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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

JUL 0 3 2003

File: EAC 02 072 51026 Office: VERMONT 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: SELF-REPRESENTED

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, Vermont 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 an alien of exceptional ability and/or a member of the professions holding an advanced degree. As indicated on his Immigrant Petition for Alien Worker, Form I-140, the petitioner seeks employment as a research scientist.

In his initial submission the petitioner refers to several of the criteria pertaining to aliens of extraordinary ability. This criteria is inapplicable to aliens, such as the petitioner, who seeks classification as an alien of exceptional ability and/or a member of the professions holding an advanced degree.

The petitioner asserts that an exemption from the requirement of a job offer, and thus a labor certification, is in the national interest of the United States. The director found 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. --
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> (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.
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> (B) Waiver of Job Offer. -- The Attorney General may, when he 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 director did not contest 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 215 (Comm. 1998), 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 that 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 petitioner submits documentation pertaining to his work at the American Health Foundation on cancer research. This background documentation establishes the intrinsic merit and national scope of the petitioner's work but does not establish why his work as a researcher serves the national interest to a greater extent than would the efforts of another fully qualified researcher.

The petitioner submits several witness letters as evidence of the importance of his work. The petitioner's supervisor, Dr [redacted] Director of Carcinogenesis and Molecular Epidemiology at the American Health Foundation, states:

> Briefly, I have been working in the cancer prevention and early detection, and carcinogenesis research for more than 20 years...My laboratory is well known in the field of DNA damage detection and their roles in cancer development, cancer chemoprevention. My lab is currently engaged in several important research projects funded by the NCI and the Health Effects Institute (HEI).

* * *

> In the past three years in my laboratory, [the petitioner] has been, and I truly believe he will continue to be, a key researcher in our cancer center making very important contributions to [our] projects...[The petitioner] plays a critical role in planning, coordinating and conducting the major experiments. As the result of [his] hard work in these projects, we have several scientific papers published or to be published in professional cancer journals, and our results have been presented in major academic meetings, such as the American Chemical Society and American Association for Cancer Research.
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> [The petitioner] is an essential component of the laboratory in terms of determining the scientific programs that we undertake, preparing grant applications for competitive review, presenting our results at important meetings and by publication in major scientific journals, and training of young scientists.

Other researchers at the American Health Foundation, and individuals who previously collaborated with the petitioner offer letters of support, as do former professors. These individuals, for the most part, discuss the same projects described above in Dr [redacted] letter, but they also mention other activities the petitioner has undertaken. For example [redacted] from Harvard University notes that he met the petitioner on several occasions while attending the Symposium of American Association for Cancer Research and the meeting of the American Chemical Society and as a result found a "great opportunity to collaborate in the field of cancer research." Mr [redacted] further states:

> By combining the forces from our two research groups, we expect to accomplish the goals of quantifying the DNA damage from different carcinogens, mapping them at the DNA sequence level, and identifying the post-damage targets which are very important Cdks dependent regulators for cell growth and division. These studies will help us understand the carcinogenesis mechanism of environmental of [sic] physiological DNA damage.

Many of the witnesses emphasize that the petitioner is an indispensable part of projects underway at the American Health Foundation, but do not explain why the petitioner's continued involvement is contingent upon his receiving permanent immigration benefits. At the time of filing, the petitioner had an approved H1-B nonimmigrant visa valid until January 1, 2005, which remained unaffected by the outcome of this petition.

The letters offer no direct evidence that researchers lacking close ties with the petitioner have viewed the petitioner's work as being especially significant nor do they establish that the wider scientific community has taken notice specifically of the petitioner's work.

The petitioner submits evidence of publication in scientific journals in both the United States and in China, as well as papers presented at international conferences and symposia. We note that publication, by itself, is not a strong indication of impact, because the act of publishing a book or an article does not compel others to read it or absorb its influence. Numerous independent

citations would provide firm evidence that others in the field have been influenced by the petitioner's work. Alternatively, if there are few or no citations to the work, it suggests that the work has gone largely unnoticed by the larger community and it is reasonable to question how much the petitioner's work has affected researchers outside of the petitioner's own group of collaborators.

The petitioner submits evidence to establish the citation rate of his article, *Crystallization under microgravity of acidic phospholipase A from venom of Agkistrodon halys Pallas*, published in the October 1996 volume of the *Journal of Crystal Growth*. We note a total of nine cites to the petitioner's article, of which, three are self-cites by the petitioner and C. Bi, a co-author of the petitioner's article. Based upon the evidence of 6 cites to one article, the petitioner has not established that his published articles are heavily cited by other researchers, nor has he otherwise shown that his individual work has attracted significant attention outside of his own group of mentors and colleagues.

While the director's decision mentions requests for reprint, we find no such evidence in the record. Even if such reprint requests were contained in the record, we would not find them to be persuasive. While reprint requests may establish that a person has an interest in reading the petitioner's article, they do not show that the person subsequently (after actually reading the article) found the article to be especially important to the field.

The petitioner submits evidence of his membership in the American Association for the Advancement of Science and the American Chemical Society but offers no evidence of the requirements for membership or statements that membership is contingent upon important contributions to his field of research. Therefore, while notable, membership in these organizations does not establish the petitioner's eligibility for a waiver of the labor certification.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner has submitted a personal statement and additional documentation, most of which duplicates material already submitted with the initial filing, or else provides peripheral information regarding the initial submission.

The original submission showed only the reaction of coworkers at the American Health Foundation and former colleagues and professors, with no direct evidence that researchers lacking close ties with the petitioner have viewed his work as being especially significant. The four witness letters submitted in response to the director's request do not establish wider recognition. Of the four letters written in response to the director's request, two letters are from coworkers at the American Health Foundation, including a second letter written by Dr[redacted] The remaining witness letters are from fellow collaborators of the petitioner. One witness, Dr.[redacted] of the University of Medicine and Dentistry of New Jersey, has collaborated with the petitioner on a joint project. The remaining witness, Dr. [redacted] Director of the Cancer Epidemiology Program at Mount Sinai School of Medicine, states:

> Because our research interests overlap, I follow the work of [the petitioner] and his colleagues closely. They have made important contributions to our understanding of

> the role of diet and environmental exposures in cancer etiology, and [the petitioner's] ongoing work will no doubt contribute extremely important findings to the field of cancer research. During his short tenure in the United States, he has been extremely productive, with publications in scientific journals and presentations at national and international meetings.

The most independent of all of the petitioner's witnesses, Dr [redacted] offers no specific comment on how the petitioner's work has affected researchers outside of the petitioner's immediate circle of colleagues.

The petitioner also submits evidence that was not in existence at the time of filing or took place subsequent to the filing of the petition. This evidence includes a journal article published in 2002, a poster session in the April 2002 annual meeting of the American Association for Cancer Research, and an invitation to speak at the September 2002 annual meeting of the European Environmental Mutagen Society. As the petitioner must establish eligibility at the time of filing, this evidence cannot be used to retroactively establish eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Bureau held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

In addition, the petitioner also submits a letter dated April 22, 2002, to show his acceptance as a member of the New York Academy of Sciences. For the reasons stated above, evidence of membership into the academy cannot assist in establishing the petitioner's eligibility at the time of filing. In addition, the petitioner offers no evidence to establish that acceptance into this academy denotes a substantial accomplishment by the petitioner that is above and beyond almost all others in his field.

After determining that the petitioner had failed to establish that a waiver of the labor certification would be in the national interest, the director denied the petition. The director specifically noted that the record does not contain evidence to establish that the national interest in retaining the petitioner on his current projects overcomes the national interest of maintaining the normal labor certification and job offer process.

On appeal, the petitioner argues his belief that the information contained in the record is sufficient to justify a waiver of the labor certification requirements. The petitioner submits information about the Institute for Cancer Prevention, two witness letters, a new publication, and two research abstracts. As the publication and research abstracts were all written and/or published after the date of filing the petition, we will not discuss them any further on appeal.

The letters submitted on appeal contain no direct evidence that the wider education community has taken specific notice of the petitioner's work. The first witness letter, written by Dr [redacted] President of the Institute for Cancer Prevention (formerly American Health Foundation Cancer Center), states:

> As you may have known, American Health Foundation Cancer Center...is a world-renowned cancer research organization. Through years of efforts of our

> researchers, the Institute has made many milestone achievements in cancer prevention in the world. [The petitioner]...is one of the most outstanding researchers in the team of Dr. [redacted] Dr [redacted] is a leading expert in our Mechanism of Carcinogenesis Program with an international reputation in his research areas. Using state-of-the-art techniques and relying on his extraordinary dedication, [the petitioner] has made critical contributions to studies of detecting and characterizing DNA damage and molecular mechanisms of DNA repair and mutagenesis. His superb skills, professional expertise and initiatives make him a very valuable member of the team. It is essential to keep [the petitioner] as our permanent member to challenge the most difficult problems in the ongoing projects.

Dr. [redacted] offers no specific comment on how the petitioner's work has affected researchers outside of the petitioner's own group of collaborators. We note that while Dr [redacted] praises the work of the petitioner, it is Dr [redacted] that is considered to be a "leading expert" with an "international reputation," not the petitioner.

Dr [redacted] letter on appeal states:

> I could not concur with your statement that the citation and reprint of [the petitioner's] publications are merely the indication of the awareness of our work. The citation and reprint request not only indicate the awareness of our work, they also represent the significance and importance of our research results and discoveries. Our research group, as a leading lab in the DNA damage detection studies in the world, has accomplished some pioneering works and reached some important conclusions and theories in the field. Thus, our papers are cited widely by international scholars, and our results have had broad influences on the research works of our colleagues around the world. The citations of our works have demonstrated that our work is of paramount importance.
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> In order for us to maintain the leading position in our research field internationally, it is important to keep [the petitioner]. It would be a great loss and detrimental to the success of our research project if we could not keep [the petitioner] working for us. His role in our group is irreplaceable and essential. The fact is that the projects will have to be suspended without his presence and contributions.

Dr [redacted] asserts that the group's papers are widely cited by international scholars. As we noted earlier in this decision, six citations of one article, do not demonstrate a significant impact on the field. The petitioner has not submitted any additional evidence to show that the citation rate has increased. As such, D [redacted] assertions as to the "broad influence" of their research are not supported by direct evidence in the record.

Neither witness indicates that the petitioner or his work has achieved a reputation beyond that of

coworkers and former colleagues, or that the petitioner has had, or will have, a greater positive impact on the United States than another would have while working on the same projects.

Both Dr[redacted] and Dr.[redacted] indicate the necessity of retaining the petitioner at the Institute, but neither witness addresses the issue of why the labor certification process, normally mandated by law for the visa classification sought, is inappropriate in this case. The denial of the waiver request is by no means tantamount to the petitioner's unconditional expulsion from the United States. The dismissal of this appeal has no effect on the petitioner's lawful nonimmigrant status, nor is it in any way prejudicial toward any future application for labor certification or any petition based on such certification. This decision does not mean that the petitioner must not be allowed to work in the United States; it means only that the petitioner has not demonstrated that he qualifies for the special benefit of an exemption from a requirement, which, by law, normally attaches to the visa classification sought.

Additionally, the implication that no one else possesses the petitioner's fundamental qualifications, which are truly essential for the duties described, suggests that a labor certification could be readily obtained, in the event that the petitioner's employer is willing to employ him permanently.

The record amply establishes the overall importance of cancer research and that Dr[redacted] laboratory has made strides in this area. The available evidence, however, includes no independent support for the assertion that the petitioner's specific contributions in this area have outweighed those of other researchers in the specialty. It is not sufficient for the petitioner and his witnesses to simply describe the work undertaken by the petitioner and then to state that it has had an impact. Instead, the petitioner must demonstrate that his individual contribution has had a disproportionately greater effect in cancer research, as compared with the efforts of other researchers in his field.

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.