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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: Nebraska Service Center

Date: 10 APR 2002

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations 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 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 found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but 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.

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. -- The Attorney General may, when he 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 medical degree from Binzhou Medical College. 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 Service 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 Service 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 Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 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 and treatment of neurological conditions, are national in scope. It remains to determine whether the petitioner has established that she 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 he 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 note 6.

██████████ in whose laboratory the petitioner worked at St. Louis University, provides general information about the reputation of the laboratory. Specifically, he states that the type of research performed there is unique, frequently cited by researchers in many other areas, and has been continuously funded by the National Institute of Health (NIH) for fifteen years. ██████████ continues that the petitioner is talented and reliable, assuming a significant role in the laboratory. ██████████ notes that the petitioner authored two published articles and presented her findings at

the annual meeting of the Society for Neuroscience. Finally, [REDACTED] provides details regarding the petitioner's projects with dopamine, altered levels of which are reflected in many brain disorders.

[The petitioner] has for the past two years focussed her efforts upon identifying specific kinds of dopamine producing cells and evaluating the levels of their relative vulnerabilities and resistance to cell death in a variety of conditions. The approach that she has taken to this problem is unique. Briefly, she utilizes injections of substances that selectively label specific types of dopamine neurons in order that she may then assess the relative vulnerabilities of specific subpopulations of dopamine cells to substances thought to cause their degeneration. She has shown that a specific calcium binding protein, which has been shown by others to protect neurons against degeneration, is present at high levels in the dopamine neurons most vulnerable to degeneration. She has shown in addition, that the expression of this compound is stimulated under neurotoxic conditions in less vulnerable neurons and thus may contribute to the resistance of those neurons to degeneration. This knowledge and the methods she employs will allow her to identify additional neurochemical therapies in neurodegenerative disorders.

[REDACTED] who has collaborated with [REDACTED] states that the petitioner's work with tracers and immunocytochemistry "has led to important discoveries" and that the petitioner has made "valuable contributions to our understanding of the neural bases for brain dysfunction in neurological disease and under conditions of substance abuse." [REDACTED] a professor at St. Louis University, provides similar information, asserting that the petitioner "is on the threshold of a major breakthrough in our knowledge about ways to prevent the onset or slow the development of Parkinson's disease."

[REDACTED] another professor at St. Louis University, discusses the petitioner's work in his laboratory on sudden infant death syndrome (SIDS).

This syndrome as yet has no etiology. I have developed a model using stimulation of the upper respiratory tract which causes a marked slowing of the heart, a cessation of breathing, and a slight rise in blood pressure. We are utilizing this model currently to discover the neural pathways which mediate this response and characterize it physiologically. Since it is currently thought that SIDS victims [sic] die in their sleep, we are attempting to induce this reflex in conscious, sleeping animals to determine if the response is accentuated when the animal goes into a specific stage of sleep, REM sleep. We have made much progress to date and recently have submitted a number of very important manuscripts in leading neuroscience and physiological journals towards this end.

[REDACTED] a professor of neurology at the Washington University in St. Louis School of Medicine indicates that the petitioner visited his laboratory to learn an intracellular dye injection

procedure, a technique “used by few investigators in the world” and quickly mastered by the petitioner. [REDACTED] also discusses the petitioner’s work in [REDACTED] laboratory, asserting it is widely recognized by the scientific community and has influenced other projects. Dr. Jaquin does not provide examples of other researchers who have been influenced by the petitioner’s work or pharmaceutical companies who are in the process of developing treatments based on the petitioner’s work.

The above letters are all from the petitioner’s immediate circle of colleagues and her advisor’s collaborator. While such letters are important in providing details about the petitioner’s role in various projects, they cannot by themselves establish that the petitioner has influenced her field as a whole.

[REDACTED] a professor at the University of Virginia Medical Center, discusses the petitioner’s work in [REDACTED] laboratory. While he characterizes the petitioner’s results as “most exciting,” he does not assert that the petitioner’s work has influenced his own work, which he states will soon end upon his retirement.

The petitioner has given several presentations and has authored two “short communication” articles in *Brain Research* and two additional articles in Chinese journals. The Association of American Universities’ Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that “the appointment is viewed as preparatory for a full-time academic and/or research career,” and that “the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment.” Thus, this national organization considers publication of one’s work to be “expected,” even among researchers who have not yet begun “a full-time academic and/or research career.” This report reinforces the Service’s position that publication of scholarly articles is not automatically evidence of influential contributions; we must consider the research community’s reaction to those articles.

The petitioner submitted three articles by independent researchers which cite her 1995 article in *Brain Research*. Three citations are not evidence that the petitioner’s work has been influential on her field as a whole.

On appeal, counsel submits evidence that the petitioner has since obtained her Ph.D. and has authored additional articles. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971).

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, 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.