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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass., 3/F

425 I Street, N.W.

Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: California Service Center

Date: **SEP 29 2003**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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)

IN BEHALF OF PETITIONER:

[Redacted]

**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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, California 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 a member of the professions holding an advanced degree. At the time of filing, the petitioner was working as a postdoctoral researcher in the Department of Neuroscience at the University of California, San Diego ("UCSD"). 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) Subject to clause (ii), 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 petitioner holds a Ph.D. in Biology from the University of Virginia ("UVA"). 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 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 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.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification sought. 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 note 6.

Along with documentation pertaining to his field of research, the petitioner initially submitted several witness letters.

Dr. [REDACTED] Assistant Professor of Neuroscience at UCSD, states:

[The petitioner] is currently a postdoctoral researcher in my laboratory supported by a highly recognized fellowship from the Life Science Research Foundation. In our lab, my colleagues and I are trying to determine the fundamental features shaping the strength of synaptic transmission in the brain. Currently, our work targets the central synaptic pathways involved in the processing of olfaction (smell). Ultimately, I hope to use this work to reveal

how brain synapses process and encode sensory information. [The petitioner's] current track record fully supports his prospective research with UCSD. With an outstanding background, [the petitioner] will be able to further develop his research to its full potential.

Dr. [REDACTED] statements pertain to the expectation of future results rather than the petitioner's specific past research achievements. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which CIS held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. An alien seeking a national interest waiver must demonstrate that his work has already significantly influenced the field.

Dr. [REDACTED] further states:

Our research, including [the petitioner's] work, contributes significantly to the understanding of the mechanisms underlying such neurological diseases as epilepsy. The improved medical treatments and healthcare that follow basic neuroscience research will also help the U.S. economy. This is a significant contribution to the U.S.

We generally do not accept the argument that a given field is so important that any alien qualified to work in that field must also qualify for a national interest waiver. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5<sup>th</sup> Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule. Witness statements and documentation pertaining to the undoubted importance of neurological research may establish the intrinsic merit and national scope of the petitioner's work, but such evidence would not suffice to show that an individual working in that field automatically qualifies for a waiver of the job offer requirement.

Dr. [REDACTED] Professor of Biology at UVA, indicates that he was the petitioner's Ph.D. advisor at UVA. Dr. [REDACTED] further states:

My overall research goal is to describe the neuronal mechanisms that underlie rhythmic animal behaviors. One specific aim is to achieve a complete understanding of the control and execution of swimming movements in the medicinal leech.

\* \* \*

During his Ph.D. study, [the petitioner] carried out original researches on sensory modification of leech swimming. The research results have been published in four articles that I co-authored with him... In addition, [the petitioner] reported our research at several conferences, including oral presentations at the conference of the Society for Neurosciences and annual meeting of Computational Neurosciences.

The record, however, contains no evidence that the presentation or publication of one's work is a rarity in petitioner's field, nor does the record sufficiently demonstrate that independent researchers have heavily cited or relied upon the petitioner's findings in their research. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. Frequent citation by independent researchers, on the other hand, would demonstrate more widespread interest in, and reliance on, the petitioner's work.

In this case, the petitioner has submitted documentary evidence of three citations of his work. Three citations is an extremely small number of citations considering the number of research papers that the petitioner has published. Thus, while heavy citation of one's work would certainly demonstrate an unusual degree of influence on the field, the limited number of citations presented by the petitioner is not so unusual as to distinguish him from other competent neurological researchers.

Dr. [REDACTED] further states:

[The petitioner's] research and publications are original and important for they have extended our understanding of how neuronal circuits control animal locomotion. In particular, he has shown how sensory input acts to alter coordination between body segments during rhythmic movements.

[The petitioner's] work contributes significantly to our fundamental understanding of biological processes that extends well beyond neurophysiology. It is not a far stretch to imagine that someday [the petitioner's] research will contribute to the improvement of human health, particularly as related to overcoming limitations in locomotory function either to accident or to disease.

Dr. [REDACTED] Professor of Biology, UVA, states:

What [the petitioner] has been able to demonstrate is that there is even stronger control through sensory feedback generated by the muscle tension in the leech body wall that is periodically increased because of the central motor pattern. While sensory feedback has been implicated in other systems in adjusting the frequency of motor output, [the

petitioner's] work has shown that coordination between different segments of the nerve cord is dependent upon this sensory feedback.

[The petitioner's] current research on the mammalian olfactory system, for which he has been awarded a postdoctoral fellowship from the Life Science Foundation, will significantly contribute to our understanding of how the nervous system encodes odor information.

While the petitioner's past findings may have added to the general pool of knowledge, it has not been shown that the greater scientific community views the petitioner's work as unusually significant. As is the case with Dr. [REDACTED], Drs. [REDACTED] and [REDACTED] do not indicate how the petitioner's past research was of greater benefit than that of others in his field. Assertions from these witnesses as to the petitioner's potential to make future contributions cannot suffice to demonstrate eligibility for a national interest waiver. Such statements fail to persuasively distinguish the petitioner from his peers.

The record contains evidence showing that the petitioner was among 35 finalists awarded a postdoctoral fellowship from the Life Science Research Foundation (LSRF). A letter from Dr. [REDACTED] President, LSRF, states:

The three-year postdoctoral fellowships are awarded on a competitive basis to graduates of medical and graduate schools in the biological sciences.... LSRF recognizes that discoveries and the application of innovations in biology for the public's good will depend upon the training and support of the highest quality young scientists in the very best research environments.

\* \* \*

[The petitioner] was awarded this highly recognized and competitive fellowship for his excellent research proposal to study synaptic mechanisms of olfactory coding in the nervous system.

Counsel argues that the petitioner's receipt of this competitive fellowship places him among a small percentage of researchers "who [have] risen to the top of his field." We reject this assertion noting that postdoctoral fellowships represent advanced training for recent graduates rather than a form of recognition that would elevate the petitioner above established professional researchers and university professors working in the neurological field. Such fellowships are presented not to established individuals with active professional careers, but rather to "young scientists" in pursuit of further research training and experience. Counsel cannot artificially restrict the petitioner's field to exclude all those researchers who have long since completed their advanced research training and therefore do not compete for postdoctoral fellowship funding. We further note that the fellowship grant was awarded based on the petitioner's "research proposal." According to documentation presented by the petitioner, fellowships from the LSRF are bestowed in response to applications by prospective recipients, who describe the research that they seek to undertake. In other words, the LSRF fellowship, while competitive, generally supports future research rather than recognizing unusually significant past scientific achievement. It cannot be ignored that a

substantial amount of scientific research is funded by research grants from a variety of sources. For the above stated reasons, it is implausible for counsel to argue that the petitioner's receipt of postdoctoral fellowship funding significantly distinguishes him from established neurological researchers.

Other than the letter from Dr. [REDACTED] that simply confirms the petitioner's receipt of a LSRF fellowship, the petitioner's initial witnesses consisted entirely of individuals from institutions where the petitioner has studied or worked. While letters from those close to the petitioner certainly have value, the letters do not show, first-hand, that the petitioner's work is attracting attention on its own merits, as we might expect with research findings that are especially significant. Independent evidence that would have existed whether or not this petition was filed, such as heavy citation of the petitioner's published findings, would be more persuasive than the subjective statements from individuals selected by the petitioner.

The director requested further evidence that the petitioner had met the guidelines published in *Matter of New York State Department of Transportation*. In response, the petitioner submitted additional witness letters and published research articles.

Dr. [REDACTED] Professor and Chairman, Department of Physiology, University of California, San Francisco ("UCSF"), states that the petitioner is now working in his laboratory. Dr. [REDACTED] emphasizes the petitioner's educational background and research experience, stating:

In our laboratory, my colleagues and I are now trying to determine the mechanisms by which connection between neurons in the brain are changed by early experience. [The petitioner's] previous education and track record as a young scientist fully supports his prospective research with UCSF. With an outstanding background, [the petitioner] will be able to further develop his research to its full potential.

Any objective qualifications that are necessary for the performance of a research position can be articulated in an application for alien labor certification. Pursuant to *Matter of New York State Dept. of Transportation, supra*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education that could be articulated on an application for a labor certification.

Dr. [REDACTED] Professor of Neurobiology, UCSD, states that the petitioner's "contributions far exceed most students' work [that he has] reviewed in the past 10 years." The assertion that the petitioner's work is superior to that of the "students" that Dr. [REDACTED] has encountered offers no meaningful comparison between the petitioner and experienced professionals in the neurological research field who have long since completed their educational training.

The petitioner also submits a letter from Dr. [REDACTED] Professor of Biology, Emory University. Dr. [REDACTED] has cited the petitioner's work in a published article and claims that the petitioner's work has impacted his own research. Dr. [REDACTED] states:



His brilliant experimental analysis of intersegmental coordination of swimming in the leech and the role of stretch receptors in this coordination has set a standard for understanding in this field.

Considering that he was only a graduate student during this work, one must regard him as one of the most promising young investigators...

While the petitioner's findings have captured the attention of Dr. [REDACTED] it has not been shown that a substantial number of other independent researchers from throughout the scientific community view the petitioner's work as so unusual that it merits the special benefit of a national interest waiver.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director acknowledged the intrinsic merit and national scope of the petitioner's work, but found 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 stated that the petitioner had failed to establish that he would serve the national interest to a substantially greater degree than others in his field.

On appeal, the petitioner submits two new witness letters and additional documentation pertaining to his work. Much of the supporting documentation submitted on appeal had previously been submitted into the record and has already been addressed.

Dr. [REDACTED] Associate Professor of Bioengineering, Arizona State University, states:

I have had the opportunity to follow [the petitioner's] work over the years while he was a graduate student, read his publications, and observe him give presentations at national and international conferences.

\* \* \*

As shown by his publications, [the petitioner's] unique and innovative approach has substantially increased understanding and progress in the research field. His research has led to novel findings, such as the role that sensory input plays in altering coordination between body segments during movements.

\* \* \*

With his scientific training and publication record, [the petitioner] is clearly one of the most promising young scientists currently working in the U.S.

Dr. [REDACTED] Professor of Biological Science, University of California [REDACTED] also focuses on the petitioner's publication record, stating:

I first met [the petitioner] at the annual meeting of the Society for Neuroscience, where as a graduate student he presented his thesis research. . . . His results have since been published in three papers on which he is first author, the traditional sign that he both conceived the research and did the bulk of the writing. These papers were accepted for publication in two of our most stringent journals, the *Journal of Neuroscience* and *Journal of Neurophysiology*, which means that they passed vigorous peer-review. This record of achievement as a graduate student in this competitive field is quite unusual, and marks him a talented and very promising young scientist.

Publication, by itself, is not a strong indication of impact in one's field, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the petitioner's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work. Their citation of the petitioner's work demonstrates their familiarity with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and national benefit — a researcher's work would have, if that research does not influence the direction of future research. The limited number of citations presented by the petitioner in this case (3) is not sufficient to demonstrate that his findings have significantly influenced his field.

On appeal and in response to the director's request for evidence, counsel argues that a letter from the National Science Foundation demonstrates the importance of the petitioner's contributions "as viewed by an *independent federal agency*." On two occasions counsel has specifically stated:

The letter from the National Science Foundation states in part that, "[The petitioner] already has made very important contributions to the study of animal locomotion. His primary efforts will be to assist in mapping sensory-CNS interactions and in obtaining intracellular records from SRs in the NC-BW preparation." (see attached letter).

Counsel further states: "The Service says 'no testimonial letters from major agencies or national organizations' by ignoring our document of the National Sciences Foundation Letter." [sic] The record, however, contains no letter from the National Science Foundation or statements issued by any official in behalf of that organization. Therefore, we reject counsel's assertion that the director's statement was erroneous. The record does contain a "Budget Justification" and a "Cover Sheet for Proposal to the National Science Foundation" (both prepared by UVA officials) listing Dr. [REDACTED] as the principal investigator. Contrary to counsel's assertion, the above quote regarding the petitioner comes from UVA's "Budget Justification" rather than any official from the National Science Foundation.

The existence of documentation indicating that a research project led by Dr. [REDACTED] received federal

funding would carry little weight in this matter. The assertion that contributing to a project which was awarded funding by the National Science Foundation would somehow elevate the petitioner above other competent researchers is flawed in that it would apply equally to all researchers who receive governmental funding for their studies. We note here that the U.S. Government routinely provides millions of dollars in research grants to many thousands of scientists and research institutions on an annual basis. The record contains no statement from any official governmental source indicating that the petitioner's specific results were viewed as particularly important when compared to those from the numerous other neurological researchers in the United States receiving similar governmental funding.

Clearly, the petitioner's research supervisors and collaborators have a high opinion of the petitioner and his work, as do other researchers who know the petitioner from encounters at scientific conferences. With regard to the witnesses of record, many of them refer to the petitioner as a "promising young scientist" and discuss what may, might, or could one day result from the his work, rather than how the petitioner's past efforts have already had a discernable impact beyond the original contributions expected of most doctoral students and postdoctoral researchers. The petitioner's findings do not appear to have yet had a significant influence in the larger field. While numerous witnesses discuss the potential applications of these findings, there is no indication that these applications have yet been realized. The petitioner's work has added to the overall body of knowledge in his field, but this is the goal of all such research; the assertion that the petitioner's findings may eventually have practical applications does not persuasively distinguish the petitioner from other competent neurological researchers.

In sum, the available evidence does not persuasively establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner.

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 the 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.

**ORDER:** The appeal is dismissed.