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**U.S. Citizenship
and Immigration
Services**

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FILE:

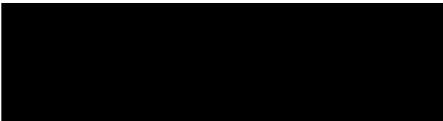
Office: NEBRASKA SERVICE CENTER

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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. 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 Doctor of Medicine degree from the Andhra Pradesh University of Health Sciences. 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, medical research. The director then concluded that the petitioner had not met the second prong because there was only the possibility that the petitioner's work would have a national benefit. Specifically, the director stated: “To decide otherwise would force the Service [now Citizenship and Immigration Services (CIS)] to concede that ALL doctors, scientists and graduate research students provide prospective benefits that are equally national in scope.” We find this analysis is better applied to the third prong, the only prong specific to the alien. Whether or not the proposed benefits would be national in scope requires only an analysis of the alien's occupation. We agree with the director that medical researchers, as a class, do have the potential to make an impact in the field that is national in scope. We find, however, that the director erred in concluding that this potential was insufficient to meet the second prong. Nevertheless, we find that the concerns expressed by the director are valid; they are simply more related to an analysis of whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

In evaluating the final prong, we note that 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 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.

As stated above, the petitioner obtained his M.D. from the Andhra Pradesh University of Health Sciences in 1993. From 1993 to 1999, the petitioner was an assistant professor of pathology at Kakatiya Medical College. The petitioner then worked as a research associate at the University of Toronto until 2000, at which time he accepted a position as a research associate at Northwestern University. The petition focuses on the petitioner's research at Northwestern.

At Northwestern, the petitioner worked in the laboratory of Dr. [REDACTED]. The initial letter from Dr. [REDACTED] however, merely confirms that the petitioner worked in his laboratory and participated in reviewing journal articles. In response to the director's request for additional documentation, the petitioner submitted a more detailed letter from Dr. [REDACTED]. Dr. [REDACTED] explains that the petitioner has been isolating liver stem cells in the pancreas. Dr. [REDACTED] asserts that the petitioner's finding that fatty change prior to the use of fatty livers for liver transplants "offers hope for more transplantable livers." Dr. [REDACTED] continues that the petitioner has also evaluated the regenerative potential in fatty livers and that the petitioner's research on the molecular mechanisms of hepatocarcinogenesis could minimize the costs associated with treating chronic liver diseases. Dr. [REDACTED] concludes that the petitioner's work has been "met with keen interest and wide praise."

Other researchers who have collaborated or otherwise worked with the petitioner at Northwestern provide similar information. Dr. [REDACTED] Chairman of the Department of Anatomy at the Fujita Health University and a collaborator of Dr. [REDACTED] explains the significance of the petitioner's work with fatty livers. Specifically, transplant physicians do not currently use livers with fatty change because it is believed that such livers have a decreased potential for regeneration. According to Dr. [REDACTED] the petitioner's studies with an animal model demonstrate for the first time that fatty livers do not impair liver regeneration after transplants of liver sections. While these letters all provide general praise of the petitioner and discuss the importance of his work and its potential, they do not provide examples of how the petitioner's work has already impacted the field.

In response to the director's request for additional documentation, the petitioner submitted more independent letters. The mere submission of letters from independent experts is insufficient; it is necessary to evaluate what those experts say. All of the letters provide general praise and make general claims that the petitioner has contributed to the field. Dr. [REDACTED] a research medical officer with the National Institute for Occupational Safety and Health, asserts that the petitioner's work is contributing to a better understanding of the mechanisms he studies and that his research with liver regeneration "can be" used to evaluate the regenerative potential of human livers. Dr. [REDACTED] a senior medical director at Merck & Company, Inc., asserts that the petitioner's work suggests ligands as targets for future drugs and will otherwise influence the pharmaceutical industry. Dr. [REDACTED] however, does not indicate that Merck & Company or any other pharmaceutical company is pursuing any drugs based on the petitioner's findings.

Dr. [REDACTED] a principal scientist at Bristol-Myers Squibb Company, asserts that the petitioner has made "significant contributions to the understanding of the molecular mechanisms" of Peroxisome Proliferators Activated Receptors (PPARs), a class of nuclear hormone receptors that are "fertile targets for drug discovery" to treat diabetes, obesity, and cardiovascular diseases. While Dr. [REDACTED] asserts that he cited the petitioner's work on PPARs in his review article on the subject, he does not assert that Bristol-Myers Squibb or any other company is pursuing drugs based on the petitioner's findings. The petitioner submitted the article by Dr. [REDACTED] which cites the petitioner's article as one of 64 articles. The text merely asserts that the petitioner has reported human PPAR α supports peroxisome proliferation in PPAR α -deficient mice. The text does not single the petitioner's work out as more significant than the other new research being reported in the field.

Finally, Dr. [REDACTED] Vice President of Drug Safety Evaluation at Esperion Therapeutics, praises the petitioner's past and recent work asserting that it may lead to new treatments for various diseases. Dr. [REDACTED] does not provide any examples of how the petitioner's work is being applied by the pharmaceutical industry.

We acknowledge that the petitioner has been performing research for several years and has published several articles. The director noted that publication is inherent to the field of research. On appeal, counsel asserts that

CIS only sees petitions from the top researchers, leading to the erroneous conclusion that most competent researchers publish their findings.

We concur with the director that the petitioner's publication history does not set him apart from other researchers. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, sets forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces CIS's position that publication of scholarly articles is not automatically evidence of influence; we must consider the research community's reaction to those articles.

Of the petitioner's 25 articles published as of the date the petitioner supplemented the record, only four had been cited at all. Of the four articles cited, the most citations received by any article were six. Moreover, a petitioner must establish eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Thus, we will not consider the evidence of the petitioner's articles published after the date of filing submitted in response to the director's request for additional documentation and again on appeal.

As demonstrated by the decision by this office submitted by counsel on appeal, evidence that a researcher has been widely cited, while useful evidence of the researcher's influence, is not always required where other objective evidence of an impact on the field exists. The decision submitted by counsel is not a precedent decision and does not identify every piece of evidence in the record. Regardless of the conclusion made in that decision, we cannot conclude that the evidence of record in the matter before us demonstrates a past record of success with some degree of influence on the field as a whole.

Finally, we acknowledge that the petitioner has submitted evidence of his professional memberships. Membership in professional associations is merely one of the regulatory requirements to establish eligibility as an alien of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that meeting one, or even the requisite three criteria for that classification warrants a waiver of the job offer requirement in the national interest.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any research, in order to be accepted for publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who is published or is working with a government grant inherently serves the national interest to an extent which justifies a waiver of the job offer requirement. The record does not establish that the petitioner's work represented a groundbreaking advance in 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.

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.