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U.S. Department of Justice

**B5**

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 01 036 50888 Office: VERMONT SERVICE CENTER

Date: **JAN 17 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 CFR 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 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Elizabeth Hayward*  
for 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 seeks employment as a research scientist at the University of Medicine and Dentistry of New Jersey (“UMDNJ”). 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 has 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 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.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel describes the petitioner’s work:

[The petitioner] is a research Neuroscientist – post Ph.D. level – specializing in neuroscience investigations on the molecular mechanism that causes (a) the spread of breast cancer, (b) how the brain receives molecular information causing drug addiction and (c) the timing and nature of the molecular messages that govern the reproductive cycle. While the end results are disparate, from a neuroscientist[’s] perspective, they are merely variations on similar basic processes: how neuropeptides (hormones) disseminate the information throughout the body that regulates its activities mostly for the better, [but] other times, causing debilitating diseases. . . .

Her present work is an outgrowth of the extensive work that she has carried out in the field of Endocrinology. . . . The products of endocrine glands (hormones) regulate a wide variety of functions. Although the basic principles have been established that hormones are involved in the control of such processes as growth and reproduction in vertebrates and invertebrates, there [are] still large gaps in our basic information about such items as the number of action of the hormones in terms of molecules and cell organelles. . . .

[The petitioner] is ranked at the top of this vital health care field by virtue of her outstanding achievements and unique training and experience. [The petitioner's] work in the field of drugs for medical treatment is national in scope and of national interest. She has achieved breakthrough results in the field.

A section of counsel's introductory letter is headed "Honors and Awards," but the section merely lists the petitioner's postdoctoral appointments from 1997 to 2000. Three of the four appointments have been at UMDNJ; the most recent had begun within weeks of the petition's filing. Considering that such postdoctoral appointments constitute more or less routine training for scientific researchers, it is not clear how these temporary assignments represent honors or awards.

Counsel states that the petitioner's "work gained wide renown because she published her results in internationally renowned journals." Leaving aside counsel's questionable presumption that publication ensures "wide renown," the record contains only one published article by the petitioner, "The ovary inhibiting hormone activity in the eyestalks of fresh water prawn, *Caridina rajadhari*," dating from 1985. A second article had been accepted for publication but there is no evidence that it had actually been published as of the petition's November 2000 filing date; the copy in the record is a pre-publication proof copy. Other articles are claimed but not documented. The remaining "articles" are in fact short abstracts published in conjunction with professional conferences.

The petitioner submits several witness letters. Counsel states that these letters show that the petitioner "is ranked at the top of her field by eminent authorities in her field of expertise." Many of the witnesses have worked with the petitioner, usually supervising or instructing her, at UMDNJ and at Tulane University. Dr. Richard D. Howells, an associate professor at UMDNJ, supervised the petitioner's postdoctoral work from 1998 to 2000. Dr. Howells states:

I recruited [the petitioner] in 1998 to work in my laboratory as a Postdoctoral Fellow. She became an integral part of my research team, which was working on the structure and function of opiate receptors. This research is funded by a \$500,000 grant from the National Institutes of Health. [The petitioner] has made outstanding contributions to these research efforts. She characterized the activity of a novel class of opiate drugs that have clinical potential as non-addictive analgesic agents. She also discovered that down regulation of opiate receptors, which is involved in tolerance and dependence to morphine, could be blocked by inhibitors of the proteasome complex. This finding may prove to be a critical step in the development of treatments for addiction.

Dr. Pranela Rameshwar, an assistant professor at UMDNJ, discusses various projects and states that the petitioner "was the only person who was qualified to work on the research projects in my laboratory" and that the petitioner "is crucial for [the] types of studies" that Dr. Rameshwar is undertaking relating to late stage relapse in cancer.

Dr. Niranjana M. Kumar, a senior research investigator at Bristol-Myers Squibb Pharmaceutical Research Institute, discusses a project of "immense" importance. "It involves identification of the NK-1 promoter that turns the gene on and off which is a key controller during the breast cancer metastasis. [The petitioner] is on the project to clone the NK-1 receptor promoter and study the regulation of the NK-1 receptor expression." Dr. Kumar states that the petitioner possesses "excellent technical skills to clone the NK-1 promoter." Other witnesses describe the petitioner's work but do not explain the special significance of that work.

The only witness to credit the petitioner with "truly outstanding discoveries" that place her "at the top of her field" is an individual who worked with the petitioner at Osmania University and again at Tulane University. Witnesses with lesser ties to the petitioner offer milder assessments, such as the assertion that the petitioner "is highly regarded among her peers and coworkers" and that her "expertise and experience . . . can be of great value." Several witnesses offer background information about breast cancer, but they do not indicate how the petitioner's work has already affected the treatment or survival rate of that illness. Instead, they indicate that the petitioner's work in this area, which began only recently, may eventually provide useful new information.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. The director stated that the initial submission indicates that the petitioner "seems to be a very competent scientist, playing a supporting role on research teams" rather than a researcher who stands out to an extent that would justify a national interest waiver. The petitioner submitted no new evidence in response to this notice. Instead, the petitioner submitted a letter in which counsel quotes from previously submitted letters and argues that the initially submitted materials are sufficient to establish eligibility.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work but finding 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.

On appeal, counsel states that the director "failed to understand that a Ph.D. scientist, who had 2 post-doctorate research associates, working on world renowned research for 20 years is a key member of a research team." We note that the "20 years" in question include several years of graduate school and postdoctoral training; the petitioner has not accumulated 20 years of experience as a fully trained researcher, considered eligible for permanent employment by U.S. research institutions. (One of the petitioner's own former supervisors refers to her postdoctoral work as "training," demonstrating that he did not consider her to be fully trained when she worked for him in 1998-2000.) Elsewhere, counsel asserts that the petitioner's "key role in research" spans the entire 20-year period, including, presumably, her early work as a first-year graduate student just beginning work on her master's degree. Such a conclusion is entirely unsupported by the record.

If it is counsel's contention that the petitioner's work is in fact "world renowned," the burden is on the petitioner to support that claim. Counsel cannot simply treat this claimed renown as a premise, and then challenge the Service to explain its decision in light of such renown. As explained earlier, the strongest praise for the petitioner's work comes from individuals who conducted that work alongside the petitioner. Other witnesses generally restrict their comments to potential benefits that may one day arise as the petitioner's work progresses.

Counsel states that the issue on appeal "is whether or not [the petitioner's] role as a scientist is a key role in order to meet the standard of the third prong of NYDOT. Is she an irreplaceable scientist whose replacement by a minimally qualified scientist through the labor certification [process] would be detrimental to the national interests of the United States?" The phrase "key role" did not appear in the director's decision, nor did any synonymous phrase. Rather, the director's decision rested on the conclusion that, while the petitioner is experienced and well-regarded by her collaborators and superiors, the petitioner has not shown that she merits a waiver of the job offer requirement that typically applies to workers in her occupation.

Counsel asserts that the petitioner "meets the criteria of NYDOT," and then presents a list of criteria which only partially conforms to guidelines from *Matter of New York State Dept. of Transportation*. Some of the claimed criteria, such as the assertion that the petitioner's "research has been funded by many federal agencies," does not derive in any way from the precedent decision.

In a newly submitted letter, Dr. Pranela Rameshwar describes the petitioner's current work and asserts that the petitioner is among the laboratory's "key personnel," and remains "the only person who was qualified to work on the research projects." Describing one new project, Dr. Rameshwar states that among the laboratory's personnel, the petitioner "is the only one that understands and can develop the skills and expertise necessary to dissect the molecular aspects of trauma related dysfunction on hematopoeisis." Dr. Rameshwar's wording suggests that the petitioner does not yet possess the necessary skills and expertise; rather, she "can develop" them as the project progresses, while the other personnel, for reasons not clearly explained, are already known to be unable to develop these skills. While the director made specific mention of the labor certification process in the denial decision, Dr. Rameshwar does not explain why this process is inappropriate even in a circumstance where the petitioner is said to be the only properly qualified individual seeking the position.

Dr. Rameshwar describes many of the petitioner's ongoing projects but does not explain how the measurable results from the petitioner's past work serve to justify expectations of future benefit to the United States. The general tone of the letter seems to be the argument that the petitioner is well suited to work in Dr. Rameshwar's laboratory and therefore ought to remain there. The petitioner's employment history appears to represent a pattern of short-term involvement in projects conceived and designed by others. The petitioner has not shown that her work has influenced the work of researchers outside of institutions where she has worked and/or studied. The petitioner has not, for example, demonstrated heavy citation of her published work, which is a better objective gauge of influence than the very existence of such published materials.

While the petitioner's talent and dedication are not in dispute, the petitioner has not demonstrated that her body of work stands out from that of others in the field to an extent that would justify a waiver of the statutory job offer requirement. By law, this requirement applies not only to members of the professions holding an advanced degree, but also to aliens of exceptional ability in the sciences. The petitioner need not establish that she is one of the top scientists in the field, but it cannot suffice to discuss the importance of (for instance) cancer research and contend that the petitioner's research, once complete, is likely to have considerable impact.

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, 8 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.