

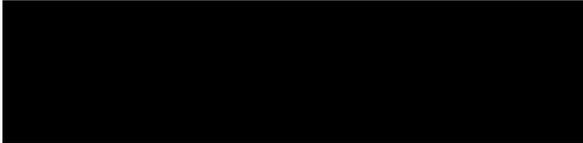
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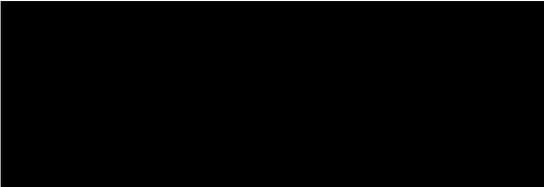
FILE: EAC-00-247-53166 Office: VERMONT SERVICE CENTER Date:

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.

for Mari Johnson
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

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.

Specifically, the director concluded that the record lacked objective evidence demonstrating that the petitioner's work had had a widespread influence on the field. On appeal, counsel argued that the reference letters in the record were sufficient and resubmitted evidence already in the record.

The AAO dismissed the appeal, noting that the record lacked letters from health departments around the nation confirming the assertions of the petitioner's collaborators that his work is being applied nationally. The AAO further noted that the evidence lacked evidence that the petitioner was moderator at a 2001 Department of Housing and Urban Development (HUD) conference. Significantly, the AAO noted that the petitioner's grant application listing him as a project manager and his attendance at the HUD conference occurred after the date of filing, August 15, 2000. Finally, the AAO noted the lack of evidence that the petitioner's articles "have been widely cited or otherwise influential"

On motion, counsel notes the media coverage the petitioner's work received in December 2002. Counsel further asserts that the record did contain evidence of the petitioner's moderator position at the HUD conference and that the HUD research grant demonstrates the significance of the petitioner's previously published research as HUD "reviews the applicant's established research achievement and record and the possibility of future success."

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.

As stated in our previous decision, the petitioner qualifies as a member of the professions holding an advanced degree. The only issue in contention is whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

As acknowledged by the director and the AAO, the record contains ample evidence regarding the significance of the petitioner's projects. 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.

The AAO acknowledged the petitioner's membership in the American Chemical Society (ACS), the American Public Health Association (APHA), and the American Association for the Advancement of Science (AAAS). The AAO also acknowledged the petitioner's receipt of an award of one-year free membership in the International Society of Exposure Analysis (ISEA). The AAO noted that recognition for achievements and memberships in professional associations are two of the requirements for aliens of exceptional ability, a classification that normally requires a labor certification. Thus, the AAO concluded that meeting one, or even all three, of the requirements for that classification was insufficient to warrant a waiver of the labor certification process in the national interest. Counsel does not contest this conclusion.

As stated in the AAO's previous decision, the petitioner obtained his Ph.D. at the University of Medicine and Dentistry of New Jersey (UMDNJ). UMDNJ is part of the Environmental and Occupational Health Sciences Institute (EOHSI) at Rutgers, the State University of New Jersey. The petitioner currently works as a Research Teaching Specialist II at EOHSI. Dr. Paul J. Liroy, the petitioner's Ph.D. advisor and current collaborator, discusses the petitioner's work as part of four EOHSI studies funded by the Environmental Protection Agency (EPA), the Department of Health and Urban Development (HUD), and the National Institutes of Environmental Health Sciences.

The AAO discussed letters from Dr. Liroy; Dr. Mark Robson, the Executive Director of EOHSI; Dr. George Rhoads, Director of the Environmental Health Division at EOHSI; former fellow graduate students at EOHSI who collaborated with the petitioner; Dr. Timothy Buckley, a member of the petitioner's research committee during his preliminary oral exam and final defense; Dr. Peter Ashley, the HUD technical representative on the petitioner's project; and Dr. Chris Liang, a research scientist with the New York City Department of Health.

The AAO noted that all of the reference letters in the record are from the petitioner's collaborators and immediate colleagues. While the AAO acknowledged that such letters are important in providing details about the petitioner's role in various projects, the AAO concluded that the letters could not by themselves establish the petitioner's influence over the field as a whole. The AAO noted that while the petitioner's collaborators assert that the petitioner's methods are being adopted nationwide, the record did not support this assertion. For example, the AAO noted the lack of letters from health departments around the nation attesting to the petitioner's influence.

The AAO acknowledged that the petitioner had presented his work at conferences, but concluded that such evidence was not indicative of the petitioner's influence in the field at a national level. The AAO concluded that counsel's assertion that the petitioner served as a moderator at the 2001 CDC conference was

unsupported by the record. Specifically, the AAO noted that the agenda for the conference merely lists the petitioner as a presenter.

On motion, counsel references a December 22, 2001 letter from Mariah Jose Lancaster thanking the petitioner for “having agreed to speak at the Center for Disease Control and Prevention’s annual meeting for lead poison and prevention program managers” and requesting that the petitioner complete the “speaker/moderator registration form.”

The AAO did not contest that the petitioner spoke at the conference. Rather, the AAO noted that the program did not list the petitioner as a moderator. The letter referenced by counsel on appeal does not address our concerns. Rather, Ms. Lancaster thanks the petitioner for agreeing to “speak” at the meeting. The reference to a “speaker/moderator registration form” in no way indicates that the petitioner was a moderator *and* a speaker. Rather, it implies that he was one or the other. It remains, the program for the meeting reflects that the petitioner was a speaker at the Applied Primary Strategies workshop on February 1, 2001. The moderator for that workshop is identified as Ed Norman from North Carolina CLPPP. Thus, the petitioner has not overcome our previously stated concern.

As noted by the AAO, it is not uncommon for researchers to present their work at conferences. Moreover, the AAO noted that this conference occurred well after the date of filing and the petitioner’s presentation at that conference is not evidence of his influence at the time of filing or even the continuation of a pattern of influence. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Counsel does not respond to the concern that the conference occurred after the date of filing.

As stated by the AAO, in addition to the evidence discussed above, the petitioner initially submitted three published articles. Over a year after filing the appeal, the petitioner submitted two additional articles accepted for publication. The AAO concluded that these articles do not relate to the petitioner’s eligibility at the time of filing. *See id.* Moreover, the AAO noted that the record contained no evidence that the petitioner’s articles have been widely cited or otherwise influential.

On motion, counsel asserts that the petitioner received one of eight grants from HUD, an indication that his previous publications had been influential. Counsel further notes that the petitioner’s article reporting the results of New Jersey Assessment of Cleaning Techniques Trial (NJACT), published in December 2002, was the focus of a Reuters Health story reproduced by several health-related Internet news sites. The article quotes the petitioner as one of the study’s authors.

Counsel is not persuasive. Obviously the past achievements of the principal investigator are a factor in considering grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not a recognition of prior work. We consistently hold that not every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. The petitioner has still failed to demonstrate that the article published prior to the date of filing has been widely cited (other than self-cites) or has otherwise influenced national health agencies or several state health agencies.

Finally, while the Reuters Health story is the type of objective evidence we consider, we cannot ignore that it focuses on research results published in December 2002, 28 months after the date of filing in August 2000.

We acknowledge that some of the initial letters reference the NJACT project and that Dr. Audrey Gotsch asserted in January 2001 that the study was complete and in the stages of being written up for publication. The NJACT grant application, however, indicates that the research period would be October 2000 through September 2001.

Regardless, the record contains no evidence that the results were compiled and presented in any form prior to a December 2000 conference, four months after the date of filing. The results were not published in a peer-reviewed publication until December 2002. As stated above, a petitioner must establish eligibility as of the date of filing. *See id.* A petitioner may not indefinitely extend the period in which he may establish eligibility by filing subsequent submissions, an appeal, and motions. We find that the materials submitted on appeal do not establish that, at the time of filing, the petitioner already had a track record of success with some degree of influence on the field.

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. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of January 14, 2003 is affirmed. The petition is denied.