



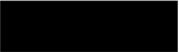
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U.S. Department of Justice  
Immigration and Naturalization Service

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

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File:  Office: Nebraska Service Center

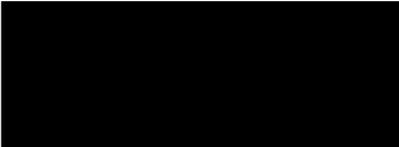
Date: FEB 27 2003

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

IN BEHALF OF PETITIONER:



**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

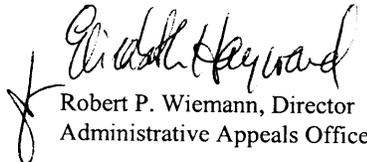
**INSTRUCTIONS:**

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, 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. At the time he filed the petition on January 16, 2001, the petitioner was pursuing his Ph.D. and working as a research assistant in the Department of Physiology at the University of Wisconsin-Madison Medical School ("UWMMS"). 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 director's decision stated:

The Service accepts that an advanced degree or exceptional ability is required by the occupation, and that the petitioner holds the requisite advanced degree...

\* \* \*

The alien petitioner desires Service approval to allow him to continue employment at

UWMMS as a Research Assistant. However, the position involves only twenty hours per week. "Employment" means permanent full-time work by an employee for an employer other than oneself. Therefore, his petition may not be approved.

At the time of filing, the petitioner in this case was pursuing his doctorate in UWMMS's Biophysics Program under F-1 visa status. It is reasonable to conclude that upon completion of his Ph.D., the petitioner would seek full-time employment. While the petitioner in this case seeks an employment-based visa, eligibility for a national interest waiver is not contingent upon a job offer or a labor certification. On appeal, we concur with counsel's assertion that full-time employment is not a prerequisite for a self-petitioning alien Ph.D. student seeking a national interest waiver. Therefore, the director's finding requiring full-time employment in this case is withdrawn.

The director's decision also addressed the merits of the petitioner's national interest waiver claim. The remaining issue to be determined on appeal 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.

We concur with the director that the petitioner works in an area of intrinsic merit, and that the proposed benefits of his research would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Along with documentation pertaining to his field of research, the petitioner submitted several witness letters. [REDACTED] Assistant Professor of Physiology, UWMMS, is the petitioner's research supervisor. [REDACTED] states:

Since joining my laboratory in 1998, [the petitioner] has focused his molecular biology, biochemical, and biophysical skills on a biological problem that is central to our understanding of diseases that affect the nervous system. Namely, our laboratory is focused on understanding the mechanism by which neurons communicate with one another... Defects in neuronal communication underlie numerous neurological deficits including schizophrenia, myasthenia, dementia, Parkinson's and Alzheimer's diseases. Our eventual goal is to provide more effective and reliable therapeutic approaches to these diseases.

[The petitioner] has made critical progress in our understanding of the function of two classes of proteins, synaptotagmin and SNAREs, which are critical for neurons to communicate with one another via chemical messengers. To highlight [the petitioner's] unique abilities, I would like to point out that in a very short time (within 2 years in the laboratory), [the petitioner] has published two papers in leading journals (Kinetics of synaptotagmin responses to  $Ca^{2+}$  and assembly with the core SNARE complex onto membranes), *Neuron*, 1999, Vol.24, 363-376; Membrane-embedded synaptotagmin penetrates *cis* or *trans* target membranes and clusters via a novel mechanism, the *Journal of Biological Chemistry*, In Press) and a third paper (Synaptotagmin functions in the docking, triggering and recycling of synaptic vesicles) has recently been completed and is in the process of being submitted for publication in *Cell*, another top flight journal.

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.

The petitioner provided internet citation lists for five of his published articles. Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. Of the nineteen citations provided, more than half were self-citations by the petitioner, his collaborators, or collaborators of [REDACTED] and [REDACTED] (the petitioner's master's research advisor from Tsinghua University in China). The internet citation lists revealed that an article entitled "Kinetics of synaptotagmin responses to  $Ca^{2+}$  and assembly with the core SNARE complex onto membranes" was cited five times by independent researchers, an article entitled "Ascertaining the number of essential thiol groups for the folding of creatine kinase" was cited twice by independent researchers, and an article entitled "Comparison of inactivation and unfolding of yeast alcohol dehydrogenase during thermal denaturation" was cited once by independent researchers. The remaining two articles had no independent citations. The limited number of independent citations is not sufficient to demonstrate that the petitioner's findings have significantly influenced the biomedical research field.

Dr. Chapman further states:

Communication between neurons is triggered by calcium ions. [The petitioner's] research is focused on elucidating how these calcium ions drive the release of neurotransmitters onto neighboring nerve cells... This process appears to be initiated by the binding of calcium ions to protein called synaptotagmin. [The petitioner's] specific research accomplishments include the first time-resolved analysis of synaptotagmin that has been reconstituted into proteoliposomes, the molecular dissection of different synaptotagmineffector interactions, the first detailed biophysical study of the interaction of synaptotagmin with membranes, the first complete characterization of synaptotagmin-SNARE-complex interactions, and the first kinetic analysis of calcium-triggered synaptotagmin-clustering. These accomplishments, which again were completed in a very short time frame, have defined the series of rapid molecular events that mediate the release of neurotransmitters from neurons.

[The petitioner] has excelled in applying difficult and challenging techniques and approaches to understand the dynamics and function of synaptotagmin in neuronal exocytosis. His ability to succeed in the application of state-of-the-art procedures to study molecular aspects of nerve cell communication is truly extraordinary. His prior experience has allowed [the petitioner] to utilize most advanced biochemical and biophysical techniques (optical reporters and real-time rapid kinetics) that have made it possible to directly address the malfunction of synaptotagmin in neurological diseases.

Simply being among the first to conduct certain novel studies pertaining to synaptotagmin carries little weight. Of far greater importance in this proceeding is the importance to the field of the

petitioner's discoveries. The petitioner has not provided sufficient evidence that his individual research has attracted significant attention from independent researchers throughout the biomedical research field.

describes the petitioner's success in applying "state-of-the-art procedures" to study molecular aspects of nerve cell communication. Other witnesses, such as postdoctoral fellow at UWMMS, and Philip Chun-Ying Wong, Associate Professor of Pathology, Johns Hopkins University School of Medicine ("JHUSM"), offer similar statements pertaining to the petitioner's research studies and his use of "state-of-the-art" scientific technologies. 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.

A comparison of the letters provided by and reveals several passages with very similar wording. It is not clear who is the original author of these highly similar passages. While it is acknowledged that these individuals have lent their support to this petition, it remains that at least one of these individuals did not independently choose the wording of substantial portions of his or her letter, thus detracting from the evidentiary weight of the letters.

With the possible exception of all of the petitioner's witnesses have direct ties to the petitioner.<sup>1</sup> For example, Associate Professor of Cell Biology at the University of Barcelona, met the petitioner as a "Visiting Professor" at UWMMS, and Assistant Professor of Neurobiology at the Massachusetts Institute of Technology, met the petitioner while working as a post-doctoral fellow at UWMMS. The witness letters provided describe the petitioner's expertise and value to his current and former research projects, but they do not demonstrate the petitioner's influence on the field beyond the laboratories where he has worked. The record does not show that the petitioner's work has attracted significant attention from independent researchers throughout the scientific community.

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 indicated that the petitioner had not shown that his contributions had influenced the field to a substantially greater extent than those of other qualified researchers.

On appeal, the petitioner provides a second letter from praising the petitioner for his publication record. states: "During a very short period of time (two and one half years), [the petitioner] has published three articles in the most prestigious journals in the world." One of the three published articles mentioned in second letter was published subsequent to the petition's filing also discusses the petitioner's current research and

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<sup>1</sup> The petitioner's curriculum vitae includes a listing of his family members and their employers. We note here that the petitioner's brother and both work in the Department of Pathology at the Johns Hopkins University School of Medicine.

mentions an article that was recently submitted to *Science* and is now being reviewed for publication. 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. 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.

second letter notes that the petitioner has served as the “first author” of a single paper published in the *Journal of Biological Chemistry*. The record, however, contains no evidence that the presentation or publication of one’s work is a rarity in the 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. 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.

On appeal, the petitioner has provided further evidence showing that the articles he contributed to have been cited. We note here that many of the citations provided on appeal were already included among the internet citation lists previously submitted. By far the most commonly cited work, an article published in *Neuron* entitled “Kinetics of synaptotagmin responses to  $Ca^{2+}$  and assembly with the core SNARE complex onto membranes,” was first-authored by [REDACTED]. More persuasive would have been evidence showing heavy independent citation of the article first-authored by the petitioner appearing in the *Journal of Biological Chemistry*. We acknowledge that the petitioner has been a contributor to published research that has been cited, but, excluding the article by [REDACTED] the petitioner offers little evidence showing that any of his other works have been frequently cited. The limited number of independent citations of the petitioner’s work simply does not rise to a level demonstrating that he has significantly influenced his field.

We cannot ignore that the majority of the petitioner’s witnesses claim publication records that far exceed that of the petitioner. For example [REDACTED] states that he has “authored more than thirty scientific research papers in internationally leading journals over the last ten years.” Similarly,

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<sup>2</sup> Dr. Chapman’s second letter specifically indicates that the petitioner was not the primary author of this article.

notes that he “published over forty research papers in leading journals.” Other witnesses, such as of UWMMS and the petitioner’s master’s research advisor from Tsinghua University, claim to have published more than one hundred articles. When compared to his witnesses, the petitioner’s publication record appears much more limited. A review of the evidence submitted reveals that the publication records, scientific achievements, and responsibilities of the petitioner’s witnesses far exceed those of the petitioner.

credits the petitioner for “independently defining a series of rapid molecular events that control the release of neurotransmitters from neurons” and proving that the disruption of these events “leads to neural dysfunction.” The fact that the petitioner was among the first to make these discoveries carries little weight. Of far greater importance in this proceeding is the importance to the field of the petitioner’s discoveries. The petitioner has not provided sufficient evidence showing that his individual research has attracted significant attention from independent researchers in the scientific community. The petitioner must show not only that his discoveries are important to UWMMS, but throughout the research field.

Counsel states that the witness letters demonstrate the petitioner’s impact on his field. We note, however, that the petitioner’s witness letters are mostly from individuals with direct ties to 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 majority of 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.

Clearly, the petitioner’s educators, supervisors, and collaborators 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 numerous witnesses discuss the potential applications of these 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. Without evidence that the petitioner has been responsible for significant achievements in biochemical research, we must find that the petitioner’s assertion of prospective national benefit is speculative at best. While the high expectations of the petitioner’s witnesses may yet come to fruition, at this time the waiver application appears premature.

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, U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.