

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

B5

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC 01 200 50572 Office: VERMONT SERVICE CENTER

Date: **MAR 17 2003**

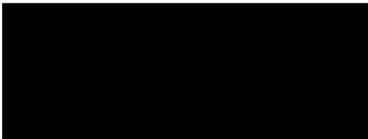
IN RE: Petitioner:
Beneficiary:



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)

PUBLIC COPY

ON BEHALF OF PETITIONER:



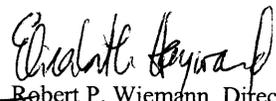
INSTRUCTIONS:

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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary 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 a research scientist at Yale University School of Medicine. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute 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 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 the 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.

Along with copies of his published work, the petitioner submits several witness letters. Yale Professor [REDACTED] is a member of the prestigious National Academy of Sciences and, according to another witness, “one of the most famous immunologists in the world.” Prof. Janeway states:

[The petitioner] is an outstanding research scientist of the highest caliber who has a proven record of original research contributions in the field of mucosal immunology, as well as in the field of costimulation of T cell responses to antigen. . . .

[The petitioner] has been exceptionally driven to work on a minor population of lymphocytes called intestinal epithelial lymphocytes or iIELs. These cells are quite heterogeneous, and could not be grown in culture for many years. Using a cytokine cocktail, [the petitioner] succeeded in causing these recalcitrant cells to grow in tissue culture, and this made a huge difference in his results as compared to earlier investigators. Using these techniques, [the petitioner] has produced a series of quite remarkable findings.

██████████ who heads the Immunology Group at the International Centre for Genetic Engineering and Biology, New Delhi, India, supervised some of the petitioner's training. ██████████ states:

[The petitioner's] research has always led to seminal publications in some of the leading scientific journals of the world. While in India, his work on how infectious parasites . . . suppress the host immune system represents one of the most important pieces of work – in the area of infectious diseases – to come out of India in recent years. This continues to be frequently cited in many international scientific papers and reviews.

[The petitioner's] current work at Yale University is also of exceptional importance and*relevance for a greater understanding of the mechanics of the immune system . . . [and] has provided some valuable insights that hold great promise for the future. His identification of the role of the Qa2 gene product in positively selecting specific T lymphocyte subsets adds another facet to our knowledge of how the immune system matures. Importantly, these studies also identify another “Achilles heel” that infectious agents could potentially co-opt for their own advantage. In addition to infectious diseases, this work also holds value in the area of cancer research. The lymphocyte subset that [the petitioner] is working on is known to target cancerous cells as well.

Professor ██████████ of the University of California at San Diego, head of the Division of Developmental Immunology at the La Jolla Institute for Allergy and Immunology, states:

I have never worked directly with [the petitioner], and I do not have a personal relationship with him, but I do know of his research. . . .

[The petitioner] has studied a unique population of white blood cells called T lymphocytes that are found in the lining or epithelium of the intestine. . . . [M]ost pathogenic microorganisms enter the body through epithelial linings, either in the intestine, the lungs or the reproductive tract. As a consequence, T cells found in these sites are poised to make the all important first response to disease causing organisms. . . .

T lymphocytes . . . recognize . . . fragments of bacterial molecules bound to what are called class I molecules. . . . [The petitioner] has made the startling observation that the intestinal T cells do not recognize the same class I molecules as the T cells circulating in the blood or found elsewhere throughout the body. Instead, they appear to recognize special class I molecules, and [the petitioner] has identified one of these, called Qa-2. . . .

The specificity of intestinal lymphocytes is a long standing scientific problem, and [the petitioner's] work goes a long way towards solving it. Not only is this an

issue of basic scientific interest, but it could lead to the development of more effective mucosal vaccines.

Other witnesses praise the petitioner's work, as described above, but offer less detail. Counsel asserts that the petitioner qualifies for the waiver because "he has a history of producing important research findings which are of significant impact."

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. The director noted that many of the witnesses' comments refer to the petitioner's potential, rather than to his existing achievements. Witnesses have stated, for instance, that the petitioner's "work might make a difference," and that the petitioner has "the potential to make major breakthroughs." In response, the petitioner has submitted additional letters and articles, as well as arguments from counsel and a copy of a citation index to demonstrate the impact of the petitioner's articles.

The citation index lists a total of 108 citations of six articles by the petitioner. While this list includes some self-citations, the overwhelming majority of citations appear to be independent, from scientists in several different countries. The petitioner co-authored a number of these articles with [REDACTED] whom the record describes as a top figure in the field of immunology. Nevertheless, the two most heavily cited articles derive respectively from 1994 (47 citations) and 1995 (30 citations), several years before the petitioner began his association with Prof. Janeway. Thus, the heavy citation of the petitioner's work is not attributable primarily to [REDACTED] reputation. As counsel observes, these citations provide objectively verifiable evidence of the influence and impact of the petitioner's scholarly work, and carry substantially greater weight than witnesses' vague references to frequent citations or general assertions about the reputations of the journals in which the articles appeared.

In a second letter [REDACTED] stresses the importance of the petitioner's innovations discovered previously, and describes other projects as well. For instance [REDACTED] asserts that the petitioner "has shown how a universal vaccine can be designed to prevent several infectious diseases by simply altering the expression of such so-called costimulatory molecules." [REDACTED] director of the National Centre for Cell Science, states that the petitioner was the leader of the universal vaccine project, as shown by his credit as first author on the resulting publications. [REDACTED] states "it was [the petitioner] who [for the] first time made it clear how the pathogens utilize our own defense system to survive within the body." Professor [REDACTED] of the University of Pittsburgh refers to the petitioner's heavily cited 1994 article as a "landmark publication" that "has had a significant impact on vaccine development." [REDACTED] met and began collaborating with the petitioner several years after the publication of that article.

The director denied the petition, acknowledging the intrinsic merit of the petitioner's work but finding that the petitioner has not established the national scope of his work, or shown that his own contribution warrants a waiver of the statutory job offer requirement. Regarding the question of national scope, the director had previously stated, in the request for additional evidence, that "[t]he evidence of record shows that the beneficiary's field of endeavor has a

national impact.” The director did not specify what was in the petitioner’s response to that notice that caused the director to reverse that finding. If anything, the petitioner’s response to the notice contains far stronger evidence than the initial submission.

The director offered general findings regarding the nature of the petitioner’s work, but did not discuss the petitioner’s work in any depth or detail. The decision contains only one mention of the petitioner’s field of immunology. The director’s analysis of the evidence is inadequate and erroneous. While it is true that originality alone does not distinguish a researcher to any significant degree, and that researchers are expected to cite any sources that they use when preparing their own articles, these generalities do not inherently discredit the petition. It remains that a researcher whose work has been cited over one hundred times, as is the case here, has demonstrably had more impact than a researcher with only a handful of independent citations. The director gave no consideration to the quantity and breadth of the documented citations in the record.

Furthermore, the witnesses of record – some of whom have no apparent personal or professional connections to the petitioner – have not merely declared the petitioner’s work to be original or useful, or used words like “breakthrough” without meaningful elaboration. The range of witnesses – including independent experts and leaders in the field – is further evidence that the petitioner’s work is not merely of interest to his mentors, instructors, collaborators and employers. While some witnesses have referred to what the petitioner may accomplish in the future, which amounts to speculation, the same witnesses have also stressed the significance of what the petitioner has already achieved. Indeed, it is these achievements that form the basis for the witnesses’ predictions of the beneficiary’s future success. We concur with counsel’s argument on appeal that the grounds for denial listed in the director’s decision are refuted by the record itself.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the scientific community recognizes the significance of this petitioner’s research rather than simply the general area of research. The benefit of retaining this alien’s services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

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