

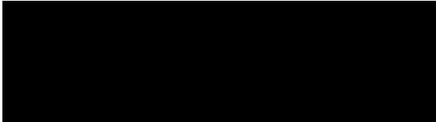
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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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



APR 21 2003

File: EAC 01 251 51090

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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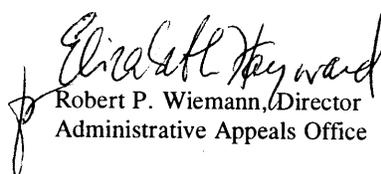
INSTRUCTIONS:

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 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.


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 member of the professions holding an advanced degree or an alien of exceptional ability. The petitioner seeks employment as a physician-scientist specializing in biomedical research. 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 concluded 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 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 director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. We do not concur. According to the documentation of record, a physician-scientist is defined as one of "those individuals holding an M.D. or M.D./Ph.D. degree who perform[s] biomedical research of any type as their primary professional activity." The regulation at 8 C.F.R. 204.5(k)(2) requires that if "a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." The petitioner must also establish his eligibility at the time of filing the petition. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The record indicates that the petitioner had not yet obtained a medical degree and did not receive his United States doctorate until December 2001, four months after the filing date of the petition in August 2001. Thus, he had not obtained the customarily required credentials as of the time of filing the petition, and cannot be considered to hold an advanced degree under the regulation. We note that the petitioner did not address the specific regulatory criteria necessary to be considered as an alien of exceptional ability. Thus, the petitioner has not established his eligibility for the visa classification for aliens who are

members of the professions holding advanced degrees or aliens of exceptional ability. As the appeal will be dismissed on the grounds discussed below, this issue will not be examined further.

The sole issue contested on appeal 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 pertinent 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.

The director did not contest the intrinsic merit and national scope of the petitioner's proposed employment as a physician-scientist specializing in biomedical research. The remaining determination is whether the petitioner has established that he 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 it 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. *Matter of New York State Dept. of Transportation*, at 219, n.6.

Together with copies of his published articles, academic credentials and documentation relating to physician-scientists, the petitioner submits several witness letters attesting to his expertise. [REDACTED] a professor and physician at Rockefeller University, indicates that he is the petitioner's Ph.D. advisor. Professor [REDACTED] states:

I have known [the petitioner] for six years, first as a student of mine in courses I taught at the Cornell Medical School, and for the past four years as he has been a biomedical research fellow in my laboratory.

* * *

[The petitioner] has had a stellar academic career, receiving his Bachelor's degree from Princeton University with highest honors (*Summa cum laude*) in Molecular Biology and at the same time obtaining a certificate in Engineering Biology from the Department of Chemical Engineering being the only non-engineer to do so. . . . For five years he has performed top-notch research in the field of Molecular Biology, concentrating on the study of brain-specific RNA-binding proteins and their biological significance and producing two publications in extremely well-respected, peer-reviewed journals

* * *

[The petitioner's] work has already significantly advanced the field by identifying a new gene named brain-enriched Polypyrimidine Tract Binding protein (brPTB) and dissecting its function *in vivo* on the control of alternative splicing in neurons. I have no doubt that more progress will be made on these exciting new discoveries, furthering our understanding of the way cells, and neurons in particular, control their fate by regulating the splicing, and thus the protein product, of specific genes.

[REDACTED] a professor of physiology and biophysics at Rockefeller University and the Director of the Tri-Institutional MD-PhD Program, confirms that the petitioner received a fellowship to the program in 1995 and has completed two years of medical training. Professor Andersen describes the extensive screening process that candidates undergo and confirms that the petitioner's exceptional credentials gained him admission. While this may establish the petitioner's academic prowess, Professor Andersen does not describe how the academic selection process distinguishes the petitioner's research achievements from others in the field.

Titia de Lange, another professor at Rockefeller University, indicates that she has known the petitioner for seven years, served on his thesis committee, and collaborated with him in the study of mammalian RNA binding proteins. Professor de Lange describes the petitioner's superior academic and research credentials and expresses confidence that the petitioner "will continue to make major contributions in the field of neuron-specific RNA splicing and become a prominent medical doctor in the area of his specialization." Professor de Lange does not specifically detail how the petitioner's work has already impacted the biomedical field.

██████████ an associate dean and registrar of Cornell University, confirms that the petitioner's academic achievements include election to Phi Beta Kappa in 1995, receipt of the George Khoury '65 Senior Prize for Academic Excellence, and receipt of the McGraw-Hill Award for being the top first year medical student. While the petitioner's academic accomplishments are commendable, it is not clear what expertise Ms. ██████████ has in biomedical research or how her testimony establishes the petitioner's influence on the wider professional biomedical community beyond his academic accomplishments.

The record also includes copies of two 1994 letters of recommendation from two of the petitioner's undergraduate professors at Princeton University. These letters show that Professor ██████████ and Dr. ██████████ both considered the petitioner a highly talented undergraduate student and recommended him for admission to graduate school.

As noted by the director in his denial, all of the petitioner's testimonials are academic officials, teachers, or collaborators from his past and present educational institutions. Letters from those with direct ties to the petitioner certainly have value, because such persons have direct knowledge of the petitioner's contributions to a specific research project; however, their statements do not show, first-hand, that the petitioner's work has attracted widespread attention on its own merits, as might be expected with research findings or achievements that are especially significant. Merely listing the petitioner's outstanding academic credentials or speculating as to his future potential does not demonstrate eligibility for the national interest waiver, which must establish some past history of influential achievement in the field. Furthermore, none of the witnesses address how the petitioner's research achievements distinguish him from other biomedical physician-scientists who have long since completed their educational training. For example, we note that the witnesses' credentials, such as those of Dr. ██████████ completely dwarf those of the petitioner at this stage of his career.

Even if the petitioner's impressive academic honors and awards represented an outstanding professional achievement, the regulations at 8 C.F.R. 204.5(k)(3)(ii)(F) provide that "recognition for achievements and significant contributions to the industry or field by peer, governmental entities, or professional or business organizations" is one possible criterion for exceptional ability, a classification normally requiring a labor certification as set forth in 8 C.F.R. § 204.5(k)(3)(ii). We cannot conclude that satisfying one requirement or even the requisite three criteria for this classification makes one eligible for a waiver of the labor certification process.

The petitioner has also submitted evidence of four published articles and two conference papers. The record contains nothing showing that the presentation or publication of one's work is rare in the petitioner's field.

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 must also demonstrate his eligibility for a national interest waiver at the time of filing the petition. Events occurring after the filing date do not retroactively establish an alien's reputation or impact on his field. *See Matter of Katigbak, supra.* Here, the record shows that the petition was filed on August 21, 2001. The evidence indicates that while the petitioner's work was cited several times prior to the date of filing, the vast majority of cited references to his published work have occurred after August 21, 2001. This fails to establish that he had already influenced his chosen field to any significant degree as of the date of filing.

In denying the petition, the director acknowledged the importance of the petitioner's work but found that the record had not established that his contribution was of such magnitude that the national interest would be ill served by requiring the normal labor certification process.

On appeal, the petitioner contends that the director did not properly evaluate his credentials. He also submits an additional citation list showing additional references to his work subsequent to the filing of the petition, as well as documentation describing the growing shortage of physician-scientists. The petitioner argues that to require him to go through the labor certification procedure would force him to seek employment as a medical doctor and prevent him from becoming an independent researcher. He states that the substantial financial investment used to finance his training, in the form of grants, awards, and scholarships would not be lost if his immigrant petition were approved.

Pursuant to published precedent, the overall importance of a given occupation, such as physician-scientist, is insufficient to demonstrate eligibility for the national interest waiver. The plain wording of the statute indicates that advanced degree professionals (including physician-scientists) as well as aliens of exceptional ability are generally subject to the job offer/labor certification requirement. By asserting that as a physician-scientist the petitioner would inherently serve the national interest because of the public financial investment made in him is to contend that there should be a blanket waiver for all those physician-scientists who receive such financial assistance. Although a limited waiver exists for physicians working in underserved areas, the petitioner has not alleged or established his eligibility for this waiver under section 203(b)(2)(B)(ii) of the Act. In cases filed under section 203(b)(2)(B)(i) of the Act such as this one, Congress plainly intended the national interest waiver to be the exception rather than the rule. There may be a shortage of qualified physician-scientists; this does not constitute grounds for a national interest waiver, given that the labor certification process was designed to address the issue of worker shortages.

It is apparent that the petitioner has excelled academically and is a talented researcher. Nevertheless, his superior ability is not by itself sufficient cause for a national interest waiver. The benefit that the petitioner presents to his field of endeavor must greatly exceed the

“achievements and significant contributions” contemplated in 8 C.F.R. 204.5(k)(3)(ii)(F) for an alien of exceptional ability. It is not sufficient to state that the alien possesses unique credentials or an impressive background. The labor certification process exists because protecting jobs and employment opportunities of U.S. workers having the same objective minimum qualifications as an alien seeking employment is in the national interest. The alien seeking an exemption from this process must present a national benefit so great as to outweigh the national interest inherent in the labor certification process. In this case, we cannot conclude from the witness letters and other evidence of the petitioner’s work that his influence on his field, as of the time of filing the petition, had reached a level that would justify a national interest waiver.

As is clear from the plain wording 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. Similarly, 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. Based on the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification would 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. In this case, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.