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Immigration and Naturalization Service

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



File: EAC 00 211 50221 Office: Vermont Service Center

Date:

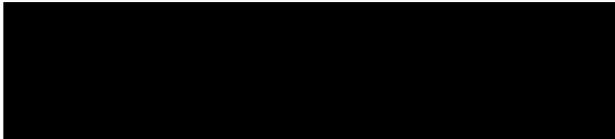
IN RE: Petitioner:
Beneficiary:



FEB 27 2003

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:



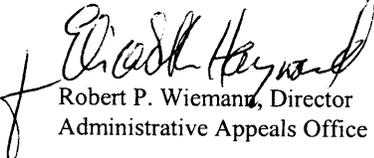
INSTRUCTIONS:

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. Wieman, 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 (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 physician/biomedical researcher. At the time of filing the petition, the petitioner was a resident in the Obstetrics/Gynecology training program at Howard University Hospital. 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.¹ 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,

¹ The record contains no request for classification pursuant to section 203(b)(2)(B)(ii) of the Act. Counsel's arguments throughout this proceeding relate to the petitioner's having met the requirements for a national interest waiver as a biomedical researcher pursuant to *Matter of New York State Dept. of Transportation*.

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.

The petitioner initially submitted three letters in support of her petition. Dr. Raymond Cox, Director of Obstetrics/Gynecology Services, Prince George's Hospital Center, an integrated hospital for the Howard University Obstetrics/Gynecology residency-training program, states:

[The petitioner] was one of a select number of physicians chosen to undergo a four-year training program in Ob/Gyn. From the onset she had the intelligence and the academic excellence necessary and pre-required for such a position. Since then I have found her to be an excellent resident who consistently demonstrated excellent qualities and diversity in patient management. Her resilience and dedication to her patients, the Ob/Gyn speciality and medicine in general is clearly noted. One of her major interests is maternal and child health which her credentials as a physician combined with her Ob/Gyn training, ongoing MPH Degree Program from Johns Hopkins University, and previous research experience in the field both in Africa and the USA encompasses. This diverse combination rarely seen in one individual puts her in a unique position that will only better serve the community she works in and a nation as a whole.

I am writing in support of [the petitioner's] application for permanent residency cognizant of the fact that to sustain the leadership position in health care that the USA now holds we must make available opportunities for young, promising and well trained individuals with diverse background such as [the petitioner].

Residency training programs are inherently temporary for the very reason that they represent advanced medical 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 physicians and researchers. [REDACTED] has not explained why the petitioner requires permanent immigration benefits to secure short-term employment, for which nonimmigrant visas exist (indeed, at the time of filing, the petitioner was working under such a visa). We reject the implied claim that, for the very reason that the petitioner has yet to complete her training, she is entitled to an exemption from the job offer requirement which, by law, attaches to the visa classification she seeks.

We note that the analysis followed in "national interest" cases under section 203(b)(2)(B)(i) of the Act differs from that for standard "exceptional ability" cases under section 203(b)(2)(A) of the Act. In the latter type of case, the local labor market is considered through the labor certification process and the activity performed by the alien need not have a national effect. For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while healthcare is in the national interest, the impact of a single physician engaged in patient care would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B)(i) of the Act.

Dr. Balwant Ahluwalia, Professor and Director of Research at the Department of Obstetrics and Gynecology at the Howard University Hospital, states:

My primary research interest is "Substance Abuse and the Immune System in the Newborn" and my responsibilities as director of research in the department includes the supervision of research work and the provision of research facilities for both residents and faculty members; as research is an integral part of the OB/GYN residency training program.

It was during her OB/GYN residency, training program at Howard University Hospital I first met [the petitioner] and I have had the pleasure of working closely with her over the last 2 years. At this time, [the petitioner] was chosen amongst a select number to work closely with myself and other colleagues on a research project to study the "Effects of Alcohol and Cytokines (associated with the Immune System) during Pregnancy." From the onset, [the petitioner] demonstrated an excellent understanding of the subject matter and was instrumental in the organization and implementation of the project. She chose a difficult, challenging and unique topic, investigating the role of alcohol and its effects on an infant's immune protective system during pregnancy...

[The petitioner] has proven invaluable to the project and I envisage a long and successful career for her in the future. There is a serious need for top-flight young scientists who have made a firm resolve to pursue the prevention of major disease through research or medical invention.

I believe that research such as this carried out by Dr. Da-Silva will not only save countless children from the detrimental effects associated with alcohol urine pregnancy, but will bring the national problem to the forefront. Presently, the National Institutes of Health has already increased their funding in this area.

While the Service recognizes the undoubted importance of research related to alcohol's impact during pregnancy and its effect on the child, eligibility for the national interest waiver must rest with the petitioner'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. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. Mountain States Tel. & Tel. v. Pueblo of Santa Ana, 472 U.S. 237, 249 (1985); Sutton v. United States, 819 F.2d 1289, 1295 (5th Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule.

Dr. Ahluwalia states that the petitioner received a Dr. Roland Nickens Research Award (first prize) at the Annual Howard University Medical Center Scientific Forum. As further evidence of her receipt of the award, the petitioner submitted a letter from Dr. William Matory, Director, Howard University, Office of Continuing Medical Education, stating that the petitioner received a plaque and a \$500 monetary award from the university. This award represents institutional, rather than national, recognition for the petitioner's work. It has not been shown that this award enjoys significant recognition throughout the petitioner's field or beyond the context of the event where it was presented.

Dr. Ahluwalia also notes that the petitioner was chosen to present her research findings at the 1998 Annual Convention and Scientific Assembly of the National Medical Association (Obstetrics and Gynecology Section Residency Forum) where she won a second prize award. Dr.

Newton Osborne, Professor of Obstetrics and Gynecology, Howard University Hospital, also mentions the petitioner's receipt of this award. We note that the competition for this award was limited to medical residents; therefore, it offers no meaningful comparison between the petitioner and more experienced professionals in the petitioner's field who have long since completed their medical training.

The record does not contain citation records or other evidence to establish that the research community (outside of the petitioner's circle of collaborators and supervisors) regards the petitioner's published and presented findings as especially significant. While heavy citation of the petitioner's published articles would carry considerable weight, the petitioner has not demonstrated such citations here.

The petitioner's initial witnesses described the petitioner's expertise and value to her current and former research projects, but they do not demonstrate the petitioner's influence on the field beyond her work at Howard University Hospital. The petitioner has not shown that her work has attracted significant attention from independent researchers in the biomedical research field. Witnesses' assertions as to the petitioner's potential to make future contributions cannot suffice to demonstrate her eligibility for a national interest waiver. The petitioner's witnesses offered no specific information as to how the petitioner's research findings have already influenced the greater field. The above letters fail to demonstrate a past history of significant accomplishment on the part of the petitioner.

The director requested further evidence that the petitioner had met the guidelines published in *Matter of New York State Department of Transportation*. In response, the petitioner submitted two additional witness letters and evidence of her published and presented work.

In his second letter, Dr. Ahluwalia states:

[The petitioner and I] have since worked together over the last 3 years and have successfully completed the first phase of the project funded in part by the National Institute of Alcohol Abuse and Alcoholism, a subsidiary of the National Institutes of Health. The local, national and global impact of our findings is made self-evident with its recent publication in a reputable journal with [the petitioner] as a co-author.

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 her research articles.

Dr. Ahluwalia further states:

[The petitioner's] contribution to this project was an integral part of its success; her excellent understanding of the disease process based on her medical background, extensive laboratory and research hours and her resilience and dedication long-term to this often times difficult and complicated project carried this project through to its successful completion.

* * *

With her medical and scientific knowledge and the expertise and intimate knowledge gathered from the initial pilot study her contribution to the successful long-term national outcome of the on-going project is irreplaceable.

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. 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. The petitioner in this case must demonstrate a past history of significant research accomplishment in the biomedical research field.

Dr. Barbara Wesley, Assistant Professor, Howard University Hospital, states:

As assistant professor in Maternal-Fetal Medicine (OB/GYN), I was one of the principal investigators of a multi-million dollar research initiative to reduce infant mortality in the District of Columbia (D.C.). Funded by the National Institutes of Health, this initiative resulted in several research projects, two of which [the petitioner] was involved in as a research assistant.

[The petitioner] was chosen by [REDACTED] and myself to work on the Cytokine System in the Human Fetus Project. This project was partially funded by the National Institute of Alcohol Abuse and Alcoholism (NIAAA) and lead by [REDACTED]. It investigated some of the biological mechanisms underlying the adverse outcomes of fetuses who are exposed to alcohol in utero.

Alcohol is the leading preventable cause for mental retardation and the cause of the devastating Fetal Alcohol Syndrome... The first phase of the Human Fetus Project could

not have either been completed or the resulting information disseminated without the involvement of [the petitioner]. Her award winning presentations greatly influenced and sensitized many clinicians to the magnitude of this problem.

The record, however, contain no independent evidence showing that the petitioner's work has influenced others in the biomedical research field. While the petitioner has contributed to two research studies, there is no indication (such as heavy independent citation) that the petitioner's research findings have had an especially substantial impact on the overall field. Counsel contends that the petitioner has made such a showing but offers no support except for the statements from the petitioner and those close to her. These statements cannot establish, first-hand, that individuals outside of the petitioner's circle of colleagues share similar opinions regarding the significance of her work.

Dr. Wesley further states:

[The petitioner] has also participated in another project at the NIH-DC Initiative which examined divergent perceptions between providers and patients regarding patient decisions to enter and utilize prenatal care. The discrepancy between Blacks and other minorities versus Whites in infant deaths is responsible for the high infant mortality in the United States compared to other industrialized nations. Lack of cultural sensitivity and communication between inner-city high-risk women and their providers is, in part, a factor in the poor participation in prenatal care by these women. Being from a multi-cultural background herself, [the petitioner] was instrumental in assisting us in the design of the questionnaires. She has been invited to participate in other future phases of the NIH-DC Initiative involving screening and educating high-risk pregnant women in a clinic setting.

The United States is a country increasingly composed of people from many cultures. Without the unique perspectives shared by scientists such as [the petitioner], we will be retarded in our growth as a multi-cultural nation, particularly in relation to inner city ethnic minorities. I have personally invested a great deal of time and energy in the training and development of [the petitioner] so that she is now positioned to provide more significant contributions than she has in the past.

Dr. Wesley indicates that the petitioner's value as a scientist lies in her prior medical training and "multi-cultural background," rather than any significantly influential past accomplishments in the biomedical field. The implication, which we cannot accept, is that the petitioner qualifies for a national interest waiver simply by virtue of being a foreign-born scientist. While the Service recognizes the importance of maintaining diversity in the medical field, the issue in this case is whether the petitioner's past record of accomplishment is at a level that significantly distinguishes her from other similarly qualified researchers. The evidence offered by the petitioner fails to show that the petitioner has already significantly influenced her field.

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 acknowledged the intrinsic merit and national scope of the petitioner's work, but found that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. The director noted the absence of "independent primary evidence of significant past accomplishment" on the part of the petitioner.

On appeal, the petitioner submits copies of documentation already provided. Counsel cites several AAO decisions approving national interest waiver petitions. Counsel's attempt to apply statements from previous AAO findings to the current case is flawed. Without the record of proceeding, there can be no meaningful analysis of the decisions to determine the applicability of the same reasoning to other cases. Furthermore, the approvals in question do not represent published precedents and therefore are not binding on the Service in other proceedings.

The petitioner has shown that her collaborators and mentors affiliated with her training program at Howard University Hospital are impressed with her work on various projects. The record does not show, however, that the petitioner's work is of such significance that it has attracted attention outside of these circles, or that researchers outside of the petitioner's circle have benefited more from the petitioner's work than from the efforts of others.

The issue in this case is not whether medical research to reduce infant mortality is in the national interest, but, rather, whether this particular petitioner, to a greater extent than U.S. workers having the same minimum qualifications, plays a significant role. There is no indication that researchers outside of the petitioner's training program and research institution regard her work to be of greater significance than that of other researchers. Rather, many key witnesses have couched their remarks not in terms of what the petitioner has done, but what she is likely to achieve at some unspecified future point. While the petitioner is an able researcher whose skills have won the respect of her supervisors and collaborators, 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, U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.