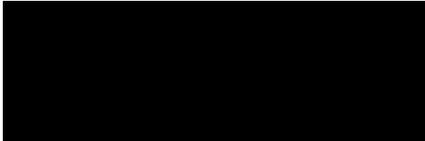


35

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

**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, DC 20536



File: [REDACTED] (SRC-98-201-50899) Office: Texas Service Center

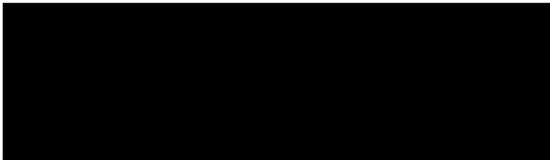
Date: SEP 15 2003

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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The Administrative Appeals Office (AAO), dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

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 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 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. The AAO concurred.

On motion, counsel asserts that the AAO failed to consider all of the evidence in detail. We will consider all of the evidence in extensive detail as well as counsel's arguments on motion below.

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 biochemistry from Vanderbilt University. 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 Dep’t. of Transp., 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.

There is no dispute that the petitioner works in an area of intrinsic merit, medical research, and that the proposed benefits of her work, improved cancer treatment, would be national in scope. 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.¹

We acknowledge, as did the AAO in its previous decision, that the greater project in which the petitioner has been involved may have tremendous potential in fighting cancer.² Eligibility for the waiver must rest with the alien’s own qualifications rather than with the position sought. In other words, we do not accept the argument that a given project is so important that any alien qualified

¹ Counsel consistently refers to this standard as one where the petitioner should be compared with a “minimally qualified worker.”

² While the record suggests that the initial trials of the anti-cancer agent on which the petitioner works were positive, the second phase was to have begun in 1999. While not relevant to the petitioner’s work prior to the date of filing, the petitioner has not submitted the results of these later trials as evidence that this research continues to be relevant in the fight against cancer.

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 she 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.

Initially, the petitioner submitted several letters from her colleagues at Vanderbilt University and CarboMed, Inc. Dr. Carl G. Hellerqvist, an associate professor at Vanderbilt University and the founder of CarboMed, Inc., discusses the importance of his discovery of CM101, a bacterial polysaccharide produced by Group B Streptococcus (GBS), as a promising anti-cancer therapy. CM101 is one of a few potential cancer drugs that rely on angiogenesis, the destruction of the blood vessels that feed tumors. Dr. Hellerqvist also notes that GBS itself is a major cause of neonatal death in the United States. Regarding the petitioner's work with CM101, Dr. Hellerqvist states:

Work done by [the petitioner] has demonstrated that CM101 activates complement by the alternative pathway which explains the severity of the CM101-induced inflammation. This finding not only filled important gaps in our understanding of the mechanism of action of CM101 in tumor ablation, but also suggests possible approaches to the treatment of newborn babies suffering from the often-fatal inflammatory response to GBS. The progress in these projects so far is being prepared for publication by [the petitioner].

[The petitioner's] essential function to this research is also demonstrated by her contribution to our efforts to expression clone the biological receptor for CM101 which binds specifically to pathologic neovasculature. [The petitioner] has isolated several promising proteins that has [sic] specific affinity to CM101. More important, [the petitioner] is a key individual in the successful execution of the critical assays necessary for this development program. The excellent contributions by [the petitioner] to our efforts to develop the total CM101 concept that will benefit millions of patients that are suffering from cancer and other diseases dependent on pathologic angiogenesis is essential.

Finally, Dr. Hellerqvist indicates that he has licensed CM101 to Zeneca, Ltd., requiring a trans-Atlantic collaboration with the company's British-based research and development group. Dr. Hellerqvist further indicates that the petitioner "is one of the non-replaceable persons who will be involved in this technology transfer process," although her participation is hindered by her nonimmigrant status. Dr. Hellerqvist does not explain why an immigrant visa is warranted for this one-time transfer of technology.

Dr. Clint E. Carter and Dr. Håkan W. Sundell, other professors at Vanderbilt University, provide similar information. Dr. Sundell further asserts that the Phase I clinical trial of CM101 produced "exciting results." Dr. Sundell asserts that the work described by Dr. Hellerqvist above "is

extremely helpful in speeding up the process of getting FDA approval for the use of CM101.” Dr. Sundell continues:

Recently, [the petitioner] has been in charge of another important project, i.e. the characterization of the genome/plasmid that is involved in CM101 synthesis. In this project [the petitioner] screens for those strains with high and low CM101 production. The purpose is to compare the difference in gene expression between high and low producing strains and to find the genes that are involved in CM101 synthesis. Her combined skills in molecular biology and immunology and her thorough understanding of CM101 makes her a unique fit for this task. This project has been progressing very fast thanks to [the petitioner’s] diligent efforts. Results of this work *should* make a breakthrough at the genetic level by improving the technique for CM101 production.

(Emphasis added.) The importance of the petitioner’s work on this final project appears to be conjecture on the part of Dr. Sundell.

Dr. R.S. Lloyd, a professor at the University of Texas and member of the Scientific Advisory Board for CarboMed, Inc., provides similar information to that quoted above. He continues that “she is an integral researcher investigating the number one drug that the National Cancer Institute has to fight cancers is ample reason to justify her status of doing research in the interest of dramatically improving the health of the United States population.” As stated above, however, Dr. Sundell indicates that only the Phase I clinical trial has been completed and that the process for FDA approval for CM101 is still ongoing. The remainder of the record confirms this status. Thus, the record contradicts Dr. Lloyd’s assertion that CM101 is the “number one drug.”

In support of the assertions of CM101’s importance, the petitioner submits an April 16, 1997 article in the *Nashville Banner* reporting the positive results of a study of CM101 at Vanderbilt University. While Dr. Hellerqvist and Dr. Sundell are quoted, the leader of the study is identified as Dr. Russell DeVore. The article also identifies “the other researchers” of the study, none of whom are the petitioner. The petitioner also submitted a July 7, 1997, press release announcing that Zeneca, Ltd. would license CM101 from CarboMed, Inc. and two news articles announcing the licensure. The petitioner also submitted a January 1998 article in the *Nashville Medical News* announcing that in Phase I, three patients experienced tumor shrinkage, paving the way for Phases II and III.

The petitioner also submitted a letter from one of her professors at Zhongshan University, Dr. Zhihua Li. Dr. Li discusses the petitioner’s work with membrane antigens. According to Dr. Li, the petitioner developed a “fast and efficient” method for isolating membrane antigens that was published in a widely circulated journal. In addition, the petitioner compared flora species and “by comparing the 5 terminal regions of rRNA of Gnetum with those in Gymnosperm and Algae, she found that Gnetum is more homologous with Gymnosperms than with Algae.” Dr. Li implies that the significance of the petitioner’s work on this issue is demonstrated by its publication. While

publication makes the results available, publication does not necessarily demonstrate that the results were influential in the field.

Finally, the petitioner submitted a letter from Dr. Lucyna Baltaziak, an assistant professor at the Medical Academy in Lublin, Poland. Dr. Baltaziak asserts that she observed the petitioner's presentation at a 1997 conference, has reviewed the petitioner's work, and opines that the petitioner's "efforts have been essential to the continuing progress of the CM101 project." According to Dr. Baltaziak, the petitioner "has led efforts to characterize the role of complement in CM101-induced inflammatory response." Dr. Baltaziak does not indicate that her own projects have been influenced by the petitioner's work or even that she has specific experience with or expertise in angiogenesis agents.

On April 20, 1999, the director advised the petitioner of the requirements set forth in *Matter of New York State Dep't. of Transp., supra*, and requested additional documentation to address that decision. In response, counsel asserts that the petitioner has a track record of cutting-edge findings and that her research skills are more advanced than those normally encountered in the field. Counsel further asserts that labor certification is not possible because there is no permanent job offer. Specifically, if funding were to be eliminated at Vanderbilt University, the petitioner would need to relocate to another laboratory doing similar research. The petitioner submitted new reference letters.

Dr. James Price, an assistant professor at Vanderbilt University Medical Center, asserts that the petitioner used to bring "samples for analysis in my research core facility." He provides general praise of the petitioner's experiments and asserts that her work "has been crucial to our understanding of the function of this anti-cancer agent, including its potential for benefit to mankind, as well as potential harmful side effects." He concludes that her experience with CM101 will allow her to contribute to the CM101 project to a greater extent than "the average researcher."

Dr. Peng Liang, an assistant professor at Vanderbilt University School of Medicine, asserts that the petitioner "plays an important role in investigating and developing CM101." Dr. Michael Waterman, another professor at Vanderbilt University School of Medicine, discusses the importance of CM101, including the recent revelation of its possible use to assist with recovery from spinal cord injury. Dr. Waterman concludes that replacing the petitioner "would cause a significant setback in development of CM101," although he does not specify that the petitioner played a role in the spinal cord revelations.

In a new letter dated May 5, 1999, Dr. Hellerqvist asserts that CarboMed, Inc. would secure its own research facilities independent of Vanderbilt in the following eight to nine months and that "all the scientists on my team will also transfer to the new CarboMed facilities." Dr. Hellerqvist adds that as a key member of the team, he expects the petitioner to follow. Finally, Dr. Hellerqvist asserts that in addition to the petitioner's work on CM101 activates, "she is developing the flow cytometry assays for CM101 receptor expression, with which she has showed

promising data so far.” He concludes that the project has “enormous potential for developing non-toxic, highly targeted drug candidates.”

Dr. Y. Richie Lu, strategic planning manager at Knoll Pharmaceutical Company, indicates that he met the petitioner at a conference in 1999, after the date of filing. Dr. Lu asserts that the petitioner “has established a solid reputation as a leading scientist in anti-cancer research.” He continues that her “unique skill set and experience are non-replaceable.” Dr. Lu does not indicate that he specializes in angiogenesis research or that he personally has been influenced by the petitioner.

The director concluded that the petitioner had not demonstrated that her ability to follow the funding for CM101 warranted a waiver of the labor certification in the national interest.

On appeal, counsel asserted that the petitioner has an “outstanding and superior record of accomplishment” that warrants a waiver of the labor certification process in the national interest. Regarding the absence of published work by the petitioner, counsel asserted that in order to secure patent rights, “much of [the petitioner’s] research has remained private and unpublished.” Counsel concluded:

It is the substantial weight of testimonial letters, international media coverage, international published research articles and unreleased lab reports, and the resultant drugs and cures that support [the petitioner’s] claim to be able to serve the national interest to a substantially greater degree than would a U.S. worker with the minimum qualifications to perform this job.

In support of the appeal, the petitioner submitted an additional letter, internal laboratory minutes and development goals for 1999, information from CarboMed, Inc.’s website, and articles regarding the potential uses for CM101 (none of which mention the petitioner by name or the significance of CM101 activates, compliments, or alternative pathways).

The new letter is from Dr. Y. Zhang Ji, a research scientist at G.D. Searle and Company. Dr. Ji explains his knowledge of the petitioner as follows: “As a critical scientist for the [CM101] research, [the petitioner] has caught my attention as I keep a close eye on the rapid progress of [the] CM101 project these years.” In addition to monitoring the project’s results through “professional contacts,” Dr. Ji asserts, “[the petitioner’s] findings have bee[n] published in professional journals, which is one of the ways in which I remain up-to-date and familiar with her work.” Finally, Dr. Ji states that while the position requires only a Master’s degree plus two or three years experience, someone with those qualifications would not be able to accomplish what the petitioner has. Dr. Ji concludes: “In fact, [the petitioner] functions so independently and crucially that I would consider her as functioning at a postdoctoral level.” Dr. Ji does not assert that his work focuses on angiogenesis agents or that it has been influenced by the petitioner.

The laboratory minutes submitted on appeal are for an April 14, 1998, meeting, a November 24, 1998, meeting, and an April 29, 1999, meeting. During the first meeting, the only one to occur

prior to the date of filing, the researchers discussed eight projects, one of which was presented by the petitioner. During the second meeting, the researchers discussed 13 projects, two of which involved the petitioner. At the final meeting, the researchers discussed 11 projects, two of which were presented by the petitioner. The notes indicate that the second project presented by the petitioner at this final meeting “produced surprise data . . . which will allow us to deliver to Zeneca a binding assay.”

CarboMed, Inc.’s Development Goal of 1999 lists the petitioner as team leader for three goals, one of which has low longer term value, another of which is defined as “little longer term value since expected.” The petitioner’s final project, “Complement C3 binding assay using [sheep and human receptors]” is rated as having “high” longer term value. The petitioner also authored standard operating procedures for flow cytometry quantitation of CM101, issued on May 29, 1999, after the date of filing.

The website materials for CarboMed, Inc. indicate that Dr. Hellerqvist has patented some innovations regarding CM101, but also indicates that several research articles regarding CM101 have been published in the *Journal of Cancer Research and Clinical Oncology* in 1993, 1995, 1997, the *Journal of Clinical Cancer Research* in 1997, *Angiogenesis* in 1998, and the *Proceedings of the National Academy of Sciences* in 1998. The reports of the Phase I Clinical study credit some of the petitioner’s references, but not her.

The AAO dismissed the appeal, noting the following deficiencies:

Counsel asserts that the petitioner’s “work is well published and widely circulated,” although the record contains no evidence to show how frequently other researchers have cited the petitioner’s published work. At the time counsel made this assertion, none of the petitioner’s work with CM101 had yet been published.

* * *

Documents on appeal concern the use of CM101 to help restore nerve function in paralyzed mice. The record contains no evidence that the petitioner was involved with these experiments. Therefore, this evidence addresses the overall importance of CM101 research, but not the significance of the petitioner’s contribution.

The record contains ample evidence to show that the petitioner was not involved in the discovery of CM101’s properties in fighting cancer and promoting nerve regeneration. Rather, the petitioner’s role has been studying means of optimizing the production of CM101 by cultured cells.

The AAO also stated that while the tasks performed by the petitioner might be required for the progress of the project, it did not follow that only the petitioner could perform those tasks. Noting Dr. Ji’s comment regarding the petitioner performing at a postdoctoral level, the AAO

questioned whether any postdoctoral researcher in the field could perform the petitioner's role. The AAO then acknowledged that many of the references asserted that the petitioner played a key role in CM101 research, but concluded that there was insufficient objective evidence in the record to support those assertions. The AAO stated: "Documentation submitted on appeal lists 17 elements of the project; the petitioner's name appears in only three of them, two of which (according to this documentation) have 'low' or 'little' long-term value."

Finally, the AAO concluded that counsel's arguments regarding the need for a labor certification waiver were contradictory. Specifically, the AAO questioned why it was important both that the petitioner remain with the CM101 project and have the flexibility to switch employers. The AAO noted a job offer from a pharmaceutical company unrelated to CM101 research.

On motion, counsel asserts that the AAO could not have reviewed the evidence in detail to reach its conclusion. Counsel then cites the conclusions of several non-precedent decisions issued by the AAO. Counsel criticizes the AAO for "devalue[ing]" the testimony of the petitioner's references, asserting that experts in the field would not perjure themselves. Counsel cites *Mnayer v. INS*, 1995 U.S. Dist. LEXIS 2193 (S.D. Fla.) for the proposition that the Service (now the Bureau) is bound by expert testimony in the record and must accept such evidence without corroborating objective evidence. Counsel notes the multiple assertions of the importance of the petitioner's role in CM101 research by the references. In detailing the petitioner's accomplishments, counsel references work performed in 1999 (the project involving C3 listed by counsel is referenced on CarboMed Inc.'s 1999 goal sheet) and November 1998, after the petition was filed.

Counsel dismisses the AAO's concern that only one of the petitioner's projects is listed as having a possible high long term value, asserting that this project was "critical." Counsel further argues that the AAO erred in raising the lack of publications, reiterating the concern for patent protection. Counsel asserts that the petitioner has published an article in the *Journal of Pediatrics* on CM101. (The article, submitted on motion, was published in 2000). Finally, counsel asserts that the AAO erred in finding the bases offered for the waiver were contradictory. Counsel reiterates that the petitioner must be free to follow the funding for CM101 and leave for different projects once that research is complete.

On motion, the petitioner submits a new letter from Dr. Hongliang Cai, a senior scientist at Pfizer. Dr. Cai discusses the importance of the petitioner's C3 work. According to CarboMed, Inc.'s 1999 goals, this work was performed after the date of filing. Dr. Cai does not indicate that his work involves CM101 or other angiogenesis agents or that his work has been influenced by the petitioner.

Counsel's arguments do not persuasively overcome all of the AAO's stated concerns and we affirm the AAO's previous decision. The court in *Mnayer* was concerned that the Service had failed to accept the assertions of the alien's references without providing a reason for doing so.

The AAU decision gives no reason why these expert recommendations should not be given credence. Instead, the determination merely parrots the above-stated standard for “national interest” and states that Mnayer has not shown that she meets this requirement.

In the instant case, the AAO discussed several reasons why the letters were insufficient. As quoted above, the AAO essentially concluded that the remaining evidence in the record was inconsistent with an influential track record of success. We concur.

We do not find that the AAO dismissed the reference letters as having no weight or questioned the credibility of the authors. We do not suggest that the petitioner’s references perjured themselves or doubt their sincerity; although, as noted above, Dr. Lloyd embellishes the facts by referencing the as yet unapproved CM101 as “the number one drug that the National Cancer Institute has to fight cancers.” Nevertheless, in general, the accolades of one’s immediate circle of colleagues do not establish one’s influence over the field as a whole. The independent letters in the record are general and fail to explain how the petitioner’s work has influenced the field. Many of them address the petitioner’s work with flow cytometry, which occurred after the date of filing. Counsel concedes that several other laboratories are performing CM101 research as part of her argument that the petitioner needs the flexibility to follow the funding. The record, however, does not include letters from these institutions explaining how the petitioner’s work has influenced their own projects. Furthermore, the record does not include any evidence from researchers at Zeneca, Ltd., explaining how the petitioner’s work has benefited the research they are conducting based on their licensure of CM101-related intellectual property rights from CarboMed, Inc.

We cannot ignore that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Recognizing that publication is inherent to the field of research, we consistently hold that mere publication of one’s work is, in and of itself, insufficient evidence to warrant a waiver. Unless the record contains other objective evidence of an influence on the field, a petitioner must demonstrate that the work is notably influential, such as by submitting evidence that it is widely cited. That said, the Bureau does recognize that intellectual property rights can play a role in decisions to delay publication of one’s findings. In such situations, however, it can be expected that the petitioner would be able to demonstrate not only that she is listed as a co-author on a patent or patent application (a patent is not evidence sufficient to warrant a waiver according to *Matter of New York State Dep’t. of Transp., supra*, at 221, n. 7.) but also that it has generated interest. Such evidence of the latter factor might include evidence of marketing success or a licensing agreement.

In the instant case, the record does not support counsel’s explanation for why the petitioner is unable to demonstrate that she has published widely cited articles. According to his resume, Dr. Hellerqvist has seven patents pending. The petitioner has not submitted evidence that she is a co-author on any of those or other patent applications. Even if the petitioner were a co-author of a patent application, the record contains no evidence that Zeneca, Ltd., or any other company, has expressed an interest in licensing a patent co-authored by the petitioner. Moreover, despite Dr.

Hellerqvist's pending patents, according to CarboMed Inc.'s website, Dr. Hellerqvist published at least two articles about CM101 in 1997, during the time when the petitioner was working in his laboratory. Neither of these articles is co-authored by the petitioner. The website materials, updated in 1998, also reference an "in press" article to be published in the prestigious *Proceedings of the National Academy of Sciences*. The petitioner has not submitted any evidence that she co-authored this article.

We cannot ignore that the "objective evidence" to which counsel referred on appeal (quoted above) does not simply fail to establish the petitioner's role in CM101 research, but indicates that her role was not particularly influential. As noted above, the newspaper article in the *Nashville Banner* names Dr. DeVore as the lead researcher on one of the more significant CM101 research projects.³ The article quotes Dr. Hellerqvist and lists the other researchers involved in the project. The list does not include the petitioner's name.

That the petitioner's name appears in the minutes of CarboMed Inc.'s meetings is not significant. We do not question that the petitioner has been involved in CM101 research. The most significant reference to the petitioner's work in these minutes, as discussed above, involves work performed after the date of filing. Similarly, whether or not the list of goals for 1999 reflects that the petitioner was responsible for any influential research in that year, the petition was filed in June 1998. In limited circumstances we have considered evidence reflecting that work performed prior to the date of filing was recognized as influential after the date of filing for this classification (which does not require any type of "acclaim.") Evidence regarding the significance of work performed after the date of filing, however, cannot be considered evidence of the petitioner's eligibility at that time. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Further, whether or not counsel's argument that the petitioner must be free to follow the funding for CM101 research is inconsistent with Dr. Hellerqvist's assertions that his research would be harmed if the petitioner were not allowed to continue, the inapplicability of the labor certification process is insufficient by itself to warrant a waiver of the process. *Matter of New York State Dep't. of Transp.*, *supra*, at 218, n.3.

Counsel is more persuasive in arguing that the AAO's reference to Dr. Ji's assertion that the petitioner was performing at a postdoctoral level suggests that the AAO was implying a standard by which the petitioner must demonstrate her abilities as compared with those with higher credentials. We do not find, however, that counsel's interpretation of this statement, even if plausible, warrants a reversal of the entire decision. For the reasons discussed above, the AAO's basic reasoning is sound.

It is clear that the petitioner has won the admiration of her immediate circle of colleagues. While the petitioner's research is no doubt of value, any research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher working on a project with great potential inherently serves the

³ The record does not include a reference letter from Dr. DeVore.

national interest to an extent that justifies a waiver of the job offer requirement. The record does not establish that the *petitioner's* work with CM101 represented a groundbreaking advance in angiogenesis research.

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. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

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 AAO's decision of January 18, 2001, is affirmed. The petition is denied.