

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.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

File: EAC 01 086 50104 Office: VERMONT SERVICE CENTER

Date: **MAY 7 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:

**PUBLIC COPY**

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*

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 was a doctoral candidate at the University of Maryland School of Medicine (UMSM) at the time of filing. The petitioner later began a three-year postdoctoral appointment at Johns Hopkins University. 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. Counsel has repeatedly argued, at length, that the beneficiary qualifies for classification as an alien of exceptional ability, but given the petitioner's eligibility as a member of the professions holding an advanced degree, an additional finding of exceptional ability would be superfluous. 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.

Counsel states that the petitioner "is among the few research scientists who have established themselves as experts" in her research specialty, and that the petitioner's "exceptional ability and significant contributions" justify a waiver of the job offer requirement. Along with copies of the petitioner's published articles and student awards, the petitioner submits several witness letters. Professor [REDACTED] chairman of the Department of Biochemistry and Molecular Biology at UMSM, states:

[The petitioner] presently conducts research on calcium regulation and the structural/functional characterizations of the calcium transport ATPases, an area of research that requires interdisciplinary training and great research skills. Free calcium, as the most important intracellular signalling molecule, is critical in regulation of many cellular processes, such as muscle contraction/relaxation, neurotransmission, exocytosis, cell proliferation/differentiation, and fertilization. Calcium transport ATPases, which reside in the plasma membrane and the membrane of endo-sarcoplasmic reticulum, play functional roles in regulating cytosolic calcium signals and the calcium within the endoplasmic reticulum, the

sarcoplasmic reticulum and the nuclear envelope, through the establishment and maintenance of intracellular stores. The inhibition of calcium ATPases results in [a] dangerously high level of intracellular calcium concentration, which alters cellular signaling, gene expression, calcium entry, cells proliferation and apoptosis. The phenotypes in clinic are skeletal muscle cell relaxation deficiency, heart failure, and many neuromuscular diseases. An understanding of the regulatory mechanisms of calcium and the functional characterization of calcium transport ATPases, therefore, will help uncover effective cures for such diseases, which is greatly beneficial to the health care and life quality in the United States.

[The petitioner] is playing a crucial role in our on-going muscle physiology and biochemical research and her expertise is essential to the success of our research project. [The petitioner] has made significant achievements in her researches.

Prof. [REDACTED] then lists, in technical terms, several specific contributions that the petitioner has made to the UMSM project. For instance, Prof. [REDACTED] states that the petitioner “[d]eveloped a recombinant adenovirus expression system, which dramatically increases the efficiency of exogenous gene transfer into cultured cells,” and “[d]iscovered the important role of M6/M7 cytoplasmic loop in long-range intramolecular signal communication in the calcium transport ATPase.” Prof. [REDACTED] praises the petitioner’s “extraordinary research ability and experience” and states “[a]s an important member of one of the leading research groups in this field, [the petitioner’s] expertise is essential to the success of our research project.” In the short term, the petitioner’s nonimmigrant student visa allows her to work at UMSM while she remains a student; her ability to participate in the above project does not require permanent resident status. Indeed, the petitioner left UMSM within months of filing the petition, in order to work at another university; the petitioner had already accepted the job offer prior to filing the petition. Even that new position is a temporary postdoctoral appointment. Whatever other arguments can be made in favor of granting the petitioner a national interest waiver, it is a weak argument to stress the necessity of the petitioner’s continued involvement in a short-term project for which the petitioner had adequate authorization to work.

Dr. [REDACTED] now an assistant professor at the University of Illinois at Chicago, worked previously at the University of Maryland where he had contact with the petitioner. Dr. [REDACTED] in rather less technical terms than many of the other witnesses, explains the significance of one of the molecules that figures in the petitioner’s work. He states “Ca<sup>2+</sup> [a form of calcium] is one of the most important intracellular signalling molecules controlling almost every physiological process. Each muscle contraction requires the entry of Ca<sup>2+</sup> into the muscle cytoplasm, while relaxation requires removal of the activating Ca<sup>2+</sup>, making Ca<sup>2+</sup> regulation one of the most extensive activities of the human body.” Critical to Ca<sup>2+</sup> regulation is sarcoplasmic reticulum calcium transport ATPase (SERCA), which is “the protein that brings about muscle relaxation after each contraction.” Because the heart is essentially a muscle that continually contracts and relaxes, genetic deficiency of SERCA can impair heart function. Dr. [REDACTED] discusses some of the petitioner’s specific research contributions:

[The petitioner], in collaboration with colleagues, developed a new and more efficient method of gene transfer and expression in cultured cells. . . . It was found that viral gene delivery system could introduce interested genes into almost 100% of cultured cells. . . . [B]y infecting Cos-1 cells with recombinant adenovirus containing exogenous SERCA genes under the control of CMV promoter, [the petitioner] was able to increase significantly the percentage of the cultured cells transfected and therefore the level of functional protein expressed by the transfected cell cultures. The new system is important because it can express much higher levels of functional SERCA in cardiac myocytes. This helps improve cardiac function in hypertrophied hearts. This novel achievement has improved upon existing techniques and laid a solid foundation for further investigations of the effects of gene transfer on the contractile behaviour of heart muscle. . . .

[The petitioner's] research results provide a more in-depth understanding of SERCA, or to be exact, the mechanism of its activation and its ability to regulate calcium fluxes. . . . [The petitioner's] research findings have offered a new insight into the calcium regulation mechanism, which serves as the theoretical basis of a potential gene therapy treatment for certain types of heart failure.

Professor [REDACTED] who supervised the petitioner's research at Beijing Medical University, describes the petitioner's work in her laboratory:

[The petitioner] took part in the research on bladder cancer and leukemia projects in my laboratory. She conducted the preparation and characterization of a monoclonal antibody in bladder carcinoma treatment and functional studies of the bone marrow stromal cells in bone marrow transplantation. Because of her thoroughness and attention to details . . . [the petitioner] improved the research methodology and eventually helped the success of the research projects.

[The petitioner] discovered that the monoclonal antibody could be used as a safe and effective means for bladder cancer treatment. . . . Her findings initiated the studies on this antibody and resulted in the successful usage of BDI-1-MD in treatment of 18 patients with bladder cancers.

[The petitioner] also discovered the critical importance of bone marrow stromal cells in hematopoiesis and treatment of leukemia. . . . She discovered that transplantation of bone marrow stromal cells, in combination with bone marrow stem cells, can improve the vitality of leukemia mice to a greater extent than if transplantation of bone marrow stem cells is used alone. The pioneer research by [the petitioner] . . . advanced significantly the understanding of leukemia therapy.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. The director stated "the record simply offers no indication that [the petitioner's] contributions are generally acknowledged as representing major advances in the

field, significantly beyond the capabilities of the majority of her colleagues. In fact, the beneficiary's contributions pale in comparison with the contributions of some of the witnesses." The director instructed the petitioner to submit statements from witnesses "that are clearly independent of the beneficiary."

In response to the above notice, the petitioner has submitted additional letters, articles, and arguments from counsel. Counsel asserts that the petitioner is responsible for significant research findings in China and, later, in the United States, and that the petitioner has continued making such contributions since she began working at Johns Hopkins University (JHU) after she filed the petition.

Counsel states that the newly submitted letters are "objective and testimonial in nature," and obtained "from independent experts." Most of these witnesses have directly supervised the petitioner's work or collaborated with her. Their statements are not without weight, but the witnesses are not independent of the petitioner as claimed. Professor Philip A. Cole, the petitioner's supervisor at JHU, describes the petitioner's current project:

[The petitioner] has already made some important progress in our understanding of the protein tyrosine phosphatase, SHP-1. SHP-1 is a protein that is critical in the development of hematopoietic cells and has been implicated as a potential target in cancer regulation. In particular, it has been shown to be phosphorylated on two tail tyrosine residues but these phosphorylation events are not understood. [The petitioner] has overcome the technical problem of auto-dephosphorylation. . . . I have been amazed at [the petitioner's] rapid progress and problem-solving skills. She has accomplished more in the first four months of being in my lab than all of the twenty previous students and post-docs over the same period.

Dr. [REDACTED] associate professor at the University of Kansas, states:

I know [the petitioner] primarily through her work in my field, where she has made significant inroads to our fundamental understanding of the Ca-ATPase. . . . Recently the atomic structure of this complex protein has been solved which provides a "roadmap" for testing models of function. However, this advance has only provided a still-life model and requires further information about its structure under solution conditions such as those found in the intact heart. [The petitioner's] work has moved us substantially closer to this goal by her innovative approach . . . providing a heretofore unique and detailed analysis of the precise functional role of critical parts of this protein. Her work has provided solid data to replace what had been previously only speculation. . . .

I would rank [the petitioner] among the very best of young research scientists.

Dr. [REDACTED] adds that Prof. [REDACTED] is "one of the leaders of the field," indicating that Prof. [REDACTED] own comments on the petitioner's behalf carry added weight.

The petitioner submits documentation showing citations of her research. One article, published May 4, 2001, was cited twice within the four months after its publication. While two citations is not an overwhelming number, the petitioner observes that the rapid citation is an indication of the timeliness and immediacy of her published work. Indeed, the turnaround time is actually less than four months, because the other articles had to be written, submitted, and accepted during that four-month period. An earlier article, published August 1, 2000, is cited in four articles all published within weeks of one another in June and July of 2001. (A fifth citation is a self-citation by the petitioner.) Again, the citation rate is not particularly heavy for this article. The articles show that the petitioner's specialty is indeed an area of active interest, but it appears to be too soon to gauge the impact of the petitioner's articles. One of the petitioner's articles had not even been published as of the petition's January 19, 2001 filing date, and all of the documented citations of both articles fall several months after the filing date. We note, nevertheless, that the petitioner's article concerns work already underway at the time of filing.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work but finding that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. The director states that the petitioner "has been a valuable team member," but that the petitioner has "not shown that she was primarily responsible for the research findings." The director also found that the petitioner had not adequately compared her findings to those of others conducting similar research.

On appeal, the petitioner submits a brief from counsel and additional exhibits. Counsel maintains that the petitioner's "record of past achievements justifi[es] projections of future benefit to the national interest of the United States." Counsel observes that the petitioner is credited as the first author of several of her published articles, which designates her as the principal contributor in obtaining the findings reported therein.

Prof. [REDACTED] offers a second letter on the petitioner's behalf. The new letter is virtually identical to Prof. [REDACTED] first letter, with the exception of the concluding sentences. Prof. [REDACTED] states that the petitioner's newest findings at JHU "have profound importance in immunology and immune-related diseases" and "allow a new approach to therapeutics for immune disease." Prof. [REDACTED] credits the petitioner with "major breakthroughs in the field." Articles submitted on appeal show that the petitioner's work continues to accumulate independent citations.

Upon careful consideration, we find that the evidence of record is sufficient to show that the petitioner has played a significant and central role in several research projects, not only at UMSM but also in prior and subsequent assignments. With regard to the importance of her work, no single piece of evidence establishes, immediately and obviously, the petitioner's eligibility. Viewed as a whole, however, the various statements and documents presented are consistent with a finding that the petitioner has been responsible for particularly important findings in an ongoing series of research projects. While many witnesses are not independent of the petitioner, nevertheless they are established experts in their fields and their assertions (corroborated by other materials in the record) bear serious consideration. The waiver request rests on the petitioner's

overall history, rather than the progress of any one single temporary project (for which nonimmigrant status would suffice to secure her involvement). The available evidence is consistent with predictions by witnesses that the petitioner's influence in the field is growing.

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 the significance of this petitioner's research rather than simply the overall 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.