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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: WAC-02-207-53549 Office: California Service Center

Date: **SEP 30 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:



**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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks 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.

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 Ph.D. in Biology from the Israel Institute of Technology. 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.

While counsel does not raise this concern on appeal, the director's decision contains several references to "general acclaim" and "widespread recognition." These phrases do not appear in the regulations or the precedent decision relating to the classification sought. On page five the director notes that the accomplishments of the petitioner's references "far outweigh" his own. On page eight, the director states that the petitioner's references "compare the petitioner's research work to the work of his coworkers and other advanced students, rather than to the most experienced and accomplished researchers in the field." For the classification sought, however, the petitioner need not demonstrate

that he is one of the very few at the top of his field, as suggested by the director's language. That requirement is only for aliens of extraordinary ability pursuant to Section 203(b)(1)(A) of the Act.

Nevertheless, we cannot sustain an appeal based solely on the director's inclusion of some problematic language. The record must establish the petitioner's eligibility for the classification sought.

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.

We concur with the director that the petitioner works in an area of intrinsic merit, prion research, and that the proposed benefits of his work, treatment of diseases caused by prions, 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.

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 he 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.

On pages five and six of the director's decision, he essentially dismisses the petitioner's reference letters based on the references' association with the petitioner. The director states:

The letters are from professors, employers, former and current coworkers, collaborators and other esteemed experts in the field, including some independent testimonies. Other witnesses are high officials of important learning and research institutions, but examination of their statements indicate that they have collaborated directly or indirectly with the petitioner or the individuals connected with the petitioner's research projects or institution. Thus their knowledge of the petitioner's work appears to derive from this association, rather than from the petition's general acclaim as a researcher in the field of prion diseases and related fields. Those letters do not show that the petitioner's work has gained significant notice in the field among individuals who have not worked directly with the petitioner.

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While their first-hand knowledge is valuable in terms of learning details of the petitioner's role at the laboratory, it remains that nearly all of the witnesses have demonstrable connections with the self-petitioner, employer or the research facility. Playing an important role in a single research project, however crucial that role may be in the perspective of other participants, does not necessarily justify projections of future benefit to the national interest, nor does it warrant a waiver of the labor certification.

We agree that letters from a petitioner's collaborators and immediate colleagues, while important in providing details about the petitioner's role in various projects, cannot generally by themselves establish the petitioner's influence over the field as a whole. Nevertheless, such letters cannot be dismissed without any consideration of who the author is and what he or she says. As will be discussed below, the record contains a letter from Dr. Stanley Prusiner. Dr. Prusiner not only received a Nobel Prize in the petitioner's area of research, but the basis of that prize was his discovery of the existence of prions as disease causing entities. Thus, we do not use the term loosely when we say that Dr. Prusiner is the pioneer of prion research. While the fact that the petitioner works for Dr. Prusiner is not in and of itself sufficient cause to waive the labor certification requirement, nor should the petitioner be penalized for working for someone so renowned that most other experts in the field will have some connection to him. Dr. Prusiner is

clearly one of if not the ultimate authority on prions and his opinions on research in this area carry significant weight.

On appeal, counsel asserts that the director incorrectly implies that the work upon which the petition is based was performed while a doctoral student. The director acknowledges that the petitioner obtained his degree in 1993, nine years before filing the petition. The director, however, then describes the petitioner as “in the early stages of his career.” The director argues that the petitioner’s work must be viewed in the “context” of which it was carried out. The director immediately begins to discuss the requirements for Ph.D. candidates, noting that “when the dissertation was written, the self-petitioner was pursuing his Ph.D. degree.” The director concludes: “From its name and timing, the petitioner’s research praised in letters of attestation appears to recognize student work rather than excellence in the field of endeavor.” The basis of the petition, however, is the petitioner’s research in the laboratory of Dr. Prusiner, begun in 1994. At the time of filing, the petitioner was working as an assistant adjunct professor at the University of California, San Francisco (UCSF). He was not a Ph.D. candidate or even a postdoctoral researcher.

Even if the petitioner were relying on his Ph.D. dissertation, what is relevant is the impact of the research, not when it was performed. We acknowledge that Ph.D. candidates are expected to complete original research. Thus, completing a dissertation is not, in and of itself, evidence that the Ph.D. recipient is any more accomplished than are others in the field with the same degree. It does not follow, however, that no Ph.D. dissertation can ever be demonstrated to have had an influence on the field.

Dr. Prusiner, Director of the Institute for Neurodegenerative Diseases at UCSF, asserts that the petitioner studied the chemical changes that are responsible for the conversion from a normal cellular prion protein (PrP<sup>C</sup>) to the pathogenic misfolded isoform (PrP<sup>SC</sup>). Dr. Prusiner explains that the goal of this research was to “raise antibodies capable of distinguishing between the different conformations.” According to Dr. Prusiner, the petitioner was able to isolate antibody fragments and developed a repertoire of antibodies “that bound linear and discontinuous epitopes of prion proteins of protein with specificities to a large number of species.” In order to combat the insolubility of PrP<sup>SC</sup>, the petitioner investigated the properties of that protein indirectly “by studying the conformational stability of the molecule using guanidine denaturation and ELISA.” Dr. Prusiner indicates that this methodology has produced “important data,” including “the biochemical events that lead to the formation of new prion diseases upon transmission between species.” Dr. Prusiner further states:

More recently, [the petitioner] has demonstrated the ability of recombinant PrP-specific antibodies to modulate the level of PrP<sup>SC</sup> in prion-infected cultured mouse neuroblastoma cells. In a series of elegant experiments, [the petitioner] has thoughtfully defined the parameters that dictate the inhibitory potency of individual antibodies (i.e. capacity to bind to cell surface PrP populations and the region of PrP bound by the antibody). Additionally, he demonstrated, for the first time, that cells possess an inherent capacity to degrade prions. This is a major finding given the known robustness of infectious prions to normal methods of pathogen inactivation carried out extracellularly. This principle has implications for all attempts to contain prion

infection be they via antibodies or other agents. A manuscript describing these studies has been published in one of the most internationally renowned journal, "Nature[.]"

Dr. Stephen J. DeArmond, another professor at UCSF, provides similar information, asserting that there were several unsuccessful attempts to isolate high affinity antibodies from phagemid libraries prior to the petitioner's development of a successful method for doing so. Dr. DeArmond further indicates that the petitioner's method is "now the standard in the Prusiner lab" and "is now validating [sic] by the European Community for screening of bovines for Mad Cow Disease (BSE)."

Dr. Peter Peters, a senior scientist at the Netherlands Cancer Institute, discusses his collaboration with the petitioner. Dr. Peters explains that the collaboration was beneficial to his work because the petitioner uses "antibodies to study the conformational properties of infectious prions, which is of great interest to me, as it covers an area of research that cannot be studied by the techniques that my laboratory specializes in." Dr. Peters later states that the petitioner's "specialization in immunoassays allowed him to contribute significantly to many groundbreaking studies." Dr. Peters further states:

In another study presented last year in a meeting in Dr. Prusiner's laboratory, I saw [the petitioner] demonstrating evidence how the conformation stability assay could distinguish between prions of cattle and sheep at the molecular level. This is an important and exciting finding because it may explain why bovine prions (termed BSE) cause disease in humans while sheep prions (termed scrapie) do not.

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In a break-through experiments [sic] he demonstrated that antibodies specific to PrP do inhibit prion formation in cultured, prion-infected mouse neuroblastoma cells. He demonstrated that the inhibitory effect is due to antibodies binding specifically to PrP<sup>C</sup> molecules on the cell surface and thereby hindering the docking of PrP<sup>Sc</sup> or a cofactor critical for the transition of PrP<sup>C</sup> to PrP<sup>Sc</sup>. . . . To substantiate these findings [the petitioner] demonstrated [that] antibodies mediate prion inhibition also in hypothalamic cell line.

That antibodies can inhibit accumulation of pathogenic proteins like prion[s] is a major and very exciting finding that opens a novel approach for therapy of prion and similar diseases. Indeed there is [an] important and unprecedented effort in many laboratories mainly in [the] USA and Europe to facilitate [the petitioner's] finding into development of therapeutic antibodies for human[s].

Finally, Richard Murdock, President and Chief Executive Officer of InPro (founded to commercialize the discoveries from Dr. Prusiner's laboratory), indicates that the petitioner and Dr. Prusiner applied for a patent for the recombinant antibodies isolated by the petitioner and that these antibodies "have the potential to become therapeutic agents."

While the director's characterization of the above letters as support from the petitioner's immediate circle of colleagues is accurate, the petitioner also submitted letters from independent experts in the field. Dr. Byron Caughey, a tenured senior investigator at the National Institutes of Health who heads a laboratory studying prions, asserts that the petitioner's work on antibodies and assays "opened a new area in prion research."

Dr. Pierluigi Gambetti, Director of the Division of Neuropathology at Case Western Reserve University, reiterates the claims above regarding the significance of the petitioner's isolation of important antibody fragments and his method for distinguishing between different prion strains. Dr. Gambetti does not simply assert that this original work might be beneficial to others in the field. Rather, he asserts that the latter method is important to his own laboratory "because it will ultimately help us with our purpose to better define prions at the molecular level in humans, cattle, deer and elk."

Dr. Ramanujan S. Hegde, a principal investigator at the National Institute of Child and Health and Human Development, asserts that he has followed the petitioner's work as published in *Nature*, *Neuron*, and *Cell*. Dr. Hegde states:

The petitioner is a leader in the field of therapeutic antibodies for prion diseases at the international level. His pioneering work in this area has been described by numerous reviews and commentary papers by leaders in several fields of science. Based on the scientific principles developed by [the petitioner], many laboratories over the world are now racing to develop vaccines against prion diseases.

Dr. Hegde further asserts that the petitioner's assays are significant in understanding the different methods of transmission for different prion diseases. Dr. Hegde explains, "defining the conformational stabilities of prions in livestock and other animal species is extremely important in defining the threats of these diseases to human health."

In support of Dr. Hegde's assertion that the petitioner's work has been referenced in review articles, the petitioner submitted review articles in *Nature* and *Trends in Biomedical Sciences* that devote a section to the petitioner's work on antibodies and bioassays. The petitioner also submitted an introduction to his work published in *Neuron*.

On appeal, the petitioner submitted new independent letters from Dr. Hans A. Kretzchmar, Director of the Institute of Neuropathology of the Ludwig-Maximilians University in Munich, and Larry Stanker, a research leader at the U.S. Department of Agriculture. They describe the petitioner's work as "groundbreaking," and "first-class."

At the time of filing, the petitioner had authored 17 published articles and a book chapter. As stated above, the director dismisses the petitioner's publication history because it is generally required of Ph.D. candidates to perform research and complete a dissertation. The director concluded:

Consequently, authorship of articles in furtherance of their degree program including dissertations is not routinely judged to be indicative of exceptional ability, nor does it

warrant exemption from the requirement of a job offer/labor certification based on national interest.

As stated above, this discussion does not appear to fit the facts of this case. The petitioner is not relying on his Ph.D. dissertation. The petitioner obtained his Ph.D. more than nine years prior to filing the petition and had published at least 12 articles since obtaining his Ph.D. at the time of filing, including articles in the prestigious *Cell*, *Nature* and three in the *Proceedings of the National Academy of Sciences*. Even researchers in the field who have obtained their degrees, however, often continue to publish. Thus, while most of these articles were published after the petitioner obtained his degree, he must still demonstrate their significance. Contrary to the director's conclusion, an unusual number of citations of an article is evidence of that article's influence on the field. While the petitioner did not initially submit evidence regarding his citation record, he does so on appeal. The record now establishes that the petitioner's articles have been cited individually 61, 44, 91, 37, 56, and 54 times. The latter number is the citation number for his article in *Nature*, which reported his isolation of antibody fragments. The citation history for this article supports the assertions of the petitioner's references that this article was significant. The large number of citations overall clearly overcomes the director's concern that "nothing in the record distinguished the self-petitioner's publications from the published work of countless others in the field." In addition, the petitioner was personally quoted in *Chemical Innovation* and *The Scientist*.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above evidence, in addition to other evidence in the record, when viewed as a whole, sufficiently establishes that the medical research community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.