B5

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: WAC 01 289 52464 Office: CALIFORNIA SERVICE CENTER Date: AUG 18 2003

IN RE: Petitioner:
Beneficiary: [redacted]

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

[redacted]

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 (AAO) 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 seeks employment as a biomedical research associate. At the time she filed the petition, the petitioner was a research associate at the University of California, Los Angeles, (UCLA) School of Medicine. 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 petitioner received a master's degree from Beijing Medical University in 1993 and obtained a Ph.D. in 1998 from the Virginia Commonwealth 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 sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

As expressed by the petitioner on appeal,[1] we note that the director's decision contains erroneous references to the criteria for aliens of extraordinary ability under section 203(b)(1)(A) and

---

[1] The petitioner filed the appeal. Counsel who represented the petitioner on the initial petition will be sent a copy of this decision, as no withdrawal appears of record.

outstanding professors and researchers under section 203(b)(1)(B) of the Act. In order to obtain a waiver of the labor certification requirement in the national interest, one need not establish international or national acclaim or that one has participated on a panel, or individually, as a judge of the work of others in the same or in an allied field. While the director subsequently discusses the evidence under the correct standard and even states that national acclaim is not required for the classification sought, the initial discussion is erroneous, and those portions of the director's decision are withdrawn. Because the decision also correctly analyzes the evidence under the statutory requirement of section 203(b)(2) and the precedent decision, *Matter of New York State Dept. of Transportation,* 22 I&N Dec. 215 (Comm. 1998), the decision will be upheld.

Neither the statute nor Service 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, supra, has set forth several factors that 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.

In denying the petition, the director notes that the petitioner has not persuasively demonstrated that her proposed employment would specifically benefit the national interest of the United States to a substantially greater degree than a similarly qualified United States worker.

The director does not contest that the petitioner's occupation as a biomedical researcher has substantial intrinsic merit or that the proposed benefits of her work, improved understanding of the immunology of inflammatory diseases, would be national in scope. It remains to determine whether the petitioner has established that she will serve the national interest to a substantially greater degree than would 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 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 she 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.

Along with educational credentials and witness testimonials, the record contains copies of two published articles in which the petitioner is a lead author, one published article in which she is a co-author and a copy of a book chapter that she has co-authored. The record also contains evidence of several conference presentations. Although the petitioner initially submitted a list of publications that reference a few additional materials that she has authored, the record does not contain any primary documentary evidence of this work. We note that our review is limited to the material presented in English, as the petitioner did not include complete certified translations of two of the Chinese articles in the record as required by 8 C.F.R. § 103.2(b)(3). We also note that the record contains no evidence indicating that publishing or presenting one's research findings is rare in the petitioner's field.

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 acknowledgment 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. If an alien is pursuing research that she and her immediate circle of colleagues consider to be critical, but which other researchers do not view as particularly significant, then the petitioner's influence on the wider scientific community has not been established. Frequent citation by independent researchers, on the other hand, would demonstrate broader interest in, and reliance on, the petitioner's work.

A petitioner must establish eligibility as of the date of filing the petition. *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, any evidence of citations submitted must reflect that the

petitioner had already been widely cited at the time of filing the petition. In this case, the petition was filed in September 2001.

On appeal, the petitioner submits a citation index indicating that her work has been cited twelve times. All but two of these citations, however, occurred after the date of filing. The petitioner also submits a copy of an additional article published after the date of filing. This evidence does not establish the petitioner's eligibility at the time of filing. We cannot conclude that the petitioner's citation or publication history establishes that she has already influenced her field to any significant degree.

The petitioner also submits several reference letters in support of her petition. Professor [redacted] is a professor of physiology at Virginia Commonwealth University. He was the petitioner's thesis advisor and a co-author of some of her articles. Professor [redacted] states:

> [The petitioner's] original work will help us to solve some long-time unknown questions. Significant scientific findings from her basic research will have had a direct impact in advancing drug discovery, drug development, and clinical research efforts. [The petitioner's] novel finding on stress and DHEA will have wide applications in clinics. . . . [The petitioner] has been instrumental in identifying the interaction of TACE with other proteins and further study in the interaction will be very important for our understanding of the function of TACE and finding novel therapies in inflammatory diseases based on the suppression or stimulation of TNFalpha release.

[redacted] is an adjunct professor of microbiology and biomedical engineering at Virginia Commonwealth University. He asserts that the petitioner's work "shed very important insight on the biological effects of stress and the mechanism of stress and stress-related diseases." While we accept that Professor [redacted] clearly considers that the petitioner is a talented researcher, we note that parts of Professor [redacted] letter use identical verbiage as Professor [redacted] endorsement, raising questions as to the authorship of the text. We accord less evidentiary weight to such testimonials.

[redacted] is the petitioner's supervisor at the UCLA School of Medicine. The petitioner works in his laboratory. Professor [redacted] considers the petitioner to be an exceptionally accomplished research scientist. Dr. [redacted] provides:

> Inflammation is part of the host response to tissue injury, and plays an important role in many clinically important lung diseases, including bronchopulmonary dysplasia, asthma, cystic fibrosis, adult respiratory distress syndrome (ARDS), and pneumonia. . . . [The petitioner] plays a critical role in our current research on two novel inflammatory mediators discovered in my laboratory. These two mediators, designated LIX and ITAC, are both members of an important family of endogenous mediators called chemokines. It has become apparent in the last few years that chemokines play critical roles in controlling the movement of inflammatory cells to sites of inflammation and infection. Before our new knowledge about chemokines can be translated into practical medical applications, however, we need to learn much more about the specific roles that individual chemokines such as LIX and ITAC play in these processes. . . . This is the area in which [the petitioner] will be able

> to make an exceptional contribution, because of the special expertise she has developed in two fields: glucocorticoid physiology and the molecular biology of chemokines.
>
> * * *
>
> In order to succeed in the research projects [the petitioner] has undertaken, a researcher must have broad training in physiology, biochemistry, and immunology, superb skills in animal work, and specialized skills and knowledge of glucocorticoid-neuroendocrine mechanisms as well as the molecular biology of LIX and ITAC. This combination of skills-which [the petitioner] possesses-is highly unusual, and probably unique.

While it is apparent that Dr. [redacted] has a high regard for the petitioner's potential contributions to his laboratory's research, it cannot suffice to state that the petitioner possesses a unique or unusual background. Even assuming that an alien has unique skills, the benefit those skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting United States workers through the labor certification process. *Matter of New York State Dept. of Transportation*, at 221.

[redacted] a member of the National Academy of Sciences and a professor of biochemistry and biophysics at the University of Pennsylvania, states that he worked with the petitioner and considers that her "original work will help us to solve some long-time unknown questions. Significant scientific findings from her basis research will have had a direct impact in advancing drug discovery, drug development, and clinical research efforts." Again, we note that while Dr. [redacted] testimonial appears to be a sincere assertion of the petitioner's research abilities, entire paragraphs are identical in language to Dr. [redacted] letter, and as such, cannot be accorded as much evidentiary weight as would ordinarily be given.

[redacted] Director, UCLA-DoE Protein Expression Technology Center, has known the petitioner since she joined Professor Smith's laboratory at UCLA. Dr. [redacted] asserts that the petitioner's research accomplishments in stress and DHEA, AIDS and inflammation have benefited and will continue to benefit important interests of the United States. Dr. [redacted] also contends that the very fact "that [the petitioner] has played important roles in the distinguished universities, such as, UCLA and the University of Pennsylvania, demonstrates that [the petitioner] possesses extraordinary ability." We disagree. As noted above, the overall importance of an occupation, or in this case, the prestige of a particular university, does not automatically establish an alien's eligibility for a national interest waiver. The issue in this case is not the reputation of UCLA or the University of Pennsylvania, but rather whether the petitioner's individual qualifications and accomplishments have reached a level which persuasively demonstrate that it would be contrary to the national interest to potentially deprive an employer of her services by making the position available to United States workers through the labor certification process. *Matter of New York State Dept. of Transportation,* at 217-218.

[redacted] a professor of medical pharmacology at Leiden University in The Netherlands, states that he is an independent expert who also conducts research in the petitioner's field of study. Professor [redacted] asserts that the petitioner's research relating to DHEA opened up new avenues of

research in the field. Professor [redacted] fails to explain specifically how the petitioner's findings have already influenced his own research or other scientists' work at other research institutions.

[redacted] is a professor at The Rockefeller University and a member of the National Academy of Sciences. He provides the same information about the petitioner as Professor [redacted] and concludes that the United States "national interest would be adversely affected if the petitioner were not granted permanent residency." While we give Professor [redacted] opinion considerable weight, he fails to identify how the petitioner's findings have impacted his own research or why it is in the national interest to waive the job offer/labor certification requirements that normally applies to the petitioner's occupation.

[redacted] an associate professor of psychology at the University of Colorado, does not specifically indicate how he is familiar with the petitioner or her work, but considers that she possesses a "rare combination of solid training in both medical and scientific research methodology, and she is a very talented and skillful scientist who will make substantial contributions to the biomedical field over the course of her career."

[redacted] is an investigator with the National Institute on Aging at the National Institute of Health (NIH). Dr. [redacted] asserts that he knows of the petitioner's work but is not personally acquainted with her. Dr. [redacted] states that "based on the information I have, I think that [the petitioner] is a talented scientist with an extraordinary potential." Dr. [redacted] fails to provide any detail about how the petitioner has already specifically impacted Dr [redacted] own research. We note that there is no indication that Dr. [redacted] opinion represents the official endorsement of the NIH.

We note that some of the testimonials submitted in support of petition appear to be from supervisors, mentors and colleagues from the petitioner's present or past educational and research institutions. Letters from those with this kind of connection 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 already influenced the wider scientific community as a whole to any significant degree, as might be expected with research findings that are especially important. Although we note that the petitioner has submitted a few other letters from persons who appear to be disinterested references, most of these letters list the petitioner's accomplishments rather than explain their first-hand specific impact on the authors' own research or on other projects at other research institutions. Several of these letters use identical verbiage raising questions as to the actual authorship of the text. Independent evidence that would have existed whether this petition were filed, would be more persuasive than the subjective statements from individuals solicited by the petitioner.

The record also contains evidence that the petitioner is a member of the American Physiological Society, the Virginia Academy of Sciences and the American Society for Biochemistry and Molecular Biology. The only evidence that the record contains related to the selection criteria for membership is that regular membership in the American Society for Biochemistry and Molecular Biology is available to persons who have "conducted and published meritorious original investigations in biochemistry and molecular biology."

On appeal, petitioner asserts that these memberships support her eligibility for a national interest waiver. She also submits an additional letter from [redacted] who is the director of the graduate program at the Virginia Commonwealth University. His letter describes the process by which doctoral candidates are considered for fellowships at that institution. The petitioner contends that her receipt of a fellowship represents an international prize recognizing her prior research achievements.

Academic awards obtained from among a restricted field of Ph.D. candidates are not generally considered evidence of exceptional ability as set forth in 8 C.F.R. § 204.5(k)(3)(ii) that designates peer recognition of achievements and significant contributions to the industry as one criterion. Similarly, while membership in scholarly research associations might, in some circumstances, represent an exceptional achievement as set forth in 8 C.F.R. § 204.5(k)(3)(ii)(E) that designates "memberships in professional associations" as one criterion indicating exceptional ability, we cannot conclude that satisfying one or two, or even the requisite three criteria for a classification that normally requires a labor certification warrants a waiver of the labor certification requirement in the national interest. As set forth in *Matter of New State Dept. of Transportation:*

> Because by statute, "exceptional ability" is not by itself sufficient cause for a national interest waiver, the benefit which the alien presents to his or her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F). Because the statute and regulations contain no provision allowing a lower national interest threshold for advanced degree professionals than for aliens of exceptional ability, this standard must apply whether the alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree.

On appeal, the petitioner also submits copies of two AAO decisions approving national interest waivers and contends that her qualifications are sufficient to establish eligibility. We note that without the original record of those cases, a complete picture of the approved petitions is not before us. Furthermore, the approvals rendered in these two cases do not represent published precedents.

The petitioner's documentation of her achievements and projections of future contributions may support the argument that the petitioner has exceptional ability in biomedical research but do not overcome the statutory mandate of a labor certification for this occupation. From the evidence and arguments presented, we cannot conclude that the benefit that the petitioner presents to her field "greatly exceeds the 'achievements and significant contributions' " contemplated in 8 C.F.R. 204.5(k)(3)(ii)(F) for an alien of exceptional ability. *See Matter of New York State Dept. of Transportation,* at 218. 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.

As is clear from the plain wording of the statute, it is 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.