

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

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
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Washington, D.C. 20536

File: EAC 01 225 53056 Office: VERMONT SERVICE CENTER

Date: MAR 17 2003

IN RE: Petitioner: [REDACTED]
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)

ON BEHALF OF PETITIONER:

[REDACTED]

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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

MAR 17 2003 - 0135203

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 an alien of exceptional ability. The petitioner seeks employment as a neuroimmunology consultant. 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 does not qualify for classification as an alien of exceptional ability, or for a national interest waiver of the job offer requirement.

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) . . . 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.

Counsel describes the petitioner's work:

In brief, [the petitioner] is a pioneer in the field of neuroimmunology. This field investigates the mechanisms by which the brain can influence immune responses and inflammatory processes in the body through mind-body molecular communication channels. [The petitioner] has identified numerous internal factors . . . as well as external factors . . . that affect the body's processes, both positively and negatively. His work has resulted, thus far, in tremendous improvement in heretofore-untreatable life-threatening ailments, as well as the overall improvement of the lives of numerous gravely ill individuals.

[The petitioner] is an expert in this field. His exceptional skills have been recognized by [REDACTED] . . . [in whose] expert opinion, [the petitioner] alone is capable of identifying the components of materials that will be studied for

their conductivity and their effects on the human body. The result of these experiments is expected to initiate a truly revolutionary approach to the manufacture and selection of clothing and other materials that we find in our immediate environment. The implications for all of our lives [are] extraordinary.

An analogy may be made to the recent findings that certain music can improve brain functioning – a classic music concert featuring the music of Mozart, for example, has been found to stimulate brain functioning, with a lasting effect on the ability of children to function at higher levels in school. While the effect that music has on the brain has recently been proven, the effect of other environmental factors, such as clothing, bed linens, materials found in homes and cars, has on the health of the individual has yet to be studied.¹

The experiments proposed by [the petitioner] will do just that; study the effect that particular environmental factors have on the health of the individual.

The first issue to be decided is whether the petitioner qualifies for the classification sought. The petitioner does not claim to be a member of the professions holding an advanced degree. The petitioner claims, instead, to qualify as an alien of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(3) states, in pertinent part:

(ii) To show that the alien is an alien of exceptional ability in the sciences, arts, or business, the petition must be accompanied by at least three of the following:

(A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

¹ The claim that simply listening to classical music improves cognitive abilities, the so-called “Mozart Effect,” is not universally regarded as “proven.” See, for example, “The Mystery of the Mozart Effect: Failure to Replicate,” in *Psychological Science*, July 1999, 366-369. Counsel’s assertion that “the effect of other environmental factors . . . on the health of the individual has yet to be studied” appears to be an oversimplification, failing for instance to take into account considerable research regarding environmental allergens and asthma triggers.

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

(iii) If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.

Counsel asserts that "[t]he evidence in this case does not fit squarely into the various categories listed" in the regulations. Therefore, the petitioner relies on the "comparable evidence" clause at 8 C.F.R. § 204.5(k)(3)(iii). The burden is on the petitioner to establish that the regulatory standards do not readily apply to his occupation; it cannot suffice for counsel simply to declare the standards to be inapplicable.

Furthermore, we note that the regulation at 8 C.F.R. 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered." Therefore, the comparable evidence offered by the petitioner must establish a degree of expertise significantly above that ordinarily encountered in the field. The comparable evidence clause does not entitle the petitioner to an entirely different or more lenient standard of evidence.

Instead of the specified regulatory standards, counsel divides the petitioner's evidence into three alternative categories. The first category is "evidence of the petitioner's original scientific contributions to the field of neuroimmunology," consisting of a letter from Professor ██████████ of Loma Linda University School of Medicine. The second category consists of three "testimonial letters by clients whose grave health situations improved dramatically after the petitioner began working with them." Finally, the petitioner submits "evidence that the media is interested in profiling [the petitioner]," in the form of a letter from ██████████ executive producer of *Health Choices*.

As described above, the petitioner's initial submission consists almost entirely of witness letters rather than objective documentation. These letters will be discussed in detail further below. The regulatory standards set forth at 8 C.F.R. § 204.5(k)(3)(ii) describe various types of objective, independent documentation, such as academic records, salary records, and documentation of formal recognition. There is no indication in the regulation that subjective witness letters can entirely replace the objective documentation contemplated by the regulation. The regulation requires at least three different types of evidence, which is not comparable to submitting letters that contain three different kinds of claims. Five letters cannot establish exceptional ability, particularly when four of the five witnesses apparently have no training in the field in which the petitioner claims exceptional ability.

Prof. Felten's letter (discussed further below) is limited to a description of a series of experiments that he plans to undertake with the petitioner. Plans for future experiments are not in any sense evidence of exceptional ability. At best, the three letters regarding the petitioner's treatment of patients shows that the petitioner has been involved in the treatment of three patients

who were already under the care of other physicians and who were satisfied with the petitioner's work. Whatever the extent of the petitioner's responsibility for the improvement in the patients' condition, these anecdotal reports are not strong evidence of exceptional ability. Most medical practitioners could probably identify three patients whose condition improved under their care. Furthermore, without some kind of baseline for comparison between the petitioner and other practitioners of "energetic medicine," there is no means in the record to determine whether the petitioner's abilities represent a level of expertise significantly above what is normally encountered in the field. Indeed, the record offers only the most vague indication of what the petitioner's field is.

Gary Nenner, executive producer of *Health Choices*, states:

Health Choices is a Series for Wisdom Television and Public Television that explores various options for health and medical treatment. For one of our programs, we recently interviewed [the petitioner] about his energy healing practice and filmed his energy healing session with [REDACTED], a woman who has been battling cancer for many years. [REDACTED] has been going for energy healing treatments with [the petitioner] over the past few months in conjunction with chemotherapy and other treatments. We will be monitoring [REDACTED] progress over the next few months for possible inclusion in our series.

[REDACTED] offers no indication that the petitioner was selected for the program because of exceptional ability as a provider of "energy healing treatments." While this program, if it ever aired, would have provided considerable exposure for the petitioner, it is not *prima facie* evidence of exceptional ability.

The director instructed the petitioner to submit "independent, contemporaneous, documentary" evidence to establish exceptional ability. In response, the petitioner has submitted three more witness letters, and background documentation regarding Prof. [REDACTED]. This documentation carries no weight because the issue in contention is not Prof. [REDACTED] reputation or credentials, but rather the beneficiary's abilities in the field. If anything, this background documentation simply illustrates that an individual accomplished in the field of neuroimmunology can amass a substantial quantity of objective documentation.

The director denied the petition, stating that the petitioner has not established exceptional ability. On appeal, the petitioner attempts to address five of the six regulatory criteria set forth at 8 C.F.R. § 204.5(k)(3)(ii). Counsel does not explain why, if the petitioner is supposedly able to meet five of these criteria, counsel had initially stated that these same criteria were not applicable to the petitioner's field.

Evidence of membership in professional associations.

The petitioner submits documentation of his membership in the American Holistic Health Association (AHHA). This documentation does not show that the petitioner was already a member

when he filed the petition; the membership statement was printed on March 20, 2002, days before the filing of the appeal. If the petitioner became a member after the petition's filing date, in order to satisfy this regulation, his action cannot retroactively contribute toward a finding of eligibility. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (now the Bureau) held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The petitioner submits information from AHHA's web site, <http://www.ahha.org>, showing a link to "AHHA Membership Options." According to AHHA, general membership in AHHA is "open to any individual or organization in the United States" and practitioner membership is "open to healthcare practitioners of any established modality, who deliver care with the holistic modality." It is not clear from the documentation submitted whether the petitioner is a general member or a practitioner member. Regarding its practitioner members, AHHA's web site states:

AHHA does not make value judgments about these practitioners' training or credentials, and while each has submitted a signed application attesting to his/her training, AHHA does not verify their training or legal authorization to practice. In listing these practitioners, AHHA does not endorse, warrant, or in any way guarantee the quality, effectiveness or safety of their work.

From the above disclaimer, it is clear that AHHA makes no effort to verify the credentials of its practitioner members or the safety or validity of their treatments. Therefore, there is no basis to conclude that membership in such an organization is, on its face, evidence of exceptional ability. It does not require unusual expertise in one's field to pay a membership fee to an organization that will accept anyone in the United States as a member.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.

The petitioner submits copies of diplomas from the International Centre of Experimental Parapsychology and from the National Association for Medical Parapsychology and Alternative Diagnostics and Treatment Techniques, both in Russia. These documents do not reflect several years of study as would be the case with a college or university degree. The diplomas indicate that the petitioner has completed several courses, but do not specify the time frame or credit hours earned. Both diplomas mention an entity called "Black Lotos," which one diploma identifies as a "Temple." One diploma is dated October 12, 1991; the other is dated December 30, 1991. The closeness of the dates suggests that the courses ran over weeks or months rather than representing degree-level education.

The petitioner's AHHA member description states that he is "[c]ertified by the National Association for Medical Parapsychology and Alternative Diagnostics and Treatment Techniques." This indicates that the petitioner and/or AHHA consider the diplomas from those entities not as degrees, but rather as occupational certifications, which are addressed by another criterion:

A license to practice the profession or certification for a particular profession or occupation.

The petitioner submits documentation of certification by the Medical Association of Kamont, as well as the two diplomas listed above. While the record offers minimal description of these certifications, they appear to fall within the scope of this criterion. The absence of further information about these certifying entities raises a relevant point. If certification is required to practice "energy healing" in Russia, then every practicing healer in Russia has such certification. Holding a required certification does not demonstrate expertise substantially above what is normally encountered in the field, because the individuals normally encountered in such a field are all certified. The record does not reveal what certification opportunities exist in the United States, where the petitioner has resided since his January 1992 arrival.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.

The petitioner submits letters from several persons whom he has treated from 1989 onward, and a translated letter dated March 23, 1991, indicating that the petitioner "is indeed working in Medical Association 'KAMONT' as a Peoples Healer." This material demonstrates that the petitioner has been active in the field for over ten years.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The petitioner submits four witness letters. Such letters, solicited for the purpose of supporting the appeal, from witnesses selected by the petitioner, cannot carry the same weight as evidence of formal recognition that took place independently of the filing of the petition. Only two of these letters offer any new information about the petitioner. One letter offered on appeal is a third submission of ██████████ original letter. As stated above, ██████████ wish to investigate an as-yet-unsupported hypothesis is not recognition of exceptional ability. Another letter does not even mention the petitioner at all. ██████████ self-described as a "healer" at Casa Alma Retreat Center, states that "the best evidence a healer would be able to present of his success would be testimonials of recovery from clients." ██████████ adds that "formal in-depth research studies are typically not conducted in the same manner as traditional scientific research done within the medical science field." She does not explain why the petitioner's type of healing is not, or should not be, subject to the same rigorous standards of evidence and investigation that apply to science-based medicine used to treat the same disorders. This letter appears to have been submitted primarily to justify the submission of anecdotal testimonial letters.

██████████ chief of Integrative Medicine at Memorial Sloan-Kettering Cancer Center, states “I am interested in studying the possibility that [the petitioner] may be able to help patients with cancer. I would like to try and obtain verifiable data concerning his unusual abilities.” This letter is not in any way evidence of recognition for achievements, and it hints at an existing lack of “verifiable data.” ██████████ states that the petitioner’s “success with other patients is remarkable,” but he bases this remark on “testimonials from patients and two physicians” rather than any first-hand familiarity with the petitioner’s work.

██████████ describes the petitioner’s work with a patient who has been quadriplegic for decades following a swimming accident. ██████████ states that the petitioner has helped the patient to develop “muscle mass and tone in areas of significant atrophy,” and “has achieved results that are undocumented for quadriplegics.” ██████████ states that he is helping the petitioner to prepare an article “for submission to interested medical journals.” To date, there is no evidence that the petitioner’s work has attracted significant notice except among physicians who are treating the petitioner’s clients. Also, the record shows that the petitioner did not begin working with this patient until January 2002, several months after the petition’s July 2001 filing date. Thus, even in the best light, this letter cannot show recognition for achievements or significant contributions as of the filing date.

Based on the foregoing, the petitioner has not satisfactorily established that he qualifies as an alien of exceptional ability. 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 the pertinent 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 [now the Bureau] 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.

The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The record does not contain this document, and therefore, by regulation, the petitioner has not properly applied for a waiver of the job offer requirement. The director failed to mention this deficiency, either in the request for evidence or in the subsequent denial. Even then, the submission of Form ETA-750B would not render the waiver approvable.

Counsel states that a waiver is in order because the petitioner's "scientific capabilities are highly unique, important, and virtually irreplaceable." Counsel asserts that "a search for a U.S. worker who can perform this work would be fruitless" and "the delay which would result from filing a labor certification would be harmful to our nation." These arguments are not persuasive. Indeed, a labor certification can only be approved if the search for a qualified U.S. worker is "fruitless." A fundamental purpose of labor certification is to establish that such workers are unavailable. With regard to any delays arising from the labor certification process, the regulation at 8 C.F.R. § 214.2(h)(16)(i) allows an alien to enter the U.S. as an H-1B nonimmigrant while an application for labor certification is pending. While a variety of factors may have a bearing on each individual case, an application for labor certification would not automatically prohibit or delay an alien's continued employment.

The petitioner describes his work in an introductory letter:

I am a special consultant in the area of neuroimmunology. The field of neuroimmunology investigates the mechanisms by which the brain can influence immune responses and inflammatory processes in the body through mind-body molecular communication channels. The brain accepts stimuli from both internal and external sources, and processes this information, which affects the body in either a positive or negative way, depending upon the perceived stimulus.

Specifically, I work with clients to identify their ailments; then identify the particular stimulus/stimuli that are negatively affecting the individual's internal and external processes; finally, I alter the stimulus itself, or the body's response to the stimulus, in order to change the effect that the stimulus has on the brain. The

goal of my work is to enhance the body's immune response to the stimulus, and curtail the course of disease.

In addition to identifying internal factors affecting health, and proving my ability to increase immunological responses which result in healing, I alone have identified numerous *external* triggers of illness, which represent my own unique contribution to the field of neuroimmunology. Specifically, I have identified materials and other factors that harm the body through their proximity to the person. . . .

Examples of external triggers of illness include environmental factors such as the materials one wears, as well as the bed linens, blankets and materials used on furniture, and even the metals and other materials found in the car one drives. These external materials all possess various electromagnetic conductivity of these materials fields which act through neural signaling to the brain to influence the nervous system's resultant regulatory control of immune responses and inflammatory responses.

(Emphasis in original.) The petitioner states that he has used his skills "to identify and alter the course of a variety of life-threatening ailments including stage IV breast cancer, various stages of paralysis, ulcers, gangrene" and other ailments. The petitioner claims "[i]n addition to stopping the progression of the disease, my treatments have significantly reduced the presence of disease."

The petitioner states that he intends eventually to "supervise the manufacture of clothing and other materials which will benefit the health of the American population."

The petitioner has not shown that he or anyone else has published even one article in a peer-reviewed scientific journal to show that nerve conductivity is appreciably affected by clothing, automobiles, or any other ambient materials that an average person is likely to encounter. Notwithstanding ██████████'s assertion that alternative healing modalities are entitled to a separate standard of proof and evidence, the above claims would seem to be readily amenable to empirical verification or falsification. If, on the other hand, such a claim is not testable, then there is no factual basis for making the claim.

As noted above, the petitioner's claim relies almost entirely on witness letters (along with background documentation that does not mention the petitioner). ██████████ states:

[The petitioner] has presented me with a series of proposed experiments in the area of environmental engineering, with the potential to profoundly advance the field of neuroimmunology. We have discussed these experiments, and I feel that they have excellent potential for the generation of important scientific information, as well as the potential for commercial development. Specifically, these experiments involve assessment of molecular and cellular aspects of immune responses and inflammatory responses to somatosensory contact with a variety of fabrics and materials. . . . We will test the general hypothesis that the

distinct profile of somatosensory stimulation plus the electromagnetic conductivity of these materials will act through sensory neural signaling to the brain, to influence the nervous system's resultant regulatory control of immune responses and inflammatory responses. We believe that materials with which the skin and its sensory receptors are in contact for many hours every day may stimulate patterns of sensory messages to the brain that are every bit as powerful as visual, auditory, and olfactory stimuli, already shown to exert a profound influence on immune responses and inflammatory responses.

If this hypothesis is substantiated by our proposed experiments, it certainly would have a profound impact both scientifically and commercially. Testing and engineering fabrics to optimize specific desired immune responses, and to inhibit undesirable inflammatory responses would become a routine part of the design of clothing and fabrics. . . . It would be impossible to conduct these studies without [the petitioner's] presence, as he is the expert in the identification of the composition and conductivity of the materials that will be studied.

It appears from [REDACTED] letter that there have been, to date, no empirical findings to substantiate the hypothesis underlying the proposed experiments. In other words, the experiments would not investigate any known phenomenon, but would rather seek to determine the existence of a newly hypothesized phenomenon. This appears to be a rather tenuous basis for a national interest waiver. Furthermore, if the experiments should demonstrate that the hypothesized effect does not exist, then there would appear to be no empirical basis for the petitioner's work and therefore no reason that the petitioner's continued presence in the U.S. would serve the national interest. Thus, in effect, the petitioner seeks a national interest waiver in part for the purpose of determining whether it would be in the national interest for him to remain in the United States.

The next two letters in the record are from individuals who attest to their successful treatment by the petitioner. Metastatic cancer sufferer [REDACTED]² apparently the [REDACTED] mentioned in [REDACTED] letter, states that the petitioner "used his healing ability to shrink my brain tumor the week before my surgery. I felt an intense pain in my head during [the petitioner's] treatment. The MRI following his work showed a small reduction in the tumor from the previous week's MRI." [REDACTED] does not describe the nature of the treatment, but it appears from the description that it involved more than an evaluation of fabrics and upholstery that came into contact with her skin (which would not cause "an intense pain in [one's] head"). Thus, the relationship, if any, between this treatment and the proposed experiments with [REDACTED] is not clear.

[REDACTED], who sought the petitioner's treatment for ulcerative colitis and arthritis, states that the petitioner's treatments have reduced her pain. [REDACTED] submits copies of blood work

² Ms. Brown Hurlock-Hobson described herself as a Dartmouth graduate living in San Francisco. According to a Dartmouth alumni newsletter, one Melissa Brown Hurlock-Hobson of San Francisco died of complications from cancer on December 26, 2001. Source: http://www.dartmouth.org/classes/93/news/news_spring2002.html.

results to show the improvement in her condition, and she states that she was able to stop receiving blood transfusions as a result of the petitioner's undescribed efforts on her behalf.

The next letter refers to the treatment of [REDACTED]. The letter is not from [REDACTED] herself, but from her physician, [REDACTED]. [REDACTED] states that [REDACTED] suffered from "a chronic interstitial infection of the colonic epithelium by *Candida parapsilosis*" and adverse reactions to various drugs. [REDACTED] states that the petitioner practices "energetic medicine" but does not elaborate. [REDACTED] states that, once the petitioner became involved in [REDACTED] treatment, "I began noticing a broad range of symptomatic improvement so beyond what I would be able to predict or justify based on past observations that I must admit a certain degree of astonishment."

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 additional witness letters and background documentation about scleroderma, an autoimmune disease of the connective tissues which can cause symptoms throughout the body. This background documentation is from the Scleroderma Foundation and other sources. The petitioner has not submitted anything to show that the Scleroderma Foundation or any comparable body has endorsed the petitioner's work or even the general principles upon which the petitioner's work rests. Instead, the documentation states "[t]he exact cause or causes of scleroderma are unknown." The disease involves over-production of collagen, but there is no mention of electromagnetic interference in neural signals.

The background documentation further indicates that scleroderma is incurable and "one of the most difficult rheumatic diseases to treat." A list of therapies includes various drugs and transplants, but does not mention alteration of the patient's clothing or other ambient materials.

The petitioner submitted the material regarding scleroderma as background regarding the medical history of one scleroderma sufferer, [REDACTED] who came to the petitioner after her symptoms (including swelling and joint stiffness) became debilitating. Ms. Tessler states:

In January 2001 . . . I began treatment with [the petitioner]. Within two months I was able to lessen the dosage of Prednisone, and within three months, I was able to discontinue it completely. The inflammation was drastically reduced, as was my discomfort. Not only did my sallow skin color return to normal, but it regained its flexibility and suppleness.

The most significant change occurred in my left hand. [The petitioner] achieved what I had been told was impossible – **the symptoms reversed**. The joints in my left hand regained their range of motion and I can open and close my hands again. According to the doctors, this is a medical miracle. . . .

[The petitioner] alone was able to reverse the symptoms I suffered from, and to enable me to experience the quality of life I led before this awful disease took over my body. I am no longer on any medication.

Occupational therapist [REDACTED] states that she has stopped treating [REDACTED] and that [REDACTED] attributes her improvement to the petitioner. [REDACTED] does not describe in any detail the work that the petitioner did with [REDACTED] nor does she indicate that she is aware of such details.

[REDACTED] physician, [REDACTED] states:

[The petitioner's] healing methods produced remarkable results. In addition to totally halting the progress of the disease, [the petitioner] succeeded in restoring the range of motion in [REDACTED] left hand. . . . In addition, [REDACTED] has been tapered off all medications, which were causing many side effects.

It is the first time in my long medical career in this field that I have ever seen a result of this magnitude. I expect that [the petitioner's] utterly unique success in treating Systemic Scleroderma will be written up in medical journals, so that they may be utilized by physicians treating this incurable disease.

Like [REDACTED] offers no discussion of the actual methods used in the treatment. [REDACTED] expectation that the petitioner's work "will be written up in medical journals" does not show that any such journal article has actually appeared, or that the medical community in general recognizes "energy healing" as a valid treatment modality.

The director denied the petition, stating that the petitioner has failed to demonstrate that his methods and findings "have enjoyed widespread implementation and acceptance by the scientific community." On appeal, counsel states "[t]he evidence presented in this case consists mainly of letters from those who have been successfully treated by [the petitioner] for illnesses such as Systemic Scleroderma and quadriplegia, *which have never been successfully treated* by the established medical community." This statement is not entirely accurate. While the record shows that scleroderma is not curable by standard medical practices, there is no indication that the petitioner has cured the disease either. The petitioner has merely relieved some of the symptoms of the disorder. The background evidence submitted by the petitioner shows that standard "Western" medicine has also had some success treating symptoms, although the extent of relief of course depends on the individual patient and the severity of that patient's condition. With regard to quadriplegia, the petitioner's "successful treatment" amounts to restoring the patient's muscle tone and ability to cough. The patient remains a quadriplegic, unable to move her arms or legs.

Counsel asserts that the petitioner is self-employed and therefore labor certification is not an option. Pursuant to *Matter of New York State Dept. of Transportation, supra*, unavailability of labor certification is not sufficient grounds for a waiver; otherwise, any given alien could

circumvent the job offer requirement simply by declaring himself or herself to be self-employed or a contractor. In any event, the petitioner has not shown that he is eligible for the underlying immigrant classification.

It is amply clear from the letters submitted that the petitioner's individual clients feel that the petitioner has performed a great service for them, and that the physicians treating some of these individuals have been impressed with the petitioner's results. Nevertheless, success in one's field is not *prima facie* evidence of eligibility for a national interest waiver. Even if the petitioner's claimed ability to manipulate hypothetical "energy fields" were to be empirically proven, and the improvements in the patients shown to be more than a combination of their ongoing standard treatments and a psychosomatic "placebo effect" from their own belief in the petitioner's alternative treatments, the petitioner's impact as an "energy healer" is necessarily limited to those whom he personally treats. Thus, the petitioner's work as a healer lacks national scope and his impact, at the national level, is greatly attenuated.

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.