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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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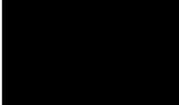


APR 10 2003

File: EAC 01 034 53062 Office: Vermont Service Center

Date:

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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Bureau of Citizenship and Immigration Services (Bureau) 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 Elizabeth Hayward
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office 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. At the time of filing, the petitioner was pursuing his doctorate and working as a research associate at the Harvard School of Public Health. 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.

(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.

The petitioner holds a M.S. degree in Nutrition and a M.P.H. in Biostatistics and Epidemiology from Tufts University. 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 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 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.

Along with documentation pertaining to his field of research, the petitioner initially submitted five witness letters from his current and former colleagues.

Dr. Frank Hu, Assistant Professor, Department of Nutrition, Harvard School of Public Health, taught one of the petitioner's graduate courses. Dr. Hu states:

[The petitioner] has been working on a couple of projects since last year. One project he has worked on is the Coronary Heart Disease ("CHD") Pooling Project. The purpose of the study is to pool and analyze the primary data from 12 prospective studies of self-reported physical activity and CHD incidence or mortality to quantitatively address the following

questions: 1) Are light levels of leisure-time physical activity such as walking as predictive of an inverse relationship with CHD and mortalities compared with more vigorous types of leisure-time physical activity? 2) Is the effect of physical activity independent of age, blood pressure, smoking, high-density lipoprotein (HDL) and total cholesterol levels, body mass index, use of medication, emotional status, and socioeconomic status? Numerous studies concerning physical activity and the risk of CHD have been conducted by many scientists worldwide. Pooling the primary data from existing studies will permit more precise estimates of the strength of these associations than presently possible.

* * *

The other project [the petitioner] is now working on is the Health Professional Follow-up Study ("HPFS"). HPFS is a nation-wide, large-scale and longitudinal prospective study involving 51,529 male U.S. health professionals... The subjects were followed up every other year to update information on potential risk factors, diet and identify new cases of disease. Many of the studies and publications regarding diet and disease have been derived from this study and yet, few published papers discuss the issue of diet and stroke... [The petitioner's] analysis investigating the relationship between dietary fat intake as well as fish consumption and the risk of stroke will certainly be of great significance.

[The petitioner] exhibits well-developed quantitative and analytic skills needed for the research of health problems. His expertise includes a mastery of all the most sophisticated mathematical methods and computer skills required to conduct data analysis... [The petitioner] is an excellent scientist whose expertise in medicine, nutrition and epidemiology will be a great plus to any public health research institution or department. [The petitioner] is an able scientist who has a bright future in this important area of nutrition and epidemiology. His training, education and the fact that he is a medical doctor make him unique and irreplaceable for his present and future work.

We note here that any objective qualifications that are necessary for the performance of a research position can be articulated in an application for alien labor certification. In this matter, the impact and implications of the petitioner's findings must be weighed. Dr. Hu's letter generally describes the petitioner's work rather than establishing its overall significance to the field.

Ellen Mara Kramer, Director, Health Information Unit, Health of the City, Cambridge, Massachusetts, states:

I have known [the petitioner] for more than one year. Dr Robert Houser, a faculty member of Tufts University, recommended [the petitioner] for an internship in the Public Health Department to conceptualize and analyze data from the Cambridge Teen Health Survey. This survey is based on the Massachusetts Youth Risk Behavior Survey ("MYRBS") which is funded through a cooperative agreement with the Centers for Disease Control ("CDC"), and is conducted by the Massachusetts Department of Education HIV/AIDS Prevention Program. The Cambridge Teen Health Survey, carried out every other year for the past

decade, asks students about a variety of health risk behaviors... The petitioner conducted an analysis of the influence of personal and social-environmental factors on Cambridge teens' health behaviors.

* * *

[The petitioner's] work specifically focuses on data analysis and interpretation of results... [The petitioner's] work has far-reaching significance since the adolescent years are a susceptible period for establishing unhealthy lifestyles and habits that could produce disability and disease later in life. Understanding teen health behavior and factors related to their making healthy choices may be very valuable for targeting at-risk youth and planning intervention programs... Improved understanding of teens who are able to avoid risky health behaviors is an important step toward creating a healthier population in the future. Considering the impact that health behaviors have on our nation, there can be no question that [the petitioner's] work is of national interest. His work has great potential for improving the health of the American population and for saving billions of dollars in health care costs.

[The petitioner] has proven his talent in data analysis by his outstanding work. Together with experts from the Cambridge Public Health Department and Tufts University, [the petitioner] is now writing a paper for publication based on the results from the Cambridge Teen Health Survey. [The petitioner's] role in this study is irreplaceable. His achievements already have been recognized and his expertise in data analysis has earned him an excellent reputation in a very short period of time... He has the skills, thoughtfulness, creativity and caring to make an important contribution to public health through better understanding of the behavioral factors underlying health choices.

Statements pertaining to the expectation of future results (such as the preparation of a paper for publication) rather than a past record of demonstrable achievement fail to demonstrate the petitioner's eligibility for the national interest waiver. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 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.

Dr. Virginia Chomitz, Assistant Director, Health of the City, Cambridge, Massachusetts, states:

The most important conclusion made by [the petitioner] is that teens who were born in the U.S., at advanced years in high school, who have poorer academic performance, who are Caucasian and have self-reported heavy stress, tend to have unhealthy behaviors.

* * *

[The petitioner] has mastered the technically sophisticated techniques necessary for data

analysis. He is a public health professional with much to offer the academic and resident community. Together with his background in medicine, nutrition and epidemiology, his expertise in research and health promotion will serve the public well in the years to come.

Pursuant to *Matter of New York State Dept. of Transportation*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education which could be articulated on an application for a labor certification.

Dr. Robert Houser, Tufts University, School of Nutrition Science and Policy, states:

I have known [the petitioner] for about two years. [The petitioner] took my course "Advanced Data Analysis." He assisted me with the analysis of the baseline survey of the Bangladesh Integrated Nutrition Project and the Tufts University Student Health Behavior Assessment Survey. I also worked with [the petitioner] on the analysis of data from the Cambridge, MA Teen Health Survey. He worked on the Cambridge research project as part of his public health degree requirements. His analyses focused on examining the relationship between social-emotional factors on the health risk behaviors of high school students.

His medical knowledge and research skills can enable him to make important contributions to public health in the U.S. He has already facilitated the analysis of the Cambridge Teen Health Survey and is currently working on the write-up of the findings for publication. Without his efforts these research findings might not have been uncovered. The results of these analyses are useful for identifying "at risk" groups within the school population of students.

Dr. F. James Levinson, Director, International Food and Nutrition Center, Tufts University, states:

I have been [the petitioner's] academic advisor at the School of Nutrition Science and Policy at Tufts University. He was also a student in my course on international nutrition programs... [The petitioner] worked directly with me on an analysis of the Baseline Survey for the Bangladesh Integrated Nutrition Project ("BINP"), a major analytical study carried out for the Government of Bangladesh and the World Bank. BINP is one of the largest long-term, community-based nutrition projects ever developed.

* * *

[The petitioner's] role in this project was to analyze data collected and to evaluate the relationship between the nutritional status of children aged less than 24 months old and the social economic status of household, especially breast feeding and the consumption of solid complementary food. This work carried out by [the petitioner], along with the work he did on the Cambridge Teen Health Survey project, the Tufts University Student Health Behavior Assessment Survey was not only of extraordinarily high quality but has substantial benefit to our government and our country. The Bangladesh analytical work, largely

unprecedented to date, will assist our government and the World Bank which it supports in carrying out its foreign aid operations effectively and efficiently. The studies on U.S. teenagers and university students will help our country's health services in effectively addressing the needs of these groups.

Pursuant to *Matter of New York State Dept. of Transportation*, we generally do not accept the argument that a given project is so important that any alien qualified to work on that 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). Congress plainly intends the national interest waiver to be the exception rather than the rule. Witness statements and documentation pertaining to the undoubted importance of statistical studies related to coronary heart disease, stroke, teenage health risk factors, and child nutrition may demonstrate the intrinsic merit and national scope of the petitioner's work, but they fail to distinguish the petitioner from other competent researchers in the fields of biostatistics, nutrition, or epidemiology.

Similarly, assertions as to the petitioner's potential to make future contributions would fall short of demonstrating his eligibility for a national interest waiver. We note Dr. Hu's statement that the petitioner is "an able scientist who has a bright future" in nutrition and epidemiology. Ellen Kramer asserts that the petitioner "has great potential" and Dr. Chomitz notes that the petitioner's education and expertise "will serve the public well in the years to come." The petitioner, however, must show that his work has already measurably influenced the greater field by demonstrating a past record of significant research accomplishment in his specialty.

On May 31, 2001, the Service Center issued a request for evidence citing the three-prong test established by *Matter of New York State Dept. of Transportation*. The director indicated that the petitioner's research possessed substantial intrinsic merit and was national in scope, but found that the petitioner "had not persuasively demonstrated that the national interest of the United States would be adversely affected if labor certification were required for the petitioner." The director's request for evidence did not specifically address any of the petitioner's evidence.

The director also stated:

Concerning [whether the national interest of the United States would be adversely affected if labor certification were required for the petitioner], we note that the petitioner is still in F-1 status, he would be eligible for one year of F-1 practical training employment after he is awarded his Ph.D., and then he would be eligible for six years of H-1B employment. With those easy-to-obtain work opportunities in mind, submit any additional evidence that you feel will establish that the national interest of the United States would be adversely affected if labor certification were required for this particular petitioner.

In response, the petitioner submitted additional witness letters, further background

documentation, and a statement from counsel addressing whether the national interest of the United States would be adversely affected if labor certification were required for the petitioner.

Dr. Theoharis Theoharides, Professor of Pharmacology and Medicine, Tufts University, states:

[The petitioner] is currently collecting and analyzing data from several nation-wide health-related projects sponsored by the National Institutes of Health ("NIH") at Harvard. The two major projects address physical activity and the risk of coronary heart disease ("CHD"), as well as the consumption of long-chain polyunsaturated fatty acids and the risk of ischemic and hemorrhagic stroke. Being the number one and number three killers in American adults, respectively, both CHD and stroke account for hundreds of billions of U.S. dollars in medical costs and loss to the economy each year. These studies, led by the leading researchers and scientists in this field, are considered as the priority projects at Harvard. These data are collected every other year and the analyzed results are vital since they have been providing and will continue to provide invaluable information to physicians and Federal government agencies. In particular, the Centers for Disease Control and Prevention ("CDC") and the Food and Drug Administration ("FDA") need such credible information to enhance health decisions, protect the public health, and promote educational activities designed to improve the health of the people of the U.S.

[The petitioner] is a productive young scientist. He has published five articles in prestigious journals and newspapers during the last three years. The recent selection, from hundreds of high quality abstracts that have been submitted for presentation, at the annual meeting of the American Public Health Association which is entitled "Relationship of personal and social-environmental factors to health-related behaviors in adolescents" further attests to his superior abilities and skills.

The record, however, contains no evidence that the publication or presentation of one's work is a rarity in the petitioner's field, nor does the record sufficiently demonstrate that independent researchers have heavily cited or relied upon the petitioner's findings in their research. A simple comparison of the petitioner's publication record with that of his colleagues from Harvard and Tufts shows that their publication records far exceed that of the petitioner.

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 record, however, does not contain citation records or other evidence to establish that independent researchers throughout the medical research community regard the petitioner's published work as especially significant. While heavy citation of the petitioner's published articles would carry considerable weight, the petitioner has not presented such citations here.

Dr. Theoharides states that the petitioner is currently collecting and analyzing data from several nation-wide health-related projects at Harvard. Dr. Theoharides notes that these studies, led by leading researchers and scientists in their respective fields, are considered as the priority projects at Harvard. Arguments pertaining to the overall importance of a given project may establish the intrinsic merit of the petitioner's work, but such general arguments cannot suffice to show that an individual worker with ties to those projects would qualify for a waiver of the job offer requirement.

Dr. Theoharides further states:

Our country is in dire need of scholars like [the petitioner]. He not only has very strong medical, nutritional, biostatistical, and epidemiological background, but has also mastered sophisticated data analytical skills and has acquired significant research experience... If [the petitioner] were not in his current position, there would be no comparable scholar to choose from at the present. To my knowledge, there are no other researchers in this country who specialize in nutritional science data analysis and who are also capable of communicating with immigrants from Asia as [the petitioner] does. Immigrants from Asia are one of the fastest growing demographics in the U.S.; consequently, his unique skills and abilities will be extremely beneficial to the U.S. not only for the next six years as an H-1B foreign worker, but for many years to come.

Pursuant to *Matter of New York State Dept. of Transportation*, a shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification.

Dr. Fu Shang, Assistant Professor, Human Nutrition Research Center on Aging, Tufts University, states:

[The petitioner], as a research assistant, worked with me from January 1998 to September 1998 in our laboratory where his performance was exceptional... [The petitioner] received state-of-the-art training in medicine, nutrition, biostatistics and epidemiology. Such a diverse training is very uncommon among graduates and most postdoctoral fellows. In our laboratory, [the petitioner] has shown expertise with various techniques in the *in vivo* and *in*

vitro determination of the efficacy of nutrients to delay cataract in laboratory animals. In addition, [the petitioner] demonstrated extraordinary skills on epidemiological data analysis. [The petitioner] is one of a very select group of physician-scientists who bring crucial and irreplaceable expertise and training in clinical medicine to biomedical science as well as nutritional epidemiological research. He was extremely productive not only analyzing data, but also producing data in the laboratory.... [The petitioner] has expertise in a number of areas of public health where all of his skills and background are extraordinarily well tailored for work in this field. His medical background along with his superb training in nutrition, biostatistics and epidemiology constitutes an extremely valuable combination for public health research.

Dr. Shang's letter cites the petitioner's objective qualifications, such as his mastery of specific laboratory techniques and his fulfillment of certain educational requirements, which would be amenable to the labor certification process.

In her second letter, Ellen Kramer further describes the benefits of the Cambridge Teen Health Survey and notes that the petitioner has submitted a paper for publication in *Social Science & Medicine*.

In his second letter, Dr. Levinson repeats some of his previous assertions and further discusses the importance of the Teen Health Survey in enhancing public health. However, we generally do not accept the argument that a given project is so important that any alien qualified to work on that project must also qualify for a national interest waiver. In this case, the petitioner must show that his individual findings have already significantly influenced his field of endeavor. Witness letters devoted to the undoubted importance of a given project, rather than the petitioner's past track record of significant research accomplishment in his field, fail to distinguish the petitioner from other competent researchers.

We are not persuaded by the observation from Dr. Levinson, Ellen Kramer, and Dr. Theoharides that the petitioner has a special perspective on health issues because he is "Asian" or "a person of foreign birth." The petitioner's alienage is not a qualifying factor for immigration benefits. Dr. Theoharides asserts that the petitioner is capable of communicating with the growing number of immigrants from Asia, thus enhancing his value as a researcher. The petitioner shares this trait with many Asian professionals. Simply possessing the ability to communicate with Asian immigrants would not single out the petitioner for the special benefit of a national interest waiver. If being multilingual were a requirement for health professionals, then a shortage of workers with those traits would facilitate the approval of labor certification.

We note here that the petitioner's witnesses consist entirely of individuals with direct ties to the petitioner. While letters from those close to the petitioner certainly have value, these letters do not show, first-hand, that the petitioner's work is attracting attention on its own merits, as we might 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 one's published findings, would be more persuasive than the subjective statements from individuals selected by the petitioner. In this case, the petitioner's findings may have added to the general pool of knowledge, but it has not been

shown that researchers throughout the field have viewed the petitioner's findings as particularly significant.

On October 15, 2001, the director denied the petition, finding 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's decision briefly discussed the petitioner's educational credentials and then mentioned the witness letters, stating: "A number of the letters in the record make clear that [the petitioner] is highly skilled in medically-related research and surveys, and the analysis of the data collected in medical research." The director also stated: "After the petitioner completes his doctorate, he will be eligible for one year of F-1 practical training employment, followed by six years of employment as an H-1B worker in a specialty occupation."

On appeal, counsel notes that the Service did not fully consider all of the petitioner's evidence. While the Service Center's decision did not elaborate on the specific evidence submitted, this error is remedied by the more detailed consideration of the evidence in the above discussion.

Counsel further argues that the Service Center based its determination solely on the finding that a non-immigrant visa would be available to the petitioner upon completion of his doctorate. We agree with counsel that the director's decision and the request for evidence incorrectly imply that the availability of a non-immigrant visa would preclude approval of a national interest waiver petition. The director's references to the availability of F-1 practical training and H-1B employment are flawed. The director's implication that the availability of a non-immigrant visa, in and of itself, would preclude approval of the petition is unsupported by statute, regulation, or published precedent. The central issue in this matter 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. The Bureau notes its authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within the power of the Bureau to formulate. *Helvering v. Gowran*, 302 U.S. 238 (1937); *Securities Comm'n v. Chenery Corp.*, 318 U.S. 86 (1943); and *Chae-Sik Lee v. Kennedy*, 294 F.2d 231 (D.C. Cir. 1961), cert. denied, 368 U.S. 926 (1961).

Counsel states that the existence of "three published articles in prestigious journals" shows the importance of the petitioner's work. 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. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work. Their citation of the petitioner's work would demonstrate their familiarity with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is 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 would have, if

that research does not influence the direction of future research. In this case, the petitioner has offered no evidence demonstrating heavy independent citation of his published findings.

Clearly, the petitioner's educators, research supervisors, and colleagues 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 numerous 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 his field, but this is the goal of all such research; the assertion that the petitioner's findings may eventually have important healthcare implications does not persuasively 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, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.