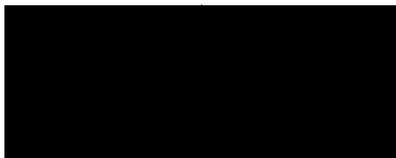


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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE: LIN-02-289-52739 Office: NEBRASKA SERVICE CENTER

MAR 31 2004

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.

*Maifolmson*

for Robert P. Wiemann, Director  
Administrative Appeals Office

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Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**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), 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 immunopathology from Xi'an Jiaotong University. 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, and that the proposed benefits of her work, improved treatment of cancer, 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.

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 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. *Id.* at 219, n. 6.

At the time of filing, the petitioner was a Ph.D. student at the University of Illinois, Urbana-Champaign working in the laboratory of Dr. Keith Kelley. The petitioner provides a personal description of her own research into proinflammatory cytokines and their ability to inhibit tumor growth by impairing signals from growth factor receptors. The petitioner asserts that this work links two approaches to cancer treatment: blocking endogenous growth factors and inhibiting tumor growth through the administration of cytokines. She further asserts that her work has identified a specific growth factor adaptor protein, IRS-1, as a molecular target for anti-tumor therapeutic strategy. On appeal, counsel asserts that the director erred by ignoring the expert opinions in the record. We will consider these opinions below.

Dr. Kelley describes the petitioner's research in his laboratory, asserting that it "could be a groundbreaking discovery in cancer biology." He explains that her discovery that cytokines only have an inhibitory effect in the presence of growth factors is "novel" and "will reshape current ideas on how growth factors and cytokines interact to control the growth of cancer cells." In a subsequent letter, Dr. Kelley asserts: "The progress we have made in exploring the impact of neuroendocrine-immune communication on tumor growth would not have been possible without [the petitioner's] expertise and contributions."

Other professors at the University of Illinois provide similar information. Dr. Steven Maier adds that the petitioner's results are "a groundbreaking discovery." Dr. Gregory Freund asserts that this work "lends credence to potentially promising anti-cancer therapies that include neutralization of endogenous growth factors and medicinal administration of cytokines."

Dr. Virginia Sanders, an associate professor of immunology at Ohio State University, asserts that she attended one of the petitioner's presentations at a scientific conference. Dr. Sanders reiterates the information discussed above. Dr. Sanders does not assert that she has incorporated the petitioner's work into her own work.

Dr. Robert Dantzer, a professor of integrative neurobiology at the Institut François Magendie and President of the Psychoneuroimmunology Research Society, asserts that he has followed the petitioner's work after visiting Dr. Kelley's laboratory. He praises the petitioner's presentation at an international conference and asserts that her work with cytokines "has opened up new grounds and laid a solid foundation for linking proinflammatory cytokines and growth factors in a way that has not been previously recognized." Dr. Dantzer provides no examples of other projects influenced by the petitioner's work. Nor does Dr. Dantzer assert that his own work has been influenced.

Dr. Eric Smith, a professor of psychiatry and behavioral sciences at the University of Texas, provides a favorable independent opinion of the petitioner's work with proinflammatory cytokines. He acknowledges, however, that this opinion is formed based on a review of her credentials. He does not appear to have heard of the petitioner or her work prior to being asked to provide a reference letter. Regardless, Dr. Smith does not assert that the petitioner's work has influenced his own work.

The petitioner submitted two letters from researchers at the National Institutes of Health (NIH) who met the petitioner at an invitation-only National Cancer Institute Roundtable Luncheon at the Psychoneuroimmunology Research Society. While one of these letters indicates that the petitioner was one of the youngest scientists invited to attend, the e-mail inviting the petitioner indicated that attendees would include "senior and junior [psychoneuroimmunology] cancer researchers." Thus, the invitation extended to the petitioner appears to have been based on her area of research rather than her contributions to the field. Dr. Fred Altman, Assistant Director for Fellowships and MERIT Program in the Division of Mental Disorders, Behavioral Research and AIDS (DMDBA) at NIH, asserts that he focuses on "the co-morbidities between mental and physical illness." He provides general praise of the petitioner's work but does not explain how her work relates to his area of expertise or assert that her work has influenced his own.

Dr. Michael Stefanek, Chief of the Basic Biobehavioral Research Branch of the Division of Cancer Control and Population Sciences at the National Cancer Institute, NIH, provides:

[The petitioner's] new model provides a new efficient approach to suppress hormone-promoted tumor growth by administration of proinflammatory cytokines. In addition, her mechanistic studies revealed an important IGF-I receptor-signaling molecule, IRS-1, may mediate the interaction between hormones and cytokines and act as a molecular target for anti-tumor therapeutic strategies. These novel findings provide a better understanding of tumor growth control by endogenous bioactive factors and will improve our ability to find better ways to fight cancer that could benefit millions of cancer patients.

A review of Dr. Stefanek's curriculum vitae reveals that he obtained his Ph.D. in Clinical Psychology. While he has been employed in oncology departments, his publications reveal that his cancer work relates to psychological stress relating to cancer and how to counsel cancer patients and those at risk for developing cancer. Dr. Stefanek does not explain how this area of expertise allows him to evaluate the petitioner's biochemical research with proteins and receptors. Regardless, neither Dr. Altman nor Dr. Stefanek assert that the petitioner's work and participation with the roundtable has influenced cancer funding priorities for NIH.

While the record contains letters from researchers who have not collaborated with the petitioner, these letters are not persuasive. The record does not establish that the petitioner's novel model has been accepted in the field or is being used as the foundation for other cancer research. Moreover, the record contains no evidence that cancer researchers have begun evaluating IRS-1 as a molecular target for anti-tumor therapeutic strategy based on her work.

The petitioner's research with proinflammatory cytokines was accepted as a poster presentation at the 2001 Cell and Molecular Biology/Molecular Biophysics Research Symposium where it was selected as one of the ten best posters.<sup>1</sup> Recognition from one's peers is one of the regulatory criteria for aliens of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that meeting this one criterion, or even the requisite three criteria, warrants a waiver of that requirement.

The petitioner's proinflammatory cytokines research was also published in *Cancer Research* one month prior to the filing date of the petition. As such, as of that date, there had been little opportunity for independent members of the petitioner's field to review, evaluate, and comment on this research. Even in response to the director's request for additional documentation and on appeal, the petitioner has submitted no evidence that this article has been cited by independent researchers, or at all. The record does contain two requests for reprints. While these requests represent an interest in the work, they do not reflect that this work has served as the foundation for any other work other than the petitioner's own work.

On appeal, counsel argues that the very fact that the petitioner was published in *Cancer Research* in addition to the positive reference letters is sufficient to set the petitioner apart from others in the field. Counsel is not persuasive. For the reasons discussed above, the letters are not persuasive evidence of the petitioner's influence on the field as a whole. Moreover, we consistently reject the argument that the prestigious nature of a journal is insufficient without consideration of the actual influence of the alien's article in that journal.

In her position as a graduate research assistant, the petitioner is listed as "key personnel" on an August 28, 2001 grant application for research involving cytokines and hormone interactions in comorbidity of AIDS. The research period is listed as September 2002 through August 2007. The key personnel includes a principal investigator and two co-investigators. Dr. Dantzer will serve as a consultant. A more detailed discussion of the staff reveals that Dr. Suzanne Broussard "developed all of the new preliminary data on the role of proinflammatory cytokines on muscle myoblast cells" and that she will be responsible for overseeing the technical aspects of the research, including training and statistical analysis. The petitioner will be responsible for measuring specific data. While the experience and expertise of most of the other team members is specified, including the other students, the petitioner's is not.

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<sup>1</sup> The petitioner also received two awards in China, both bearing the seal of Xi'an Medical University. These awards relate to the work described below.

On appeal, counsel asserts that the petitioner's immigration status precludes her from participating as a co-investigator. While the failure to list the petitioner as a co-investigator does not preclude eligibility, neither is it persuasive evidence of her eligibility. Not every researcher working with a government grant qualifies for a national interest waiver of the job offer requirement. None of the petitioner's references discuss her participation in this particular project involving cytokines and AIDS. Thus, the record does not establish the significance of the petitioner's participation on this project.

Regarding her previous research, the petitioner submitted a letter from Dr. Yuxin Yin, an assistant professor at Columbia University. According to the letter, Dr. Yin and the petitioner shared a mentor at the Xi'an Jiaotong University College of Medicine in China. Dr. Yin explains that during this time, the petitioner focused on how host immunity, triggered by a tumor antigen and a "costimulatory signal," initiates a protective response to tumor cell invasion. The petitioner demonstrated that the B7 recombinant protein efficiently induces the anti-tumor activity of host T lymphocytes in the presence of tumor antigens.

Dr. Yin asserts that this discovery with the B7 protein "lays down a foundation to develop an immune strategy for treatment of cancer." Dr. Kelley concurs, asserting that this work was an important contribution to biomedical science. Dr. Stefanek asserts that it is "an outstanding contribution to the area of tumor immune therapy with international significance in scope." Dr. Yin, Dr. Kelley, and Dr. Stefanek, however, fail to provide examples of new treatments resulting from this work or research that has been influenced by this work. This information is also lacking regarding the petitioner's work with diabetes, which Dr. Kelley asserts "had a very positive impact on this field around the world."

Among the petitioner's other published articles is a review article published in *Critical Reviews*. In response to the director's request for additional documentation, the petitioner submitted evidence that this article had been cited five times. The review article, however, does not report the petitioner's own research. Thus, the citation history of this article does not demonstrate that the petitioner's own research has been influential. The record includes no other evidence of citations.

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 Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains a Ph.D. or is working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

The record does not establish that the petitioner's work is recognized in the field as a groundbreaking advance in cancer research. While we do not question the sincerity of the petitioner's references in attesting to the promising nature of the petitioner's novel unifying theory, at best the petition was filed prematurely, before the reaction of the cancer research community can be gauged.

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.