

**PUBLIC COPY**

**U.S. Department of Homeland Security**

**Bureau of Citizenship and Immigration Services**

Identify  
prevent  
invasion of

to

**B5**

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

**JUL 24 2003**

File: WAC 02 153 51920 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, 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 (AAO) 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 an assistant research scientist. At the time he filed the petition, the petitioner was a biomedical research assistant at the University of Arizona. 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 from the Shanghai Second Medical University in June 1998. 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.

As expressed by the petitioner on appeal,<sup>1</sup> we note that the director's decision contains erroneous references to the criteria for aliens of extraordinary ability under section 203(b)(1)(A) and outstanding professors and researchers under section 203(b)(1)(B) of the Act. In order to obtain a waiver of the labor certification requirement in the national interest, one need not establish

---

<sup>1</sup> The petitioner filed the appeal. Counsel who represented the petitioner on the initial petition will be sent a copy of this decision, as no withdrawal of counsel appears on record.

widespread national acclaim or that one has participated on a panel, or individually, as a judge of the work of others in the same or in an allied field. While the director subsequently discusses 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 that 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 does not contest that the petitioner's field of endeavor in biomedical and public health research has substantial intrinsic merit or that the proposed benefits of his work, improved understanding of the prevention of *Giardia* and other parasitic infections, would be national in scope. It remains to determine whether the petitioner has established that he 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 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. *Matter of New York State Dept. of Transportation*, at 219, n.6.

Along with educational credentials and witness testimonials, the record contains copies of three published articles of which the petitioner is a co-author and one in which he is the lead author. This article was published in April 2002, in a new scholarly journal called *Eukaryotic Cell*.<sup>2</sup> The record also contains a copy of the petitioner's work that was presented at a conference in Japan in 1998. Although the petitioner initially submitted a list of publications that reference additional materials that he has authored, the record does not contain any primary documentary evidence of this work. We note that our review is limited to the material presented in English, as the petitioner did not include complete certified translations of some of the Chinese documents as required by 8 C.F.R. § 103.2(b)(2). We also note that the record contains no evidence indicating that publishing or presenting one's 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 he, and his immediate circle of colleagues consider to be critical, but which other researchers do not view as particularly significant, then the petitioner's influence on the wider scientific community has not been established. Frequent citation by independent researchers, on the other hand, would demonstrate broader interest in, and reliance on, the petitioner's work. In this regard, we do not agree with the director's finding that printed citations to a petitioner's work are insignificant.

On appeal, the petitioner submits a citation report which indicates that his April 2002 article in

---

<sup>2</sup> The article is entitled; "The Two Nuclei of *Giardia* Each have Complete Copies of the Genome and Are Partitioned Equationally at Cytokinesis."

*Eukaryotic Cell* has been cited one time by an independent researcher. We note that this citation did not appear until January 2003, well after the petition's filing date of April 5, 2002. A petitioner must establish eligibility as of the date of filing the petition. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner also submits a citation report possibly indicating that other researchers may have cited some of his other articles. This report, however, is not accompanied by a list of the dates and titles of the articles that have cited the petitioner's work, so it is difficult to verify the petitioner's assertion on appeal that he has been cited "multiple times."<sup>3</sup> We cannot conclude that the petitioner's citation history establishes that he has already influenced his field to any significant degree.

The petitioner also submits several reference letters in support of his petition. Professor [REDACTED] is a professor of ecology and evolutionary biology at the University of Arizona. He is also the chairman of the graduate interdisciplinary program. In Professor [REDACTED]'s first letter, he states that the petitioner joined the program in January 2000. The program's purpose is "to focus on the most important genetic issues facing our society such as genetic disease, infectious disease, genetic screening and counseling, etc." He explains that the petitioner's research concentrates on the waterborne infectious disease known as *Giardia*, and that his expertise in using the fluorescence in situ hybridization (FISH) technique is especially useful because the petitioner was able to "investigate the distribution of genes between the two nuclei in each cell, and how the two are inherited by the daughter cells during cell division." Professor [REDACTED] states:

[The petitioner's] research proved that when a *Giardia* cell divides, each daughter cell receives one copy of each nucleus. Moreover, the nuclei maintain their left: right asymmetry. This highly significant discovery has shed important light on how *Giardia* genes are inherited and on how the several sets of *Giardia* genes maintain their similarity. These discoveries will be published in the first issue of an important new scientific journal, *Eukaryotic Cell*, where they will be available to other researchers throughout the United States.

(Original emphasis).

Professor [REDACTED] adds that the petitioner is also studying the genetic code of the human immune system in order to better understand how humans develop immunity to *Giardia* and other infections.

Professor [REDACTED] submitted a second letter addressing some of the concerns that the director raised in his request for evidence. Professor [REDACTED] asserts that the petitioner's skill in using the FISH technique is significantly above average and that he has made important improvements. He also argues that the acceptance of the petitioner's article for publication by the new journal *Eukaryotic Cell*, shows that the reviewers believe its impact would be apparent. We do not agree that the mere acceptance for publication by a new scholarly journal automatically shows that the petitioner has already influenced his field. As noted previously, the petitioner's citation report submitted on appeal shows only one cite of this article in January 2003.

---

<sup>3</sup> We note that two of the journals listed on the citation report do not correspond to the petitioner's previously submitted list of journals that have published his articles.

Professor [REDACTED] is an associate professor of infectious disease and microbiology/immunology at the University of Arizona College of Medicine. He was the petitioner's research advisor from January 2000 through October 2001. Professor [REDACTED] also praises the petitioner's skills in using the FISH technique to conduct *Giardia* research. He expresses confidence that the petitioner's article to be published in *Eukaryotic Cell* will produce a better understanding of this organism.

[REDACTED] a vice president for research and graduate studies at the University of Arizona, provides similar information describing the petitioner's involvement in the *Giardia* research project and the importance of the public health threat from this infection. He also cites the publication of the petitioner's article in *Eukaryotic Cell* as significant recognition of the petitioner's expertise that other scientists could adapt to their own research. We note that there is no indication from Mr. [REDACTED] letter how his own expertise enables him to offer an evaluation of the petitioner's research or that he has information about the petitioner's work that is not contained in the file.

As discussed previously, the importance of the petitioner's field of research is not at issue, but rather whether this petitioner's contributions to the field have already had such unusual significance and influence so as to merit the special benefit of a national interest waiver. While Professor [REDACTED] and Mr. [REDACTED] confidence in the impact of the petitioner's work may be well founded, prospective benefits to the national interest are based upon past achievements and not upon the promise of the future impact of a petitioner's particular findings expressed in a specific journal.

[REDACTED] is an associate professor in the biological science department at the University of Texas in El Paso. Professor [REDACTED] research concentrates on the study of host parasitic interactions in the intestine. He states that his laboratory is also part of a multi-institutional collaboration "to sequence the entire genome of *Giardia lamblia*." Professor [REDACTED] states that he is familiar with the petitioner's research. In his first letter, Professor [REDACTED] explains:

[The petitioner] has utilized a method for targeting genes within *Giardia* cellular nuclei. This method, known as the FISH technique, allows researchers to target the original position of genes within an individual cell. In fact, [the petitioner's] research has advanced the use of the FISH technique, which allows scientists across the board to use this powerful tool to do further in-depth investigation of *Giardia*.

\*

\*

\*

[The petitioner] has made significant progress in the research. It is my understanding that his paper will be published in a national scientific journal so that all the researchers in *Giardia* field could share his FISH technology and research findings.

Professor [REDACTED] second letter was submitted in November 2002. He reiterates his belief that the petitioner's work is national in scope and has intrinsic value. He states that the petitioner's work in investigating the *Giardia* genome and human resistance to the disease is extremely important and

explains that the petitioner's research showed that *Giardia* has a complete set of genome in each of its two nuclei and these two nuclei enters two daughter cells independently when the parasite is in the process of propagation. Professor [REDACTED] does not indicate that the petitioner's results have specifically influenced his own research or that the petitioner's modifications to the FISH technique as set forth in his article in *Eukaryotic Cell* have already influenced other researchers' projects.

[REDACTED] a president of Biomedical Diagnostics & Research, Inc. in Tucson, Arizona, indicates that her company develops new techniques for disease diagnosis. She also submitted two letters in support of the petition. Dr. [REDACTED] states that she is only familiar with the petitioner's work through a review of his research papers. In her second letter, she states that the petitioner described in his paper how he modified the FISH technique to study the *Giardia lamblia*. She characterizes him as a talented researcher and asserts that his "expertise, along with his research accomplishments to date" distinguish him to a substantially greater degree than average researchers in the field. Like Professor [REDACTED] Dr. [REDACTED] assertions do not indicate how the petitioner's improved FISH technique research findings, as expressed in his *Eukaryotic Cell* article, have specifically impacted her own research or influenced other biomedical researchers.

With the exception of Professor [REDACTED] and Dr. [REDACTED] we note that all of the testimonials submitted in support of petition appear to be from individuals from the petitioner's present educational institution. Letters from those with this kind of connection 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 this petition were filed or not, would be more persuasive than the subjective statements from individuals solicited by the petitioner.

The petitioner's documentation of his achievements and projections of future contributions may support the argument that the petitioner has exceptional ability in biomedical research related to *Giardia*, but do not overcome the statutory mandate of a labor certification for this occupation. From the evidence and arguments presented, we cannot conclude that the benefit that the petitioner presents to his field "greatly exceeds the 'achievements and significant contributions' " contemplated in 8 C.F.R. 204.5(k)(3)(ii)(F) for an alien of exceptional ability. *Matter of New York State Dept. of Transportation*, at 218. 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.

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.