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

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536



File: EAC 98 179 50669 Office: Vermont Service Center

Date: JUL 10 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)

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, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

The petitioner seeks classification as an employment-based immigrant 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 with an advanced degree. The director determined that the petitioner qualified 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.

On appeal, the petitioner asserted that her medical research skills were so unique that she would be able to serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

On March 19, 2002, the AAO affirmed the director's decision, concluding that the evidence failed to establish that the petitioner's research on the larynx had been sufficiently influential to justify waiving the labor certification process in the national interest.

On motion, the petitioner re-submits copies of documents contained in the file and contends that the evidence supported her eligibility for a national interest waiver.

The regulation at 8 C.F.R. § 103.5(a)(3) provides that a motion for reconsideration must state the reasons for reconsideration and be supported by applicable law or precedent decisions to establish that the previous decision incorrectly applied the law or Bureau policy. It must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The requirements for a petitioner to establish eligibility for a national interest waiver under section 203(b) of the Act, and as outlined in the precedent decision, *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm. 1998), were addressed in the March 19, 2002 decision of the AAO and will not be repeated here.

In its decision, the AAO reviewed the evidence in the file including several witness letters, one publication, and one award. It noted that the record failed to establish that the petitioner's research accomplishments had influenced her field as a whole. *See Matter of New York State Dept. of Transportation* at 219, n.6.

In her motion, the petitioner asserts that her skill and unique ability as researcher in identifying the morphology of the thyroarytenoid muscle resulting in the "Young Faculty Research Award" demonstrates her eligibility.<sup>1</sup> This evidence, as peer recognition for a significant achievement, would

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<sup>1</sup> We note that there is an unresolved question about whether the beneficiary earned the award individually or jointly with the other team members named on the American Laryngological Association document of record, which would affect any weight to be given this evidence.

represent only one evidentiary criterion for exceptional ability found at 8 C.F.R. § 204.5(k)(3)(ii)(F), a classification that normally requires a labor certification. In order to obtain a waiver of the labor certification requirement under this classification, the benefit that a petitioner presents to her field of endeavor must *greatly exceed* the "achievements and significant contributions" found in the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F). *Id.* at 218-219.

The petitioner also argues that there are no more forthcoming articles or awards because she is not working. She also states that there was a reluctance to publish because other scientists might "take the credit." We can only note that fear of others taking credit for one's work is not an acceptable basis for a national interest waiver and does little to further scientific inquiry in the field. Although the petitioner's employment status is unfortunate, it remains her burden of proof to show eligibility for a national interest waiver. The opportunity to establish that one's work had already been influential on the wider scientific community occurred at the time of filing the petition. In this case, that was June 1998. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner asserts that Dr. [REDACTED] name on the article contained in the file demonstrates the significance of her work and abilities. Although we do not dispute the petitioner's regard for Dr. [REDACTED] the record contains no evidence of his renown. Regardless, as noted in the AAO's decision, this article was not published until well after the filing date of the petition. As such, it cannot be considered as evidence of the petitioner's eligibility for a national interest waiver at the time of filing. Further, the eminence of a fellow author named on a scholarly article may possibly increase the level of interest it receives from others in the field, but does not automatically establish that any particular co-author has individually influenced the field to any significant degree. As noted in the AAO's decision, the Bureau gives more weight to the research community's reaction to scholarly articles, not to the act of publishing itself. This reaction is usually manifested by other independent researchers citing the article in their own publications. As noted in the AAO decision, the petitioner's article had not yet been published, much less widely cited by the petition's filing date.

Central to the petitioner's request for reconsideration is her claim that the AAO decision did not give more weight to the letters from Dr. [REDACTED], Dr. [REDACTED] and Dr. [REDACTED]. These doctors all work at the Mt. Sinai School of Medicine where the petitioner was employed. While their opinions certainly have value, as noted in the AAO decision, their statements do not show, first-hand, that the petitioner's work had already attracted significant attention outside the institution where she was employed at the time of filing the petition. Independent evidence that would have existed whether this petition was filed, such as heavy citation of published findings, is generally more persuasive than the statements of

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<sup>2</sup> The evidence does not confirm the petitioner's assertion that Dr. [REDACTED] was not her previous collaborator. The file contains a letter dated December 9, 1998 that was signed by Dr. [REDACTED] stating that he "first met [the petitioner] during a scientific collaboration, which was designed to study the complex anatomy and physiology of the larynx, the source of voice production."

witnesses selected by a petitioner.

The petitioner also challenges the AAO's finding that the petitioner's work in India did not garner any attention beyond her immediate colleagues. The petitioner explains that she practiced medicine there and didn't do much research. The petitioner then concedes that her work did not receive much attention beyond her immediate colleagues.

The petitioner has not established that the AAO decision of March 19, 2002 was incorrect based on the evidence of record at the time of the initial decision. A review of the record does not establish that the petitioner's past achievements have influenced the research community as a whole to any significant degree. 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. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(2) of the Act and the petition may not be approved.

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. Accordingly the previous decision of the AAO will be affirmed, and the petition will be denied.

**ORDER:** The AAO's decision of March 19, 2002 is affirmed. The petition is denied.