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

ADMINISTRATIVE APPEALS OFFICE  
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Washington, D.C. 20536

Identifying data deleted to  
prevent clearly unwarranted

[Redacted]

JUL 08 2003

File: WAC 01 243 50789 Office: California Service Center

Date:

IN RE: Petitioner:  
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 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, 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 sustained, and the petition will be approved.

It is noted that the petitioner was initially represented by [REDACTED] Mr. [REDACTED] will be referred to herein as the petitioner's former counsel, or previous counsel. References simply to "counsel" will refer to the petitioner's current attorney of record, who submitted a Form G-28, Notice of Entry of Appearance as Attorney or Representative, on August 1, 2002.

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 of filing, the petitioner was employed as a senior staff attending in the Department of Anesthesiology, Kliniken der Stadt Koln in Germany. Prior to that the petitioner had completed a two-year academic appointment as a Visiting Assistant Professor in the Department of Anesthesiology at the University of Texas Medical School at Houston ("UTMSH"). 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.

The petitioner holds a M.D. degree from Rheinisch-Westfalischen Technical College in Germany. The petitioner has provided an educational evaluation report from Global Credential Evaluators, Inc. indicating that this degree has been independently evaluated as being equivalent to a M.D. from an accredited U.S. institution. 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 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 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.

Counsel states:

[The petitioner's] teaching duties involve the education of residents and medical students in all areas of Anesthesiology, especially Regional Anesthesia. As a researcher [the petitioner's] main interest is in the field of Regional Anesthesia and the improvement of perioperative outcome by utilizing Regional Anesthesia techniques.

[The petitioner's] field of expertise, Regional Anesthesia, utilizes nerve block techniques and local anesthetics to numb up specific areas of the body to provide intraoperative pain relief and pain control for several days after surgery. [The petitioner] has demonstrated several advantages of the Regional Anesthesia technique to the United States medical community...

Along with documentation pertaining to his field of research, the petitioner submitted several witness letters from medical experts throughout the United States.

In his first letter, Dr. [REDACTED] now Professor and Vice-Chairman of Research, Department of Anesthesiology, University of Pennsylvania Medical Center at Pittsburgh, and formerly Professor and Director of Clinical Research, Department of Anesthesiology, UTMSH, states:

I have worked with [the petitioner] for the past two years during which I have been able to appreciate his unique expertise in regional anesthesia. [The petitioner] was instrumental in the development of the regional anesthesia training program for our residents. This program under his leadership has become one of the most recognized in the United States. In addition to his educational excellence in teaching, he has proven to be an exceptional anesthesiologist and specialist in orthopedic pain management.

[The petitioner] has also significantly contributed to several international anesthesia symposiums as well as national and international presentation of his work, especially at several annual meetings of the American Society of Anesthesiology. His contribution to regional anesthesia via clinical research has been significant and contributed to a significant improvement in patient well-being and outcome, especially in the area of orthopedics.

Dr. [REDACTED] Professor of Anesthesiology, University of Texas Medical Branch at Galveston, credits the petitioner and Dr. [REDACTED] with developing an acclaimed anesthesia training program at UTMSH. He states: "Other anesthesiology programs are trying to adopt their program for their ambulatory surgery patients." Dr. [REDACTED] statement is confirmed by additional witness letters.

For example, Dr. [REDACTED] Associate Professor of Anesthesiology, University of Louisville Hospital, states:

[The petitioner] presented part of his research in the field of Regional Anesthesia [at the Annual Meeting of the American Society of Anesthesiologists (2000)]. Encouraged and interested by his presentation, I developed a strong interest in this relatively new, exciting and promising area of our specialty. During a visit to Houston, Texas... I had the opportunity to benefit directly from [the petitioner's] teaching abilities in Regional Anesthesia. After my return to Louisville, I started developing a Regional Anesthesia and Acute Pain Center. [The petitioner] has been instrumental

in the progress and development of this endeavor.

Dr. [REDACTED] Colonel, Medical Corps, Walter Reed Army Medical Center, and Anesthesiology Consultant to the Surgeon General of the Army, states that the petitioner is “a world-renowned expert in the specialized field of regional anesthesia.” He further states: “Recently, I conducted a cadaver lab on regional anesthesia and had my choice of the very finest instructors in the field. [The petitioner] was at the top of my list and I was not disappointed.... He has proven himself an invaluable clinician, researcher and educator.”

Dr. [REDACTED] Chief of Regional Anesthesia, Florida Surgical Center, and Associate Professor of Anesthesiology, University of Florida, College of Medicine, states that the petitioner has contributed significantly to issues involving the safe application of regional anesthesia techniques. He further states: “[The petitioner’s] innovative research on the application of peripheral nerve blocks, particularly in the elderly, has added greatly to this field which is still in its relative infancy.”

Dr. [REDACTED] Director of Regional Anesthesia, St. Luke’s-Roosevelt Hospital Center, and Associate Professor of Anesthesiology, Columbia University, College of Physicians and Surgeons, states:

The kind of research [the petitioner] has been conducting has significant impact on shaping trends in Anesthesiology and holds promise for pain-free and speedier recovery of many patients undergoing a wide variety of surgical procedures. His lectures at the national meetings have helped educate a sizable population of anesthesiologists whose previous training and exposure to regional anesthesia has been limited.

Dr. [REDACTED] Assistant Professor, Department of Anesthesiology, Duke University Medical Center, states:

[The petitioner] has unique skills in regional and cardiac anesthesiology, teaching, and research that have the ability to provide improved compassionate and economic outcomes. These skills have been demonstrated in his internationally recognized work and published in several prestigious journals.

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 petitioner’s work, but found 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 argues that the director used the standard for a higher classification, aliens of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. We agree with counsel that the director’s decision contains several erroneous references to the regulatory criteria for aliens of extraordinary ability. For example, pages three and four include a discussion about “nationally recognized prizes or awards for excellence in the field” and “participation... as a judge of the works of

others.” National prizes and judging experience, however, are not required for the classification sought by the petitioner. On page five the director states that citation of one’s work by others is not evidence of “widespread acclaim,” a standard not required for the instant classification. Page eight addresses the petitioner’s lack of membership in associations requiring “outstanding achievements of their members, as judged by recognized national experts.” By discussing the lack of evidence of “national recognition” or “widespread acclaim,” the director presented improper grounds for denial.

While the director subsequently goes on to discuss some of the evidence under the correct standard and even states that national acclaim is not required for the classification sought, the initial discussion indicates serious flaws in the director’s analysis and the application of an unacceptably restrictive standard. The director’s decision implies that a lack of evidence pertaining to a higher, separate visa classification was a consideration in the decision. In light of the preceding discussion of the evidence, we withdraw the director’s finding that the petitioner’s past record of achievement is not 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.

Upon careful consideration of the documentation submitted, we find that the petitioner has satisfied the guidelines published in *Matter of New York State Dept. of Transportation*. The record shows that the petitioner has earned a reputation as a leading expert in regional anesthesiology and that other prominent experts in his field view his research and teaching methods as particularly significant. Clearly, the benefits of this petitioner’s work are not tied to a single medical institution or a specific geographic region. The witness letters point toward a consensus throughout the field of anesthesiology that the petitioner’s achievements significantly distinguish him from others in the field. Leading experts from reputable medical institutions from throughout the United States regard this petitioner’s contributions as especially significant.

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 field of endeavor, rather than on the merits of the individual alien. That being said, the above testimony, and further evidence in the record, establishes that the medical community recognizes the significance of this petitioner’s work rather than simply the general importance of his profession. The benefit of retaining this alien’s services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has 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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.