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

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



APR 16 2003

File: EAC-02-105-51304 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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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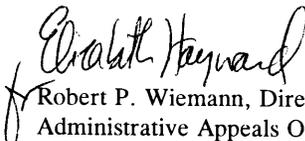
INSTRUCTIONS:

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, 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. 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. in biochemistry from the Institute of Biophysics in China. 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 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.

We concur with the director that the petitioner works in an area of intrinsic merit, protein chemistry, and that the proposed benefits of his current work, improved ability to increase kidney cell survival, 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.

Dr. [REDACTED] a section chief of the Laboratory of Kidney and Electrolyte Metabolism, National Heart, Lung, and Blood Institute of the National Institutes of Health (NIH), discusses the petitioner's current work at that institution. Dr. [REDACTED] asserts that the petitioner is "making excellent progress towards isolating and characterizing [a transcriptional factor] and has become an essential participant [in] our research program." On appeal, the petitioner submits a letter from Dr. [REDACTED] Chief of this laboratory, who discusses the importance of the project and the petitioner's qualifications to work on it.

In response to the director's request for additional documentation, the petitioner submitted an independent evaluation of this project. Dr. [REDACTED] an associate professor at Johns Hopkins University School of Medicine, asserts that his own laboratory established that TonEBP plays a critical role in the maintenance of blood pressure due to its role in the kidney. Dr. [REDACTED] notes that at NIH, the petitioner is currently studying how TonEBP is controlled by a chemical

modification called phosphorylation. While Dr. [REDACTED] asserts that if the petitioner achieves his goal it will provide a novel target for the development of drugs for diabetes and other diseases involving TonEBP, he does not indicate that the petitioner has made breakthrough progress towards this goal other than to assert that the group as a whole has published "a critical paper in this area."

The petitioner asserts that he is the only one in Dr. [REDACTED] group with an expertise in protein chemistry and proteomics. We do not accept, however, 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.

Dr. [REDACTED] a professor at the University of California, Irvine, asserts that the petitioner's NIH supported research at that institution focused on the purification and characterization of the brain development protein phosphacan. While Dr. [REDACTED] asserted that the petitioner's work would be published, he did not explain the significance of the petitioner's contribution to that work or provide examples of how it has been influential.

Dr. [REDACTED] the Chair of the Enzyme Chemistry Division at the University of Tokushima, provides more details regarding the petitioner's work at that institution. Dr. [REDACTED] states:

[The petitioner] was working on purification and characterization of a cellular protease potentiating infection with influenza and Sendai viruses. He succeeded in purification of a novel trypsin-like protease from porcine lungs that proteolytically activates these respiratory viruses, it was a job which required expertise in protein chemistry and original thinking. The main results were presented as posters in international scientific meetings in Germany and Japan and later published in an important international journal in [the] biochemistry field [REDACTED]. This study helped our understanding of the physiologic part of virus infection in the respiratory tract and eventually the prevention and treatment of influenza diseases. Furthermore, many of [the] pharmaceutical companies [are] interested in his results to develop anti-influenza drugs for domestic animals.

Dr. [REDACTED] assertions are not supported by pharmaceutical companies confirming that they have progressed in preventing and treating influenza based on the petitioner's work or that they are interested in using his data to develop anti-influenza drugs for domestic animals.

Professor [REDACTED] who worked with the petitioner at the National Laboratory of Biomacromolecules in China, provides general praise of the petitioner's skills and dedication. Professor [REDACTED] who also worked with the petitioner at that laboratory, provides more detail. Professor Wang asserts that the petitioner obtained convincing data to support his kinetics

model, which paved a new way of studying irreversible modification kinetics of enzymes and had potential value to theoretical studies as well as practical applications.

The above letters are all from the petitioner's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's influence over the field as a whole. Despite the director's request for independent evidence to verify the above statements, the only independent evaluation is the letter from Dr. [REDACTED] discussed above. Similarly, while the director notes the lack of independent evaluations, the petitioner submits another letter from a close colleague on appeal. Moreover, some of the petitioner's own colleagues provide little information that would suggest that the petitioner has a track record of success with a degree of influence over the field as a whole. That the petitioner has extensive experience is not grounds for waiving the labor certification requirement as such experience can be listed on an application for labor certification.

The petitioner has authored eight articles, one of which was published in the prestigious *Proceedings of the National Academy of Sciences*. 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." This report reinforces the Bureau's position that publication of scholarly articles is not automatically evidence of influence; we must consider the research community's reaction to those articles. The petitioner asserts that his articles have been "well cited." As an example, he claims that one of his articles has been cited three times. The petitioner submits no evidence to support this claim. Moreover, three citations are not indicative that the article is widely influential. Despite the director's conclusion that "the record must clearly demonstrate that these publications and presentations have been recognized for their national importance," the petitioner submits no additional evidence of citations on appeal.

While we acknowledge the significance of publication in the *Proceedings of the National Academy of Sciences*, which requires the recommendation of a member of the academy, mere publication in that journal is insufficient by itself. There is no evidence that it was singled out for a commentary in the journal or that it is generating citations or at least requests for reprints.

Finally, in response to the director's request for additional documentation, the petitioner submitted an article printed in the *Bulletin of the Institute of Biochemistry and Cell Biology* regarding the He Liang/He Li Foundation prize for science and technology presented to Gen-Jun Xu, the petitioner's Ph.D. advisor in November 2001. The petitioner submitted an uncertified translation of portions of the article, none of which mention the petitioner. While the petitioner asserts that the story also appeared in several major Chinese newspapers, the record does not support that assertion. The petitioner also submitted a letter from Professor [REDACTED] asserting that while the prize was only awarded to the chief investigator, the petitioner is one of the colleagues

“who contributed significantly to our research.” The petitioner’s collaboration with Professor █████ ended in 1997. Without more evidence regarding the basis of the award, the petitioner has not established that an award issued to his advisor four years later reflects on the petitioner’s contribution to his field.

Similarly, the petitioner submitted a December 20, 2001 article in the Japanese publication *Tokushima Shinbun* with a partial uncertified translation. The petitioner asserts that this article demonstrates the significance of his work with Professor █████ in Japan. The translated portions of the article do not mention either the petitioner or Professor █████. Moreover, the petitioner ended his collaboration with Professor █████ in 1999, more than two years before the article was published. Thus, as with the above prize, without evidence that the article is referring to research concluded two years previously, the record does not establish that this article reflects on the petitioner’s contribution to his field.

While the petitioner’s research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any research, in order to be accepted for publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who is working with a government grant and is published inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. The record does not establish that the petitioner’s work is recognized as a groundbreaking advance in nephrology or protein chemistry beyond his collaborators. While the petitioner clearly works for a prestigious institution and has recently published an article in a prestigious journal, it appears that the petition may have been filed prematurely, before the petitioner’s influence has been established.

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, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.