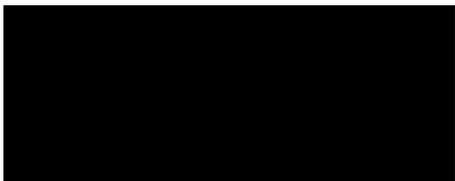


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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: [REDACTED]
LIN 99 254 52265

Office: NEBRASKA SERVICE CENTER

APR 05 2004
Date:

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 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 pursuing graduate studies for the fulfillment of his doctorate degree at the Northeastern Ohio Universities College of Medicine (NOUCM). 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 director found that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor 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 he 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 submitted several witness letters.

Dr. John Chiang, Professor of Biochemistry and Molecular Biology, NOUCM, states:

[The petitioner] is working on my research project to study a gene involved in cholesterol and bile acid metabolisms. He has cloned the gene and is studying how this gene is regulated to maintain cholesterol level in the body. This project is supported by a research grant from the National Institutes of Health. Results from this project will have a significant impact on understanding the development of coronary heart disease caused by atherosclerosis, or the thickening of the arterial wall. Coronary heart disease is the number one cause of death in the U.S. This area of research is high on our national interest to fight heart diseases and improving the health in the nation [sic].

[The petitioner has done an excellent job since joining my laboratory.... In a very short time, he has obtained results, which have been included in a manuscript for publication.

The petitioner, however, must demonstrate that his work has already significantly influenced the greater research field. Dr. Chiang’s assertions that results from the petitioner’s project “will have a significant impact” and that these results are expected to be published are not sufficient demonstrate his eligibility for a national interest waiver. 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 the Immigration

and Naturalization Service (legacy INS) held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Dr. Philip Westerman, Professor of Biochemistry and Molecular Pathology, NOUCM, states:

[The petitioner] joined Dr. Chiang's laboratory in the Biochemistry Department at NOUCM in August 1997 as a graduate student in the School of Biomedical Sciences at Kent State University. [The petitioner] started a new research project to clone the human oxysterol 7 α -hydroxylase gene and study its transcriptional regulation. In less than one and a half years, he was able to clone and sequence this gene which is an outstanding accomplishment. A manuscript reporting his results has just been submitted for publication.

The petitioner's initial submission included the above-mentioned manuscript, entitled "Structure and Functions of Human Oxysterol 7 α -Hydroxylase cDNAs and Gene CYP7B1" and evidence of a single published conference abstract. The record, however, contains no evidence showing that the presentation or publication of one's work is unusual in the biochemistry field, nor does the record sufficiently demonstrate that independent researchers have heavily cited or often relied upon the petitioner's work in their research. The fact that the petitioner successfully cloned and sequenced a particular gene carries little weight. Of far greater relevance in this proceeding is the importance to the overall field of the petitioner's discovery. In this case, the petitioner has not provided sufficient evidence that his research findings have attracted significant attention from independent biomedical researchers.

Qi-nan Wang, Engineer, Jiangsu Institute of Microbiology, supervised the petitioner's work at that institution from 1991 to 1994. He states:

During his 3 years in our institute, [the petitioner] served as a researcher and participated in various research projects. His first project was to apply an amylase producing strain in an unprofitable plant. He showed great talent as a researcher and great potential to be a successful manager.

* * *

Later, by using the modern biotechnology, recombinant DNA and gene delivery methods, the petitioner and his teammates developed other industrial bacterial strains. A better and bacterial phage resistant strain for producing monosodium glutamate was developed. The strain was commercialized later.

[The petitioner] also participated [in] the cultivation of a protease producing strain. For measuring protease activity, [the petitioner]...developed an innovative economic system, which saved us a lot of money.

The letters from Dr. Westerman and Qi-nan Wang focus on the petitioner's objective qualifications, such as his expertise in cloning and sequencing genes and in applying modern biotechnology experimental methods. Also provided was a letter from Peter Cooper, who works on the service desk at the National Center for Biotechnology Information at the National Library of Medicine, National Institutes of Health, stating that the petitioner "deposited two DNA sequences in Gen Bank, an international molecular sequence database." Experience with DNA sequencing and other such qualifications as described in the above witness letters are amenable to the labor certification process. 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 experience that could be articulated on an application for a labor certification.

Dr. William Landis, Professor and Chairman, Department of Biochemistry and Molecular Pathology, NOUCM, states that the petitioner has “made significant advances in the discovery of novel mechanisms in cholesterol and bile acid biochemistry.” Dr. Landis further states:

[The petitioner] is involved in the research of cholesterol degradation and bile acid synthesis, areas of study that have implications and impact in a wide range of health issues (cardiac, pulmonary, digestive, vascular, stroke, aging and others) that are clearly critical to the health care of the population in the United States. Because of such an important aspect of work, continuation of his research is also most obviously beneficial and supportive of the national interest of the United States.

Dr. Landis’ statements about the overall importance of the petitioner’s area of research may establish the intrinsic merit and national scope of his work, but such general arguments cannot suffice to show that an individual worker in that field qualifies for a waiver of the job offer requirement. Pursuant to *Matter of New York State Dept. of Transportation, supra*, the petitioner show that his past individual accomplishments are of such an unusual significance that he merits a waiver of the labor certification process. 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 (5th Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule. Beyond establishing his eligibility for the underlying visa classification, the petitioner must also demonstrate that his work has already had a significant impact on the biomedical field.

Dr. James Halpert, Professor and Chairman, Department of Pharmacology and Toxicology, University of Texas Medical Branch at Galveston, states:

The Drug Metabolism Division of the American Society for Pharmacology and Experimental Therapeutics awarded [the petitioner] a Graduate Student Best Paper Award at the annual Experimental Biology’99 meeting held in Washington, D.C. [in the spring of 1999].... In order to qualify for an award, the author must first be selected to do a formal presentation. The Graduate Student Best Paper Awards are then given to the top two presenters. [The petitioner] certainly deserved the award because of his excellent work on cloning the human oxysterol 7 α -hydroxylase gene and cDNA. Oxysterol 7 α -hydroxylase is one important enzyme involved in cholesterol degradation and bile acid synthesis. [The petitioner’s] contribution in this research area should help to increase the understanding of cholesterol and ultimately benefit the health care of the American people.

We accept that 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 him from other capable researchers in the biomedical field.

In regard to the petitioner’s Graduate Student Best Paper Award, we note that the American Society for Pharmacology and Experimental Therapeutics presented a total of nineteen such awards at the Experimental Biology’99 meeting. Competition for this award was limited to graduate students and therefore it offers no

meaningful comparison between the petitioner and capable professionals in the research field who have long since completed their educational training.

In addition to evidence showing that he received the 1999 Graduate Student Best Paper Award, the petitioner submitted additional documentation showing that he received various awards and scholarships presented by his educational institutions. Also submitted was a letter confirming the petitioner's "Associate" membership in the American Society for Biochemistry and Molecular Biology. In support of his appeal, the petitioner provides a letter from his current employer showing that he received a recent salary increase to \$33,000 per year. The amount of one's salary, recognition and professional memberships, however, relate to the criteria for classification as an alien of exceptional ability, a classification that normally requires an approved labor certification. We cannot conclude that meeting one, two, or even the requisite three criteria for this classification warrants a waiver of the labor certification requirement in the national interest.

Sherrod Brown, Member of Congress from Ohio's Thirteenth District, states:

I have read [the petitioner's] material from the research he has conducted on cholesterol degradation which is extremely important to the general health care of the citizens of the United States.

[The petitioner's] contribution to the research by cloning one critical gene will help science to understand the mechanisms of cholesterol homeostasis and may lead the way to a new principle for treatment and prevention of atherosclerosis.

Permanent residency for [the petitioner] in the United States would be of great benefit to our country due to his experience, education and capabilities.

Dr. Dawn Wooley, Assistant Professor, Department of Microbiology and Immunology, Wright State University, states: "[The petitioner] was a graduate student in the Biomedical Sciences Ph.D. Program at Wright State University and worked in my research laboratory in 1997." Dr. Wooley describes the petitioner as "an outstanding scholar and scientific researcher," but she offers no specific information about the petitioner's research findings or their implications.

As is the case with the previous witnesses, Congressman Brown and Dr. Wooley do not indicate how the petitioner's work was of greater benefit than that of others in his field. The initial evidence accompanying the petition shows that the petitioner had co-written a published article and a conference abstract, but the record contained no objective evidence (such as a large number of independent citations) to establish the extent to which the petitioner's published finding had affected the work of other scientists.

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, his Ph.D. degree, further publications, and a single citation of one of his published articles.

Dr. Robert Rosenberg, Professor of Biology, Massachusetts Institute of Technology (MIT), states that the petitioner joined his laboratory at MIT as a postdoctoral research associate in July of 2000. Dr. Rosenberg describes the petitioner's ongoing research into the formation and function of blood vessels and blood cells using biochemical and molecular genetic techniques. Dr. Rosenberg also compliments the petitioner on his effective use of "state-of-art DNA technology." As we have previously observed, this type of job

qualification is amenable to the labor certification process. Much of the documentation submitted in response to the director's request for evidence relates to events that came into existence subsequent to the petition's filing date (such as the petitioner's recent activities at MIT described in Dr. Rosenberg's letter). The petitioner's response to the director's request for evidence also included a copy of his Ph.D. from Kent State University dated August 19, 2000. *See Matter of Katigbak, supra.* Subsequent developments in the petitioner's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date.

In his second letter, Dr. Landis addresses the overall importance of research into cholesterol degradation and bile acid synthesis. Dr. Landis' second letter confirms that the petitioner works in an area of intrinsic merit and that the proposed benefits of his work would be national in scope, but it offers no explanation as to how petitioner's work was of greater benefit than that of others in his field. As stated previously, the overall importance of a particular area of research is not sufficient to demonstrate eligibility for a national interest waiver. *See Matter of New York State Dept. of Transportation, supra.*

Dr. Diane Stroup, Assistant Professor, Department of Biochemistry and Molecular Pathology, NOUCM, submitted a letter expressing her support for the petition, but she does not specifically identify any of the petitioner's research contributions that have already measurably influenced the greater field. Rather, she expresses her belief that the petitioner "has a very promising future in science and will indubitably make many very important contributions to the biomedical sciences." With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the petitioner's work, rather than how the petitioner's past efforts have already had a discernable impact on his field.

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.

On appeal, the petitioner argues that the significance of his work is documented in his four co-authored papers. 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.

In the present matter, the petitioner has submitted evidence of only two journal articles citing his published work. Two citations are not sufficient to establish that the greater field regards the petitioner's published work as especially significant. While the evidence presented may indicate a minimal degree of interest in the

petitioner's work, the petitioner has not shown that an aggregate total of two citations of his articles (during a research career spanning a decade) indicates an unusual level of interest as to distinguish him from his peers.

Also submitted was a second letter from Dr. Rosenberg written in support of an H-1B visa petition filed in the petitioner's behalf. This letter discusses the petitioner's current involvement in a research project "concerned with determining how Heparan sulfate molecules enhance or inhibit growth factor receptor interactions." The letter also describes objective skills possessed by the petitioner that qualify him to work on this project. We note here that the qualifications listed are all amenable to the labor certification process. Much of the remaining documentation presented on appeal was previously submitted and has already been addressed.

The petitioner challenges the director's finding that the witness letters do not establish that his "work is known and considered unique outside of his immediate circle of colleagues." We concur with the petitioner's observation that a few of his witnesses have no direct ties to him (their letters have all been addressed above). That said, there is no general consensus among the witnesses in this case that the petitioner's findings have had a measurable influence in the biomedical field. While numerous witnesses discuss the potential applications of his 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 researchers.

For the reasons set forth above, the petitioner has not established that his past accomplishments set him significantly above his peers such that a national interest waiver would be warranted. While the petitioner has plainly earned the respect and admiration of his current and former colleagues, it appears premature to conclude that the petitioner's work has had and will continue to have a nationally significant impact. In sum, the available evidence does not 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 project or area of research, 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.