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U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



File: [Redacted] Office: Nebraska Service Center

Date: 22 MAY 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

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 post-doctoral research fellow at Wayne State University ("WSU"). 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 petitioner holds a Ph.D. in Cell Biology from the Chinese Academy of Sciences, Beijing. This degree has been independently evaluated as being equivalent to a Ph.D. degree from an accredited U.S. institution. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, cell biology, and that the proposed benefits of her 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 he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. Id. at note 6.

Along with documentation pertaining to her field of research, the petitioner submits several witness letters. Professor [REDACTED] Department of Pathology, WSU, indicates that the petitioner is employed as a research associate in her laboratory. Professor Kuo states:

To study the problem of heart failure, our laboratory has used an animal model of the Syrian hamster which develops cardiomyopathy and heart failure spontaneously. Our



laboratory's research has shown that cardiac cell death is the primary cause of heart failure. For this reason, the focus of our current research is to study the mechanism of cell death and how to prevent it.

\* \* \*

[The petitioner] has made a substantial contribution to the research on the mechanism of cell death. She has shown that altered calcium metabolism is a major factor that can trigger cell death, and the expression of protein called Bcl-2 can inhibit this death process. Her hard work has resulted in the publication of a paper entitled "Modulation of endoplasmic reticulum calcium pump Bcl-2."

\* \* \*

Continuing her in-depth study on the mechanism of cell death, she has mastered the technique to measure calcium ion concentration in various compartments of the cell. Using a state-of-art technology called fluorescence imaging she is able to detect rapid changes of calcium ions in the endoplasmic reticulum and mitochondria compartments... Since the technology requires special training, she is the only person in my laboratory that can carry out this work.

Professor  Chairman of the Department of Biochemistry at WSU, states:

I have known [the petitioner] since 1995, when I first met her in Beijing during her graduate studies in the State Key Laboratory of Biomembrane and Membrane Biotechnology, one of the top laboratories in China, where she studied under the guidance of my collaborator,  Director of the Institute of Zoology at the Chinese Academy of Sciences.

\* \* \*

Since my first meeting with her, I have kept in close contact with [the petitioner] and served as an outside examiner for her Ph.D. thesis proposal. To gain scientific research experience in a leading research laboratory in the United States, [the petitioner] applied for an associate research position in the laboratory of Dr.  Professor of Pathology at WSU, a well-known scientist in the field of cardiovascular diseases.

\* \* \*

Results from [the petitioner's] research show that cardiac cell death is an integral part of the lesion development in myopathic heart that results in heart failure subsequently. Altered calcium homeostasis is the major cause for cardiac cell death. These investigations not only provide insights into the pathogenesis of human cardiomyopathy, but also lead to new strategies for the prevention and control of heart failure. More

importantly, [the petitioner] has succeeded in introducing the oncogene Bcl-2, which is the first inhibitor of cell death to be discovered, into endothelial cell and myocytes using adenovirus-mediated gene transfer. This will shed light on gene therapy for heart failure and other cardiovascular diseases.

[REDACTED] Director of the Institute of Physico-Chemical Biology, Moscow State University, states: "I first met [the petitioner] in the spring of 1997 while I was visiting [REDACTED] a well-known scientist, at the Chinese Academy of Sciences in Beijing." [REDACTED] summarizes the petitioner's research at WSU and credits her with developing "the idea that altered calcium homeostasis leads to aberrant cell cycle gene expression which results in cell death in cardiomyocytes."

[REDACTED] of the University of Texas Southwestern Medical Center states: "I have known [the petitioner] since she joined [REDACTED] laboratory... I have been collaborating with this laboratory for many years." [REDACTED] describes the nature of the petitioner's research and repeats the assertions of previous witnesses. He indicates that the petitioner is "uniquely qualified" for study in the area of cardiovascular disease. [REDACTED] concludes by stating that if the petitioner were unable to stay in the United States, the loss of her contributions would "interrupt and delay the progress of her research project."

[REDACTED] Director of the Key State Laboratory of Biomembrane and Membrane Biotechnology at the Chinese Academy of Sciences in Beijing, draws a similar conclusion in his letter. The petitioner offers no explanation as to how these witnesses are in a better position to assess the loss of personnel at [REDACTED] laboratory than [REDACTED] herself or other WSU faculty.

We note that the petitioner's postdoctoral fellowship at WSU is already covered by her H-1B nonimmigrant visa. Therefore, the petitioner's continued participation in research projects involving WSU is obviously not contingent on her obtaining permanent resident status.

[REDACTED] supervised the petitioner's Ph.D. research in China. [REDACTED] generally repeats the assertions from previous witnesses and states that the petitioner "has proven that altered calcium metabolism is the major factor that can trigger heart cell death during disease development." [REDACTED] indicates that the petitioner "is uniquely qualified to fulfill a critical function within the project." He adds: "Her continued participation is definitely required for the reason that she is the only expert responsible for studying different aspects of calcium regulation using a variety of advanced techniques such as fluorometry, laser cytometer, [and] image acquisition and analysis."

Pursuant to Matter of New York State Dept. of Transportation, any objective qualifications that are necessary for the performance of the occupation can be articulated in an application for alien labor certification; the fact that the alien is qualified for the job does not warrant a waiver of the job offer/labor certification requirement. It cannot suffice to state that the alien possesses useful skills, or a "unique background." The benefit that the petitioner presents to her field of endeavor must

greatly exceed the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. 204.5(k)(3)(ii)(F).

The petitioner's five witnesses include two faculty members at WSU, a research collaborator, the petitioner's Ph.D. research supervisor, and a professional acquaintance. The testimonials submitted indicate the petitioner's expertise and value to her research projects at WSU, but do not demonstrate the petitioner's influence on the field beyond her research institution. The witness letters submitted with the petition do not establish that the petitioner's work has attracted significant attention from independent researchers in the field of cell biology.

The petitioner submits proof of various student awards she received from 1984 through 1988. University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The petitioner's academic awards may place the petitioner among the top students at her educational institutions, but it offers no meaningful comparison between the petitioner and other more experienced biology researchers in the field.

The petitioner provides documentation establishing the undoubted importance of research related to heart disease. Pursuant to published precedent, the overall importance of a given occupation is insufficient to demonstrate eligibility for the national interest waiver. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. 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 cell biology researcher inherently serves the national interest, counsel for the petitioner 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.

The petitioner also submits evidence of her published and presented work. 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 of the petitioner's work, 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 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 indicated that the petitioner's "achievements at this stage of her career appear to fall within the norm expected of successful graduate students and professionals in the field of science."

On appeal, counsel argues that the "decision was contrary to the weight of the evidence" and "the director failed to take into account the specific contributions of the petitioner." Counsel refers to the petitioner's research published in *Oncogene*, *Progress in Natural Science*, and *Burns*. The record contains no evidence that the presentation or publication of one's work is a rarity in cell biology research, nor does the record sufficiently demonstrate that independent researchers have heavily cited or relied upon the petitioner's work in their research.

The petitioner submits the citation history for an article she co-authored that was published in *Oncogene* on October 14, 1998. Not a single article appearing in the citation database provided on appeal was published prior to the filing of the petition on February 26, 1999. The petitioner also provides evidence of an article published on November 19, 1999, and submits three articles "submitted for publication" or "in press" at time of filing of the appeal. This evidence all came into existence subsequent to the petition's filing. 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.

Self-citation is a normal, expected practice. However, self-citation and citation from one's research collaborators cannot demonstrate the response of independent researchers. The article appearing in *Oncogene* on October 14, 1998 was cited fourteen times, eleven times by independent researchers. While the record contains evidence that one of the petitioner's articles has been minimally cited (subsequent to the petition's filing), the number of independent citations simply does not rise to a level that would demonstrate a significant impact on the biomedical field. The petitioner has failed to provide a citation history for her six other published works. Without additional evidence reflecting independent citation of these articles, we find that the petitioner has not significantly distinguished her results from those of other researchers in the biomedical field. It can be expected that if the petitioner's published research was truly significant, it would be more widely cited. The petitioner's participation in the authorship of seven published articles prior to the filing of the petition may demonstrate that her 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 seven published works have garnered significant attention from other researchers in the scientific community.

Counsel cites the testimonial letters previously submitted as evidence of the petitioner's impact on her field. The petitioner's witnesses consist almost entirely of her current and former research supervisors and collaborators. Such individuals, by virtue of their proximity to the petitioner's work, are not in the best position to attest to the petitioner's impact outside of the

laboratories where she has worked. Research which influences the field of cell biology in general serves the national interest to a greater extent than research which attracts little attention outside of the institution that produced that research. We note that the record reflects little formal recognition or awards for the petitioner's cell biology 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 is more persuasive than subjective statements from individuals personally acquainted with the petitioner.

Several of the witnesses, such as [REDACTED] assert their confidence in the future significance of the petitioner's work. The witnesses' use of phrases such as "will benefit basic biomedical science" and "will clearly impact upon future healthcare in the United States" in describing the petitioner's efforts seem to suggest future results rather than a past record of demonstrable achievement. Statements by various witnesses attesting to the petitioner's expertise in fluorescence imaging and other advanced laboratory techniques utilized at WSU are also insufficient to demonstrate eligibility for the national interest waiver. These objective qualifications that are necessary for the performance of the research position can be articulated in an application for alien labor certification.

The petitioner has not established that her research has consistently attracted significant attention outside of the universities or institutions where she has conducted research. Clearly, the faculty of WSU and the petitioner's research collaborators have a high opinion of the petitioner and her work, as do other researchers who encountered the petitioner at the Key State Laboratory of Biomembrane and Membrane Biotechnology at the Chinese Academy of Sciences in Beijing. The petitioner's findings, however, do not appear to have yet had a measurable influence in the larger field. While the 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 her 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. The petitioner's witnesses fail to demonstrate her significant influence upon the biomedical field as a whole.

The issue in this case is not whether advances in the field of cell biology are in the national interest, but, rather, whether this particular petitioner, to a greater extent than U.S. workers having the same minimum qualifications, plays a significant role. While the petitioner certainly need not establish national fame as a researcher, the claim that her research is especially significant would benefit greatly from evidence that it has attracted significant attention outside of her research institutions.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. Without evidence that the petitioner has been responsible for significant achievements in

the field of cell biology, we must find that the petitioner's assertion of prospective national benefit is speculative at best. While the high expectations of the petitioner's instructors and collaborators may yet come to fruition, at this time the waiver application appears premature.

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.