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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

[Redacted]

File: [Redacted] Office: Nebraska Service Center

Date: AUG 27 2002

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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 seeks employment as a research scientist in the Department of Chemistry and College of Pharmacy at Oregon State University ("OSU"). 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 director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

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.

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 sought. 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.

We concur with the director that the petitioner works in an area of intrinsic merit, and that the proposed benefits of his research 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.

Along with documentation of his published research and academic credentials, the petitioner submits several witness letters. At the time of filing of the petition, the petitioner was working as a postdoctoral research associate in the laboratory of Dr. Mark Zabriskie, Associate Professor of Medicinal Chemistry, OSU. Dr. Zabriskie states:

[The petitioner] is currently a postdoctoral fellow in my laboratories in the College of Pharmacy and Department of Chemistry at Oregon State University where I am an

Associate Professor of Medicinal Chemistry.

\* \* \*

The second major project is involved in investigating the enzymology and molecular genetics of peptide antibiotic biosynthesis. Many complex peptides produced by microorganisms are clinically important drugs with useful properties including, antibiotic, immunosuppressant, antitubercular, and anticancer activities. The structural complexity of most of these peptides makes their synthetic preparation in the necessary quantities impossible using the organic chemistry tools currently available. Therefore, most of the bioactive peptides are produced by fermentation of the producing bacterium or fungus. Our research efforts in this area are directed at harnessing and engineering the biochemical machinery used by these microorganisms to produce greater quantities of these peptides as well as new peptides which might have improved biological properties.

\* \* \*

Specifically, [the petitioner] is cloning, characterizing, and expressing the biosynthetic genes for the clinically used peptide antibiotic capreomycin (CAPASTAT®), a mixture of four closely related peptides produced by the soil bacterium *Streptomyces capreolus*. Capreomycin has been used for decades to treat tuberculosis (TB) caused by *Mycobacterium tuberculosis* infections. Frequent incidence of hearing and kidney damage associated with capreomycin typically limit its use to treating cases of TB that are resistant to less toxic agents. Because a third of the world's population is infected with *M. tuberculosis* and because the number of cases of TB reported in the U.S., including multiple-drug resistant TB, has risen every year since 1990, there is a desperate need for new agents effective at controlling this deadly disease. [The petitioner's] work to clone, characterize, and express the genes encoding enzymes for capreomycin biosynthesis is the critical first step in developing a deeper understanding of the function and properties of these enzymes. This information will enable us to genetically alter the bacterium to produce new peptide antibiotics structurally related to capreomycin. These compounds will be evaluated for improved efficacy and decreased toxicity. Thus, [the petitioner's] research may have a direct impact on the identification of new drugs, and better ways to produce these drugs, to cure one of the most difficult to treat, and increasingly problematic, infectious diseases.

\* \* \*

[The petitioner's] current research is providing him with new training and challenges in the cloning and expression of genes that are involved in *Streptomyces* secondary metabolism. This is a very unique niche in the drug discovery area and one that is receiving increasing attention... Because of the central role *Streptomyces* occupy in the drug discovery area, persons skilled in the molecular genetics of these organisms are in great demand and in very short supply... A *Streptomyces* geneticist skilled in working

with metabolic pathways leading to the formation of important pharmaceutical agents is a very rare individual.

\* \* \*

Currently, [the petitioner] is the only person in the laboratory working on the capreomycin synthetase project and his continued involvement is paramount to achieving the immediate goals as well as the long-term success of this research. Reiterating my comment above, working with Streptomyces is inherently more difficult than most other types of bacteria used in laboratory research and finding persons with training and experience in the genetic manipulation of those organisms is very difficult.

Dr. Zabriskie notes "persons skilled in the molecular genetics of these organisms are in great demand and in very short supply." Pursuant to Matter of New York State Dept. of Transportation, a shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification.

Dr. Zabriskie also states: "Upon completing his postdoctoral training in my laboratory, I fully expect [the petitioner] to be heavily recruited by many of the major pharmaceutical companies in the U.S." If the position the petitioner seeks at OSU is temporary, the question necessarily arises as to why permanent immigration benefits are necessary when the petitioner already holds a nonimmigrant visa which allows him to work in the United States. By nature, postdoctoral research positions represent training for a future professional career. Nothing in the legislative history suggests that the national interest waiver was conceived as a means to facilitate the ongoing training of alien researchers.

We note that Dr. Zabriskie's statements are contradictory in regards to the necessity for a waiver of the labor certification requirement. After acknowledging the temporary nature of the petitioner's position, Dr. Zabriskie concludes his letter by stating: "The setbacks this research would suffer if I have to seek a replacement for [the petitioner] would greatly jeopardize the ability to conduct this work in a timely fashion and severely decrease the chances of renewing this grant." It should be noted, however, that the petitioner's postdoctoral research training at OSU is already covered by his H-1B nonimmigrant visa. Therefore, the petitioner's continued participation in research projects in Dr. Zabriskie's laboratory is obviously not contingent on the petitioner obtaining permanent resident status.

Drs. Michel Guerineau and Marie Jeolle, Paris South University, Orsay, France, supervised the petitioner's Ph.D. research at their laboratory. In a joint letter, they state:

[The petitioner] showed an exceptionally high dedication to his work and worked tirelessly to achieve his Ph.D. thesis within two years when the standards are usually close to three to four years. His very productive work led to a first authorship in two papers published in

the international journal *Gene*. His Ph.D. work and his current work makes him a specially skilled geneticist with a very good knowledge of the molecular biology and the physiology of the bacteria *Streptomyces*.

\* \* \*

[The petitioner's] research in our laboratory focused on the cloning, sequencing, mapping, disruption and transcriptional regulation of two amyolytic genes of *S. lividans*. *S. lividans* is the *Streptomyces* species the most amenable to molecular biology techniques. In consequence, using efficient genetic engineering techniques (gene disruption, overexpression etc.), this specie is likely to become the best industrial strain for an optimized production of various antibiotics (including new hybrid antibiotics) from cloned pathways. It should be stressed that society is facing now one of its greatest public health problems- the emergence of infectious bacteria with resistance to many, and in some cases all, available antibiotics. In that respect, with his good theoretical and experimental knowledge of all the genetic engineering techniques applicable to this particular species [the petitioner] could significantly contribute to research of great scientific, medical and economical value for the U.S.

Drs. Guerineau and Virolle emphasize the petitioner's "theoretical and experimental knowledge of all the genetic engineering techniques." We note, however, that any objective qualifications that are necessary for the performance of a research position can be articulated in an application for alien labor certification.

Drs. Guerineau and Virolle also refer to the petitioner's rapid completion of his Ph.D. studies. University study, however, is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The petitioner's academic achievement may place him among the top Ph.D. students at Paris South University, but it offers no meaningful comparison between the petitioner and experienced biomedical researchers who have already completed their doctorate.

Dr. Philippe Mazodier, Head of the *Streptomyces* Research Group at the Pasteur Institute, Paris, France, describes the petitioner's work as "promising" and notes it is "plausible that [the petitioner's] work will lead to a significant breakthrough in antibacterial drug development." Dr. Mazodier, however, fails to identify any of the petitioner's specific past accomplishments which resulted in any significant breakthroughs.

The petitioner's initial nine witnesses include his laboratory supervisor at OSU (Dr. Zabriskie), two OSU colleagues, his two Ph.D. supervisors from Paris South University, a research collaborator from Paris South University, two members of his doctoral thesis committee, and a researcher who met the petitioner at scientific meetings in Paris. The above witness letters demonstrate that the petitioner is valued for the contributions he made in the laboratories of Drs. Zabriskie, Guerineau and Virolle. The witnesses praise the petitioner's dedication, competence, mastery of laboratory methodologies, and research skills. The witnesses, however, fail to demonstrate the petitioner's impact on the field beyond the laboratories where he has

trained. The petitioner has not shown that his work has attracted significant attention from independent researchers in the field of biomedical science.

Several witnesses refer to the petitioner's co-authorship of two scholarly articles published in *Gene*. However, the record contains no evidence that the publication of one's work is a rarity in petitioner's field, nor does the record demonstrate that independent researchers have heavily cited or relied upon the petitioner's work in their 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." When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. Frequent citation by independent researchers, on the other hand, demonstrates more widespread interest in, and reliance on, the petitioner's work. The petitioner provides no evidence that his articles have been heavily cited.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director acknowledged the petitioner's co-authorship of publications and abstracts, but indicated that the "publication and presentation of research work are inherent to the position of a researcher." The director also noted that the petitioner failed to provide evidence "from disinterested parties" showing the petitioner's work was "known and considered unique outside his immediate circle of colleagues."

In order to qualify for the classification sought, the petitioner must demonstrate that he has had some measure of influence on the biomedical research field as a whole. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful national interest waiver claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. We note that the record reflects little formal recognition or awards for the petitioner's research, arising from various groups taking the initiative to recognize the petitioner's contributions, as opposed to private letters solicited from selected witnesses expressly for the purpose of supporting the visa petition. Independent evidence that would have existed whether or not this petition was filed, such as heavy independent citation of one's published articles, is more persuasive than the subjective statements from individuals selected by the petitioner.

On appeal, counsel argues that the director improperly denied the petition without issuing a Request for Evidence. At this point, the decision already having been rendered, the most expedient remedy for this complaint is the full consideration on appeal of any evidence that the petitioner would have submitted in response to such a request. The petitioner has submitted further witness letters, publications, and two grant applications naming the petitioner's research supervisors at OSU (Drs. Zabriskie and Proteau).

Counsel takes issue with the director's statement that the petitioner failed to show his "contribution places him above all those others who continually contribute to the field of knowledge." We concur with counsel that the director's statement created an additional standard not supported by existing statute, regulation, or case law. Pursuant to Matter of New York State Dept. of Transportation, the petitioner need only establish that the benefit he presents to his field of endeavor greatly exceed the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. 204.5(k)(3)(ii)(F). We note, however, that the above assertion was not the sole basis for denial and, therefore, does not undermine the remaining grounds cited in the director's decision. Further, the Service notes its authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within the power of the Service to formulate. Helvering v. Gowran, 302 U.S. 238 (1937); Securities Comm'n v. Chenery Corp., 318 U.S. 86 (1943); and Chae-Sik Lee v. Kennedy, 294 F.2d 231 (D.C. Cir. 1961), cert. denied, 368 U.S. 926 (1961).

Fifteen months after the petition's filing, the petitioner obtained a position as a postdoctoral research associate in the laboratory of Dr. Philip Proteau, Assistant Professor of Medicinal Chemistry, OSU.

In his second letter, Dr. Zabriskie states: "Recently, [the petitioner] left my group to join my colleague Dr. Philip Proteau's laboratory. This was prompted by my temporary loss of funding for [the petitioner's] position... I anticipate a renewal of the grant that supported [the petitioner] and plan to rehire him in the future."

Dr. Proteau states that the petitioner will now participate in a project to fully characterize how certain enzymes function, an early step in the development process for antibacterial and antimalarial compounds. Dr. Proteau notes: "Although the main focus of [the petitioner's] work will not be on soil bacterial pathways, the skills that [the petitioner] possesses are vital to the success of my work." Dr. Proteau states that the petitioner's new research involves using molecular biology laboratory skills to "rapidly produce significant amounts of recombinant enzymes... for in-depth studies."

While the witnesses' statements above show that the petitioner has continued to work in the same field, we cannot conclude that the petitioner's current work in Dr. Proteau's laboratory is a major factor in approving a petition filed fifteen months before the petitioner had commenced employment there. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess

the necessary qualifications as of the filing date of the visa petition. A petitioner cannot file a petition under this classification based on the expectation of future eligibility.

That being said, we also cannot ignore that the petitioner has left Dr. Zabriski's laboratory due to a loss of funding, so earlier arguments to the effect that he should remain there, or that Dr. Zabriski's research would suffer "setbacks" without the petitioner's participation, are now moot. Dr. Zabriski stated that the petitioner's "continued involvement [was] paramount to achieving the immediate goals as well as the long-term success of the project." Furthermore, in a statement filed with initial petition, the petitioner indicated that his "continued and long-term participation in [Dr. Zabriski's] project [would] be critical and indispensable." On appeal, counsel offers no explanation addressing how an individual with such a "critical and indispensable" research role would no longer receive funding to participate in the project. One could reasonably expect a scientist who is making significant research advances not to be disrupted by a lack of funding. Counsel, however, offers no specific reasons as to why the petitioner's funding was not renewed.

Counsel questions the director's assertion that the petitioner's work was not shown to be "known and considered unique outside his immediate circle of colleagues." Counsel argues that the petitioner's initial witnesses come from "diverse" sources. While this may be true, statements contained in their letters show that all of the initial witnesses have direct ties to the petitioner. Letters from those close to the petitioner certainly have value, for it is those individuals who have the most direct knowledge of the petitioner's specific contributions to a given research project. It remains, however, that very often, the petitioner's projects are also the projects of the witnesses, and no researcher is likely to view his or her own work as unimportant. The director's observation that all of the witnesses have ties to the petitioner is not intended to cast aspersions on the integrity of the witnesses; the director specifically indicated that the letters accompanying the petition show that the "alien is a talented individual." Still, these individuals became aware of the petitioner's research work because of their close contact with the petitioner; their statements do not show, first-hand, that the petitioner's work is attracting attention on its own merits, as we could expect with research findings that are especially significant.

Dr. Gary DeLander, Chair of the Department of Pharmaceutical Sciences and Assistant Dean for Academic Affairs at the College of Pharmacy, OSU, states:

[The petitioner] brings expertise to the laboratory that is otherwise unavailable. The research projects with which [the petitioner] is currently engaged are designed to explore biosynthetic pathways of bacteria and potential inhibitors of the same. A continuing difficulty in studies of this type is the ability to develop techniques that allow production of recombinant enzymes that can then be studied directly and without interference of other biosynthetic systems. [The petitioner's] specific expertise with *Streptomyces* is uncommon and in high demand both in the pharmaceutical industry and in basic research labs, because of its applicability to our present understanding of antibacterial agents. [The petitioner] has made substantive contributions to our knowledge of microbial biosynthetic

pathways since arriving at OSU. I fully expect his record of success to continue.

Aside from the contributions to basic knowledge that [the petitioner] has and will obviously make, I am particularly interested in the vitality he has brought to the medicinal chemistry laboratories of Dr. Mark Zabriskie and Dr. Phil Proteau. Both outstanding scientists in their own right, Drs. Zabriskie and Proteau have benefited immensely from their association with [the petitioner]. The expertise of [the petitioner] as a molecular geneticist has brought a new dimension to studies conducted in these laboratories, and the match between these accomplished medicinal chemists and [the petitioner] has led to a synergy that would not otherwise occur or continue. [The petitioner] was a significant contributor in the successful identification of a biosynthetic gene cluster in Dr. Zabriskie's laboratory. This discovery has particular importance to future advances in the treatment of tuberculosis. [The petitioner] has since joined Dr. Proteau and his expertise in molecular biology is central to Dr. Proteau's investigations regarding discovery and characterization of new antibacterial agents. As a 'not yet' tenured member of our faculty, Dr. Proteau is at a critical point in his development as an independent investigator. Dr. Proteau has had early success and has begun to establish himself in an active, important area of research. Continued development at this time is very important and the talents of [the petitioner] will likely be the difference in Dr. Proteau's ability to carry out, in a timely manner, the investigations that are part of his vision. Forcing Dr. Proteau to search for another individual with [the petitioner's] expertise at this time, if other investigators are available, would be detrimental to his research program and his success in progressing through the academic ranks.

Examination of the entire record and the assertions of witnesses, such as Dr. Gary DeLander, show that the petitioner's contributions have arisen from his work on ongoing research projects already in existence (such as his research at OSU and Paris South University). The petitioner has not been shown to have initiated or been the primary vision behind research projects that yielded significant findings. As a research associate, the petitioner's duties involve applying his laboratory expertise in molecular genetics to assist his superiors (such as Drs. Proteau and Zabriskie) with research which, in many cases, had been underway well before the petitioner arrived at their laboratories. The petitioner has not shown that his work has had significant repercussions throughout the field. Thus, the petitioner's contributions to biomedical research appear to be incremental rather than fundamental.

The petitioner submits additional witness letters from individuals attesting to his contributions in the field of streptomyces molecular genetics. Dr. Tadeusz Molinski, Professor of Chemistry, University of California, Davis, states that the petitioner's "development of a novel *E. coli*-*Streptomyces* shuttle expression vector will greatly assist exploration of gene systems vital to the production of commodity antibiotics and antitumor agents." Dr. Molinski further states that the petitioner's "research area is definitely one of national importance." Pursuant to published precedent, the overall importance of a given project or area of research is insufficient to demonstrate eligibility for the national interest waiver. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor

certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. Mountain States Tel. & Tel. v. Pueblo of Santa Ana, 472 U.S. 237, 249 (1985); Sutton v. United States, 819 F.2d 1289, 1295 (5<sup>th</sup> Cir. 1987). By asserting the petitioner's employment as a molecular geneticist inherently serves the national interest, Dr. Molinski essentially contends that the job offer requirement should never be enforced for this occupation, and thus this section of the statute would have no meaningful effect.

Dr. Bradley Moore, Assistant Professor of Medicinal Chemistry at the University of Arizona, states that the petitioner's efforts "will soon lead to applied research in genetically engineering new peptide antibiotics for evaluation as new drug candidates." However, in order to establish eligibility under this visa classification, the petitioner must clearly demonstrate a past history of significant accomplishment that has already influenced the biomedical research field. Dr. Moore notes that Dr. Zabriskie's project "would greatly suffer without [the petitioner's] expertise and participation." As the petitioner has already left Dr. Zabriskie's laboratory due to a loss of funding, the argument that the petitioner should remain there is now moot. Dr. Moore concludes his letter by stating: "...there is a severe shortage of trained scientists in the United States with [the petitioner's] skills and experience." As stated earlier, a shortage of qualified workers in a given field, regardless of the nature of the occupation, is an argument for obtaining rather than waiving a labor certification.

The petitioner's nine witnesses offered on appeal include two of his research supervisors from OSU, four OSU colleagues, a researcher who met the petitioner while on sabbatical at OSU, and two researchers with no known ties to the petitioner (Dr. Molinsky of the University of California, Davis, and Dr. Bradley Moore of the University of Arizona).

The petitioner submits two articles on appeal that were published subsequent to the filing of the petition. See Matter of Katigbak, *supra*. Counsel states that the petitioner's record of publication "clearly demonstrates his national stature in the field." We disagree and note that the publication record of the majority of the petitioner's witnesses far exceeds that of the petitioner. More importantly, the petitioner has not provided a citation history of his published works. Without evidence reflecting independent citation of his articles, we find that the petitioner has not significantly distinguished his results from those of other researchers in the field. It can be expected that if the petitioner's published research were truly significant, it would be widely cited. From 1987 to the petition's filing, the petitioner co-authored two published articles appearing in *Gene* and four published articles about "project and personnel management, and agricultural policy" that were featured in Chinese journals. The petitioner's work has also been presented at two scientific conferences (prior to filing). The publication and presentation of the petitioner's work may demonstrate that his efforts yielded some useful and valid results; however, the impact and implications of the petitioner's findings must be weighed. The record fails to demonstrate that the petitioner's work has garnered significant attention from other researchers throughout the scientific community.

While the record amply documents that the petitioner has been an active biomedical researcher, it does not establish that the petitioner's research has had a greater or more lasting impact than that

of other researchers in the biomedical field. Several of the witnesses, such as Drs. Zabriskie and Mazodier, assert their confidence in the future significance of the petitioner's work. The witnesses' use of phrases such as "may have a direct impact on the identification of new drugs" and "has a good chance of developing into meaningful new pharmacological therapies" in describing the petitioner's accomplishments seem to suggest future results rather than a past record of demonstrable achievement. Without evidence that the petitioner has been responsible for significant achievements in the field of biomedical research, we must find that the petitioner's assertion of prospective national benefit is speculative at best. While the high expectations of the petitioner's research supervisors and colleagues may yet come to fruition, at this time the waiver application appears premature.

Clearly, the petitioner's witnesses have a high opinion of the petitioner and his work. The petitioner's findings, however, do not appear to have yet had a measurable influence in the larger field. While some of the witnesses discuss the potential applications of these findings, there is no indication that these applications have yet been realized. The petitioner's work has added to the overall body of knowledge in his field, but this is the goal of all such research; the assertion that the petitioner's findings may eventually have practical applications does not persuasively distinguish the petitioner from other competent researchers. In sum, the available evidence does not persuasively establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches itself to the visa classification sought by the petitioner.

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.

**ORDER:** The appeal is dismissed.