. "Broad brush" RFEs tend to generate "broad brush" responses (and initial filings) that overburden our customers, over-document the file, and waste examination resources through the review of unnecessary, duplicative, or irrelevant documents. . . . The RFE should set forth what is required in a comprehensible manner so that the filer is sufficiently informed of what is required. . . .
>
> It can be helpful to customers to articulate how and why information already submitted is not sufficient or persuasive on a particular issue. Customers can become confused and frustrated when they receive general requests for information that they believe they have already submitted.

The director issued an RFE on May 29, 2013, stating: "The self-petitioner did not declare any proposed employment, nor did he submit any letter of interest in regard to future employment. . . . In fact, the self-petitioner has not told us what work he will be doing or if there is any pending employment." The director quoted the "cover letter . . . on Page 5, Paragraph 2," regarding "part-time employment," and stated "These statements do not show an intent for full-time employment." The director instructed the petitioner: "Please explain exactly what type of full-time work you are intending. Please submit evidence of employment that has been offered to you."

The director stated that the petitioner had submitted "no letters . . . to support the national interest waiver"; all of the submitted letters concerned invitations to attend various conferences. After listing some of the requirements deriving from *NYSDOT*, the director stated that the petitioner had submitted an incomplete copy of ETA Form 9089, Application for Permanent Employment Certification. The USCIS regulation at 8 C.F.R. § 204.5(k)(4)(ii) requires the submission of parts J, K, and L of that form.[1] The director added that, on Part K of that form, the petitioner had not identified any employment before his current position. Part K of ETA Form 9089 instructs applicants to "list any other experience that qualifies the alien for the job opportunity."

The petitioner's response consisted of a letter which reads, in part: "The RFE is yet another 'broad brush' and inconsistent with the February 16, 2005 Yates memo entitled 'Requests for Evidence and Notices of Intent to Deny.' . . . Please, therefore, issue a compliant RFE forthwith or favorably adjudicate the petition." The letter did not explain how the RFE was "broad brush"; the RFE contained several case-specific requests and observations that clearly did not derive from any general template.

The only substantive response to specific points in the RFE was this statement: "the request asks for pages 9 and 10 of Form 9089 which do not apply [to national interest waiver cases]. Moreover, statements about employment are not required under the regulations which were apparently ignored once again."

Pages 9 and 10 of ETA Form 9089 comprise parts N through Q of that form. It is correct that these elements are not required in an application for a national interest waiver. This assertion, however, did not address the director's separate observation that the petitioner provided what appeared to be an incomplete employment history on Part K, which is one of the required parts of the form.

The director denied the petition on January 21, 2014, stating that the record "included insufficient information support a conclusion that the petitioner's past work had benefitted the field as a whole." The director acknowledged the petitioner's submission of citation evidence, but found that this evidence did not establish ongoing influence. The director stated:

> The petitioner's published research has been independently cited 87 times since 2002, with only four [citations] in 2009 and one in 2011. There were no recent citations after 2011, which points to a lack of use and not a continuation of the self-petitioner[']s influence [on] others in the field.

More specifically, the numbers quoted by the director refer to citations of articles that the petitioner published in 2009 and 2011.

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[1] The regulation requires the submission of Form ETA-750B, Statement of Qualifications of Alien. This form is now obsolete. Parts J through L of ETA Form 9089 fulfill the same function.

The director found that "the record lacked sufficient descriptive evidence (such as testimonial evidence) setting forth in understandable terms, how the research community had, in fact, benefitted from the petitioner's work. . . . Letters submitted with the petition . . . did not describe past work or prior achievements."

The director also stated:

> The self-petitioner also did not declare any proposed employment, nor did he submit any letter of interest in regard to future work. Counsel's supporting statement . . . [did] not show intent for full-time work. In fact, the self-petitioner has not told us what type of work he will be doing nor if there is any pending work.

The director concluded that the petitioner had not provided sufficient evidence to show that the benefit from the petitioner's future work would be national in scope, or that the prospective benefit from the petitioner's future work would warrant the national interest waiver.

The director observed that the director issued an RFE to allow the petitioner the opportunity to supplement the record, but that the petitioner's "RFE response consisted solely of [a] letter" claiming that the RFE was deficient. The director certified the decision to the AAO.

The petitioner's legal brief includes the observation that the initial submission included "[o]ver one hundred pages of evidence . . . which demonstrated [the petitioner's] related advanced degree, over ten years of experience, professional licensure, professional memberships, recognition for achievement and eligibility for exemption from a job offer." The petitioner's initial evidence, described above, supported only some of these claims.

The petitioner asserts that the director "issued a boiler-plate Request for Evidence (RFE) that held [the petitioner] to the EB-1, not the correct EB-2 standard." The record contradicts this claim. The petitioner, here, claims that the director issued a generic request for evidence relating to aliens of extraordinary ability, which is a higher preference classification with more stringent requirements than the benefit that the petitioner seeks. The principal evidentiary requirements for aliens of extraordinary ability appear in the subsections of the regulation at 8 C.F.R. § 204.5(h)(3). The RFE contained no mention of extraordinary ability, and it did not cite or quote the evidentiary requirements at 8 C.F.R. § 204.5(h)(3).

Furthermore, contrary to the allegation that the RFE is "likely the result of indolent 'cutting and pasting' from RFE templates," the RFE contains specific references to this petition that could not have originated from any general template. Some of these specific references, such as the assertion that the petitioner "has not told us what work he will be doing" and that "[t]here were no letters offered to support the national interest waiver," later formed the basis for the denial of the petition. The claim that the RFE was "non-compliant" did not relieve the petitioner of the obligation to submit a substantive response to the RFE.

The petitioner observes that "on page three of the certification," the director stated "the record of evidence demonstrates an employment offer." This misstatement could result in some confusion, but it does not rebut the director's detailed conclusion that the petitioner provided no specific information regarding his intended work in the United States. The petitioner established that he is a professor at an overseas university, and that he has engaged in research in the past, but he did not indicate what he intended to do in the United States. The director requested more details not as a means of imposing the job offer requirement, but because the petitioner's ability to benefit the United States in the future depends in large part on the nature of his intended employment. The petitioner's claimed credentials indicate that he could, for instance, work as a college professor, or a medical researcher, or a physician. These professions draw from a similar well of subject matter expertise, but involve highly divergent duties and, therefore, affect the national interest in very different ways. It cannot suffice for the petitioner to state that, because he has done all of these things in the past, it is reasonable to predict that he will somehow benefit the United States. The petitioner has not indicated, even approximately, what form that benefit would take.

The legal brief states:

> [The director] made the following laughable assertion: "there was little to no evidence submitted to support a conclusion that the petitioner's research had been influential to his field. The petitioner's published research has been independently cited 87 times. . . " It is a well-known fact that by the very nature of being a citation a citation is "influential." . . . If the material . . . that has been cited 87 times were not influential, it would not have been so extensively cited.

The above selective quotation of the certified denial notice omitted crucial context. A fuller quotation of the relevant portion follows:

> There was little to no evidence submitted to support a conclusion that the petitioner's research had been influential to his field. The petitioner's published research has been independently cited 87 times since 2002, with only four in 2009 and one in 2011. There were no recent citations after 2011, which points to a lack of use and not a continuation of the self-petitioner[']s influence [on] others in the field.

The brief does not address the latter portion of the above passage, which raised the highly relevant issue of the petitioner's ongoing influence on his field.

The brief states:

> Had the [Texas Service Center] complied with its own policy and extended the courtesy of a specific RFE, counsel would have been able to furnish additional details such as the following:

> [The petitioner] was invited by [redacted] where he conducted research from July 1-15, 2013. . . .
>
> [The petitioner] was nominated by the [redacted] to Co-Chair a [redacted] of the Association to develop [redacted] . . . A first report of the activity of the Panel is due at the [redacted], in China.
>
> In furtherance of his effort to establish [redacted] and Use for Scientific purposes in developing countries, in particular in Africa, [the petitioner] facilitated [redacted] in Nigeria. The first held at the [redacted] Nigeria on [redacted] 2011 and the [redacted] held at [redacted] Nigeria from [redacted] 201[3]. . . .
>
> These efforts recently culminated in the establishment and incorporation of the organization [redacted] to sustain the successes achieved following the National and International Workshops held . . . in 2011 and 2013 respectively, which are being propagated to Ghana and Kenya. . . .
>
> [The petitioner] has been invited as Faculty to the [redacted] conference, holding [*sic*] in Denver, CO, USA from [redacted] . .
>
> [The petitioner's] book titles, [redacted] is under consideration for publication by [redacted] publishers to submit an initial draft. This is first of its kind, a book on [redacted] for undergraduate students, and it is [a] work in active progress.

As shown above, the brief contains a series of specific claims of fact. Some of these claims are unsupported and therefore cannot meet the petitioner's burden of proof. *See Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner submits copies of fliers for two events that both occurred after the filing of the petition. One flier promoted a [redacted] 2013 seminar at [redacted] at which the petitioner spoke; the other identified the petitioner as a "resource person" at an [redacted] workshop on animal testing ethics held at [redacted] on [redacted] 2013. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). Therefore, subsequent events cannot cause a previously ineligible alien to become eligible after the filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Furthermore, the petitioner has not explained how these events establish the petitioner's influence on the field as a whole. Therefore, even if they predated the filing of the petition, they would establish only that the petitioner has been active in the fields discussed on the fliers.

The only evidence that the petitioner submitted regarding his claimed forthcoming book is a copy of These guidelines state the publisher's policies, but contain no internal evidence that has solicited a book from the petitioner. At most, the petitioner's possession of the guidelines suggests that he has looked into submitting a manuscript to for publication.

The director, in the RFE, had instructed the petitioner: "Please explain exactly what type of full-time work you are intending." The petitioner did not submit any explanation in response to the RFE. On that basis alone, USCIS may not approve the petition. *See* 8 C.F.R. § 103.2(b)(14). The petitioner's submission of such an explanation at this stage is untimely, and he has offered no explanation for his failure to submit it when the director specifically requested it in the RFE.

On certification, the petitioner submits a brief, stating:

> [C]ounsel hereby submits evidence labeled "Exhibit A" that . . . [the director] claimed was missing in [the] certification notice but did not have the courtesy or professionalism to request [the above evidence] in a properly written RFE. Such evidence includes correspondence from [the petitioner] that he intends to continue to work in his field and that he, to a greater extent than U.S. workers having the same minimum qualification, plays a significant role in the furtherance of that field.

The petitioner, in his new letter, describes his claimed past employment at length, and states that he hopes to work at "a College/University, when given an opportunity to do so." The petitioner did not identify any U.S. college or university that had expressed an interest in employing him.

The petitioner seeks an employment-based immigrant classification, and must show how his intended employment will serve the national interest. The petitioner cannot do so without providing reasonable details about the petitioner's intended work in the United States. The statutory job offer requirement includes several specific elements, such as labor certification and documentation regarding the prospective employer's finances (to establish ability to pay the offered salary). A waiver of the job offer would exempt the petitioner from submitting these specific pieces of documentation, but it does not entitle the petitioner to omit basic information about his intended employment in the United States. Furthermore, a waiver of the job offer requirement does not mean that the petitioner can express an intention to work at an unnamed "College/University" and leave it at that. Employment at such an institution is not entirely up to the petitioner; the college or university must seek to employ him. Therefore, the petitioner's unilateral assertion of intent cannot suffice to show that he will, in fact, secure employment at a U.S. college or university at some point in the future.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested

evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The director specifically requested information regarding the petitioner's intended work in the United States, and the petitioner's failure to provide that requested information was grounds for denial of the petition. The petitioner's submission of a statement at this late date cannot show that the director's decision was improper or in error. *Cf. Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 537 (evidence requested in an RFE, but not submitted until after the denial decision, will not establish eligibility.)

As indicated in the legal brief, heavy citation of the petitioner's early work is an indication of its influence. The petitioner, however, has failed to address the director's observation that the evidence does not establish an ongoing pattern of continued influence in the petitioner's field. The director specifically requested third-party evidence of the significance of the petitioner's work, which the petitioner has not submitted. The director, in the RFE, also asked for more information about the petitioner's intended work in the United States, and the petitioner's response to the RFE did not address or even acknowledge this request. This lack of a substantive response is, itself, sufficient grounds for denial of the petition under 8 C.F.R. § 103.2(b)(14). Beyond that issue, the petitioner has offered insufficient evidence to support claims put forth at various stages in the proceeding. The legal brief blames the denial of the petition on the director's issuance of a generic RFE, but the record demonstrates that the RFE contained specific, customized language that did not originate from any "boilerplate" template.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole.").

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. 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.

While the director cited sufficient grounds to warrant denial of the petition, review of the record reveals an additional ground for denial. The AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Apart from the issue of the petitioner's eligibility for the national interest waiver, the petitioner must also establish eligibility for the underlying immigrant classification, either as a member of the professions holding an advanced degree or as an alien of exceptional ability in the science, the arts, or business.

The director, in the certified decision, made a summary finding in the petitioner's favor, stating: "It is established that the self-petitioner holds a Ph.D. from the and meets the advanced degree qualification under INA 203(b)(2)." The record, however, does not support this finding. The USCIS regulation at 8 C.F.R. § 204.5(k)(3)(i)(A) states that, to show that the alien is a professional holding an advanced degree, the petition must be accompanied by an official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree.

The petitioner holds master's and doctorate degrees from the university named above. That university is in Nigeria, and therefore it is not a United States university. The petitioner has submitted no evaluation to establish that the degrees are the foreign equivalent of advanced degrees from a United States university. They could be equivalent degrees, but the petitioner has submitted no evidence to warrant such a finding. Therefore, the petitioner has not sufficiently documented that he qualifies as a member of the professions holding an advanced degree.

The petitioner also claims to qualify for classification as an alien of exceptional ability in the sciences. The director did not address this claim. Responsibility to make the initial determination on the claim rests with the director rather than with the AAO. Detailed discussion of the claim on certification would not change the outcome of the present decision, because the petition cannot be approved without concurrent approval of the national interest waiver application.

The AAO will affirm the denial of the petition 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). Here, the petitioner has not met that burden.

ORDER: The director's decision of January 21, 2014 is affirmed. The petition is denied.