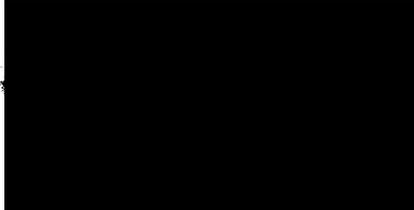


B-5



U.S. Citizenship
and Immigration
Services



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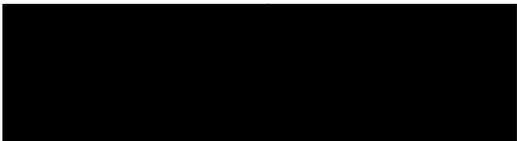
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IN RE: Petitioner:
Beneficiary:



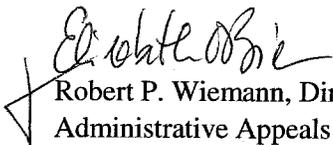
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The employment based immigrant visa petition was denied by the Director, Vermont 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 or an alien of exceptional ability. 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 Immunology from the University of Birmingham in the United Kingdom. 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:

joined the [REDACTED] Assistant Professor in the Department of Pathology. After obtaining his M.S. and Ph.D. degrees in Immunology from the University of Birmingham, U.K., [the petitioner] joined this university in March 1993. He was promoted to the post of Associate Professor in November, 1993, the capacity in which he is serving sincerely...to date.

[The petitioner] is a dedicated teacher, responsible for teaching Pathology, Immunology and Medical Genetics to the post-graduate students of our university and is a guest lecturer of the Bangladesh Institute of Research and Rehabilitation in [REDACTED]. He is engaged in departmental research and works as co-supervisor for [REDACTED] Students. To date he has supervised with his departmental head 22 M.Phil. theses. [The petitioner] has more than 28 publications in reputed journals in his credit. He is also responsible for routine histopathology and cytopathology service of our university hospital patients. In addition to his regular duties, [the petitioner] has been working as member of the Ph.D. Committee of the Post-Graduate Medical Faculty of the [REDACTED] Medical University.

[REDACTED] letter discusses the petitioner's educational background, job experience, and publication record, but it does not explain how the petitioner's work is of greater benefit than that of other biomedical researchers. We note here that objective qualifications, such as educational degrees and teaching experience, are amenable to the labor certification process. Pursuant to *Matter of New York State Dept. of Transportation, supra*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education that could be articulated on an application for a labor certification.

Dr. John Gordon, Reader in Cellular Immunology, University of Birmingham, states:

As part of the requirement for [his M.S. degree], [the beneficiary] spent four months in the laboratory carrying out original research work under my supervision and submitted the report entitled "FUNCTIONAL STUDIES ON B LYMPHOCYTE RECEPTORS." Together with written examination of the course work and oral examination of his research endeavors, this research thesis enabled him to gain his M.S., which was conferred formally at the Degree Congregation in December 1990.

He then registered as a Ph.D. student continuing his research in my laboratory culminating in the submission of a thesis entitled "Role of CD72 on Human B Lymphocytes" which was successfully defended.... Three publications in internationally recognized scientific journals have already arisen from his work at Birmingham and more are anticipated as a direct result of his original research effort.

Professor I. C. M. MacLennan, Head of the Department of Immunology, The University of Birmingham, states:

[The petitioner] enrolled on the one-year taught M.S. course run by the Department of Immunology in September, 1989.... [The petitioner] successfully completed the Course in September 1990, achieving an excellent mark.

He did his project in [REDACTED] laboratory and his performance in this project was such that he was invited to enroll as a Ph.D. student from October 1, 1989 again under the supervision of Dr John Gordon, Reader in Immunology.... After successfully defending the thesis on February 12, 1993, his Ph.D. degree was approved by the Faculty of Medicine and was conferred in the July '93 Degree Congregation. As a direct result of his research work, three articles have been published in international journals...

All three of the above witnesses indicate that the petitioner has published his work in international journals. We do not find, however, that publication of one's work in an international journal is presumptive evidence of eligibility for the national interest waiver. When judging the influence and impact that the petitioner's 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. Frequent citation by independent researchers, on the other hand, would demonstrate more widespread interest in, and reliance on, the petitioner's work.

The documentation accompanying the petition included eleven articles citing three papers that the petitioner coauthored with [REDACTED] (while under his supervision at the University of Birmingham). While the articles presented demonstrate some degree of interest in the petitioner's published work, it has not been shown that an aggregate total of eleven citations during a research career spanning more than a decade adequately distinguishes the petitioner from other capable researchers in the immunology field. Aside from citations of the three papers that the petitioner coauthored during his Ph.D. studies with [REDACTED] in the early 1990's, the record contains no evidence of citations of the petitioner's remaining published papers.

The petitioner also submitted two letters from the American Biographical Institute, Inc. (ABI) announcing the petitioner's nomination for "the...title MAN OF THE YEAR - 1997" and the "ABI Gold Record of Achievement for 1997." Neither letter explains what the petitioner accomplished to be "nominated" for these awards nor does the record contain evidence showing that either award was ultimately bestowed upon the petitioner. Regardless, recognition relates to one of the criteria for classification as an alien of exceptional ability, a classification that normally requires an approved labor certification. We cannot conclude that meeting one, two, or even the requisite three criteria for classification as an alien of exceptional ability warrants a waiver of the labor certification requirement in the national interest.

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 an updated list of citations (accompanied by two additional articles citing the petitioner and [REDACTED] work that were not previously submitted), further background materials, and an additional letter from [REDACTED]

In his second letter, [REDACTED] states:

[The petitioner] studied within my Laboratory for a period of 3 years during which time he was funded by the World Health Organization. Over the course of those studies he first obtained the degree of M.S. in immunology then completed his thesis to achieve the degree of Ph.D., both being awarded by the

University of Birmingham (U.K.). The work comprising the project element of the M.S. and the entirety of the Ph.D. was entirely that of the above and his own efforts with the exception of the general and specific supervision and minor technical assistance that is normal procedure in these situations.

The work undertaken during the course of Ph.D. study resulted in the publication of three peer-reviewed original papers that appeared in international journals of repute. For two of these papers..., [the petitioner] was the principal author denoting that the work contained therein was primarily driven and undertaken by him as the lead writer. Other authors appearing on these two publications either provided supervision or specific technical assistance.... These papers have continued to provide insight into CD72 and B cell biology and have been regularly cited by other workers in the field. All other named individuals on these papers were, at the time, employees of the University of Birmingham (U.K.).

We accept that the petitioner has contributed to the overall pool of knowledge in his field; however, the witnesses have not explained how his work is of greater benefit than that of other scientists in the immunology/biomedical field. In this case, the witnesses offering letters of support consist entirely of individuals from overseas educational institutions where the petitioner has studied or worked. These individuals became aware of the petitioner's work because of their close association with him; their statements do not show, first-hand, that the petitioner's work is attracting attention on its own merits, as we might expect with research findings that are unusually significant. While the petitioner may have contributed to research projects undertaken in Dr. Gordon's laboratory in the early 1990's, his ability to significantly impact the field beyond these projects has not been demonstrated. It is noted that the record contains no letters of support from interested U.S. government agencies or U.S. research institutions attesting to the petitioner's benefit to the national interest of this country or indicating that his work is particularly important when compared to that of other scientists in his field.

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 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 noted the absence of "commentary from independent experts in the field regarding the significance of the beneficiary's claimed achievements." The director also noted a lack of evidence showing that the petitioner (rather than Dr. Gordon) was "primarily responsible" for the published research findings discussed in the record.

On appeal, counsel challenges the director's observation that the petitioner has not shown that he was "primarily responsible" for his published findings. Counsel argues that the petitioner was the "first author" of numerous scholarly articles. While we accept that first authorship is indicative of a leading role on a particular research project, of far greater relevance to the petitioner's national interest waiver claim is whether his findings have attracted an unusual level of interest throughout the greater field. Publication, by itself, is not a strong indication of impact in one's field, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the petitioner's work. If a given article in a prestigious journal (such as the

Proceedings of the National Academy of Sciences of the U.S.A.) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work. Their citation of the petitioner's work demonstrates their familiarity with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and national benefit — a researcher's work would have, if that research does not influence the direction of future research. In the present case, we find that an aggregate total of thirteen articles citing the petitioner's thirty or so published works is not adequate to demonstrate that his findings have significantly influenced the greater immunology field.

For the reasons set forth above, the petitioner has not established that his past accomplishments set him significantly above his peers such that a national interest waiver would be warranted.

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 the 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 project or area of research, 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.

ORDER: The appeal is dismissed.