

PUBLIC COPY

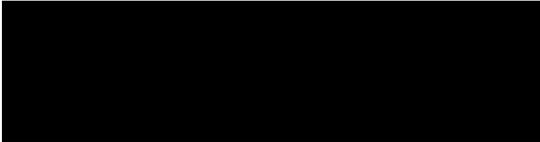
U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

B5

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



SEP 26 2007

File: [REDACTED] (LIN-99-129-51228) Office: Nebraska Service Center

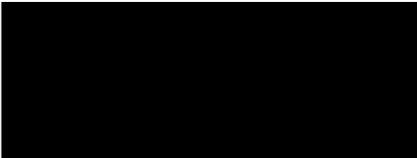
Date:

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:



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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks to employ the beneficiary as a statistician. 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 beneficiary 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 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 beneficiary holds a Ph.D. in Statistics from Northwestern University. The beneficiary's occupation falls within the pertinent regulatory definition of a profession. The beneficiary 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.

The petition was supported by two exhibits regarding the petitioning laboratory, 13 exhibits relating to the area of research that the beneficiary supports, the beneficiary's credentials, and five reference letters from the beneficiary's immediate circle of colleagues.

We concur with the director that the beneficiary works in an area of intrinsic merit, statistics for medical research. The bulk of the record addresses this factor although the Service, now CIS, has consistently held that eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. The director then concluded that the impact of a single statistician would be negligible nationally. On appeal, counsel asserts that statisticians involved in pharmacological research can have a national impact. While the director's concerns might be valid for some statistics work, we concur with counsel that the *proposed* benefits of the beneficiary's work, new treatments for ulcers and other gastric conditions, would be national in scope.

It remains, then, to determine whether the beneficiary will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. As implied above, we 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 beneficiary's contributions in the field are of such unusual significance that the beneficiary merits the special

benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate the alien's past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The petitioner asserts that as a statistician for its laboratory, the beneficiary was involved in the development of the laboratory's drugs Lansoprazole and Clarithromycin, treatments for gastrointestinal diseases and lower respiratory tract infections. The petitioner further states that the beneficiary recently tested a new regimen to eradicate *H. pylori* in patients with peptic ulcers. The petitioner asserts that this regimen, involving a higher eradication rate of *H. pylori*, less treatment emergent *H. pylori* resistance, and more manageable treatment compliance, won FDA approval.

The beneficiary's supervisor at the petitioning laboratory, Dr. [REDACTED] praises the beneficiary's computer skills, statistical methodology knowledge, ability to work with complex models, and communication skills. Dr. [REDACTED] asserts that in addition to working on Lansoprazole and Clarithromycin, the beneficiary also worked on drugs for the treatment of prostate cancer, endometriosis, arthritis and cardiovascular disease. He specified that "several of her contributions have involved an investigation of the relationship of drug concentration in the blood with drug concentrations in tissues (site of action) or with effects of drug (hormone levels associated with efficacy, liver function measures, etc.)." The beneficiary has also performed "a comparison of pharmacodynamic effects of different drugs or different doses of a given drug, pharmacokinetic drug interactions, comparing drug formulations with respect to bioavailability, comparing the effects of various dosing conditions on bioavailability, and the assessment of a new drug with respect to liner kinetics and dose proportionality." Dr. [REDACTED] indicates that the above studies required a "cross-over design, which rarely gets much attention in Statistics curricula."

Dr. [REDACTED] an associate professor at Northwestern University, discusses her collaboration with the beneficiary on a study of cancer incidence in individuals with lupus. According to Dr. [REDACTED] their study showed for the first time an increased risk of cancer in women with lupus. Dr. [REDACTED] indicates that Systemic Lupus International Cooperating Clinics researchers are using these results to investigate the specific risk factors that "might predispose a lupus patient to develop cancer." Finally, Dr. [REDACTED] asserts that the beneficiary was "instrumental" in cleaning and analyzing data for a study on juvenile dermatomyositis.

Dr. [REDACTED] one of the beneficiary's professors at Northwestern University, asserts that the beneficiary did well in her courses. Dr. [REDACTED] praises the beneficiary's ability to write and present her work "clearly and articulately." While Dr. [REDACTED] asserts that the beneficiary is "creating some of the analytical tools that will provide more discerning insight to the data that medical researchers assess," she does not provide examples of medical research laboratories beyond those associated with the beneficiary that have adopted the beneficiary's "tools."

Dr. [REDACTED] the beneficiary's Ph.D. advisor at Northwestern, asserts that the beneficiary is a "capable statistician." Dr. [REDACTED] continues that the beneficiary's "work on multivariate measures of ordinal association permits application of classical techniques of statistical inference to such

measures.” Dr. [REDACTED] concludes that the beneficiary’s “results have substantial significance in statistical applications in the social and biological sciences.” Dr. [REDACTED] does not explain how the beneficiary’s methods constitute a significant improvement over previous statistical methods. Nor does Dr. [REDACTED] provide specific examples demonstrating how the beneficiary has influenced the field beyond her colleagues.

Finally, Dr. [REDACTED] a professor of pediatrics at Northwestern University Medical School, discusses the beneficiary’s evaluation of the “clinical and epidemiological features of 103 children with juvenile dermatomyositis who were studied.” Dr. [REDACTED] asserts that the beneficiary’s data was always “clean” and that the beneficiary “sought less common methods of data analysis that proved to be extremely useful.” Dr. [REDACTED] concludes that the results of the study, reflecting that juvenile dermatomyositis may have an infectious origin, “has the promise of changing the way that physicians think about and (ultimately) treat this chronic disease.” Dr. [REDACTED] does not explain how the use of uncommon methods adds anything new to the field of statistics or indicate that the beneficiary developed new statistical methods that have influenced the field of statistics.

The director concluded that the record did not distinguish the beneficiary from other statisticians beyond her academic credentials and experience, which can be enumerated on an application for labor certification.

On appeal, counsel asserts that the beneficiary’s skills are unique and critical to the success of the projects on which she works. Counsel further asserts that the labor certification process is too lengthy and cannot be completed prior to the completion of the beneficiary’s current nonimmigrant status. Counsel further asserts that few statisticians have obtained or even intend to obtain Ph.D.’s. Counsel concedes that it is insufficient to “simply enumerate [the beneficiary’s] qualifications,” but then immediately asserts that “those qualifications do amply demonstrate that [the beneficiary’s] expertise in statistical research is significantly greater than other similarly trained researchers.” Counsel continues: “Her education and previous experience in the pharmacokinetics and pharmacodynamics have uniquely prepared her for the rigors of pharmaceutical research.”

The above arguments are not persuasive. As stated in *Matter of New York State Dep’t. of Transp., supra*, at 221, it cannot suffice to state that the alien possesses useful skills, or a “unique background.” The beneficiary’s education and experience are qualifications that can be easily enumerated on an application for labor certification. Regarding the length of the process, nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process.<sup>1</sup> Dr. [REDACTED] asserts that “few Americans are able to receive doctorates in statistics from major universities” and that those who do “either have limited applied training or lack technical skills.” While this statement appears to

---

<sup>1</sup> We note that on July 30, 2001, the petitioner filed another petition in behalf of the beneficiary based on an approved labor certification. Arguably, the petitioner’s request to waive a requirement that the beneficiary can now meet is moot.

go beyond the mere assertion of a shortage of qualified statisticians, Dr [REDACTED] provides no explanation for his implication that Americans are not “able” to succeed in the field of statistics.

In addition to the above arguments, counsel also argues that the beneficiary has a “sustained record of achievement.” As evidence of those achievements, counsel references the beneficiary’s publications and presentations, noting that statisticians are not required to publish research results. Statisticians can serve in many different positions. Some of those positions may not involve presentations or publications. The petitioner has not established that it is remarkable for statisticians who focus on analyzing medical data to be listed as a co-author on the publications reporting the results of those studies. The record contains no evidence that the article co-authored by the beneficiary are considered remarkable for the statistical methods used, as opposed to the results announced in the articles. For example, there is no evidence that the beneficiary’s articles have been widely cited by statisticians in articles relating to statistical methods.

The letters discussed above provide details about the beneficiary’s role in various projects and demonstrate that the beneficiary has won the admiration of those with whom she has come in contact. The letters do not establish the beneficiary’s influence over the field as a whole. On pages two, nine, and ten of her appellate brief, counsel refers to reference letters from “independent” experts in the field. Counsel does not explain how the beneficiary’s supervisor, Ph.D. advisor, professors and collaborators constitute “independent” experts. We conclude that the record contains no independent evaluations of the beneficiary’s work or its influence on the field of statistics. Specifically, the record contains no letters from high-level officials at health related government agencies attesting to the beneficiary’s influence on the field of pharmaceutical statistics. The record also contains no letters from statisticians or medical researchers with whom the beneficiary has not collaborated asserting that they are adopting the beneficiary’s statistical methods in their own studies.

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.