

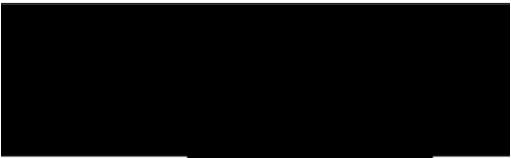


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Office: TEXAS SERVICE CENTER

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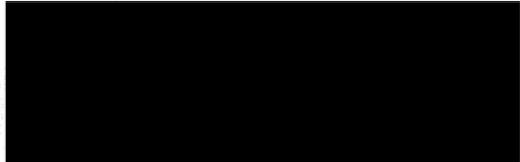
Petitioner:

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to 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 or a member of the professions holding an advanced degree. 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 did not contest that the petitioner qualifies for classification as an alien of exceptional ability or a member of the professions holding an advanced degree, but found that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, in the very first paragraph, counsel asserts that the petitioner is appealing “the denial of the petition for extraordinary researcher.” We note that no such classification exists. The petitioner also filed a petition seeking classification as an alien of extraordinary ability and the University of New Mexico filed a petition in her behalf seeking to classify her as an outstanding researcher. The latter petition was approved and the petitioner would not have standing to appeal the denial of a petition for which she is only the beneficiary. Thus, this appeal must relate to either the extraordinary ability petition or the advanced degree alien petition seeking a waiver of the national interest waiver. We acknowledge that the final four pages of counsel’s brief address the director’s decision on the extraordinary petition. Counsel filed the appeal, however, on the Form I-1290B with the receipt number of the national interest waiver petition. Moreover, language in counsel’s brief repeatedly compares “this denial” with the director’s separate decision on the extraordinary ability petition and asserts that the petitioner is “also appealing the Extraordinary case.” Thus, we conclude that the petitioner is actually appealing the national interest waiver decision based solely on the assertion that the same adjudicator rendered both decisions and that the extraordinary ability decision is so flawed that the national interest waiver decision should be overturned.

Counsel provides no legal authority or policy, and we know of none, that would preclude a single adjudicator from reviewing different petitions filed on behalf of the same individual. It could be credibly argued that review by a single adjudicator insures consistency, improves efficiency and prevents contradictory claims from being advanced in separate proceedings involving the same individual. We note that current procedures do allow for a second review through the appeals process. Thus, we find that the main focus of counsel’s appellate brief is utterly without merit. As this appeal is appealing the national interest waiver decision, we find all discussion of the merits of the extraordinary ability decision irrelevant. Counsel’s sole assertion relating to the decision on the national interest waiver petition is that the director placed too much weight on the lack of frequent (or any) citation of the alien’s work. We will consider this assertion below.

Section 203(b) of the Act states in pertinent part that:

(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 requirement 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 holds a doctoral degree from the Chongqing University of Medical Sciences. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue 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 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 the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service 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.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be

shown that the proposed benefit will be national in scope. 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.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien 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 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.

We concur with the director that the petitioner works in an area of intrinsic merit, medical research, and that the proposed benefits of her work, improved understanding of and treatment for strokes, would be national in scope. 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.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. 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.

The petitioner relies on several reference letters and her publication record as evidence of why the waiver of the job offer is warranted in the national interest. The director concluded that the petitioner's work identified as the most significant had yet to be published and that the record lacked persuasive letters from independent sources or evidence of frequent citation. Thus, the director further concluded that the petitioner had not influenced her field.

On appeal, counsel notes that some of this language appears in the decision denying the extraordinary ability petition. If the petitioner submitted the same or similar evidence for two petitions, it is unclear how the director erred in using similar language to evaluate the same or similar evidence. Counsel himself repeats much of his own language in his briefs supporting the two petitions.

We concur with counsel that the standard for the classification sought is less than the standard for aliens of extraordinary ability. That said, none of the repeated language in the national interest waiver decision is exclusive to the extraordinary ability classification. For example, in the national interest waiver decision, the director did not use a national or international acclaim standard or discuss the lack

of evidence to meet at least three of the regulatory criteria for aliens of extraordinary ability. At issue is not whether the director repeated language from another decision but whether the language in the national interest waiver decision is legally and factually sound.

We acknowledge that the petitioner submitted evidence of academic and regional awards received by the petitioner. Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 219, n.6. Regardless, recognition from government entities is one criterion for classification as an alien of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that meeting one criterion, or even the requisite three criteria, warrants a waiver of that requirement.

The petitioner also submitted numerous reference letters. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions that the alien's work is in the national interest or of contributions and important results are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through her reputation *and who have applied her work* are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

The petitioner obtained her Ph.D. from Chongqing University in 1998. She served on the faculty there through 1998. From September 1998 through February 2001, the petitioner was a postdoctoral fellow at the University of Hong Kong. The petitioner has worked at the University of New Mexico since March 2001, first as a postdoctoral fellow and then as a research assistant professor. The petitioner submitted several reference letters and copies of her published articles and conference presentations. Most of the letters attest to the national interest inherent in the petitioner's work. We note that the statutory standard for the classification sought with this petition is national or international *acclaim*. The letters focus on the petitioner's research on strokes conducted at the University of New Mexico in the laboratories of [REDACTED] and [REDACTED]. Noting this work had yet to

be published, the director concluded that the petitioner had not established the impact of this work outside of her immediate circle of colleagues.

On appeal, counsel notes that the petitioner presented this work at a professional conference. Counsel further asserts that the petitioner is in a small field and, thus, the top members of the field are familiar with one another.

The letters submitted initially mostly discuss the importance of the petitioner's area of research, praise the petitioner's skills, attest to her contributions to the understanding of brain damage from strokes due to the breakdown of the blood-brain barrier and assert that she is vital to [redacted] projects. We have already acknowledged the importance of the petitioner's field above as well as the national scope of the proposed benefits of her work. While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently warrants a waiver of the labor certification requirement in the national interest. None of the initial letters, including those from independent researchers who met the petitioner at a conference, explain how the petitioner's work has influenced the direction of stroke research or their own research.

Several references also attest to the petitioner's unique skills, including microsurgery. It cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221.

In response to the director's request for additional evidence, [redacted] asserts that the labor certification procedure is employer-oriented and, thus, "would hinder [the petitioner's] freedom in pursuing the different approaches in stroke research if the labor certificate were required." Yet, earlier in the same letter, [redacted] asserts that if the petitioner "were to discontinue her job, research progress on multiple federally-funded projects at UNM would be seriously disrupted." If it is in the national interest for the petitioner to continue at the University of New Mexico, it is unclear how the labor certification process being an employer-oriented process would harm the national interest.

The most significant inquiry is into the petitioner's past history. The most detailed letter regarding this issue is from [redacted] in response to the director's request for additional evidence. According to [redacted] the petitioner's Ph.D. research involved analgesia effects of lithium salt on rat brains. He asserts that this work, pursued from 1995 to 1998, won a Nomination Award (documented as a scholarship elsewhere in the record) in 1995 from the Chinese Neuroscience Society. If true, it appears that the award was based on the promise of the petitioner's proposal

rather than the significance of the final results. At the University of Hong Kong, the petitioner's research involved cDNA microarray analysis of gene expression associated with motor neuron death after different spinal cord injuries. As of the date of filing the petition, this work had yet to be published.

then discusses the petitioner's work at the University of New Mexico. In the laboratory of the petitioner used DNA microarray analysis to investigate changes in gene expression in different brain regions during learning and memory in an animal model of alcoholism. The results of this work demonstrated that the genes for proteosomal components are involved in memory consolidation in the brain. Once again, this work had yet to be published as of the date of filing the petition.

Finally, in laboratory, the petitioner focused on stroke research. explains that stroke is very difficult to research because animal models are difficult to achieve. The petitioner created a unique Middle Cerebral Artery Occlusion (MCAO) in mice and rats, allowing her to discover that "the early opening of the blood brain barrier (BBB) induced by reperfusion after 60 minute MCAO in mouse and 90 minutes MCAO in rat is associated with matrix metalloproteinases-2 (MMP-2) and -9 (MMPs) and that the extent of proteolysis of tight junction proteins of BBB by the MMPs determines the degree and duration of the leakiness of the BBB." According to the petitioner was the first person to describe this new mechanism at the early stages of the disruption of the BBB. While an associate professor at the University of Hong Kong, asserts that this work aims to find a new target for drug therapies in stroke patients, asserts that the work's significance is that it strengthens the argument for using MMP inhibitors in the early treatment of stroke, "the only treatment for stroke approved by the [Food and Drug Administration (FDA)]."

In a later section, asserts that the petitioner's MCAO induced mice make it possible to study the roles of MMP-3 and MMP-9 as well as tissue inhibitor of metalloproteinase-3 (TIMP-3). The petitioner herself "found a new mechanism of edema caused by disruption of BBB after MCAO, which is a significant breakthrough in stroke research." The petitioner presented this work in a poster at a Society for Neuroscience (SFN) Annual Meeting in 2004 and submitted it for publication in *The Journal of Neuroscience*. Director of the Biomedical Research and Integrative NeuroImaging Center at the University of New Mexico, asserts that this work "represents a significant advance on previous work in this field."

The petitioner submitted a few e-mail messages designed to demonstrate the impact of her work. One e-mail chain is between the petitioner and another individual at the University of New Mexico. This e-mail chain does not establish the petitioner's influence beyond the University of New Mexico. Another e-mail chain begins with a question to for his "support staff" that he forwarded to the petitioner for a response. The final e-mail chain is from at the University of California, San Francisco, who met the petitioner during the petitioner's poster presentation at SFN's 2004 annual meeting, requesting details of the petitioner's protocol. The petitioner responds that she

used a "ready-to-go" kit from Molecular Probes. With regard to the in situ zymography, the petitioner asserts that she "referred [sic] to several papers to make a protocol [sic]." The petitioner attached the papers on which she relied in her response. This e-mail chain suggests that while the petitioner's results were original, as is true with all published research, she did not personally develop the protocol used to obtain these results. Rather, the petitioner's protocol follows from the work of others to such an extent that she sent the articles on which she relied to [REDACTED] without embellishment.

Finally, [REDACTED] discusses the petitioner's research at the time of filing, which involved working with TIMP-3 knockout mice. While [REDACTED] asserts that any "breakthrough in this research would result in new avenues for stroke therapy," he does not identify any such breakthroughs in this area as of the date of filing.

The letters submitted on appeal go beyond the claims in the previous letters. For example, two letters from faculty at the University of New Mexico discuss the petitioner's influence in other laboratories at the University of New Mexico. Specifically, [REDACTED] an associate professor at the university's school of pharmacy, asserts that the petitioner's data "has helped us to design better pharmacological intervention strategies to minimize the brain damage caused by stroke by providing vascular protection." [REDACTED] an associate professor at the university's school of medicine, asserts that the petitioner "will help my laboratory to establish the use of In Situ Zymography for our studies on stroke-induced neurogenesis." These letters do not establish the petitioner's influence beyond the University of New Mexico.

In addition, [REDACTED] a Canada Research Chair in Neuroimmunology at the University of Calgary, asserts that his laboratory has "consulted [the petitioner] on a number of occasions in order to bring in situ zymography on line in our studies of Multiple Sclerosis (and also spinal cord injury and brain tumors). [REDACTED] states that the petitioner was "instrumental" in the development of in situ zymography and in refining that technology to "identify the particular type of neural cell that expresses the active protease activity." [REDACTED] concludes that "many laboratories" in the United States are applying this work. Similarly, [REDACTED] an associate professor in the Department of Oral and Maxillofacial Surgery at Kagawa University in Japan, asserts that the petitioner's work "has provided our research a novel approach to design better therapeutic strategies of cancer," such as oral squamous cell carcinomas.

As noted by the director, the record contains no evidence that the petitioner has been widely and frequently cited. Requests for reprints carry far less weight than citations as the requestor is only expressing an interest in the work and has yet to fully evaluate its usefulness. We acknowledge that the petitioner has now provided letters attesting to the petitioner's help in establishing protocols outside the University of New Mexico. As stated above, however, the petitioner's response to Dr. Vexler's e-mail strongly suggests that the petitioner's in-situ zymography is derived from the work of others and that a reading of the articles by those researchers is sufficient to use this procedure. The record lacks evidence that the correspondence between the petitioner and her peers is above and beyond the typical correspondence between researchers working on similar issues. While we

acknowledge that the petitioner gained national exposure at the 2004 SFN annual meeting, it remains that the work discussed by the references, going all the way back to 1998, has yet to be published as a full length article in a peer-reviewed journal. As such, it is difficult to gauge the response of the field as a whole. The evidence demonstrates that the petitioner is a talented researcher with potential, but the petitioner has not demonstrated a record of success 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.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.