

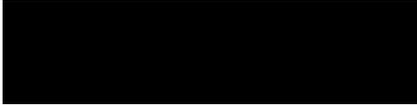


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U.S. Department of Justice  
Immigration and Naturalization Service

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



File: EAC 01 230 55798 Office: VERMONT SERVICE CENTER

Date: DEC 09 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, Vermont 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 associate in the field of pulmonary (lung) medicine. At the time of filing, the petitioner was a medical resident at Lankenau Hospital, Wynnewood, Pennsylvania, in internal medicine rather than pulmonary medicine. He has since become a fellow in pulmonary medicine and critical care at Graduate Hospital in Philadelphia. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

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 requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director 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, 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.

Counsel states that the petitioner “is marshalling the effort to minimize and eradicate the effect of asthma triggers, such as house dust mites.” While the petitioner indicates that he seeks to work as a researcher rather than as a practicing physician, the petitioner worked as a physician when he filed the petition, and his past employment has been primarily in clinical medicine. On his own resume, the petitioner states that he has been “continuously employed in a clinical capacity.”

In conjunction with his clinical duties, the petitioner has conducted some research into pulmonary medicine, writing eleven articles and conference presentations between 1997 and 1999. One of these articles is a case study, which describes one single case in detail rather than reporting the results of a research study. Another piece is a preliminary report credited to the Respiratory Medicine Section at the University of Sheffield, rather than to the petitioner specifically. Counsel notes that the petitioner’s articles have appeared in top medical publications. To establish the importance of the journals, counsel cites the “ranking determined by Journal Citation Reports” which “distinguishes the ordinary from the extraordinary” by ranking the impact factor of each journal. The impact factor of a journal is calculated by examining the frequency with which articles in that journal are cited by other researchers. The more citations are reported, the greater the impact factor for the journal. By relying upon this information, counsel acknowledges the importance of citations when considering the impact of a

journal. The record, however, contains no documentation to establish the extent (if any) to which others have cited the petitioner's articles.

Most of the published pieces are abstracts of conference presentations, rather than full articles. Counsel rather misleadingly cites the impact factor of the *Lancet*, a prestigious UK medical journal, when in fact the petitioner has published no article in the *Lancet*. Rather, the petitioner was co-author of a presentation at a conference sponsored by the *Lancet*. The total number of presentations is not shown in the record, but the petitioner's was presentation number 91.

The petitioner submits several witness letters. Dr. Henry Ling, an attending and teaching physician at Lankenau Hospital, states:

It was through my own teaching and work in the field of asthma that I first became aware of [the petitioner's] extraordinary work. He is currently completing a three year medical residency program in internal medicine, where I have had the good fortune of his assistance in the care of my patients on the clinical floors for the past two years.

[The petitioner's] work in the field of dust mite allergen research has gained him international recognition. . . . [The petitioner's] work on identification and eradication of these allergens has the potential of dramatically decreasing our asthma cases in the United States.

Dr. Gan-Xin Yan, director of Cardiovascular Research at the Cardiology Foundation of Lankenau, Jefferson Medical College, states:

It was through my own work in the field of clinical and basic research that I first became aware of [the petitioner's] extraordinary work. I met [the petitioner] in 1999 at the American Thoracic Society Conference where he eloquently presented his research paper on mechanism for the prevention of Asthma. . . .

[The petitioner has] contributed a lot in the field of Allergic Asthma and its immunology and prevention. His publications are impressive and very valuable in today's medicine.

[The petitioner's] work outlined the importance of prevention of atopic asthma and strategies to avoid allergen exposure particularly House Dust Mite and its associated allergens. Thus, this will avoid further sensitization in newly diagnosed asthmatics.

Dr. P.B. Anderson, consultant physician at Northern General Hospital, Sheffield, United Kingdom, states that the petitioner was "involved in a major project we were running looking at a new method of eradication of the house dust mite and its allergens, its effects on the demography of the house dust mite populations and of house dust mite control of Asthma."

Other physicians who have participated in the petitioner's training offer general endorsements of the petitioner's experience and clinical skills. Many of these letters are recommendations written several years prior to the preparation of the petition. One of these letters is a "form" letter with the petitioner's name written into blank spaces, and the pronouns "he/she" and "him/her" in the body of the letter, such as in the passage "he/she has been good and regular student who was deeply interested in his/her studies and actively participated in the college academic activities."

Whatever the opinions of those who have supervised the petitioner's work, the initial submission did not establish that the petitioner's work has had an especially significant impact in the area of asthma research. The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted additional exhibits and arguments from counsel.

Counsel states that the petitioner "is best known for documenting the link between house dust mites and asthma." Counsel identifies no source in the record to show that it was the petitioner who discovered this link. The witness letters contain no such claim. Dr. Anderson's letter, cited above, indicated only that the petitioner was involved in a project to study "a new method of eradication of the house dust mite." The existence of such a project suggests that the deleterious effect of dust mites was already so well known that efforts to eradicate the mites were in order. The petitioner himself claims only to have "invented and devised a novel method for trapping mobile house dust mite[s]."

Counsel makes other unsubstantiated claims as well, such as the contention that "[o]nly the foremost researchers in the field are invited by the international medical community to present their research." The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaighena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

In a new letter, Dr. Qasim Raza, staff physician and teaching attending at Marshfield Hospital, Marshfield, Wisconsin, states that he seeks to pursue a research project with the petitioner. Dr. Raza states that the petitioner has an international reputation but offers no details in this regard. It remains that the record does not indicate the near-universal recognition claimed by counsel.

Professor Jamil A. Siddique of Liat Medical College, University of Sindh, Jamshoro, Pakistan, is the first witness to mention the petitioner's "work in identifying the causative link with house dust mite and Asthma." Like several earlier letters, this letter contains the exact phrase "I first became aware of [the petitioner's] extraordinary work," suggesting common authorship of at least some portions of the letters.

The director denied the petition, finding that the petitioner has not shown that his contribution to his field is distinguished from the work of others such that it warrants a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek.

There is no evidence that counsel was involved with preparing or filing the appeal. On appeal, the petitioner states that he intends to continue his asthma research in the United States, “knowing that I will get a reasonable backup and support from the centres and institutions in [the] USA.” The petitioner asserts that, while he could obtain a labor certification, to do so he would “clearly” have to remain “in clinical or hospital medicine for [a] few years” which will delay his preferred work as a researcher.

The petitioner’s argument presumes, incorrectly, that labor certification is not available for researchers as it is for physicians. The petitioner is certain of “backup and support from the centres and institutions in [the] USA” but does not show that any research facility has shown interest in employing him; rather, he has acknowledged that he does not know where he will work. Medical research requires a research facility; it is not the kind of career in which being a self-employed freelancer is a realistic option.

Also, the petitioner has never worked as a full-time researcher. Rather, throughout his career he has been first and foremost a physician who has sometimes been able to participate in some research studies. The petitioner has participated in some important studies but he has not shown a consistent track record as a researcher to demonstrate that he, more than other asthma researchers, will significantly serve the national interest in that capacity. Attestations of international recognition are vague and lack independent substantiation. General assertions about the importance and urgency of asthma research apply to the area of inquiry but do not distinguish the petitioner from other researchers in the same area. The petitioner’s choice of research specialty is not *prima facie* evidence of eligibility for a waiver.

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.