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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: 18 DEC 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:



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

for Elizabeth Hayward
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 associate in the Nephrology-Dialysis Unit, Minneapolis Veteran's Administration Medical Center ("MVAMC"), in collaboration with the University of Minnesota. 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, in a number not to exceed 28.6 percent of such world wide level, plus any visas not required for the classes specified in paragraph (1), 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) Subject to clause (ii), 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.

(ii) Physicians working in shortage areas or veterans facilities.-

(I) The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if--

(aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and

(bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

(II) No permanent resident visa may be issued to an alien physician described in subclause (I) by the Secretary of State under section 204(b), and the Attorney General may not adjust the status of such an alien physician from that of a nonimmigrant alien to that of a permanent resident alien under section 245, until such time as the alien has worked full time as a physician for an aggregate of 5 years (not including the time served in the status of an alien described in section 101(a)(15)(J)), in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs.

The petition was filed on October 2, 2000. The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The first issue to be determined is whether the petitioner seeks classification pursuant to section 203(b)(2)(B)(i) or section 203(b)(2)(B)(ii) of the Act. While the petitioner works for the Minneapolis Veteran's Administration Medical Center, the record contains no specific request for classification pursuant to section 203(b)(2)(B)(ii) of the Act. Counsel's statements and the petitioner's evidence relate to the petitioner seeking employment in the U.S. as a research associate and are far more consistent with a request for classification under section 203(b)(2)(B)(i). The Form I-140 and Form ETA-750B indicate that the petitioner is seeking a national interest waiver as a research associate rather than as a practicing physician. Finally, counsel's arguments throughout this proceeding relate only to the requirements set forth in Matter of New York State Dept. of Transportation.

The Service regulation at 8 C.F.R. 204.12 states:

How can second-preference immigrant physicians be granted a national interest waiver based on service in a medically underserved area or VA facility?

(a) Which physicians qualify? Any alien physician (namely doctors of medicine and doctors of osteopathy) for whom an immigrant visa petition has been filed pursuant to section 203(b)(2) of the Act shall be granted a national interest waiver under section 203(b)(2)(B)(ii) of the Act if the physician requests the waiver in accordance with this section and establishes that:

(1) The physician agrees to work full-time (40 hours per week) in a clinical practice for an aggregate of 5 years (not including time served in J-1 nonimmigrant status); and

(2) The service is;

(i) In a geographical area or areas designated by the Secretary of Health and Human

Services (HHS) as a Medically Underserved Area, a Primary Medical Health Professional Shortage Area, or a Mental Health Professional Shortage Area, and in a medical speciality that is within the scope of the Secretary's designation for the geographical area or areas; or

(ii) At a health care facility under the jurisdiction of the Secretary of Veterans Affairs (VA); and

(3) A Federal agency or the department of public health of a State, territory of the United States, or the District of Columbia, has previously determined that the physician's work in that area or facility is in the public interest.

(b) Is there a time limit on how long the physician has to complete the required medical service?

(1) If the physician already has authorization to accept employment (other than as a J-1 exchange alien), the beneficiary physician must complete the aggregate 5 years of qualifying full-time clinical practice during the 6-year period beginning on the date of approval of the Form I-140.

(2) If the physician must obtain authorization to accept employment before the physician may lawfully begin working, the physician must complete the aggregate 5 years of qualifying full-time clinical practice during the 6-year period beginning on the date of the Service issues the necessary employment authorization document.

(c) Are there special requirements for these physicians? Petitioners requesting the national interest waiver as described in this section on behalf of a qualified alien physician, or alien physicians self-petitioning for second preference classification, must meet all eligibility requirements found in paragraphs (k)(1) through (k)(3) of § 204.5. In addition, the petitioner or self-petitioner must submit the following evidence with Form I-140 to support the request for a national interest waiver. Physicians planning to divide the practice of full-time clinical medicine between more than one underserved area must submit the following evidence for each area of intended practice.

(1)(i) If the physician will be an employee, a full-time employment contract for the required period of clinical medical practice, or an employment commitment letter from a VA facility. The contract or letter must have been issued and dated within 6 months prior to the date the petition is filed.

(ii) If the physician will establish his or her own practice, the physician's sworn statement committing to the full-time practice of clinical medicine for the required period, and describing the steps the physician has taken or intends to actually take to establish the practice.

(2) Evidence that the physician will provide full-time clinical medical service:

(i) In a geographical area or areas designated by the Secretary of HHS as having a shortage of health care professionals and in a medical speciality that is within the scope of the Secretary's designation for the geographical area or areas; or

(ii) In a facility under the jurisdiction of the Secretary of VA.

(3) A letter (issued and dated within 6 months prior to the date on which the petition is filed) from a Federal agency or from the department of public health (or equivalent) of a State or territory of the United States or the District of Columbia, attesting that the alien physician's work is or will be in the public interest.

(i) An attestation from a Federal agency must reflect the agency's knowledge of the alien's qualifications and the agency's background in making determinations on matters involving medical affairs so as to substantiate the finding that the alien's work is or will be in the public interest.

(ii) An attestation from the public health department of a State, territory, or the District of Columbia must reflect that the agency has jurisdiction over the place where the alien physician intends to practice clinical medicine. If the alien physician intends to practice clinical medicine in more than one underserved area, attestations from each intended area of practice must be included.

(4) Evidence that the alien physician meets the admissibility requirements established by section 212(a)(5)(B) of the Act.

(5) Evidence of the Service-issued waivers, if applicable, of the requirements of sections 212(e) of the Act, if the alien physician has been a J-1 nonimmigrant receiving medical training within the United States.

(d) How will the Service process petitions filed on different dates?

(1) Petitions filed on or after November 12, 1999. For petitions filed on or after November 12, 1999, the Service will approve a national interest waiver provided the petitioner or beneficiary (if self-petitioning) submits the necessary documentation to satisfy the requirements of section 203(b)(2)(B)(ii) of the Act and this section, and the physician is otherwise eligible for classification as a second preference employment-based immigrant. Nothing in this section relieves the alien physician from any other requirement other than that of fulfilling the labor certification process as provided in § 204.5(k)(4).

Even if we were to consider the petitioner's request for classification pursuant to 203(b)(2)(B)(ii), the record contains no evidence of the petitioner's agreement to work full-time (40 hours per week) as a physician for an aggregate of 5 years as demonstrated by an employment commitment letter

from a VA facility. Furthermore, the petitioner has provided no evidence showing that he meets the admissibility requirements established by section 212(a)(5)(B) of the Act.

Section 212(a)(5)(B) of the Act states:

(B) Unqualified physicians.- An alien who is a graduate of a medical school not accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States) and who is coming to the United States principally to perform services as a member of the medical profession is inadmissible, unless the alien (i) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) and (ii) is competent in oral and written English. For purposes of the previous sentence, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

In this case, the petitioner has provided no evidence showing that he passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services).

The issue to be determined in this proceeding, therefore, is whether the petitioner, through his employment as a nephrological researcher, 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.

We concur with the director that the petitioner works in an area of intrinsic merit, nephrological research, 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.

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.

The petitioner submits several witness letters in support of the petition. Dr. Leopoldo Raij, Professor of Medicine, University of Minnesota, and Chief of the Nephrology/Hypertension Section, MVAMC, is the petitioner's research supervisor. Dr. Raij states:

[The petitioner] is, simply put, a great emerging researcher. His educational background is impeccable, both in terms of the quality of the institutions and the breadth of his knowledge (i.e., a M.D., M.S., Ph.D. and post-graduate training). Building upon this education, he has established himself in the field of hypertension and renal disease. In support of this, one can look to the prestigious Fellowship Award from the International Society of Nephrology, his impressive record of presentations at international conferences and his list of publications in major scientific journals.

* * *

His work on new parameters for the diagnosis of kidney disease, for example, was the topic of many publications, one of them is the article in the journal of *Kidney International* 1996 with the title of "Phenotypic modulation of renal cells during experimental and clinical

renal scarring." Newer markers were done in the last year and some were presented at Arabic Conference of Kidney Diseases in Morocco February 2000, and others will be presented European Renal Meeting in Nice September 2000. Some of this new work is submitted for publication in Kidney International journal. Likewise, his research into PDGF and Renal Mesangial Cells and superoxide radicals has been accepted for presentation at the annual conference of the American Society of Nephrology in Toronto 2000. Finally, his study of the of the interactions of hypertension drugs (i.e., nitric oxide, ACE inhibitors and vasoepitidases inhibitors), which has the title "Nitric oxide-angiotensin axis, in renal and cardiovascular injury," has been the subject of one review article published in the Journal of Nephrology in May issue this year.

The record, however, contains no evidence that the presentation or publication of one's work is a rarity in petitioner's field, nor does the record sufficiently 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, would demonstrate more widespread interest in, and reliance on, the petitioner's work. Under Tab #11, the petitioner submits a listing of research articles obtained from the internet. The petitioner alleges that these articles reflect evidence of citation of his work by others. The internet listing from "dialogweb.com" lists sixteen articles and their corresponding authors, but the listing does not show the specific article being cited or its author. Without showing the actual source of the material being cited, the evidence provided is insufficient to demonstrate that the petitioner has garnered the favorable response of independent researchers.

Dr. Rajj further states:

[The petitioner] is one of the relatively few individuals in the field who possesses both a M.D. and a Ph.D., and who has then done post-doctoral research studies. As a result, he possesses clinical skills as a physician as well as laboratory-based research skills arising from his Ph.D. studies in metabolism, metabolic bone disease and progression of kidney diseases, which enable him to perform the type of advanced research studies in which he is now engaged at the Minneapolis VAMC.

We note here that any objective qualifications necessary for the performance of the petitioner's research position can be articulated in an application for alien labor certification.

Dr. Raij concludes his letter, stating:

I cannot over emphasize how important it is for US medical facilities to retain this type of talent. Kidney disease and hypertension are two of the largest public health issues facing this country today, both in terms of severity of illness and increases in health care costs. Furthermore, it can be expected that such problems will only increase as the elderly continue to comprise an ever-larger percentage of the national population. While there is no foreseeable panacea to these issues, [the petitioner's] work promises to bring tangible improvements to our ability to diagnose, treat and monitor renal diseases.

While the Service recognizes the undoubted importance of research related to kidney disease and hypertension, eligibility for the national interest waiver must rest with the petitioner'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. 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 (5th Cir. 1987). By asserting that trained physicians with laboratory-based research skills inherently serve the national interest, Dr. Raij essentially contends that the job offer requirement should never be enforced for these occupations, and thus this section of the statute would have no meaningful effect. Congress plainly intends the national interest waiver to be the exception rather than the rule.

Dr. Rashad Barsoum, Professor and Chairman of the Department of Internal Medicine and Head of the Nephrology Division at Cairo University in Egypt, served as a member of the petitioner's thesis review committee. Dr. Barsoum notes that the petitioner's thesis was "the first in [Egypt] on renal osteodystrophy." Dr. Barsoum states: "[The petitioner] was very proud of his invention of a hard microtome, which he used to study the bone biopsies. The thesis was really good, but more impressive was [the petitioner's] self confidence, enthusiasm and ambition." Dr. Barsoum further states:

Through his work with Professor A.M. El Nahas in the United Kingdom and, later on, Professor Raij in the United States, he was able to go into the depth of the molecular mechanisms underlying the pathogenesis of hypertension and progression of renal disease. He focused his studies on Platelet-derived Growth Factor, Angiotensin receptors and Nitric oxide. The latter work acquires particular importance having been conducted under the supervision of the World's most pronounced researcher in the field today, Leopoldo Raij. He already published a lot on these topics, and made several excellent presentations in different meetings...

Dr. A.M. El Nahas, Professor of Nephrology at the University of Sheffield in the United Kingdom, supervised the petitioner's postgraduate training at the Sheffield Kidney Institute. Dr. El Nahas notes that he and the petitioner continue to collaborate on various research subjects. Dr. El Nahas states:

[The petitioner's] current work on the interactions of hormonal systems with reactive oxygen species and the nitric oxide system is key to the understanding of the predisposition to hypertension and its effects on the kidneys. He has already published some important papers on the subject and contributed to a monograph by authoring a chapter. His research on the role of oxygen free radicals and nitric oxide deficiency in hypertension may open the way to new treatments for the treatment of patients with high blood pressure.

Dr. Nahas concludes by stating that the petitioner "is likely to be a major future asset to American Nephrology." All three of the above witnesses have asserted their confidence in the petitioner's potential to make future contributions in biomedical research. Such assertions, however, cannot suffice to demonstrate the petitioner's eligibility for a national interest waiver. Dr. Raij's assertion that the petitioner's work shows promise in bringing tangible improvements to the ability to diagnose, treat and monitor renal diseases does not persuasively distinguish the petitioner from other competent biomedical researchers. The witnesses have provided no information as to how the petitioner's research findings have already influenced his field. Their letters fail to demonstrate a past history of significant accomplishment on the part of the petitioner. The witnesses describe the petitioner's expertise and value to his current and former research projects, but do not demonstrate the petitioner's influence on the field beyond his research institutions. The petitioner has not shown that his work has attracted significant attention from independent researchers in the biomedical research field.

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 noted that the evidence presented by the petitioner did not establish that the petitioner's "work was known and considered unique outside his immediate circle of colleagues." The director indicated that the petitioner had not shown how his research contributions have influenced the field to a substantially greater degree than those of other qualified researchers in the same field.

On appeal, counsel argues that the petitioner has met all of the factors set forth in Matter of New York State Dept. of Transportation. The petitioner submits three additional letters in support of the appeal. In his second letter, Dr. Raij states that the petitioner possesses talents and achievements well above the normative standard in the profession. He credits the petitioner with inventing "an instrument to study metabolic bone diseases related to kidney patients in Egypt." Dr. Raij, however, has not shown that the petitioner's hard microtone was regarded as a significant medical advancement throughout the research field. For example, there is no evidence demonstrating that the petitioner's device has been widely utilized beyond the petitioner's own research institutions or marketed by companies in the healthcare industry.

Dr. Rajj cites the petitioner's receipt of a fellowship grant from the International Society of Nephrology as another of his significant achievements. Dr. Rajj describes the fellowship as an "award to young physicians from the developing world to work for periods of one to two years in academic renal centers in North America, Western Europe, Japan and Australia." The petitioner utilized his award for postgraduate training at the Sheffield Kidney Institute (1994 to 1995). Post-doctoral fellowships are, by nature, presented not to established researchers with active professional careers, but rather to recent doctoral graduates pursuing further training and research experience. The petitioner's receipt of this award represents future training in his field rather than recognition for significant biomedical discoveries. Furthermore, the competition for the grant excluded researchers from more developed nations who have finished their education and therefore do not compete for post-doctoral fellowships.

The remainder of Dr. Rajj's letter discusses current research projects being undertaken by the petitioner. Much of the discussion relates to events that occurred subsequent to the filing of the petition. See Matter of Katighak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The petitioner also submits a brief letter from Dr. J. Carlos Romero, Director, Hypertension Research Laboratory, Mayo Foundation (Rochester, Minnesota). Dr. Romero states:

[The petitioner] is an accomplished physician who has made outstanding research about renal pathology, more precisely the factors that favor the development of renal fibrosis... More recently, [the petitioner] has developed a keen interest in nitric oxide angiotensin II, salt sensitivity in hypertension. This is an area of research in which we have been working on for several years.

Dr. Oscar Carretero, Division Head, Hypertension and Vascular Research Division of the Department of Internal Medicine, Henry Ford Hospital, states:

[The petitioner] was fortunate enough to secure a position with Dr. Leopoldo Rajj at MVAMC and the University of Minnesota, whose Hypertension and Nephrology Department is well recognized in the field. Dr. Rajj of course is a recognized expert in the field of hypertension research, and I was privileged to meet [the petitioner] during a recent visit to Dr. Rajj's laboratory. His studies have concentrated on hypertension and kidney disease, particularly the importance of angiotensin II and nitric oxide. His work with new drugs that offer great promise for treatment of hypertension and its associated conditions has been widely published in peer-reviewed journals including the *Journal of Nephrology*, and further findings have recently been submitted to *Circulation* and *Hypertension*. In addition, he has contributed an important chapter on angiotensin receptor blockers to the book on Angiotensin II Receptor Antagonists published this year under the guidance of Drs. Epstein and Brunner. His in vitro studies of the effect of platelet-derived growth factors in kidney disease, recently presented at the Toronto meeting of the American Society of

Nephrology, is very important because it will help us understand more about renal scarring and how to prevent it. Finally, his work on drug treatment of mortality and progression of renal disease in hypertension is scheduled to be presented next year at the American Society of Hypertension in San Francisco.

* * *

Both in terms of proven ability and expertise, [the petitioner] is currently at the very height of his potential benefit to the medical community in this country, and there is no question in my mind that he is well qualified for permanent residency status.

Counsel cites the above witness letters as evidence of the petitioner's medical research achievements. The above witnesses, however, offer little information as to how the petitioner's specific research findings have already significantly influenced the greater field. The letters indicate that the petitioner's contributions have arisen from work on ongoing research projects led by Dr. Nahas in the United Kingdom and, later on, Dr. Raj in the United States. The letters do not show that the petitioner initiated research projects yielding significant findings or that his collaborative findings have had significant repercussions throughout the field. The petitioner's contributions to nephrology research appear to be incremental rather than fundamental. While the record amply documents that the petitioner has been an active researcher at MVAMC and abroad, it does not establish that the petitioner's research has had a greater or more lasting impact than that of similarly qualified researchers.

Dr. Carretero cites the petitioner's publication in peer-reviewed journals as evidence of the petitioner's impact on the medical research field. Publication, by itself, is not a strong indication of impact because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the petitioner's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own articles. Outside citations (the more the better) provide firm evidence that other researchers have been influenced by the petitioner's work. Their citation of the petitioner's work demonstrates their familiarity with it. The petitioner has submitted an internet listing alleging that it reflects citation of his work, but the listing does not show the article being cited or its author. Thus, the petitioner has not shown that his work has garnered attention beyond his professional acquaintances. Few or no citations of an alien's work suggests that that work has gone largely unnoticed by the larger research community; it is therefore reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and national benefit — a researcher's work can have, if that research does not influence the direction of future research.

Clearly, the petitioner's research supervisors, collaborators and former professors 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 benefits of his findings, there is no indication that these benefits 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 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 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 the 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.