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U.S. Department of Justice  
Immigration and Naturalization Service

*(This information is deleted to prevent a fairly unexamined invasion of personal assets.)*

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

[Redacted]

File: [Redacted]

Office: Nebraska Service Center

Date: 27 MAR 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)

PUBLIC COPY

IN BEHALF OF PETITIONER:

[Redacted]

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 postdoctoral research associate at 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 . . . 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 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.

The petitioner submits several witness letters. Professor Horace H. Loh, head of the Department of Pharmacology at the University of Minnesota where the petitioner has been working, states:

Our project, in which [the petitioner] has been the key researcher, is the first to apply a transgenic animal model in the kappa opioid receptor gene expression in the early fetal stages. She is also studying how the kappa opioid receptor gene can be transcribed into several species of RNA and whether they are differentially regulated in animals. The knowledge gained from these studies will help us to understand the mechanisms underlying the ontogeny of opioid receptor, and potentially, the problems associated with the use of opioid drugs.

Dr. Xunlei Zhou, currently a staff scientist at the Max Planck Institute of Biophysical Chemistry, first met the petitioner when the petitioner was a postgraduate researcher at Peking University. Dr. Zhou states that, at Peking University, the petitioner established lines of embryonic mouse cells “that are used even today for transgenic research at Peking University,” and later the petitioner studied a gene “required for the formation of the primitive streak during mouse gastrulation. It is also a participant in a critical developmental decision: Left-right patterning . . . during the early embryo development.” Dr. Zhou discusses the petitioner’s current work:

She is now mainly focus[ing] on the regulation of Kappa Opioid receptor (Kor). Besides relieving pain, opioid receptors play a variety of roles in the central nervous

system from development to immune modulation. Since opium is a highly addictive substance, it is also of great interest to understand the molecular mechanism of its addiction and if opioid receptors are involved or affected by the addiction. . . . [The petitioner] has discovered alternative splicing forms of Kor and their tissue and developmental specificity.

Other witnesses with demonstrable ties to the petitioner (via the University of Minnesota or Peking University) assert that the petitioner has performed significant research on the expression of the Kor gene, as well as her aforementioned embryonic mouse cell line and recent inquiry into “the function of expression regulation of mouse cellular retinoic acid binding protein (CRABP).” Retinoic acid is a form of Vitamin A, critical to growth, vision, and other functions.

The petitioner submits copies of her published articles, and background information about heroin addiction, genetic disorders which interfere with the absorption of medicines, and about the National Institutes of Health.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner’s occupation but finding that the petitioner has not shown that her research is of especially great importance, nor has she otherwise shown that the labor certification process would be inappropriate.

On appeal, counsel quotes at length from previously submitted letters in an effort to demonstrate that the petitioner has established a track record of significant accomplishments in the national interest. Counsel also offers several additional arguments regarding the importance of the petitioner’s work. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that the petitioner has published her work in important journals. The record does not contain citation records or other evidence to establish that the research community (outside of the petitioner’s circle of collaborators and professors) regards the petitioner’s published work as especially significant. The petitioner submits information from the publishers of various scholarly journals, indicating that the editors of those journals seek articles that report new information and findings. While we do not dispute the overall prestige of these journals, we do not find that publication of the petitioner’s work in the journals is presumptive evidence of eligibility for the national interest waiver. Similarly, such publication does not necessarily reflect the overall field’s reaction to the petitioner’s work. While heavy citation of the petitioner’s past articles would carry considerable weight, the petitioner has not demonstrated such citations here.

The petitioner has shown that her collaborators, mentors, and others at the universities where she has worked and studied are impressed with her work on various projects. The record does not show, however, that the petitioner’s work is of such significance that it has attracted attention outside of these circles, or that researchers outside of the petitioner’s circle have benefited more from the petitioner’s work than from the efforts of others.



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.