



U.S. Department of Justice

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: [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]

**PUBLIC COPY**

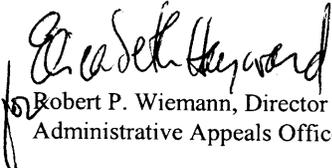
INSTRUCTIONS:

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.

  
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 of the beneficiary 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 to employ the beneficiary as a research fellow at the Institute of Human Genetics at the University of Minnesota ("UM"). 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 beneficiary 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 beneficiary 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 beneficiary's contributions in the field are of such unusual significance that the beneficiary 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 the beneficiary's past history of achievement with some degree of influence on the field as a whole. *Id.* at note 6.

Along with documentation pertaining to the beneficiary's field of research, the petitioner submitted several witness letters. Dr. R. Scott McIvor, Professor of Genetics, Cell Biology and Development, and Director, Gene Therapy Program, Institute of Human Genetics, UM, supervises the beneficiary's research. Dr. McIvor states:

[The beneficiary] received an excellent scientific education in China and has made remarkable research contributions both in China and in the United States, working first in

the laboratory of entomologist [REDACTED] at the University of Minnesota, and more recently working in my laboratory at the Institute of Human Genetics at UM.

\* \* \*

[The beneficiary] is currently supported by an NIH grant, and his work is crucial to the development of molecular genetic therapy for ataxias, inherited conditions such as spinocerebellar ataxia, caused by genetic deficiencies which affect thousands nationwide. [The beneficiary] has developed a technique for introduction of genes to counteract the genetic deficiency, thus paving the way for clinical implementation of gene therapy for ataxia.

\* \* \*

The acquired information is critical for developing new products for the purpose of gene therapy for ataxias. [The beneficiary] has generated several recombinant plasmids which encode antisense RNAs capable of correcting ataxia, and he has tested these plasmids for physiological effectiveness (i.e. inhibition of pathologic gene expression in tissue culture cells). These products have the potential to save thousands of lives, alleviate suffering, and lower the medical cost dramatically in the USA.

[The beneficiary] is working in a unique laboratory setting consisting of myself, [REDACTED] all internationally acclaimed scientists [REDACTED] is among a group of pioneers to characterize molecular alterations of genes causing ataxias. The laboratory approach which [the beneficiary] has developed for treatment of these diseases is completely unique. He has had the vision to construct a series of recombinant plasmids which evaluate a whole range of different gene sequence targets, and identified key attributes of a successful system for inhibition of pathologic gene expression. His role and capability in the construction and analysis of antisense vectors in our laboratory is absolutely irreplaceable, and without him the work which he is pursuing would not be accomplished, resulting in the loss of all potential clinical and other benefits for the USA described above. Given the unique laboratory setting, the experiments he has been performing cannot be carried out successfully in any other lab in the United States or elsewhere.

[The beneficiary] has extensive research experience in the areas of virology, molecular genetics and gene therapy, with a great breadth of laboratory training. He has authored 13 scientific papers and delivered 4 presentations at nationally and internationally-attended scientific conferences... Such activity and productivity is a testimony to his caliber as a scientist and bodes well for the likelihood of his future contribution toward new therapeutic approaches in genetic diseases and other human ailment.

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

[REDACTED] Professor of Entomology, UM, also discussed the beneficiary's publication record, stating:

[The beneficiary] has worked as a molecular biologist at the University of Minnesota since 1994. In my lab, [the beneficiary] did independent research on insect molecular immunology and insect genetics. Over a period of 5 years, he published two important articles on mosquito defensin and mosquito lysozyme, both of which were published in [*Insect Molecular Biology*].

[The beneficiary's] efforts were supported by a grant from the U.S. National Institutes of Health. In particular, I note that mosquito-borne diseases such as malaria, dengue virus and yellow fever are responsible for considerable morbidity and mortality in many developing countries where American diplomats, Peace Corps workers, volunteers, and military personnel are at risk. The principle underlying this research support is the hypothesis that understanding the molecular basis of the mosquito immune response will contribute to the development of novel genetic approaches for mosquito control.

Cloning and characterizing gene products such as these requires considerable skill, and I consider the work done in my lab equivalent to that of a Ph.D. student. Since leaving my lab in July 1999 [REDACTED] joined the lab of [REDACTED] at the Institute of Human Genetics, University of Minnesota. He has made substantial progress towards understanding a genetic disease of humans, spinocerebellar ataxia type 1. Again, he is using modern molecular approaches to understand gene regulation and function. Here, the ultimate outcome is an effective gene therapy for affected humans.

Dr. Fallon equates the beneficiary's skills and experience gained in her laboratory as being comparable to that of a Ph.D. student. 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 that could be articulated on an application for a labor certification.

Dr. Perry Hackett, Professor of Genetics, Cell Biology and Development, UM, states:

[The beneficiary] has published several papers on his entomology work and the work he did in China. He will be one of the lead authors on a couple of papers in international journals on gene therapy that are now in the process of being written up. I have no doubt that his work will be acknowledged as a foundation for work by many labs in many countries in the future.

Statements from Drs. Hackett and Fallon pertaining to the expectation of future results rather than a past record of demonstrable achievement fail to demonstrate the beneficiary's eligibility for a national interest waiver. Dr. McIvor's letter offered a similar conclusion, stating: "As [the beneficiary's] work develops, it will directly relate to improving the outcome of patients with ataxia." Assertions addressing expected future contributions rather than a past history of proven

research accomplishment do not persuasively distinguish the beneficiary from other competent researchers. 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.

We note here that the publication records, scientific achievements, and responsibilities of Drs. [REDACTED] far exceed those of the beneficiary. For example, Dr. McIvor's resume indicates that he has authored well over one hundred refereed articles and abstracts. In comparison, the beneficiary's publication record is much more limited.

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 beneficiary'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 beneficiary's findings. Frequent citation by independent researchers, on the other hand, would demonstrate more widespread interest in, and reliance on, the beneficiary's work. The petitioner, however, has failed to provide any evidence showing that the beneficiary's work has been heavily cited.

Dr. McIvor offers an opinion as why the labor certification process would be inappropriate for the beneficiary.

A traditional labor certification would not be appropriate in this case as [the beneficiary's] is not a full-time permanent position but a funded research position. His productivity is absolutely essential for the continued success of the ataxia gene therapy project, and for continued funding for this research. [The beneficiary's] participation in the project is directly linked to the amount of funding we receive. If he is unable to continue his work on the project, the funding we receive will not be available. Thus, [the beneficiary's] successful work will foster continued funding for the ataxia research project, creating new, real personnel funds for employment of U.S. citizens. This funding opportunity will not exist without [the beneficiary's] remarkable gift for development of molecular tools for gene therapy, thus allowing my research group to effectively win new research support funds.

The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause

[REDACTED]

for a national interest waiver; the petitioner must still demonstrate that the beneficiary will serve the national interest to a substantially greater degree than do others in the same field. Congress plainly intended that, as a matter of course, advanced degree professionals should be subject to the job offer/labor certification requirement. In this case, the issue is not whether the beneficiary's involvement in the project is necessary to secure future funding, but whether the beneficiary's prior findings have already significantly influenced his field. While Dr. McIvor's letter stressed that the beneficiary's research was government-funded, the record contained no evidence from the funding agencies themselves to show that these agencies considered the beneficiary's work to be more important than biomedical studies underway elsewhere, or to establish the implied claim that the funding itself was evidence of that importance.

Research fellowships such as the beneficiary's 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. [REDACTED] has not explained why the beneficiary requires permanent immigration benefits to secure short-term employment for a funded research position, for which nonimmigrant visas exist (indeed, at the time of filing, the beneficiary was working under an H-1B visa).

The petitioner also submitted a letter from [REDACTED] Assistant Professor, Yale School of Medicine. [REDACTED] who studied and trained with the beneficiary at Hubei Medical University in China, specializes in pulmonary diseases and pharmacology, rather than genetic research. Dr. Zhu repeats the assertions of previous witness and devotes a significant portion of his letter to the undoubted importance of genetic therapy research related to Spinocerebellar Ataxia. Pursuant to *Matter of New York State Dept. of Transportation*, eligibility for a national waiver must rest with the beneficiary'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 (5<sup>th</sup> Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule.

Additionally, the petitioner submitted letters from [REDACTED] professors at Hubei Medical University, where the beneficiary received his medical degree. Their letters describe the beneficiary's advanced knowledge, medical skills, research experience, and educational background, but neither of their letters identifies any specific contributions attributable to the beneficiary that were especially important to his field. 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 letters from [REDACTED] also mention the beneficiary's superior academic achievement at Hubei Medical University. University study, however, is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The beneficiary's academic achievement may place him among the top students at a

particular educational institution, but it offers no meaningful comparison between the beneficiary and those individuals who have long since completed their educational training.

The beneficiary's initial witnesses consisted entirely of individuals with direct ties to the beneficiary. Their letters described the beneficiary's expertise and value to his current and former research projects, but did not demonstrate the beneficiary's influence on the field beyond the laboratories where he has worked. The evidence did not show that the beneficiary's work has attracted significant attention from independent researchers throughout the biomedical research 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 beneficiary's work, but found that the beneficiary'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 that the petitioner had failed to "clearly demonstrate that [the beneficiary's] contributions have influenced the field to a substantially greater extent than those of other qualified researchers" in the biomedical field.

On appeal, counsel asserts that the director erred by failing to issue a request for evidence. At this point, the decision already having been rendered, the most expedient remedy for this complaint is the full consideration on appeal of any evidence that the petitioner would have submitted in response to such a request. The petitioner submits two additional witness letters, a recently published abstract, and further information about Spinocerebellar Ataxia.

In his second letter, Dr. McIvor states:

As summarized in my previous letter, this project has been inspired by the previous work of our colleague and collaborator at the Institute of Human Genetics [REDACTED] Dr. Orr was one of the leaders of the team that discovered the genetic basis of SCA1. Briefly SCA1 is a neurological disorder which is inherited... resulting in a loss of coordination, ataxia, and death... This was monumental research achievement, and established SCA1 as the fifth disease known to be caused by unstable trinucleotide repeats.

\* \* \*

To a research setting which was already strong in human molecular genetics (Dr. Orr), gene therapy (myself), and neurosurgical approaches (Dr. Low), [the beneficiary] brought a strong background in basic studies of molecular biology and gene expression. The integration of [the beneficiary's] expertise... has provided critical advancement demonstrating the potential feasibility of genetic therapy for SCA1. As described in my previous letter, [the beneficiary] has designed and carried out a remarkable series of experiments in which he used recombinant DNA approaches to express antisense RNA molecules targeting the SCA1 messenger RNA, effectively reducing the level of SCA 1 message in cultured cells. [The beneficiary's] results are nothing short of a molecular

model for gene therapy of SCA type 1, and the really exciting part of his work is that it means similar approaches could be used for controlling the expression of other dominant-acting pathologic conditions, such as Huntington's disease.

One might ask, what was so remarkable about the work that [the beneficiary] did? Wouldn't it have been quite straightforward for someone skilled in the art (i.e. with a working knowledge of genetic engineering and antisense concepts) to accomplish what [the beneficiary] has accomplished? My frank answer to these questions is that someone else skilled in the art *might* have been able to accomplish what [the beneficiary] has accomplished, but it would have to have happened by pure chance. The reason for [the beneficiary's] success in this endeavor, in addition to his insight into biological and biochemical problems, is the great attention that he pays to molecular detail in the design of his recombinant strategies. [The beneficiary] carried out extensive computer modeling studies to identify sequences on the SCA1 message which are more likely to be effective targets for antisense-mediated inhibition. By taking such great care to make sure that the antisense sequences he generated will be able to bind to the SCA1 message, [the beneficiary] optimized his system for effectiveness and was thus able to establish, for the first time, the use of antisense sequences for down-regulation of a dominant-acting, neuropathogenic molecule.

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As of this current moment, [the beneficiary's] work is the *only* work to be reported where the level of message for an expanded trinucleotide repeat disorder has been effectively downregulated using antisense technology. [The beneficiary's] work thus constitutes an extremely important advance, not only for SCA1 or even for cerebellar ataxias, but for all disorders associated with unstable trinucleotide repeats. [The beneficiary's] advances in this field will thus be watched closely and adopted for treatment of other diseases caused by unstable trinucleotide repeats. I expect to see [the beneficiary] lead the charge in formulating molecular strategies for treatment of these diseases.

We do not dispute the beneficiary's expertise in using computer modeling to identify genetic sequences and his development of recombinant DNA strategies. Objective research qualifications such as these, however, appear amenable to the labor certification process.

[REDACTED] Professor, Biochemical Genetics Program, University of Wisconsin School of Medicine, states that he participated on the site visit team that reviewed for the National Institutes of Health the project that the beneficiary is working on in [REDACTED] laboratory. Dr. Wolff notes that the project received subsequent governmental funding [REDACTED] further states:

[The beneficiary's] work for the first time demonstrates the use of antisense RNA to reduce expression of the ataxia gene. These results constitute a new molecular model for gene therapy of SCA1, and prospects for development of this therapeutic approach for SCA1 now appear much more promising.

In this case, we must consider the significance, not just the originality, of the beneficiary's findings. For example, Dr. Orr's discovery of the genetic basis of SCA1 is viewed throughout the research field as a particularly significant achievement. In regards to the beneficiary's specific findings, while they may have added to the general pool of knowledge, it has not been shown that independent researchers throughout the field have viewed the beneficiary's findings as particularly significant. Dr. Wolff only became aware of the beneficiary's efforts because of his participation as a member of the site visit team. The fact that the beneficiary was among the first to make a given discovery carries little weight. Of far greater importance in this proceeding is the importance to the field of the beneficiary's discoveries. The petitioner has not provided sufficient evidence showing that the beneficiary's research has attracted significant attention from independent researchers throughout the scientific community in the same manner (for example) as [REDACTED]. The petitioner must show not only that the beneficiary's discoveries are important to his own research institution, but throughout the research field.

[REDACTED] states that the beneficiary's accomplishments "have impacted the academic field on an international scope," but the petitioner has provided no evidence from any other independent sources to support this conclusion [REDACTED] further states:

[The beneficiary] has published several papers on his entomology work and the work he did in China. He is one of the lead authors on several papers to be published in international journals on gene therapy that are now in the process of being written. His research constitutes a foundation for work being carried out by many laboratories around the world.

[REDACTED] assertions that the beneficiary's scientific papers have had an international impact and "constitute a foundation for work being carried out by many laboratories around the world" cannot suffice to establish such recognition, when the petitioner has offered no evidence from citation indices to support these claims. Furthermore, it is not immediately apparent how research that has not yet been published would demonstrate significant influence in one's field, nationally or internationally. We have already noted that a petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak, supra.*

In addressing the abstract provided on appeal, we note that 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 beneficiary'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 beneficiary himself has cited sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the beneficiary's work. Their citation of the beneficiary'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 the beneficiary's research articles.

Counsel asserts that the beneficiary's receipt of grant funding demonstrates superior scientific achievement and that his work is of "high national priority." This argument is flawed, however, in that it applies equally to all researchers who receive governmental funding for their studies. We note here that the U.S. Government routinely provides millions of dollars in research grants to many thousands of scientists and research institutions on an annual basis. The record contains no statement from any official governmental source indicating that beneficiary's specific results are viewed as particularly more significant than the results of the thousands of other biomedical researchers in the United States receiving research funding. Grants from NIH generally support future research rather than recognize prior achievement and therefore we reject the argument that the receipt of grant funding significantly distinguishes the beneficiary from other competent researchers.

Counsel states that the "Service mistook [the beneficiary's] job as that of a permanent position." We note, however, that the director's reference to the permanent position was most likely the result of information obtained from counsel's letter dated April 27, 2001, which accompanied the Form I-140. Among the documents listed in the letter is an "Offer letter of permanent employment from Petitioner." We further note that director's decision mentioned the permanent position only when acknowledging the intrinsic merit of the beneficiary's research, a determination that was favorable to the beneficiary. There is no indication that the director would have rendered a substantially different decision without this error, which first appeared in a letter from counsel accompanying the petition.

Counsel argues that the director ignored the collaborative nature of scientific research and "belittle[d] the petitioner's contributions" to various scientific articles. While we agree with counsel that the collaborative nature of the beneficiary's research is hardly fatal to his claim of eligibility under this classification, it could be argued that the director was simply seeking stronger evidence of the beneficiary's prominent role in the research studies he participates in at UM. We cannot ignore the evidence indicating that [REDACTED] are already respected, established figures in the biomedical research field. When describing the beneficiary's contributions to the research being conducted at the Institute of Human Genetics, the beneficiary's witnesses have continually referred to his unpublished findings. As of the petition's filing date, the petitioner has offered little or no evidence to confirm that the beneficiary himself was often the principal or leading author (or primary motivator) behind the projects undertaken at UM. We note here that the information provided by counsel and virtually all of the beneficiary's witnesses indicates that the beneficiary's eligibility for the national interest waiver is based primarily on his research efforts in Dr. McIvor's laboratory. The record, however, contains no evidence of any of the beneficiary's published findings resulting from that research which existed as of the petition's filing date.<sup>1</sup>

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<sup>1</sup> The abstract provided on appeal appears to have been published subsequent to the petition's filing. See



Counsel asserts that the witness letters demonstrate that the beneficiary's research contributions have gained widespread attention throughout the scientific community. The evidentiary weight of the witness letters, however, is diminished by the lack of direct evidence showing that the beneficiary's findings have influenced the greater field. We note here that with the possible exception of the letter from [REDACTED] all of the beneficiary's witness letters are from individuals with direct ties to the beneficiary. Letters from those close to the beneficiary certainly have value, for it is those individuals who have the most direct knowledge of the beneficiary's specific contributions to a given research project. It remains, however, that very often, the beneficiary's projects are also the projects of the witnesses, and no researcher is likely to view his or her own work as unimportant. The beneficiary's witnesses in this case became aware of the beneficiary's research work because of their close contact with the beneficiary; their statements do not show, first-hand, that the beneficiary'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, is more persuasive than the subjective statements from individuals selected by the beneficiary.

Without evidence showing heavy independent citation of his published works, we find that the beneficiary has not significantly distinguished his results from those of other researchers in the genetic research field. It can be expected that if the beneficiary's published research were truly significant, it would be widely cited. The beneficiary's authorship of two articles at UM (with Dr. Fallon) and other articles at Hubei Medical University may demonstrate that his research efforts yielded some useful and valid results; however, the impact and implications of the beneficiary's findings must be weighed. The record fails to show that the beneficiary's work has garnered significant attention in the biomedical field beyond the institutions where the beneficiary has studied or worked.

Clearly, the beneficiary's current and former colleagues have a high opinion of the beneficiary and his work, as does [REDACTED] who knows the beneficiary from his site visit to UM. The beneficiary's findings, however, do not appear to have yet had a measurable influence in the larger field. While numerous witnesses discuss the potential applications of these findings, there is no indication that these applications have yet been realized. The beneficiary'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 beneficiary's findings may eventually have practical applications does not persuasively distinguish the beneficiary from other competent researchers.

In sum, the available evidence does not persuasively establish that the beneficiary'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

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*Matter of Katigbak, supra*, 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.

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.