

U.S. Department of Homeland Security

Citizenship and Immigration Services

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

File: EAC 02 094 54106 Office: VERMONT SERVICE CENTER

Date:

NOV 12 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

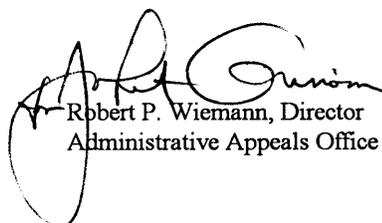
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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 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 research scientist at Columbia 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 has 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 states that a brief is forthcoming within 30 days. To date, a year after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands. There is no indication that counsel was involved in the preparation or filing of the appeal.

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 states that the petitioner qualifies as an alien of exceptional ability. Because he readily qualifies as an advanced-degree professional, however, an additional finding of exceptional ability would be of no further benefit to the petitioner. 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 regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now CIS] 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 has earned international recognition through his work at Beijing Medical University, Shanghai Medical University, the University of Delaware, and Columbia University. Counsel states “**[d]ue to these achievements, [the petitioner] was selected as a member [of the] New York Academy of Sciences, an Academy that only absorbs scientists who have reached to the top level of scientific research, and who have built up international reputation**” (emphasis in original). Counsel cites no source for this claim.

Counsel’s claim is demonstrably false. The official web site of the New York Academy of Sciences (NYAS) states “[m]embership is open to all active professional scientists, physicians, engineers, students, and other individuals who share the Academy’s interests” (<http://www.nyas.org/services/index.cfm>). Given counsel’s patently false claim that NYAS “only absorbs scientists who have reached to the top level of scientific research,” we have no reason to accept counsel’s claims and assertions at face value, and no weight attaches to counsel’s

interpretations of the evidence and testimony in the record. Even in instances where there are no questions of credibility, the assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner describes his area of research interest:

I earned my Ph.D. in biological science at [the] University of Delaware in 1998 and have been working in Dr. Christian Schindler's laboratory at Columbia University since then. My primary goal of research is to investigate the mechanism of arteriosclerosis and then to find the drugs that can block arteriosclerotic plaque growing. Arteriosclerosis is an artery clogging disease, which causes heart attack and stroke. The nature of my research is to apply modern molecular biology theories and techniques to identify the molecules or genes that can promote or prohibit the progress of arteriosclerosis.

The petitioner describes several projects in detail. For instance:

In 1997, Dr. Schindler's laboratory **first in the world** found that a strong immune regulator—interferon gamma promotes mouse atherosclerosis and published the finding in *The Journal of Clinical Investigation*. The cells that produce this molecule are T lymphocytes and Nature Killer cells. When I joined Dr. Schindler's laboratory in 1998, I thought if there is no lymphocyte inside the body, the production of interferon gamma will be significantly decreased, thus the development of the arteriosclerosis will be hampered. Based on this hypothesis, **I made a line of mice with two mutant genes . . . which have no mature lymphocyte in their peripheral blood. . . .** As feeding prolonged, the double mutant mice actually caught up in their arteriosclerotic lesion sizes. Thus, arteriosclerosis was delayed in the lymphocyte deficient mice. This suggests that the role of lymphocytes in the arteriosclerosis is played only at the early stage. . . . This is **the first thorough study** to study the role of lymphocytes in arteriosclerosis in the world.

Along with documentation pertaining to his field of research, the petitioner submits several witness letters. Most of the witnesses are, or have been, faculty members at the various universities where the petitioner has worked or studied. Dr. Christian W. Schindler, associate professor at Columbia University, praises the petitioner's "unique scientific and medical training" and "keen intellect and medical acumen." Dr. Schindler discusses the overall importance of the projects on which the petitioner is working in Dr. Schindler's laboratory, and states that the petitioner's "skills have been critical for his work in my laboratory," but he says little about the petitioner's specific contributions.

Other researchers at Columbia University state that the petitioner's findings "will provide insights about the cellular events that may lead to atherosclerosis," and that the beneficiary possesses

valuable knowledge and laboratory skills, but they, like the petitioner, indicate that these studies are essentially a continuation of research that was already underway in Dr. Schindler's laboratory prior to the petitioner's arrival. In general, the petitioner's witnesses focus on the overall importance of the petitioner's area of research, but they do not establish that the petitioner's own findings are of substantially greater significance than those of other researchers in the same specialty.

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 copies of the petitioner's scholarly writings, either published or submitted for publication; additional witness letters; and a brief from counsel, who repeats the erroneous and baseless claim regarding NYAS' membership standards.

One of the petitioner's articles appeared in *The Journal of Clinical Investigation*. The petitioner submits a copy of a segment entitled "In This Issue," which includes a short description of the petitioner's article. Counsel states that the petitioner's article was selected "from over 50 research papers in the issue." Two other articles were also profiled in this way. It is not clear whether the articles profiled in the piece represent the most significant findings in the issue. Counsel's claims in this regard carry no weight.

A good indicator of a published article's importance is its citation history. Generally, the more influential an article is, the more frequently other researchers will cite that article in their own writings. The petitioner submits documentation showing one citation each of three of the petitioner's articles.

The director had stated "[i]t is reasonable to expect that substantial documentation from well-known U.S. experts, established institutions, and appropriate U.S. governmental agencies would be readily available if the exemption from the usual job offer and labor certification requirements is realistically in the 'national interest' of the United States." Counsel states that the petitioner's four new letters are "from experts in the United States Top medical research institutes, from US *National Institutes of Health* and from research institutes of United Kingdom."

One of the four newly submitted letters is from Dr. Schindler, who states that the petitioner's work "has provided important insight into how apolipoproteins A-I and A-II regulate lipid metabolism," and that the petitioner's findings "provide the first direct evidence on the role of IL-6 and the 'acute phase response' in atherosclerosis." Dr. Schindler asserts that the petitioner's ongoing work is "likely to lead to important new therapeutic approaches for this prevalent disease," and that the petitioner "is ideally suited to fulfill the functions of research scientist in the field of cytokine signaling and atherosclerosis."

The witness from the National Institutes of Health is Dr. Manfred Boehm of the National Heart, Lung, and Blood Institute. There is no indication that Dr. Boehm is a ranking official of the institute or that he has authority to write on its behalf. Dr. Boehm is a postdoctoral research fellow, and thus occupies a similar station to the petitioner's own. He states that he does not

“personally know [the petitioner] well.” Dr. Boehm asserts that he “was very impressed by one of [the petitioner’s] papers. . . . This work discovered a significant role of lymphocytes in the early developmental stage of arteriosclerosis. [The petitioner’s] finding significantly improves our understanding [of] how those inflammatory cells infiltrate into the arterial wall and enhance early arteriosclerotic lesion development.” Dr. Boehm concludes that the petitioner’s “discoveries have provided important clues to the cause of coronary artery disease.”

Dr. Shui Qing Ye, associate professor and director of the Gene Expression Profiling Core at Johns Hopkins University School of Medicine, first met the petitioner while “collaborating with his Ph.D. mentor, Dr. David Usher.” Dr. Ye states that the petitioner’s “findings are a significant contribution to the field of coronary artery disease” and “of great medical importance because of its potential clinical application into treatment of coronary artery disease.” Dr. Feng Lin of the University of Newcastle states “I am very impressed by one of [the petitioner’s] recently published papers,” and that the petitioner “is a distinguished researcher with an international reputation.”

The above opinions are duly noted, but the record does not show that the witnesses, in general, represent the caliber described by the director in the request for evidence, or that their views represent a consensus among that level of experts in the field. Claims of widespread recognition are not matched by objectively verifiable evidence, such as heavy citation of the petitioner’s published work, materials showing that the petitioner’s findings have been implemented more widely than those of others in the specialty, or documentation that the petitioner’s findings have been (rather than might eventually be) unusually influential in the formulation of new prevention or treatment strategies.

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.

On appeal, the petitioner submits copies of his recent articles, as well as a fourth article that cites his prior work. The petitioner argues “[t]he quality of the work in this field actually is **NOT** evaluated by if you own any **patents**, but by WHERE you publish your work. My first paper was published in the *Journal of Clinical Investigation (JCI)*.” Certainly, publication in a prestigious journal increases the visibility of a given article, but it does not follow that every such article is received with equal enthusiasm. The petitioner submits documentation showing that *JCI* has an impact factor of 14.118 in 2001. This number evidently means that articles published in *JCI* are cited, on average, slightly over 14 times. The impact factor is a general figure, derived statistically from all the articles published by the journal; it does not demonstrate that a given article from that journal has had proportionate impact. As noted, the petitioner has documented only four citations of his entire body of published work. The journal’s high impact factor merely serves to demonstrate that the petitioner’s article has had considerably less impact than the average article published in *JCI*. On its face, this statistical information seems to contradict the claim that the petitioner’s findings have been especially important or influential in the field.

The petitioner describes his current projects, some of which appear to have commenced after he filed the petition in January 2002. The petitioner states that his specialized skills are necessary for these projects, and that he fears that his nonimmigrant status will not remain valid long enough for him to obtain a labor certification. The director did not find that the petitioner's research is trivial or that the petitioner's skills are not useful. Rather, the director acknowledged the petitioner's contributions but found that the petitioner has not distinguished himself from other researchers to an extent that would justify not only classification as a member of the professions holding an advanced degree, but also for the special additional benefit of a national interest waiver.

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.