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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: Nebraska Service Center

Date: **FEB 27 2003**

IN RE: Petitioner: [Redacted]
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)

IN BEHALF OF PETITIONER:

[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 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
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska 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 seeks employment as a research associate at the University of Michigan Medical School ("UMMS"). 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) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

(ii) Physicians working in shortage areas or veterans facilities.

The director did not dispute that the petitioner 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.

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 Service 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.

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 sought. 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 note 6.

Along with copies of the petitioner's published articles, the petitioner submitted three witness letters. Dr. Robert Bradley, Professor of Physiology, UMMS, and Professor of Dentistry, University of Michigan Dental School, states:

[The petitioner] joined my laboratory in 1995 as a postdoctoral fellow and was subsequently promoted to Research Associate in 1997. He left my laboratory in September of this year to join Dr. Hylan Moises in the Physiology Department at the University of Michigan.

The work that [the petitioner] conducted in my laboratory concerned the mechanisms of inhibitory neurotransmission at synapses. He used modern biophysical techniques to isolate and characterize the potentials and currents that are involved in this process and skillfully characterized how inhibitory transmission can be potentiated by various brain mechanisms. This is a significant contribution because these mechanisms are important in a number of nervous system disorders that include epilepsy and depression.

The importance of his work is demonstrated in a number of ways. He has presented his findings at a number of national and international meetings and has been invited to present seminars on campus as well as at one of the prestigious Gordon Conferences. His work has been published in internationally recognized journals after rigorous peer review. During his stay with me, he wrote an average of one fill-length manuscript a year and a further manuscript will be submitted shortly. Another manuscript is in preparation. He has also written a number of scientific abstracts and presented his work in progress at major scientific meetings. His presentations were always well received and led to much fruitful scientific discourse.

The record, however, contains no evidence that the presentation or publication of one's work is a rarity in petitioner's field, nor does the record sufficiently demonstrate that independent researchers have heavily cited or relied upon the petitioner's findings in their research.

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." 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. In this case, the petitioner has failed to provide any evidence of independent citation of his published works.

Dr. Bradley cites several anonymous comments offered by the reviewers of the petitioner's manuscripts. These comments may demonstrate "the suitability of the petitioner's work for publication," but they fail to demonstrate that the petitioner's work is viewed throughout his field as significantly influential. While we do not dispute the overall prestige of the journals that published the petitioner's findings or the expertise of their reviewers, we do not find that publication of the petitioner's work in scholarly journals is presumptive evidence of eligibility

for the national interest waiver. Such publication does not necessarily reflect the overall field's reaction to the petitioner's work. While heavy citation of the petitioner's past articles would carry considerable weight, the petitioner has not demonstrated such citations here.

Dr. Hylan Moises, Professor of Physiology, UMMS, states:

[The petitioner] has compiled a strong record of research achievement during his tenure with Dr. Bradley, as evidenced by his authorship of 7 scientific publications since 1996. He has also received recognition for his work in the field of gustatory systems neurophysiology through invitation to present his findings at several national scientific meetings. During the short time that [the petitioner] has been affiliated with my laboratory, he has continued to demonstrate outstanding potential and capabilities as a neurophysiologist. He has been quite productive in generating research data, amassing new kinds of information regarding the role of brainstem centers and their descending projections in the control of digestive functions and utilization of energy stores. In this way, he has already contributed in an important and significant manner to the level of scientific activity being conducted in my laboratory and furthered the health-related mission of the Michigan Gastrointestinal Peptide Research Center. Moreover, he has played a pivotal role in implementing state-of-the-art electrophysiological techniques within the laboratory that have proven instrumental for deciphering the functional organization of brain circuitry involved in the regulation of appetite, feeding behavior and nutrient handling. An expansion of information in these areas is considered crucial for improving the overall health and well being of millions of Americans suffering from obesity and other digestive disorders. Indeed, it is my strong belief that the unique combination of his grounding in gustatory and autonomic systems physiology and extensive electrophysiological expertise position [the petitioner] among a select group of neuro scientists best suited and technically equipped to advance our understanding of the neurobiological basis of obesity and related feeding disorders.

We note here that any objective qualifications that are necessary for the performance of a research position can be articulated in an application for alien labor certification.

The witness letters submitted with the petition establish the intrinsic merit and national scope of the petitioner's neurophysiological research. It does not follow, however, that every alien involved with such research automatically qualifies for a national interest waiver. Apart from a limited exception that does not apply in this instance, Congress has created no blanket national interest waivers based on occupation or specialty. General arguments about the importance of neurophysiological research apply equally to alien researchers and U.S. researchers conducting such research.

Dr. Moises further states:

I firmly believe that he possesses the intellectual talents, scientific curiosity and level of training to become an important contributor in the field of autonomic and regulatory systems neurobiology and that his future work in these areas will have an important impact

on our understanding of brain-gut interactions involved in nutritional balance and energy homeostasis.

Statements pertaining to the expectation of future results rather than a past record of demonstrable achievement fail to demonstrate eligibility for a national interest waiver. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

concludes his letter by stating: “[The petitioner’s] continued development as a scientist can best be achieved by a prolonged period of uninterrupted research endeavor in this country.”

Postdoctoral positions are inherently temporary for the very reason that they represent advanced training rather than independent career positions. Nothing in the legislative history suggests that the national interest waiver was conceived as a means to facilitate the ongoing training of alien researchers. We reject the implied claim that, for the very reason that the petitioner has yet to complete his training, he is entitled to an exemption from the job offer requirement which, by law, attaches to the visa classification he seeks.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director further stated: “The record does not establish that the contributions of the alien petitioner are such that they measurably exceed those of his peers.” The director also noted: “The petitioner has not explained why he requires permanent immigration benefits to secure short-term employment, for which nonimmigrant visas exist (indeed, the petitioner is working under such a visa).”

On appeal, counsel for the petitioner argues that a U.S. worker with the same minimum qualifications would not be able to serve the national interest to the same degree as the petitioner. Counsel calls attention to the petitioner’s “stellar academic record.” University study, however, is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The petitioner’s academic achievement may place him among the top students at a given educational institution, but it offers no meaningful comparison between the petitioner and other researchers who have long since completed their educational training.

Counsel argues that the petitioner’s qualifications and experience include “two advanced degrees” and “fifteen years work experience” in biomedical imaging research. However, pursuant to *Matter of New York State Dept. of Transportation*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education which could be articulated on an application for a labor certification.

Counsel states that the petitioner’s skills “are urgently needed now in the U.S.,” particularly in

the Detroit area. Pursuant to *Matter of New York State Dept. of Transportation*, a shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification.

Counsel next argues that the labor certification process is lengthy and cumbersome. Counsel asserts that the labor certification process in the Detroit area is “taking about 3 ½ years” to complete. While these assertions leave little doubt as to counsel’s opinion of the labor certification process, nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. As long as the requirement of an approved labor certification remains in the law, it is not persuasive to argue that the process itself is inherently flawed and obsolete and therefore a waiver is in the national interest.

We note Congress’ creation of a blanket national interest waiver for certain physicians. The creation of Section 203(b)(2)(B)(ii) of the Act demonstrates Congress’ willingness to grant such blanket waivers. We cannot ignore the absence to date of such a blanket waiver for neurophysiologists. Furthermore, the creation of the blanket waiver for certain physicians demonstrates that no such blanket waiver for any given occupation is implied in the statute. Otherwise, the blanket waiver for certain physicians would be superfluous.

Counsel argues that the three witness letters demonstrate the petitioner’s ability to serve the national interest to a greater degree than other individuals in the field. We note, however, that the petitioner’s witnesses consist entirely of individuals with direct ties to the petitioner. All three of the petitioner’s witnesses are professors from the University of Michigan who had worked closely with the petitioner. Letters from those close to the petitioner certainly have value, for it is those individuals who have the most direct knowledge of the petitioner’s specific contributions to a given research project. It remains, however, that very often the petitioner’s projects are also the projects of the witnesses, and no researcher is likely to view his or her own work as unimportant. The petitioner’s witnesses became aware of the petitioner’s research work because of their close contact with the petitioner; their statements do not show, first-hand, that the petitioner’s work is attracting attention on its own merits, as we might expect with research findings that are especially significant. Independent evidence that would have existed whether or not this petition was filed, such as heavy citation of one’s published findings, would be more persuasive than the subjective statements from individuals selected by the petitioner.

The petitioner’s witnesses describe the petitioner’s expertise and value to his current and former research projects at UMMS, but they do not demonstrate the petitioner’s influence on the field beyond the laboratories where he has worked. The evidence does not show that the petitioner’s work has attracted significant attention from independent researchers throughout the greater scientific community. While the petitioner’s published and presented findings may have added to the general pool of knowledge, it has not been shown that researchers throughout the field view the petitioner’s findings as particularly significant.

Counsel argues that the petitioner's publication record demonstrates his impact on the research field. Publication, by itself, is not a strong indication of impact, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the petitioner's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work. Their citation of the petitioner's work demonstrates their familiarity with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and national benefit — a researcher's work can have, if that research does not influence the direction of future research. In this case, the petitioner has offered no evidence demonstrating independent citation of his research articles.

Clearly, the petitioner's colleagues at UMMS have a high opinion of the petitioner and his work. The petitioner's findings, however, do not appear to have yet had a measurable influence in the larger field. While the petitioner's witnesses discuss the potential applications of his findings, there is no indication that these applications have yet been realized. The petitioner's work has added to the overall body of knowledge in his field, but this is the goal of all such research; the assertion that the petitioner's findings may eventually have practical applications does not persuasively distinguish the petitioner from other competent researchers.

In sum, the available evidence does not persuasively establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner.

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 the 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.

ORDER: The appeal is dismissed.