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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

**B5**

ADMINISTRATIVE APPEALS OFFICE  
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Washington, D.C. 20536

**JUL 03 2003**

File: WAC 02 113 52801 Office: CALIFORNIA SERVICE CENTER Date:

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)

ON 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 Bureau of Citizenship and Immigration Services (Bureau) 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**

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California 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. The petitioner seeks employment as a postdoctoral researcher in neurology. At the time she filed the petition, the petitioner was a postdoctoral researcher for the Buck Institute for Age Research in Novato, California. The petitioner has since moved to another postdoctoral position at the University of California, San Francisco (UCSF). 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 concluded 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 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 received a medical degree in 1989 from Shanxi Medical University, China and obtained a Ph.D. from Shanghai Medical University in 1997. 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 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.

On appeal, counsel argues that the director considered the evidence under the standard for a higher classification than that sought by the petitioner. We agree with counsel that the director's decision contains several erroneous references to the criteria for aliens of extraordinary ability

under section 203(b)(1)(A). In order to obtain a waiver of the labor certification requirement in the national interest, one need not be one of the small percentage at the top of one's field. While the director subsequently goes on to discuss the evidence under the correct standard and even states that national acclaim is not required for the classification sought, the initial discussion is erroneous, and those portions of the director's decision are withdrawn. Because the decision also correctly analyzes the evidence under the statutory requirement of section 203(b)(2) and the precedent decision, *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm. 1998), the decision will be upheld.

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 pertinent 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, supra*, 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.

We concur with the director that the petitioner works in an area of intrinsic merit, neurodegenerative disease research, and that the proposed benefits of her work, improved understanding of neurological diseases, are national in scope. It remains to determine whether the petitioner has established that she will serve the national interest to a substantially greater degree than would an available U.S. worker

with the same minimum qualifications.

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 it 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 she 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. *Matter of New York State Dept. of Transportation*, at 219, n.6.

The petitioner submits several reference letters in support of her petition. Professor [REDACTED] supervised the petitioner's postdoctoral work at Massachusetts General Hospital. He states that the petitioner made fundamental contributions to the understanding of a protein called 'caspase-3' and its significance in ischemic cell death associated with neurological diseases such as Parkinson's and Alzheimer's. Professor [REDACTED] praises the petitioner's laboratory skills and characterizes her work as at the "cutting edge of understanding cell death in the nervous system."

Professor [REDACTED] also worked with the petitioner at Massachusetts General Hospital. He states that research in the operation of molecular mechanisms of brain cell death is critical and that the petitioner is "uniquely qualified to conduct this work because of her training in both medicine and science."

It is not sufficient to state that the alien possesses unique credentials or an impressive background. The benefit that the petitioner presents to her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in 8 C.F.R. 204.5(k)(3)(ii)(F) for an alien of exceptional ability. The labor certification process exists because protecting jobs and employment opportunities of U.S. workers having the same objective minimum qualifications as an alien seeking employment is in the national interest. The alien seeking an exemption from this process must present a national benefit so great as to outweigh the national interest inherent in the labor certification process.

Dr. [REDACTED] a co-chair of the research committee of Massachusetts General and Brigham and Woman's Hospital, does not state how she has become acquainted with the petitioner's work, but describes the petitioner as an individual with widely recognized scientific ability as shown by her published articles, her membership in the Society for Neuroscience, and her current position as an assistant research neurologist at UCSF. Eligibility for a national interest waiver rests upon the merit of an alien's individual credentials, not with the significance of the field of research or the prominence of an educational institution.

Dr. [REDACTED] provides no details on how membership in the Society for Neuroscience establishes that one has wide recognition as a scientist. Although the record contains evidence that the petitioner is a member of the Society for Neuroscience, there is no evidence provided that establishes the criteria for membership. While such evidence could reflect membership in a professional association requiring outstanding achievements from its members, this would only represent one regulatory criterion for

aliens of exceptional ability, a classification that normally requires a labor certification as set forth in 8 C.F.R. § 204.5(k)(3)(ii) enumerating the criteria for an alien of exceptional ability. The same reasoning applies to the petitioner's awards and honors obtained in China as recognition of her academic work and research efforts. Recognition for achievements and significant contributions to her field is another possible criterion to establish eligibility for exceptional ability. We cannot conclude that satisfying two requirements or even the requisite three requirements for this classification makes one eligible for a waiver of the labor certification process.

Professor [REDACTED] supervised the petitioner's postdoctoral work at the Buck Institute for Age Research. She relates that the petitioner has become an invaluable member of her team and states:

She is an extraordinarily hard working and productive researcher and collaborator. She has played a critical role in analyzing transgenic mouse models created in my laboratory to assess the role of oxidative stress and apoptotic cell death in neurodegeneration associated with both epilepsy and Parkinson's disease. This work has already resulted in a co-first authored paper again in the Journal of Neuroscience. [The petitioner's] unique skills and expertise in the area of caspases, proteases which are induced by oxidative stress and play a critical role in the apoptotic cell death process, have allowed us to critically assess how alteration of components which act to protect against these deleterious phenomena can help to prevent or slow the course of such diseases. Our findings may provide significant therapeutic benefit to the millions of persons in the US suffering from these devastating disorders. We expect that the work that [the petitioner] has contributed to from our laboratory will continue to be published in high-end journals in the fields and will be of vital importance in the fields of Parkinson's and epilepsy disease research.

Professor [REDACTED] directs the postdoctoral training at the Buck Institute. He confirms that "by virtue of her unique scientific background and expertise, [the petitioner] serves a critical role at both the institutional and the national levels in the field of stroke and neurodegenerative disease research."

Professor [REDACTED] supervises the petitioner's research at his laboratory at UCSF. The research involves the study of malformations of the blood vessels in the brain and the development of new therapeutic strategies for clinical management. Professor [REDACTED] states that the petitioner has been with his group for about one month; however he is confident that she is an outstanding scientist with an "exceptionally broad grasp of cellular biology, developmental biology, neurology, and molecular biology."

[REDACTED] an associate professor of neurology at the University of Pittsburgh School of Medicine, states that she knows the petitioner through her publications and her presentations at national and international conferences. She also states that she has worked with over 30 scientists at the University of Pittsburgh and previously at UCSF. Professor Chen relates that her field of interest is also in cell death mechanisms and neurological disorders such as Parkinson's disease and stroke. She rates the petitioner in the top 5% of scientists. She also praises the petitioner's previous work, her publication history and concludes that the petitioner's accomplishments in the field of neuronal cell death in stroke

and Parkinson's disease have "significant implications for the healthcare in the United States." Professor [REDACTED] fails to explain with specificity how the petitioner's work has furthered her own research.

All of the petitioner's testimonials, except those from Dr. [REDACTED] and Professor [REDACTED] come from the petitioner's supervisors, mentors, collaborators or colleagues from her past and present research institutions. Letters from those with direct ties to the petitioner certainly have value, because such persons have direct knowledge of the petitioner's contributions to a specific research project; however, their statements do not show, first-hand, that the petitioner's work has already influenced the wider scientific community as a whole, as might be expected with research findings that are especially significant. Independent evidence that would have existed whether or not this petition was filed, would be more persuasive than the subjective statements from individuals selected by the petitioner.

Several witnesses discuss the petitioner's influence as shown by the publication of her research findings. The record contains copies of two published articles in which the petitioner was the lead author and four that she co-authored. The record also contains articles in the Chinese language but they are not accompanied by an English translation pursuant to 8 C.F.R. § 103.2(b)(3), so it is difficult to ascertain authorship. The evidence indicates that the petitioner has also submitted written drafts to scholarly journals which have not yet been published. Unpublished articles may be an indicator of the petitioner's diligence in her field, but she must establish eligibility at the time of filing the petition. A petitioner may not establish eligibility for the visa classification by relying on an achievement attained after the filing date of the petition. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

We also note that the record contains no evidence indicating that publishing research findings is rare in the petitioner's field. 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 acknowledgment 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. If an alien is pursuing research which she, and her immediate circle of colleagues consider to be critical, but which other researchers do not view as particularly significant, then the extent of the alien's influence is not established. Frequent citation by independent researchers, on the other hand, would demonstrate more widespread interest in, and reliance on, the petitioner's work.

In this case, the record contains no evidence that independent researchers have cited the petitioner's work. We cannot conclude that the petitioner's work has already been influential on her field as a whole.

On appeal, counsel asserts that very few researchers among the petitioner's peers can claim her level of achievement. Counsel states that her work has attracted broad interest as shown by numerous instances of citations from other researchers. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). If this petitioner's work has been cited numerous times, the evidence has not been included in the record. While her level of achievement at this stage of her career may be commendable, it does not follow that it is in the national interest to waive the requirement for a labor certification, when this requirement applies to other aliens with far more experience or credentials. We note that several of the testimonials offered in her behalf were from such individuals. Members of the professions holding advanced degrees (including scientists) as well as aliens of exceptional ability in the sciences are generally subject to the job offer/labor certification requirement.

The petitioner's documentation of her achievements and projections of future contributions may support the argument that the petitioner has exceptional ability in neurodegenerative research, but do not overcome the statutory mandate of a labor certification for this occupation or show with specificity that the petitioner's work was of such recognized significance at the time of filing that it had already influenced the work undertaken by other independent researchers.

As is clear from the plain wording of the statute, it is 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. Similarly, 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. Based on the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification would 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. In this case, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.

4/11/12 P. 10:00