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U.S. Citizenship  
and Immigration  
Services



FILE: WAC 02 036 51838 Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2004

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

PETITION: Immigrant Petition for a 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]

**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, 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 seeks employment as an immunology researcher. At the time she filed the petition, the petitioner was a graduate researcher at the University of California, San Francisco (UCSF). 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 concluded 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 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 director does not dispute that the petitioner's occupation falls within the pertinent regulatory definition of a profession and that the petitioner thus qualifies as a member of the professions holding an advanced degree.<sup>1</sup> The sole issue in contention on appeal is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

We note that the director's decision contains several erroneous references to the criteria for aliens of extraordinary ability under section 203(b)(1)(A). In order to obtain a waiver of the labor certification requirement in the national interest, one need not establish national or international acclaim. While the director subsequently discusses the evidence under the correct standard and even states that national acclaim is not required for the classification sought, the initial discussion is erroneous, and those portions of the director's decision are withdrawn. Because the decision also correctly analyzes the evidence under the

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<sup>1</sup> The director apparently made this determination based on evidence indicating that the petitioner holds a bachelor's degree and has more than five years of progressive experience pursuant to 8 C.F.R. § 204.5(k)(3)(i)(B).

statutory requirement of section 203(b)(2) and the precedent decision, *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm. 1998), the decision will be upheld.

Neither the statute nor Service 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 pertinent 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.

Several factors 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. "The final threshold is therefore specific to the alien. The petitioner seeking the waiver must persuasively demonstrate that the national interest would be adversely affected if a labor certification were required for the alien." *Matter of New York State Dept. of Transportation* at 217.

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.

In denying the petition, the director notes that the evidence in the record does not persuasively demonstrate that the petitioner's proposed employment as an immunology researcher would benefit the national interest of the United States to a substantially greater degree than a similarly qualified United States worker.

The director does not contest that the petitioner's occupation as an immunology researcher working in areas of cell and molecular biology related to the AIDS virus has substantial intrinsic merit, and that the proposed benefits of her work would be national in scope. It remains to determine whether the petitioner has established that she will serve the national interest to a substantially greater degree than would 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 it 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 she 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. *Matter of New York State Dept. of Transportation*, at 219, n.6.

The petitioner submits several reference letters in support of her petition. Michael S. McGrath is a professor of laboratory medicine, medicine and pathology at UCSF. In his first letter, Professor McGrath notes that the petitioner has worked in his laboratory for the past two and one-half years and has participated in the most important projects. He states that the petitioner's research "identified activated macrophages at the fastest rate of clinical progress as the first marker of patients who are infected by HIV" and that she is "studying the killing effects of the novel drugs on this extremely long-lived HIV reservoir." Professor McGrath's subsequent letter is identical to the first except that he adds:

No other laboratory in the country is as focused on the role of macrophages in the pathogenesis of these diseases as the laboratory [the petitioner] works in. Therefore it is difficult to imagine that any of her peers would be competitive with her in regard to her capability of making important contributions to the country in this area. As stated previously, novel macrophage targeted therapy is now being tested in patients with chronic viral diseases due to a significant part because of [the petitioner's] contributions.

Brian G. Herndier, an associate professor in the pathology department at UCSF, provides similar information as Dr. McGrath, and considers the petitioner to be "a highly gifted scientist who has unique skills and extraordinary ability in the study of the immunology and pathogenesis of hepatitis C infection and primary HIV infection."

Sharon P. Shoemaker, an executive director of the California Institute of Food and Agricultural Research at the University of California, Davis, has known the petitioner since 1995 when she visited Dr. Pingfan Rao's laboratory in China where the petitioner was working. She subsequently met the petitioner in 1997 at a professional conference in California. Dr. Shoemaker praises the petitioner's research skills in immunobiochemistry and asserts that the petitioner's contributions helped to improve the clinic diagnostic process for Hepatitis C liver disease. Dr. Shoemaker's letter fails to indicate how the petitioner's work has specifically impacted the research at the University of California, Davis or why the labor certification process should be waived in this case.

Roger Ruan is a professor in the department of biosystems and agricultural engineering and the department of food science at the University of Minnesota. He states that he has known the petitioner since they collaborated at Fuzhou University in 1997. Professor Ruan describes the petitioner as having multidisciplinary skills in molecular biology and biochemistry and predicts that the long-term goals of her research in the prevention of HIV infection and HCV liver disease will significantly decrease deaths associated with these diseases.

Pingfan Rao is a professor and vice president at Fuzhou University, China. He has known the petitioner for twenty years and states that the petitioner worked in his research group in 1989. This research was in the fields of protein biochemistry, immunochemistry, and molecular biology. Professor Rao explains that the petitioner was one of the co-principal investigators on a variety of projects and did excellent work. He states that some of her original findings related to the isolation and purification of immunoglobulin from egg yolk made great contributions to the field of food biochemistry.

Xinfan Huang is a senior director for preclinical research and development at Connetics Corporation in Palo Alto, California. He states that one of its projects is to develop new drugs to treat HIV associated skin diseases. He asserts that he is not acquainted with the petitioner, but has followed her work. Dr. Huang describes the petitioner's research involvement in studying the pathogenesis of early HIV infection related to blood associated macrophages and expresses confidence that her continuing efforts will provide novel therapeutic approaches. Dr. Huang does not explain how the petitioner's research has already impacted the work of his company or why it would be contrary to the national interest to potentially deprive an employer of the services of the petitioner by making available to United States workers the research position sought by the petitioner.

Charles Zou is a scientist employed at a Aventis Pharmaceutical Inc. in Bridgewater, New Jersey. He states that he is not personally acquainted with the petitioner, but claims that he knows of her work through her research publications. Dr. Zou asserts that the petitioner has shown a high degree of originality and creativity and "has made significant contributions to drug treatment pathways and alterations of these pathways that may lead to successful treatments for HIV/AIDS and HCV associated disease." Like Dr. Huang, Dr. Zou fails to explain how the petitioner's work has specifically impacted his own research or why the labor certification that normally attaches to her occupation should be waived.

Meng Yang, a senior scientist at AntiCancer Incorporated in San Diego, California, provides similar biographical information about the petitioner's research background and predicts that the petitioner's "multidisciplinary background, unique skills, and extraordinary abilities will continue to make significant contributions in this field that most of her peers are incapable of accomplishing." Dr. Yang fails to indicate how he is aware of the petitioner or her work.

Vaclav Kasicka is the head of the Laboratory of Electromigration Methods of the Institute of Organic Chemistry and Biochemistry, Academy of Sciences of the Czech Republic. He praises the petitioner's research skills and states that he is not personally acquainted with the petitioner, but is aware of her research through her publications. Dr. Kasicka states that he has written a review article and has included a reference to one of the petitioner's articles published in May 2000.

We note that some of the petitioner's reference letters appear to be from independent sources. The content of these letters, however, indicates that, except for Dr. Kasicka, none of the writers has actually adopted or implemented the petitioner's research in any of their own work. The remaining testimonials submitted in support of petition appear to be from colleagues, supervisors, or mentors from the petitioner's past and present educational and research institutions or from persons who have had direct professional contact with her. Letters from those with these kinds of connections to the petitioner certainly have value, because such persons have direct knowledge of the petitioner's contributions to a specific research project; however, their statements do not show, first-hand, that the petitioner's work has already influenced the wider scientific community as a whole, as might be expected with research findings that are especially significant. Independent evidence that would have existed whether this petition were filed or not, would be more persuasive than the subjective statements from individuals connected with the petitioner.

The record also contains copies of numerous published articles in which the petitioner is the co-author or lead author, as well as evidence that the petitioner's work has been presented at scholarly conferences. On appeal, counsel also contends that the evidence shows that the petitioner has also submitted written drafts to scholarly journals that have not yet been published. This evidence consists of letters from the editor-in-chief of the *Journal of Acquired Immune Deficiency Syndromes* to Dr. Ronnie Gascon. The petitioner's name does not appear in these

letters. Moreover, unpublished articles do not establish that a petitioner has already influenced her field. A petitioner may not establish eligibility for the visa classification by relying on an achievement attained after the filing date of the petition. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

When judging the impact of a petitioner's work, the very act of publication is not as reliable a gauge as is the citation history of the published works. It is difficult to conclude what impact a published article has had if there is little evidence that other researchers have relied upon the petitioner's findings. In this case, the petitioner submitted a citation index that indicates that one of the petitioner's articles has been cited one time. The petitioner did not submit evidence of the title and author(s) of this article so it is impossible to determine whether independent researchers cited her work or whether it is a self-citation by the petitioner or her colleagues. This minimal citation history does not support the argument that the petitioner's accomplishments have influenced the wider scientific community.

On appeal, counsel expresses concern that the director misapplied the third standard enunciated in *Matter of New York State Dept. of Transportation*. Counsel's point is well taken, but as noted previously, while the director erroneously referred to inapplicable standards, the petition was ultimately evaluated under the correct standards pursuant to section 203(b)(2) of the Act and the guidelines set forth in *Matter of New York State Dept. of Transportation*.

The petitioner's documentation of her achievements and projections of future contributions at this stage in her career do not overcome the statutory mandate of a labor certification. The labor certification process exists because protecting jobs and employment opportunities for U.S. workers having the same objective minimum qualifications as an alien seeking employment is in the national interest. In this case, the evidence fails to show that the national interest would be adversely affected if the petitioner should have to seek a labor certification.

As is clear from the plain wording of the statute, it is 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. Similarly, 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. Based on the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification would 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. In this case, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.