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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, DC 20536

APR 21 2003

File: EAC-02-039-54640 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:

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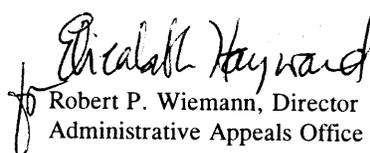
INSTRUCTIONS:

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 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 an alien of exceptional ability. 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.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Ph.D. in Biochemistry from Beijing Medical 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 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.

The director does not appear to contest that the petitioner works in an area of intrinsic merit, medical research, and that the proposed benefits of his work, improved understanding and treatment of cancer, 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.

The petitioner submitted a letter from his supervisor, Dr. [REDACTED] Acting Chief of the Laboratory of Cellular and Molecular Biology (LCMB) at the National Institute on Aging (NIA), National Institutes of Health (NIH). Dr. [REDACTED] notes that while the cancer research community understands that cancer progresses based on a "complex pattern of expressed genes," the regulation of

most of these genes is not yet understood. Dr. [REDACTED] asserts that the petitioner “demonstrated that the process of mRNA turnover was critical for the regulation of many genes associated with cancer of the colon, breast, and lung.” In addition, the petitioner “has identified HuR as one such protein that coordinately regulates the expression of several cancer-related genes.” Dr. [REDACTED] further asserts that this discovery has prompted further research both within and outside NIH on HuR that “will likely provide successful cancer therapies.”

Dr. [REDACTED] the petitioner’s previous supervisor at LCMB, discusses the petitioner’s earlier work at that laboratory as follows:

[The petitioner’s] work in my laboratory involved investigation of the role of a very important transcription factor (Nf-kB) in vascular endothelial cells. This factor regulates the survival and differentiation of vascular cells and, as such, is central to the regulation of new blood vessel formation and inflammation. [The petitioner] examined the expression of several genes regulated by Nf-kB in endothelial cells and found that not only were these genes involved in cell survival, but independently, they also regulated cell differentiation. These results were possible because [the petitioner] developed the methods to specifically inhibit the expression of the Nf-kB by introducing antagonists into cells that interfered with the ability of cells to synthesize it. . . . The studies that he was involved in have increased our knowledge of vascular cell biology and provide a sound foundation for further research which may lead to the development of anti-angiogenic agents. The immediate application of these results will be of future benefit to many cancer patients in the United States.

Other collaborators, including Dr. [REDACTED] former Chief of LCMB, and Dr. [REDACTED] at John Hopkins, echo the above sentiments. The director concluded that “your letters of support are not from entirely independent sources who are national leaders in your field.” While the above letters, and an additional letter from Professor [REDACTED] at Peking University who supervised the petitioner’s work in China, are from the petitioner’s immediate circle of colleagues, the petitioner submitted other letters from more independent sources.

Initially, the petitioner submitted a letter from Dr. [REDACTED] a biology professor at the University of Rochester who has published 130 articles in journals such as *Cell*, *Science*, and the *Proceedings of the National Academy of Science*. Dr. [REDACTED] asserts that he has “been following [the petitioner’s] papers for some years because of my special interest in the transcriptional regulation and mechanisms of gene activity.” Dr. [REDACTED] continues:

[The petitioner’s] research was truly groundbreaking. His studies indicate that the RNA-binding protein HuR plays critical roles in the regulation of proliferative genes such as cyclin A, cyclin B1, cyclin D1 and p21, by enhancing mRNA stability. A reduced level of HuR leads to reduced cell growth and accentuated replicative senescence. This work has major implications in a number of fields, including cancer, development and aging. [The petitioner’s] work makes it clear that HuR is also a good entry point for studies on pharmaceutical intervention and gene therapy.

In response to the director's request for additional evidence, the petitioner submitted letters from Dr. [REDACTED] Director of the Office for Genetics and Children with Special Health Care Needs at the Maryland Department of Health and Mental Hygiene, and Dr. [REDACTED] Chief of the Endocrinology Section at the Birmingham Veterans Affairs Medical Center in Alabama. While Dr. [REDACTED] opinion appears to be based on information provided by Dr. [REDACTED] Dr. [REDACTED] concludes that "without a doubt, [the petitioner's] work on gene regulation has had and continues to have a major impact on the biomedical community at a national and international level." Dr. [REDACTED] asserts that the petitioner's work with HuR, which he discusses in detail, "has significantly enriched our understanding of the general mechanisms underlying cancer and aging and this work has the strong potential to translate to clinical application because it identifies targets for gene therapy and other molecular medicine approaches to treating disease." Dr. [REDACTED] concludes that the petitioner's "contributions in this area thus place him in a very influential group of productive and important scientists."

The director stated that Dr. [REDACTED] "opinion is held in high regard," and that Dr. [REDACTED] opinion "is duly noted for these proceedings." The director does not identify any specific concern with these letters. Rather, the director expresses concerns regarding the lack of "major, high-profile awards" or "news articles explaining the importance of your contributions." Neither the statute, regulations nor the precedent decision cited above requires such specific evidence.

The petitioner claims to have authored 11 articles and provides evidence of many of those articles. In addition, the petitioner provided evidence that one of his articles on HuR was cited 25 times, only three of which were self-citations. Further, another article by the petitioner was cited 12 times, three of which were self-citations and a third article was cited seven times, two of which are self-citations. Inexplicably, the director acknowledged that the petitioner's citation history is indicative of the articles' impact on the field, but concluded that "the record must contain corroborative evidence to establish our [sic] claim."

Clearly, any research must be shown to be original and present some benefit if it is to receive funding. Similarly, any research, in order to be accepted for publication, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who is published serves the national interest to an extent that justifies a waiver of the job offer requirement. Thus, the petitioner must establish the actual impact of his articles. The director is correct that researchers are obligated to cite their sources. It does not follow, however, that it is typical for every scientific article to be *widely* cited. An article that is widely cited is the source of several independent research projects. That the petitioner's articles have been well cited is corroborative evidence of Dr. [REDACTED] statement that the petitioner's work has inspired other research outside of NIH. Moreover, the petitioner has not only been frequently cited, but at least three of the recent citations are in review articles that provide summaries of recent breakthroughs in the field.

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, the above testimony, and further testimony in the record, 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.