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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:  Office: Nebraska Service Center

Date: OCT 01 2002

IN RE: Petitioner: 
Beneficiary: 

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 research assistant at the University of Minnesota ("UM"). 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 petition was filed on January 31, 2000. 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.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at note 6.

We concur with the director that the petitioner works in an area of intrinsic merit, and that the proposed benefits of his research would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

At the time the petition was filed, the petitioner was a Ph.D. candidate in biostatistics at UM. Along with evidence of his published research and academic credentials, the petitioner submits four witness letters. Dr. Matt McGue, Professor and Chair, Department of Psychology, UM, states:

I have known [the petitioner] since the fall of 1995, when he started graduate school at the University of Minnesota. From 1995 through 1997, I served as his academic adviser in the Department of Psychology as well the supervisor for his Master's research project on adolescent substance use.

During his 2 years in the Department of Psychology, [the petitioner] focused his research efforts on identifying factors that contribute to adolescent initiation of alcohol and substance use. Early experimentation with alcohol and other drugs substantially increases an individual's risk for developing alcoholism or drug abuse/dependence in adulthood. Thus, understanding the mechanisms underlying early initiation is of great significance for efforts aimed at preventing adult substance abuse. In his Master's thesis, which was published in 1999 in the prestigious international journal *Addiction*, he showed, by comparing the similarity of identical and non-identical twins, that contrary to current opinion in the addictions field, early adolescent substance use is primarily environmentally and not genetically mediated.

Dr. James D. Neaton, Professor of Biostatistics at UM, states:

From 1997 to 1998, I oversaw [the petitioner] in his work as a Graduate Research Assistant with the CPCRA Statistical Center, and during this past year he was teaching assistant for a class I teach on clinical trial design... [The petitioner] worked on the reliability and validity of a quality of life questionnaire used in many studies of treatments for patients with HIV infection.

Most instruments for measuring quality of life have been developed and used in white patients. [The petitioner] examined the reliability of a commonly used questionnaire on quality of life in Hispanics and Blacks. [The petitioner's] work in these two area [sic] was timely and innovative since data on quality of life in nonwhite populations with HIV are sparse. His research led to the preparation of an article that I believe will be published in a scientific journal.

[The petitioner] not only carried out important research on a national AIDS project but he also did excellent work in the classroom and was an excellent teaching assistant.

Dr. Thomas A. Louis, Professor of Biostatistics at UM, states:

I have known [the petitioner] since 1997, when he entered our graduate program in biostatistics. He has been a marvelous student and researcher, with truly impressive performance in courses and as a research colleague. His master's project, "Piecewise exponential models with smooth transitions and covariates for kidney transplant survival data," has influenced the analysis of information in the United States Renal Data System (USRDS). These analyses evaluate the relative success of alternative patient management approaches and are important in setting health policy. His ongoing doctoral research on spatial statistics will find application in the USRDS, environmental risk assessment and other contexts that depend on spatially indexed information.

[The petitioner] is experienced and effective in melding statistical science with subject-area science. He has been a true leader in his work in our statistical center for the Community Programs for Clinical Research on AIDS, advising other students and ensuring that projects

are excellent and timely.

Dr. Louis notes that the petitioner's master's project has "influenced the analysis of information in the United States Renal Data System," but he provides no specific information detailing the extent of the petitioner's impact.

Dr. Ye Guangjun, Professor and Director of the Institute of Child and Adolescent Health, Beijing Medical University, states:

I have known [the petitioner] since 1992 when he joined our institute as a lecturer, a position that is equivalent to an assistant professor in the United States... While in our institute, he was actively involved in a wide range of research work on child and adolescent mental health and health behavior, including smoking, alcohol use, and other problem behaviors.

One of his research projects was to identify the adolescent problem behavior syndromes. [The petitioner] showed that the problem behaviors of Chinese adolescents basically fall into two broad categories: internalizing problem behaviors (such as neuroticism) and externalizing problem behaviors (such as aggression and delinquency). More importantly, he found that problem behaviors and symptoms related with academic pressure are the common problem behaviors among Chinese adolescents. It is well known that sexuality-related problems are quite common during adolescence, but these problems are often regarded as belonging to a single cluster of problems. [The petitioner] found that these problems belong to two distinct clusters that he called sexual activity and sexual withdrawal, respectively. His finding suggested that different intervention measures need to be designed for these two kinds of problems. In this research project as well as the other projects he was involved in, he served as both a subject matter researcher and a biostatistician; his skillful and accurate application of univariate and multivariate statistical methods was a key component in the success of our research projects.

In summary, his work contributed to the understanding [of] the nature of child and adolescent mental health and health behavior, and is essential to the development of corresponding countermeasures... His work has been presented at national and international conferences, including a workshop of the International Society for the Study of Behavioral Development, and the Pan Asian-Pacific Conference on Mental Health, as well as being published in national professional journals that are regarded as of the highest academic esteem.

The letters from Drs. McGue, Neaton, and Guangjun refer to the petitioner's published articles and presentations at scientific conferences. 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. The petitioner provides no evidence that his articles have been heavily cited.

The petitioner's witnesses include three of his academic supervisors from UM and a former supervisor from the Institute of Child and Adolescent Health. All four of the witnesses have direct ties to the petitioner. In order to qualify for the classification sought, however, the petitioner must demonstrate that he has had some measure of influence on the biostatistical research field as a whole. Letters from those close to the petitioner certainly have value, for it is those individuals who have the most direct knowledge of the petitioner's specific contributions to a given research project. Still, these individuals became aware of the petitioner's research work because of their close contact with the petitioner; their statements do not show, first-hand, that the petitioner's work is attracting attention on its own merits, as we could expect with research findings that are especially significant. Independent evidence that would have existed whether or not this petition was filed, such as heavy citation of the petitioner's published articles, is more persuasive than the subjective statements from individuals selected by the petitioner.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director acknowledged the petitioner's co-authorship of scholarly articles, but indicated that "publication and presentation of research work are inherent to the position of a researcher."

On appeal, the petitioner submits a research article dated August 4, 2000. This evidence came into existence subsequent to the petition's filing. 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.

In a statement accompanying the appeal, counsel argues that the petitioner's record of publication and presentation demonstrates a "history or pattern of significant contributions to the field." The petitioner, however, has not provided a citation history of his published works. Without evidence reflecting independent citation of his articles, we find that the petitioner has not significantly distinguished his results from those of other researchers in the field. It can be expected that if the petitioner's published research were truly significant, it would be widely cited. The petitioner's

participation in the authorship of several published articles prior to the filing of the petition may demonstrate that his efforts yielded some useful and valid results; however, the impact and implications of the petitioner's findings must be weighed. The record fails to demonstrate that the petitioner's published works have garnered significant attention from other researchers throughout the field.

Counsel cites the four testimonial letters as further evidence of the petitioner's contributions and achievements. We note that the petitioner's witnesses consist entirely of individuals with direct ties to the petitioner. The witness letters do not show that the petitioner's individual work or collaborative findings have had significant repercussions throughout the field. Thus, the petitioner's research findings, such as identifying adolescent problem behavior syndromes and showing that early adolescent substance use is primarily environmentally mediated, appear to be incremental rather than fundamental. While the record amply documents that the petitioner has been an active researcher at UM and at the Institute of Child and Adolescent Health in China, it does not establish that the petitioner's research has had a greater or more lasting impact than that of other researchers in the biostatistical research field.

In this case, the petitioner has offered no independent evidence showing that he has been recognized for significant achievements or contributions in the biostatistical research field. Several of the petitioner's witnesses, such as Drs. Neaton and Louis, assert their confidence in the future significance of the petitioner's work. The witnesses' describe the petitioner as having "strong capabilities and potential as a biostatistician" and as "a person with excellent potential." Statements such as these suggest future results rather than a past record of demonstrable achievement. Without evidence that the petitioner has been responsible for significant achievements in the field of biostatistical research, we must find that the petitioner's assertion of prospective national benefit is speculative at best. In sum, the available evidence does not persuasively establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches itself to the visa classification sought by the petitioner.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on 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.