U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: APR 2 8 2004
LIN 02 207 50315

IN RE: Petitioner: [redacted]
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:

[redacted]

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center. The director reopened the matter on the petitioner's motion, and denied the petition again. The matter is now before 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. At the time of filing, the petitioner was working as a research associate in the Department of Chemistry at Ohio State University. 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 Chemistry from the Chinese University of Hong Kong. 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. Michael Chan, Associate Professor, Departments of Chemistry and Biochemistry, Ohio State University, states that the petitioner "is an expert in multistep organic syntheses, synthetic methodology and asymmetric catalysis." Dr. Chan indicates that the petitioner "prepare[d] a series of novel planar chiral compounds for alkyne insertion reactions" while at the Chinese University of Hong Kong. Dr. Chan further states that, while there, the petitioner published 11 papers in well-respected journals (which he first-authored as "the major contributor of the work").

Dr. Leo Paquette, Professor of Chemistry, Ohio State University, and a member of the U.S. National Academy of Sciences, states:

> The developments realized by [the petitioner] constitute a scientific first of some importance. The adaptations currently being made of [the petitioner's] work show that it is now possible to prepare...powerful classes of compounds with greater speed and precision than ever before. This could represent a boon to the U.S. pharmaceutical industry.

Dr. Bing Gong, Professor, Department of Chemistry, State University of New York at Buffalo, states that the petitioner is "one of the top scientists in the world" in the field of organic synthesis. Dr. Gong further states:

> [The petitioner] has...made a name for himself in this field with his important work in synthesizing a new class of bioactive natural product-like and drug-like macrocyclodepsipeptide, and drug-like heterocycles. These new molecules have important applications in human disease therapy and are fundamentally important for understanding other biological processes.
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> * * *
>
> [The petitioner] is without question one of the leading experts in his field, and his publication history is one of the top of his field.

Dr. Lisheng Cai, Assistant Professor of Chemistry, University of Illinois at Chicago, states:

> [The petitioner's] specific research impacts on the field as a whole. He has published his research in leading journals. These publications have been referred to by others in our field to advance their research in developing anti-cancer drugs as well as in other areas of research. His novel asymmetric catalytic reactions are studied by other scientists and these methods and catalysts have wide applications in the anti-cancer drug development area.

Dr. Lin Pu, Associate Professor, Department of Chemistry, University of Virginia, asserts that the petitioner has made "significant accomplishments" in the field of synthetic organic chemistry and organometallic chemistry.

Dr. Jieping Zhu, Institute of Natural Substance Chemistry, National Center of Scientific Research, France, states:

> [The petitioner] has had an enormous impact on research in the field of organic chemistry. He has a very impressive publication record both for the number of publications and for the significance of them. His published work has influenced the work of others in the research establishment in this field and around the world.... [The petitioner's] research is having an enormous impact on pharmaceutical science.

In support of the witness' statements, the petitioner presented a citation report showing 161 citations of his published articles. Numerous scientists in the United States and from around the world have cited the petitioner's work. When judging the influence and impact that the petitioner's published 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. In this case, the substantial number of citations of the petitioner's published articles demonstrates widespread interest in, and reliance on, the petitioner's work. The citation history presented here shows that many other scientists have acknowledged the petitioner's influence and found his work to be significant.

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 a letter from counsel, further witness letters, and additional documentation pertaining to his field.

Counsel's response letter states:

> I find it difficult to believe that the examiner has read the petition or the supporting materials.... Many of the [Service Center's] specific requests make little sense considering what was originally submitted.
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> * * *
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> It is quite troubling that the examiner does not appear to have read anything that was submitted in support of this petition. In response, we request that you actually look at the material submitted.
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> * * *
>
> If indeed you took the trouble to look at these letters you certainly would not have asked the questions that you did.

In requesting additional evidence pursuant to 8 C.F.R. § 103.2(b)(8), it appears that the director was simply being thorough in analyzing the evidence presented. Counsel's repeated complaints directed at the examiner add no substance to the record.

Dr. Tingyu Li, Assistant Professor of Chemistry, Vanderbilt University, states: "[The petitioner's] extraordinary achievements are well-documented by his many publications in the top journals of scientific research. There is no question that he is at the top of his profession judging by these publications. His name is well known to people like myself who are doing research in the same field."

Additional witnesses such as Dr. Zheng-Rong Lu, Assistant Professor at the Department of Pharmaceutics and Pharmaceutical Chemistry of the University of Utah, Professor Dieter Enders, Institute for Organic Chemistry (Aachen, Germany), and Dr. Albert Moyano, Professor of Organic Chemistry, University of Barcelona, offer similar letters of support.

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: "The petitioner's numerous publications in organic chemistry do not force a conclusion that he will make an equal impact in bioinorganic chemistry. Furthermore,...the petitioner failed to submit [the] requested verification from [Dr. Thomas Mak, a frequent co-author and former supervisor of the petitioner]."

While providing the requested letter from Dr. Mak would have certainly strengthened the petitioner's national interest waiver claim, we find that its absence is not so fatal as to undermine the objective evidence already presented in this case. For example, the record contains numerous citations to establish the extent to which the petitioner's publications have affected the work of other scientists. The director's decision noted that the

absence of a letter from Dr. Mak "preclude[d] a material line of inquiry into the impact which the petitioner, as an individual, has made on his field." Based on the number of citations presented and the fact that the petitioner first-authored many of the articles with Dr. Mak, it is reasonable to conclude that the petitioner has demonstrated his "individual" impact on the chemistry field. Regarding the issue of their joint authorship, the director must acknowledge the inherently collaborative nature of modern scientific inquiry, in which researchers rarely labor in isolation. The sciences, in general, have reached such a level of narrow specialization that one scientist rarely possesses the full breadth of expertise (not to mention resources) necessary to execute a research project.

On motion, counsel states:

> The examiner...state[s] that the alien must "make a showing significantly above that necessary to prove the prospective national benefit required of any alien seeking to qualify as exceptional." The examiner quotes *Matter of New York State Dept. of Transportation*...for this legal requirement, but he does not cite any specific page or quotation. The reason is that the examiner has made this requirement up out of whole cloth. There is no such requirement as the examiner cites.... Thus very clearly the examiner did not understand and did not use the correct standard.

This statement from the director's decision, as quoted by counsel, can be found in the supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), as cited at the top of page 2 of this decision. Contrary to counsel's observation, this citation does indeed appear in *Matter of New York State Dept. of Transportation, supra*. Counsel is quick to point out that the director failed to read certain materials, but in this instance it is counsel who failed to fully review the published precedent under which this case has been reviewed.

Counsel further states:

> To call [the petitioner's] 16 year research history, his 37 publications, patents and presentations, [and] his Associate Professorship a "successful training program" demonstrates how out of touch this examiner is.... If [the examiner] had ever taken a course in chemistry, he would probably know that...areas of chemistry overlap significantly...
>
> There was more than enough evidence presented to have approved this case. In addition, it is not expecting too much to hope that the [Citizenship and Immigration Services] examiner would know enough about academic publications to know what being first-author means. Clearly this examiner either misunderstood, or intentionally tried not to understand.

In denying the motion, the director seemed to focus on counsel's provocative remarks rather than the strength of the evidence presented. Remarks by counsel, however inappropriate, do not undermine the value of the objective evidence in the record. Far more relevant to this matter are the independent witness letters and the citation history of the petitioner's published articles.

Counsel asserts that the director overlooked the number of publications first-authored by the petitioner. While the number of publications is certainly an indicator of the petitioner's productivity as a researcher, of far greater value in assessing his impact on the field is the number of independent citations of his published

work. The large number of citations presented here (161) clearly demonstrates that the petitioner has significantly influenced his field.

In denying the motion, the director concluded that the petitioner had not established that a substantial degree of overlap exists between organic and bioinorganic chemistry. With regard to this finding, we refer to a letter in the record from Dr. Concepcion Lopez, Professor of Inorganic Chemistry, University of Barcelona. Dr. Lopez states:

> Although I have not had the chance to meet [the petitioner] personally, I have been following the progress and evolution of his research for about the last twelve years. During this period his work has been focused on a wide variety of fields including Bio-Organic and Bio-Inorganic Chemistry, Coordination Chemistry, Organic and Organometallic Synthesis, Diastereo- or Enantioselective synthesis of organometallic complexes, and the study of the reactivity of some optically pure palladium(II) complexes with planar chirality, which has provided new methods for the preparation of 1,2-disubstituted ferrocene derivatives with unsaturated groups in vicinal positions...
>
> The amount of work produced by the applicant, as well as the importance and originality of the results, are demonstrated by the high quality publications in top journals in the field. These are prestigious journals of international importance, such as *The Journal of the American Chemical Society, Organometallics, Tetrahedron: Asymmetry, Journal of the Chemical Society, Dalton Transactions*, etc. It should be noted that these publications are listed as having the highest impact indexes in Chemistry. From my point of view, the achievements of these results in so many different areas of chemistry and in such a short period of time requires a truly extraordinary individual, one who is not only at the top of his field, but one who is at the top of many fields. Besides that, the variety of topics in which he has focused his research and the results achieved in all of them, indicates also that he is also gifted with an enormous ability to re-adapt himself to face and resolve successfully novel research objectives in a wide bunch of areas of actual or future interest.

In the present case, we find that the petitioner's fields are not so completely different as to discount his prior accomplishments. Webster's Revised Unabridged Dictionary, ©1998 Micra, Inc., defines organic chemistry as "the chemistry of compounds containing carbon (originally defined as the chemistry of substances produced by living organisms but now extended to substances synthesized artificially)." While organic chemistry relates to compounds containing carbon, it is not apparent that a fundamental difference exists between organic and inorganic/bioinorganic chemistry. And regardless of his specialty, the petitioner still works in the chemistry field.

On appeal, counsel states that the director's denial of the motion has compelled him to file a formal complaint against the Service Center examiner. Counsel cites the first full paragraph on page 3 of the director's August 21, 2003 decision. While counsel's use of phrases such as "the examiner has made this requirement up," "the examiner's above quoted moronic statement," "[t]his examiner may be used to other lawyers kissing his feet," "this is an amazing amount of gibberish," "this examiner did not read much of what was submitted," "[t]he Service Center is...hiring people who do not have the sophistication to do the job," and "grounds...for firing [the examiner]" have no place in professional correspondence, it is equally true that the paragraph on page 3 of the director's decision was worded inappropriately. With regard to counsel's allegations of incompetence and misconduct, any formal complaint filed against the Nebraska Service Center is a separate matter, outside of the AAO's jurisdiction. Counsel's strongly-worded opinions regarding the actions of the particular examiner that

adjudicated this case add nothing of substance to the proceeding at hand; these observations are not considered argument or statement of fact.

In the present matter, we find that the strength of the evidence constitutes sufficient grounds for approving the petition. The evidence presented by the petitioner is sufficient to meet the three-prong test established by *Matter of New York State Dept. of Transportation*. The heavy independent citation of the petitioner's published work, along with the statements of witnesses from outside of the petitioner's immediate circle of colleagues, shows that petitioner's work has advanced his field to a substantially greater degree than that of other similarly qualified researchers. Upon careful consideration of the documentation presented, we find that the petitioner has shown that researchers from throughout his field view his findings as significant chemistry breakthroughs. The witness letters presented reflect a consensus among scientific experts from throughout this country and around the world that the petitioner's achievements are unusually significant.

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 testimony, and further evidence in the record, establishes that the greater scientific 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.