

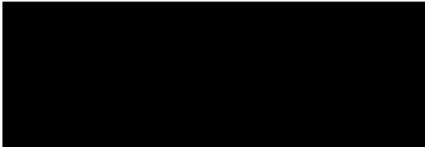
U.S. Department of Homeland Security

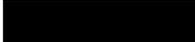
Bureau of Citizenship and Immigration Services

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invasion of personal privacy**

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



File:  Office: Texas Service Center

Date: **MAR 26 2003**

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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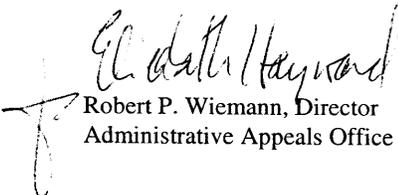
INSTRUCTIONS:

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

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 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 of a labor certification, is in the national interest of the United States. The director did not contest that the petitioner qualifies for classification as an alien of exceptional ability or a member of the professions holding an advanced degree, but 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.

On appeal, the petitioner requests oral argument. Oral argument is limited to cases in which cause is shown. A petitioner or his counsel must show that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Specifically, the petitioner has not demonstrated why accomplishments in his proposed field are not amenable to documentation. Accomplished researchers with a track record of success can provide documentation of published, frequently cited articles and recommendation letters from independent experts in the field or high level officials of relevant government agencies. Therefore, the petitioner's request for oral argument is denied.

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 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 holds a Master's degree in Animal Health from the Royal Veterinary College at the University of London. 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 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 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 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 director did not contest that the petitioner intends to work in an area of intrinsic merit, studying animal diseases related to human diseases, and we concur. The director concluded that the petitioner had not established that the benefits of his work would be national in scope since, according to the director, the petitioner had previously worked on diseases not common in the United States. On appeal, the petitioner asserts that the Center for Disease Control (CDC) has established a rapid response and advanced technology laboratory that can quickly identify biological and chemical agents rare to the United States. The petitioner provided no evidence from the CDC regarding this laboratory or its focus. Nevertheless, we find that the petitioner's intended research into emerging patterns in disease transmission from animals to humans and

from nation to nation could provide a national benefit, protecting the United States from foreign animal-derived diseases. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than 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 this project 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. *Id.* at 219, n. 6.

The record consists of the petitioner's personal statement of his experience and future plans, two of his three alleged degrees, and two letters from colleagues who have worked with the petitioner. [REDACTED] Course Director of Post-graduate Studies at the University of London during the petitioner's period of study there, asserts that the petitioner developed a polymerase chain reaction (PCR) assay for diagnosis of Avian Leucosis while PCR development was a new procedure. While [REDACTED] asserts that the petitioner is "showing remarkable gifts," he does not provide examples of how the petitioner's PCR work influenced the field. [REDACTED] who indicates that he has known the petitioner since his work at the Institute of Primate Research in Kenya 15 years ago, asserts that the petitioner "participated" in research on the simian version of the HIV virus, "contributed" to rabies research, and describes the petitioner's work with PCR. [REDACTED] does not identify a specific contribution or explain how it influenced the field.

In his personal statement, the petitioner indicated that studying animal diseases related to human diseases prompted a desire to gain an appreciation of "the human dimension" of such diseases. The petitioner implies that he accomplished that goal with his U.S. studies, the nursing degree and his molecular biology studies. The petitioner did not provide evidence of his nursing degree or a transcript reflecting his molecular biology studies. The petitioner further states that he seeks to continue studying animal models for human diseases, interact with the scientific community through "various professional bodies," "deepen [his] appreciation of emerging computer adapted molecular and diagnostic imaging techniques to enhance [his] research capabilities," and collaborate with other researchers in the U.S. and abroad.

The director noted that, according to the petitioner's ETA-750B, while the petitioner obtained a Bachelor's degree of veterinary medicine and a Master's degree in animal science, the petitioner's research experience ended in 1992. From 1995 to 1997, the petitioner pursued a degree in divinity and in 1999 the petitioner became a licensed vocational nurse. At the time of filing, the petitioner was pursuing a degree in molecular biology at the University of Texas, Austin. The director concluded that the petitioner had not established that his research experience was up to date. The director further concluded that the petitioner's goals were vague and that he had not established that he could proceed effectively with his stated goals.

On appeal, the petitioner asserts that the director did not understand the basis of the petition because he used the general term “zoology” instead of the specific term “zoonosis,” which refers to diseases transferable from animal to humans. A reading of the director’s decision in its entirety, however, with its references to animal and human diseases, reveals that the director understood the petitioner’s field.

The petitioner further argues that his experience is not outdated as his degrees have been evaluated as equivalent to U.S. degrees. An evaluation of the petitioner’s degrees is irrelevant to whether the petitioner has continued to remain active in that field. In addition, the petitioner asserts that it is the director’s burden to demonstrate that the field has changed in the years since the petitioner stopped conducting animal research. The field of science and technology is a rapidly changing one. In his future plans, the petitioner himself concedes that he needs to gain experience with emerging computer adapted molecular and diagnostic imaging techniques to enhance his research capabilities. Finally, the petitioner discusses the importance of his field because of bio-terrorist threats. The substantial merit of the petitioner’s field has already been acknowledged above.

On appeal, the petitioner does not overcome the director’s concern that the petitioner has not demonstrated his ability to fulfill his goals. While the director does not expand on his conclusion, we note that the petitioner has not submitted letters from professional bodies expressing an interest in his participation or from experts in the U.S. and abroad who are interested in collaborating with the petitioner.

While the director’s concerns are legitimate ones that we uphold, we must emphasize that the record contains no independent evidence that the petitioner’s research, whenever it was conducted, was influential or significant. In his request for additional evidence, the director requested evidence of the petitioner’s prior achievements that would justify the projected future benefit of the petitioner to the national interest. In response, prior counsel quotes several post-*Matter of New York State Dept. of Transportation* decisions from this office, implying that the petitioner has submitted evidence akin to the evidence this office has previously found sufficient. Prior counsel does not, however, make any reference to the evidence submitted in support of this petition and explain how it is comparable to evidence found sufficient previously by this office. For example, prior counsel quotes a decision relying on evidence of “recognition for achievements and significant contributions in improving health care,” including statements from third party professionals. The initial filing of the instant petition, however, included only the two colleague letters discussed above. These letters not only fail to identify any specific contribution to the petitioner’s field; additionally, letters from one’s immediate circle of colleagues cannot demonstrate an influence on the field as a whole. In response to the director’s request for additional documentation, the petitioner submitted only his personal statement and credentials. Thus, prior counsel’s response and the documentation submitted therewith did not address the director’s concerns.

The petitioner’s academic degrees and experience alone cannot justify a waiver of the labor certification requirement as such credentials can be enumerated on a labor certification application. As stated in *Matter of New York State Dept. of Transportation*, “it is not sufficient for the petitioner

simply to enumerate the alien's qualifications, since the labor certification process might reveal that an available U.S. worker has the qualifications as well." *Id.* at 218. The petitioner must establish that he will benefit the national interest to a greater degree than an available U.S. worker with the same minimum qualifications. The petitioner's self-serving statement that he will do so is insufficient. *Id.* at 219. Rather, the petitioner must demonstrate a past history of demonstrable specific prior achievements with some degree of influence on the field. *Id.* at 219, n. 6. The record contains no such evidence. For example, the petitioner has not demonstrated that he has published widely cited articles in peer reviewed journals. Moreover, the record does not contain letters from high-level officials at relevant government agencies, such as the CDC, supporting the waiver. Finally, the petitioner has not submitted letters from independent experts in the field explaining the petitioner's past contributions to and influence on the field of zoonosis.

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.

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