



U.S. Department of Justice

Immigration and Naturalization Service

B5

PUBLIC COPY

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

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

File: EAC-00-247-53166

Office: Vermont Service Center

Date:

JAN 14 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:

INSTRUCTIONS:

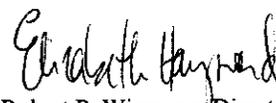
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations 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 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) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in environmental science from Rutgers State University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue 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.

The director did not contest that the petitioner works in an area of intrinsic merit, environmental health research, and that the proposed benefits of his work, reduced lead poisoning in children, 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.

As acknowledged by the director, the record contains ample evidence regarding the significance of the petitioner's projects. Eligibility for the waiver, however, 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 he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, note 6.

In his final decision, the director stated that the record did not contain objective evidence of the widespread influence the petitioner's work has had on the field at large. On appeal, counsel asserts that the reference letters in the record adequately demonstrate that the national interest in

granting the waiver request outweighs the national interest in the labor certification process, especially since the petitioner cannot obtain a labor certification without a permanent job offer. Despite being placed on notice of the lack of objective evidence in the record, the petitioner did not submit any new evidence on appeal. Rather, the petitioner resubmitted copies of all of the previously submitted evidence. Such a response does not add anything new to the proceedings.

The petitioner submitted his membership cards in the American Chemical Society (ACS), the American Public Health Association (APHA), and the American Association for the Advancement of Science (AAAS). The record does not reflect that these associations have particularly restrictive membership requirements. In addition, the petitioner submits a newsletter from the International Society of Exposure Analysis (ISEA) listing the petitioner's receipt of a one-year membership in ISEA as an award from the society in 1997. These awards of free membership are in addition to the three student cash prizes awarded by ISEA annually. Recognition for achievements and memberships in professional associations are two of the requirements for aliens of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that meeting one, or even all three, of the requirements for that classification warrants a waiver of the labor certification process in the national interest.

The petitioner obtained his Ph.D. at the University of Medicine and Dentistry of New Jersey (UMDNJ). UMDNJ is part of the Environmental and Occupational Health Sciences Institute (EOHSI) at Rutgers, the State University of New Jersey. The petitioner currently works as a Research Teaching Specialist II at EOHSI. Dr. Paul J. Liroy, the petitioner's Ph.D. advisor and current collaborator, discusses the petitioner's work as part of four EOHSI studies funded by the Environmental Protection Agency (EPA), the Department of Health and Urban Development (HUD), and the National Institutes of Environmental Health Sciences. Dr. Liroy provides:

Each program has been highly successful in establishing protocols which are beginning to be used nationally to reduce lead contamination in urban residences. These methods have never been used before and, we are requiring a change in the national and state philosophy employed to manage and reduce lead exposure in urban children in the years to come.

Dr. Liroy asserts that the strategies developed by their program are "essential for improving public health," and that the petitioner's unique knowledge and skills acquired while working on this program will assist public health officials and residents deal with environmental lead exposure as well as being applicable to other areas of public health, such as pesticides.

Dr. Mark Robson, the executive director of EOHSI, indicates that the petitioner "has been part of some very interesting and important research concerning household exposure to lead." Dr. Robson then discusses the importance of the area of this research, lead exposure, which is not in dispute. Dr. Robson concludes:

[The petitioner's] fieldwork and data collection and analysis is contributing to the understanding of the outcomes of using the non-traditional means and appropriate

public health interventions. [The petitioner's] efforts in the field have been very useful in recognizing the value and importance to lead measurement and remediation.

Dr. George Rhoads, director of the Environmental Health Division at EOHSI, provides similar information in his initial letter. In a subsequent letter, Dr. Rhoads asserts that the petitioner completed his projects with minimal supervision. He writes that the petitioner began working on the New Jersey Assessment of Cleaning Techniques (NJACT) as a field technician in January 1999 but was soon promoted to project manager. Dr. Rhoads indicates that the petitioner is currently drafting a manuscript of the results of the NJACT study for publication. In addition, Dr. Rhoads indicates that the petitioner was the project manager for the Community Lending and Evaluation of Abatements in Neighborhoods (CLEAN), the results of which the petitioner presented at a CDC conference after the date of filing. Finally, Dr. Rhoads asserts that the petitioner recently began work as co-principal investigator for the Cleaning after Renovation and Remodeling (CARR) study. Dr. Rhoads concludes that the petitioner is "a key individual in the field of lead exposure research in New Jersey and is already recognized at national meetings."

Dr. John Adgate, a former fellow graduate student at EOHSI who collaborated with the petitioner, asserts that the petitioner worked on the Children's Lead Exposure Assessment and Reduction Study (CLEARs), "a randomized trial of the effectiveness of home cleaning in reducing children's blood lead levels," and the Treatment of Lead-exposed Children (TLC) trial, "a study designed to test new strategies to reduce the prevalence of lead poisoning in young children." Dr. Adgate concludes that both studies used innovative methods and that the petitioner played an important role in the successful completion of both studies. Dr. Junfeng Zhang, another former fellow graduate student, provides similar information.

Dr. Timothy Buckley, an assistant professor at the School of Hygiene and Public Health at John's Hopkins University, indicates that he became familiar with the petitioner's work by serving on his research committee during his preliminary oral exam and final defense. Dr. Buckley discusses the importance of the petitioner's research and asserts that the petitioner's "unique set of experience, skills, and abilities" make him important for the successful completion of ongoing lead exposure research. Dr. Buckley does not identify any specific past accomplishments indicative of a past record of success with a degree of influence on the field as a whole.

Dr. Peter Ashley, the Department of Housing and Urban Development's (HUD) technical representative on the petitioner's project, provides general praise of the petitioner's "competence, dedication, and reliability." Dr. Ashley asserts that the petitioner has made "key contributions" to the project and that he now has "developed insight into the type of field-based research which is required for the development of cost-effective strategies to reduce residential lead exposure." In response to the director's request for additional documentation, the petitioner submitted a letter from an environmental scientist with HUD who provides general praise of the petitioner and his project. Their opinions do not appear to reflect the official opinion of the department.

Dr. Chris Liang, a research scientist with the New York City Department of Health, asserts that he has “known” the petitioner in an unspecified capacity since the petitioner was a graduate student. Dr. Liang discusses the importance of the petitioner’s area of work, which, as stated above, is not in dispute. Finally, Dr. Liang asserts that the petitioner’s project has “shown that interim controls can not only reduce dust lead in the dwellings but also result in blood lead reductions in children.” Dr. Liang concludes that, based on the petitioner’s years of dedication to this issue, he is one of the best scientists conducting field projects on lead exposure. Dr. Liang’s opinion does not appear to reflect the official opinion of the New York City Department of Health.

The petitioner submitted the project proposals for “Cleaning after Renovation and Remodeling” and “Effect of CRA Loans for Lead Abatement” funded by the Environmental Protection Agency (EPA) listing Dr. George Rhoads and Dr. Paul Liroy as the principal investigators and the petitioner as the project coordinator.

In response to the director’s request for additional documentation, the petitioner submitted a letter from Dr. Audrey Gotsch, the interim dean of UMDNJ, asserting that the petitioner’s leadership abilities have resulted in his consideration for promotion from staff to faculty at UMDNJ. The petitioner also submitted a grant proposal dated after the date of filing listing the petitioner as the project manager and evidence that, after the date of filing, the petitioner gave two presentations at the 2000 National Lead Grantee Conference and a presentation at the 2001 CDC annual meeting of Childhood Lead Poisoning Prevention Program Managers.

All of the reference letters in the record are from the petitioner’s collaborators and immediate colleagues. While such letters are important in providing details about the petitioner’s role in various projects, they cannot by themselves establish the petitioner’s influence over the field as a whole. While the petitioner’s collaborators assert that the petitioner’s methods are being adopted nationwide, the record does not support this assertion. For example, the record does not contain letters from health departments around the nation attesting to the petitioner’s influence. As stated above, Dr. Liang is not a high level official at the New York City Department of Health, and appears to be a former colleague of the petitioner’s. Moreover, he does not assert that the petitioner’s methods have been adopted in New York.

Regarding the petitioner’s presentations, it is not evidence of the petitioner’s influence that HUD requested the petitioner to present the results of the research that HUD financed. While counsel asserts that the petitioner served as a moderator at the 2001 CDC conference, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The agenda for the conference merely lists the petitioner as a presenter. It is not uncommon for researchers to present their work at conferences. Regardless, this conference occurred well after the date of filing and the petitioner’s presentation at that conference is not evidence of his influence at the time of filing or even the continuation of a pattern of influence. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

In addition to the evidence discussed above, the petitioner initially submitted three published articles. Over a year after filing the appeal, the petitioner submitted two additional articles accepted for publication. These articles do not relate to the petitioner's eligibility at the time of filing. *See id.* Regardless, 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." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of influence; we must consider the research community's reaction to those articles. The record contains no evidence that the petitioner's articles have been widely cited or otherwise influential.

Finally, counsel's assertion that the petitioner is unable to obtain a labor certification since he has not been offered a permanent job is not persuasive. *Matter of New York State Dept. of Transportation, supra*, specifically provides that the unavailability of the labor certification process is only one factor to be considered. The petitioner still must demonstrate that he will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at 218, note 5. For the reasons discussed above, the petitioner has not met that burden.

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 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.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.