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U.S. Department of Justice

Immigration and Naturalization Service

identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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

[redacted]

File: [redacted] Office: Nebraska Service Center Date: APR 29 2002

IN RE: Petitioner: [redacted]
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:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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.

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 that 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 that 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.

On appeal, counsel asserts that the director erred by failing to issue a request for additional evidence prior to issuing the notice of denial. The remedy for any failure to request additional evidence is to consider any evidence that would have been submitted in response to such a request on appeal. The petitioner now submits four additional letters that will be considered 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. -- 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 Master's degree in biology from Cleveland State University. 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 of heart disease and Long QT Syndrome, 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 note 6.

Dr. F. Paul Doerder, a professor at Cleveland State University provides general praise of the

petitioner. While he praises her skills and track record of accomplishments, he fails to identify any specific contribution or how it has influenced the field of cardiology.

[redacted] an assistant professor and junior staff scientist at the MetroHealth Medical Center and the petitioner's supervisor at that institution, discusses the petitioner's work with genetic deficiencies of Long QT Syndrome (LQTS) patients, specifically the minK protein. [redacted] asserts that the petitioner "has already demonstrated that both wild type minK and minK subunits with mutations isolated from LQTS patients associate with the cardiac HERG potassium channel." [redacted] asserts that this finding "provides the basis for further investigation into cardiac abnormalities in LQTS patients," she does not provide examples of other laboratories incorporating the petitioner's results into their projects.

[redacted] Vice President for Research of MetroHealth Medical Center, writes:

> [The petitioner] is investigating the role of the minK protein in the potassium channel structure and function by using molecular biological technology. The minK protein is structurally unrelated to any other ion channel subunit but induces slowly activating, voltage-dependent potassium currents in heterologous expression systems. The quaternary structure of the minK channel complex has long remained a mystery, but recent studies have shown an interaction of the minK protein with another potassium channel subunit, KvLQT1, which is critical in human cardiac physiology. The minK protein is expressed in different tissues including heart, making minK an excellent target for pharmacological agents in the treatment of heart disease. [The petitioner] has been able to demonstrate that both wild type minK and minK with mutations associate with the cardiac HERG potassium channel. <u>This important finding provides the basis for further investigation into cardiac abnormalities in LQTS patients: it serves as the basis for future research. Very few researchers would be capable of performing this research with as much success</u>.

(Emphasis in original.) There is no indication, however, that the petitioner's work in this area has been subject to peer review through, for example, publication and citation, or that it has attracted the attention of the pharmaceutical industry.

[redacted] a project scientist at the Cleveland Clinic Foundation, asserts that he came to know the petitioner when his laboratory had joint meetings with [redacted] laboratory in which the petitioner worked [redacted] states:

> During her graduate work [the petitioner] mastered a wide spectrum of techniques relevant for work in the field of Molecular and Cellular Biology, and Biochemistry. She was able to demonstrate the critical role of amino acid mutations in the Switch II region of Ras proteins for binding of Ras-GTP to its downstream target proteins. Ras proteins are the cellular proliferative master switches in cells that transduce the proliferative signals from the cell membranes to cell nucleus. When Ras proteins

> human cancers contain mutated Ras proteins that are constantly in an activated "on" state. The pioneering research of [the petitioner] on the elucidation of molecular mechanisms by which Ras proteins can be "switched off" was, therefore, critical for the future design of novel cancer therapies. [The petitioner's] contribution to elucidation of molecular mechanisms by which cells transduce signals from their environment to their genes was also demonstrated in her postdoctoral work at the Neurosciences Department of the Cleveland Clinic Foundation. Her efforts were essential in isolation and biochemical characterization of group of proteins, caveolins that are critically involved in the signal transduction of malignant cells.

[redacted] a senior instructor at MetroHealth Hospital Medical Center, describes Long QT Syndrome and asserts that the petitioner has expertise in DNA sequencing and genotyping which are used to investigate the genetic deficiencies in LQTS. While [redacted] anticipates future accomplishments, he fails to identify and specific contributions already made by the petitioner.

The director concluded that the petitioner's "achievements appear to be commensurate with those expected of successful graduate students and research professionals." On appeal, counsel challenges this conclusion, noting that the references assert that the petitioner has a degree of expertise, which exceeds that normally encountered and is a pioneer in her field.

The references, however, provide insufficient examples of accomplishments to corroborate their opinions. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Moreover, the above letters are all from the petitioner's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's influence over the field as a whole.

On appeal, the petitioner submits four new letters, three of which are from researchers at the Cleveland Clinic Foundation. [redacted] a researcher at the Cleveland Clinic Foundation, reiterates much of the information discussed above as well as the petitioner's current work in [redacted] laboratory. [redacted] asserts that the petitioner's current work with LP(a), elevated levels of which are associated with cardiovascular disease, "could potentially lead to the invention of new drugs that would benefit millions of Americans." Most, if not all, medical research is in pursuit of medical treatments for disease. [redacted] does not indicate that the petitioner's work has led to clinical trials for any new drugs. Moreover, a petitioner must establish eligibility at the time of filing. Work performed after the date of filing is not relevant to the petitioner's eligibility prior to filing the petition.

[redacted] another researcher at the Cleveland Clinic Foundation discusses the importance of the general area of the petitioner's research and provides general praise of her abilities. He does not identify any specific achievement or finding that has influenced independent

researchers in the field. While he notes that the petitioner's work was published in *Brain Research*, he does not claim, and the record does not reveal, that this article has been widely cited.

[redacted] another researcher at the Cleveland Clinic Foundation, discusses the importance of cardiovascular research and provides general praise of the petitioner's abilities. [redacted] provides no examples of any specific influential contributions.

The final letter submitted on appeal is from Wentian Yang, a researcher at Harvard Medical School who met the petitioner while a postdoctoral researcher at the Cleveland Clinic Foundation. [redacted] eiterates much of the above information and provides general praise of the petitioner's skills. He asserts that her work with minK proteins has been shared with other researchers through publication and presentations. The record contains no evidence of such publications or presentations prior to (or after) the date of filing or letters from independent researchers who have been influenced by this work.

These letters on appeal are all from researchers who worked at the same institution in Cleveland as the petitioner. They cannot establish that she already has a track record of achievement with some degree of influence beyond Cleveland.

The petitioner submitted a copy of her article published in *Brain Research*. 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 record contains no evidence that independent researchers have cited the petitioner's article.

While the petitioner is respected by her colleagues and her research is no doubt of value, it can be argued that any research must be shown to present some benefit if it is to receive funding and attention from the scientific community. The record, however, does not establish that the petitioner's work represented a groundbreaking advance in cardiovascular research, or has far-reaching implications. While the petitioner's research clearly has practical applications, it can be argued that any published article, in order to be accepted for publication, must offer new and useful information to the pool of knowledge.

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.