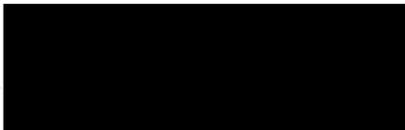


U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536



File: WAC-01-258-50904 Office: California Service Center

Date: APR 10 2003

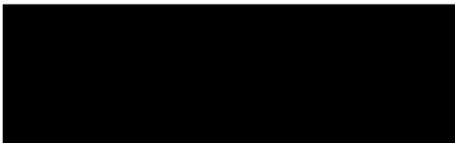
IN RE: Petitioner:
Beneficiary:



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)

ON BEHALF OF PETITIONER:

PUBLIC COPY



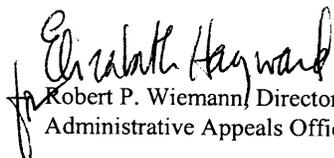
INSTRUCTIONS:

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 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

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 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) . . . the Attorney General may, when the Attorney General 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. degree in biological sciences from the University of Warwick. 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.

While counsel does not raise this concern on appeal, the director's decision contains several troubling references to the criteria for aliens of extraordinary ability under section 203(b)(1)(A). For example, page three includes a discussion of the lack of national or international prizes and participation as a judge. Prizes and judging experience, however, are not required for the classification sought by the petitioner. On page five the director asserts that citations of one's work are not evidence of "national acclaim," a standard not required for the instant classification. On the same page, the director notes that the accomplishments of the petitioner's references "outweigh" his own. Once again, in order to

obtain a waiver of the labor certification requirement in the national interest, one need not be one of the small percentage at the top of one's field. On page eight, the director states that the petitioner's references "compare the petitioner's research to his coworkers and other advanced students rather than to the most experienced and accomplished researchers in the field." In the next paragraph, the director concludes that the petitioner has not demonstrated that "his 'national impact' exceeded that of others in the field." For the classification sought, however, the petitioner need not demonstrate that he is one of the very few at the top of his field, as suggested by the director's language.

The director's decision does include some analysis under the correct standard and even acknowledges on page 10 that national acclaim is not required. The initial discussion, however, is troubling. By repeatedly discussing the lack of evidence regarding national acclaim, the director certainly implied that this absence was a consideration in the decision. Nevertheless, we cannot sustain an appeal based solely on the director's inclusion of some problematic language. The record must establish the petitioner's eligibility for the classification sought.

Neither the statute nor pertinent 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 the 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.

On appeal, counsel's sole argument is that the waiver should be granted due to a shortage of qualified scientists in the United States working in the petitioner's area of research. Counsel lists four institutions where the research is occurring and asserts that only 50 researchers are engaged in such research. Counsel's argument is not persuasive and runs counter to the plain language of *Matter of New York State Dept. of Transportation, supra*. That case provides:

With regard to the unavailability of qualified U.S. workers, the job offer waiver based on national interest is not warranted solely for the purpose of ameliorating a local labor shortage, because the labor certification process is already in place to address such shortages.

Id. at 218. We will review the remaining evidence under the correct standard set forth in *Matter of New York State Dept. of Transportation*.

We concur with the director that the petitioner works in an area of intrinsic merit, recombinant DNA technology and prion research, and that the proposed benefits of his work, improved understanding of prions, 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 219, n. 6.

On pages five and six of the director's decision, he essentially dismisses the petitioner's reference letters based on the references' association with the petitioner. The director states:

The letters are from professors, employers, former and current coworkers, collaborators and other esteemed experts in the field, including some independent testimonies. Other witnesses are high officials of important learning and research institutions, but examination of their statements indicate that they have collaborated directly or indirectly with the petitioner or the individuals connected with the petitioner's research projects or institution. Thus their knowledge of the petitioner's work appears to derive from this association, rather than from the petition's general acclaim as a researcher in the field of biochemistry, molecular biology and related fields. Those letters do not show that the petitioner's work has

gained significant notice in the field among individuals who have not worked directly with the petitioner.

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While their first-hand knowledge is valuable in terms of learning details of the petitioner's role at the laboratory, it remains that nearly all of the witnesses have demonstrable connections with the self petitioner, employer or the research facility. Playing an important role in a single research project, however, crucial that role may be in the perspective of other participants, does not necessarily justify projections of future benefit to the national interest, nor does it warrant a waiver of the labor certification.

We agree that letters from a petitioner's collaborators and immediate colleagues, while important in providing details about the petitioner's role in various projects, cannot generally by themselves establish the petitioner's influence over the field as a whole. Nevertheless, such letters cannot be dismissed without any consideration of who the author is and what he or she says. As will be discussed below, the record contains a letter from Dr. Stanley Prusiner. Dr. Prusiner not only received a Nobel Prize in the petitioner's area of research, but the basis of that prize was his discovery of the existence of prions as disease causing entities. Thus, we do not use the term loosely when we say that Dr. Prusiner is the pioneer of prion research. While the fact that the petitioner works for Dr. Prusiner is not in and of itself sufficient cause to waive the labor certification requirement, nor should the petitioner be penalized for working for someone so renowned that most other experts in the field will have some connection to him. Dr. Prusiner is clearly one of if not the ultimate authority on prions and his opinions on research in this area carry significant weight. In addition, another reference, Ronald Kaback is a member of the National Academy of Sciences.

Dr. Prusiner, Director of the Institute for Neurodegenerative Diseases at the University of California, San Francisco (UCSF), provides general praise regarding the petitioner's skills and dedication. Dr. Prusiner further states:

Of particular note, is his contribution to the production of species-specific, highly sensitive recombinant Fab antibodies that represent critical tools in a BSE [bovine spongiform encephalopathy or "mad cow disease"] diagnostic test currently being developed. The protein synthesis group, under [the petitioner's] supervision, is also generating uniformly labeled PrP proteins that are essential for obtaining high resolution structural data using NMR spectroscopy.

[The petitioner] has quickly and smoothly adapted to the highly demanding field of prion research by achieving outstanding results in developing new immunochemical tools for structural studies as well as biochemical characterization of novel prion-like proteins. Currently, he is establishing himself as a unique expert in developing recombinant antibodies (and their fragments) to prion proteins, a process which

facilitates other research within the University and in the medical research community as a whole.

In addition, the record contains several reference letters from scientists who have not collaborated with either Dr. Prusiner or the petitioner. Dr. Charles Yanofsky, a Professor Emeritus at Stanford University, asserts that he knows the petitioner from his presentations and scholarly articles, although, as a former member of the Fairchild Scientific Review Board at the University of California Medical School in San Francisco, Dr. Yanofsky reviewed the research of Dr. Prusiner. Dr. Yanofsky provides similar information to that quoted above and indicates that the petitioner “is also contributing to the development of several transgenic mice lines which should increase his ability to investigate the mechanism of prion disease development in human beings.” Dr. Ronald Kaback, a professor at the University of California, Los Angeles (UCLA) and a member of the National Academy of Sciences, provides similar information, noting that “recently, [the petitioner] has been directly involved in the study of novel therapeutic agents for the treatment of Creutzfeldt-Jakob diseases, including the new variant version of this malady.” Finally, Richard Murdock, President and Chief Executive Officer of InPro, a company formed to commercialize the scientific advances from Dr. Prusiner’s laboratory; Dr. L.W. Enquist, a professor at Princeton University; and Dr. Sebastian Doniach, another professor at Stanford University, all provide similar information.

In addition, these letters are supported by additional objective evidence, some of which was not even considered by the director. The petitioner submitted evidence of his publication history. The director dismisses the petitioner’s publication history because it is generally required of Ph.D. candidates to perform research and complete a dissertation. The director concludes:

Consequently, authorship of articles in furtherance of their degree program including dissertations is not routinely judged to be indicative of exceptional ability, nor does it warrant exemption from the requirement of a job offer/labor certification based on national interest. From its name and timing, the petitioner’s research praised in letters of attestation appears to recognize student work rather than excellence in the field of endeavor.

This discussion does not appear to fit the facts of this case. The petitioner is not relying solely on his Ph.D. dissertation. The petitioner obtained his Ph.D. more than four years prior to filing the petition and had published at least five articles since obtaining his Ph.D. at the time of filing, including an article in the prestigious *Science*. The petitioner was working as an assistant adjunct professor at UCSF at the time of filing. He was not a Ph.D. candidate or even a postdoctoral researcher at the time. Regardless, the research must be judged on its impact, not when in the petitioner’s career it was published. While original research is expected of Ph.D. candidates and is not noteworthy in and of itself, we do not rule out the possibility that student work can be influential on the field as a whole. Regardless, despite the director’s assertion that the petitioner submitted evidence that his articles had been cited (and dismissing such evidence as “expected and routine”), the record contains no evidence of citations.

The record would clearly be bolstered by citation evidence. Contrary to the director’s conclusion, an unusual number of citations of an article is evidence of that article’s influence on the field.

The record would clearly be bolstered by citation evidence. Contrary to the director's conclusion, an unusual number of citations of an article is evidence of that article's influence on the field. Nevertheless, other factors in the record suggest that the petitioner's work is influential. In general, we look at the impact of the article itself, not the publication in which it appears. That said, we acknowledge that *Science* is one of the most prestigious science publications, accepting only the most significant articles from every field. Moreover, subsequent to filing the petition, the petitioner published an article in the prestigious *Proceedings of the National Academy of Sciences*. Only articles recommended by an academy member are accepted for publication in this journal. Further, the petitioner submitted evidence that this article received coverage in the general media. For example, the petitioner was personally quoted in *The San Francisco Chronicle*, *The New York Times*, *The Harold Tribune*, *The London Times*, and *Reuters*. While the publication of this article and interviews with the petitioner himself occurred after the date of filing, they are the result of research being performed at the time of filing and demonstrate a continuation of the petitioner's successful record of accomplishment apparent at the date of filing. We reiterate that publication in a prestigious journal and evidence regarding recognition after the date of filing is insufficient on its own. Such evidence is notable in this case due to the persuasiveness of the record when considered as a whole.

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 field of research, rather than on the merits of the individual alien. That being said, while the petitioner's eligibility could have been better argued and documented, the above evidence in addition to other evidence in the record, when viewed as a whole, sufficiently establishes that the community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has 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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.