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U.S. Citizenship  
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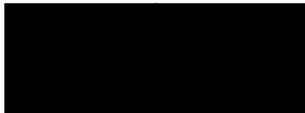
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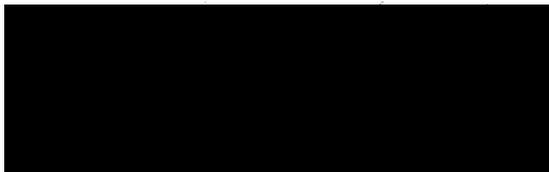
FILE: WAC 03 092 52413 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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.

*Mani Johnson*

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 (AAO) 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. 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 Master's degree in Vision Science from the University of Houston. 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 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, photoreceptor study, and that the proposed benefits of his work, improved understanding and treatment of retinal degeneration, 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.

The director made two conclusions relating to this issue that are inaccurate. First, the director stated that the witness letters in the record “by and large describe rather than evaluate the self-petitioner's work.” The director subsequently, however, correctly acknowledges that the letters are “highly complimentary.” Second, the director asserts that the letters appear “to recognize student work rather than excellence in the field of endeavor.” The petitioner obtained his degree in 1999. Several of the letters discuss his research after graduation. Regardless, the alien's past record need not be limited to prior work experience. *Id.* at 219, n. 6. In addition, as noted by counsel, the decision includes a brief quote from a letter regarding a different petition. As the job duties on page two and the remaining quotes relate to this petitioner, however, the inclusion of an extra quote does not suggest that the director's conclusions relate to a different record of proceedings.

Ultimately, the director concluded that the witness letters did not explain how the petitioner's work has specifically influenced other independent researchers and noted the lack of citation evidence. Counsel fails to address these concerns on appeal. Rather, counsel asserts that the petitioner established his eligibility through the submission of witness letters attesting to the unique and promising nature of the petitioner's work.

The petitioner's reference letters all focus on the importance of the petitioner's area of research, the likelihood of significant benefits, and the uniqueness of his methodologies. Such information is insufficient. We have already acknowledged the intrinsic merit of the petitioner's area of research and the national scope of the potential benefits. Eligibility for the waiver, however, 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. Further, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

Dr. [REDACTED] an assistant professor at the University of California, San Francisco (UCSF), discusses his collaborations with the petitioner. Specifically, the petitioner identified and characterized modifying genes responsible for light damage in mouse models, enhancing our understanding of the genetic basis for environmentally-induced retinal degenerations. Working with mice containing a mutated mer gene, the petitioner has also "shown conclusively that a small amount of vision persists despite advanced loss of retinal cells" in these mice. Dr. [REDACTED] a professor at the University of California, Los Angeles, asserts that these mice "should become a widely studied model of human disease by the vision research community." Dr. [REDACTED] however, provides no examples of vision research laboratories expressing an interest in the mer knockout mice. According to Dr. [REDACTED] the petitioner also had similar results with other transgenic mice. Dr. [REDACTED] Chairman of Cell Biology at the University of Oklahoma, asserts that this work "accelerated the development of novel experimental therapies for inherited retinal degeneration." It can be argued, however, that the petitioner's field, like most science, is research-driven, and there would be little point in publishing research which did not add to the general pool of knowledge in the field.

We acknowledge that the record contains letters from high-level experts in the petitioner's field. While we give due deference to the opinions of such experts, the content of such letters is as important as the credentials of the authors. Bare assertions that the petitioner's skills will benefit the national interest are less persuasive than specific examples of accomplishments and explanations as to how those accomplishments have already influenced the field.

The most detailed expert letter is from Dr. [REDACTED] Chief Scientific Officer for the Foundation Fighting Blindness, which funds the Kearn Family Center for the Study of Retinal Degeneration at UCSF. Dr. [REDACTED] asserts that the petitioner has "mastered several histological techniques including immunocytochemistry, preparation of retinal specimens for both light and electron microscopy, and bioquantification of cellular components of the retina." According to Dr. [REDACTED] this work "has proven critical for numerous studies of retinal degenerations." In *Matter of New York State Dep't. of Transp.*, however, the AAO rejected a claim that the alien's specialized design techniques warranted a waiver of the labor certification requirement. *Id.* at 220-221.

Dr. [REDACTED] further asserts that the petitioner's work with mer gene knockout mice "will allow [researchers in the field of retinal degenerations] to develop treatments that precisely target this harmful mutation." Dr. [REDACTED] however, does not indicate that pharmaceutical companies or other researchers have expressed an interest in pursuing such research.

Dr. [REDACTED] finally asserts that the petitioner developed and is the first to use the multifocal electroretinogram to test vision in treated animals before testing in humans. Dr. [REDACTED] Chairman of the Scientific Advisory Board of the Foundation Fighting Blindness, states that the importance of the petitioner's role with the multifocal electroretinogram "can be seen by the fact that no one in the world has yet used this new instrument to study photoreceptor rescue." The fact that use of the instrument has not spread beyond UCSF, however, is more indicative of its failure to influence the field as of the date of filing. Dr. [REDACTED] concludes that when the

petitioner "completes his work on the instrumentation, his subsequent experimental studies hopefully will provide pivotal data that would lead to clinical trials of several different pharmaceutical and gene-based therapies." This conclusion is highly speculative.

Dr. [REDACTED] Director of the National Eye Institute, reiterates the claims discussed above and asserts that the petitioner authored "the first paper in the world's literature to use the innovative QTL analysis to define genetic loci that influence age-related retinal degeneration." Dr. [REDACTED] a professor at New Jersey Medical School, asserts that QTL analysis provides more definitive genetic data than traditional methods and that the petitioner "plans to define the genes represented by the QTLs in age-related retinal degeneration, as well as to study modifying genes in several inherited retinal degenerations and light-exacerbated inherited retinal degenerations." Dr. [REDACTED] concludes that waiving the labor certification requirement for the petitioner would be in the national interest because he is the only researcher using the QTL genetic approach. Dr. [REDACTED] Miller, Scientific Director for the National Eye Institute and a professor at the University of California, Berkeley, provides similar information. The petitioner's QTL work was unpublished as of the date of filing and the petitioner's references do not explain how this work had already influenced the field as of that date. Dr. [REDACTED] predictions as to the promise of this work appear highly speculative.

At the time of filing, the petitioner had authored four published articles and had presented his work at conferences. Dr. [REDACTED] Information Services Librarian at UCSF, asserts that the petitioner has published his work "in the world's most important journals." We do not infer, however, the impact of a particular article from the journal in which it appears. Rather, it is the petitioner's burden to demonstrate the impact of his articles. As noted by the director, the petitioner has not submitted any evidence that independent researchers have cited his articles.

The petitioner's research is no doubt of value and is deemed to have tremendous promise by the top experts in the petitioner's field. As stated above, however, any research must be shown to present some benefit if it is to receive funding and attention from the scientific community. The record does not establish that the petitioner's work represented a groundbreaking advance in vision research at the time of filing. At best, the petition was filed prematurely, before the influence of the petitioner's techniques and publications could be gauged through adoption and citation.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.