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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER

MAR 31 2004

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

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:

[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.

to 
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 doctor of medicine degree from Tbilisi State Medical Institution. 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 do not contest that the petitioner works in an area of intrinsic merit, medical research, and that the proposed benefits of his work, improved treatment of skin diseases, 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 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.

The petitioner is a senior researcher at Northwestern University. Previously, he was a postdoctoral fellow at Emory University. He provides letters from colleagues at both institutions and collaborators. Dr. John C. Ansel, the petitioner's supervisor at Northwestern University, explains that the cutaneous neurosensory system plays a role in inflammatory skin diseases such as dermatitis and psoriasis and diabetic foot ulcers. Peptides have been previously limited as topical treatments because skin permeation of peptides is low. The petitioner "discovered a vehicle that enhances skin penetration of peptide drugs" that "does not have any adverse effects on the skin." Thus, the petitioner "pioneered the examination of the anti-inflammatory effects of the substance P receptor antagonist spantide II [a peptide] in the treatment of allergic contact dermatitis." According to Dr. Ansel: "Spantide II drug showed much better therapeutic effects in the treatment of acute contact dermatitis than dexamethasone." In addition, the petitioner's work with low doses of ultraviolet irradiation demonstrated "that low therapeutic doses of UV increase content of biologically important neuropeptides such as calcitonin gene-related peptide (CGRP)" that suppress inflammation of the skin. Finally, the petitioner "discovered [a] new drug called adose reductase inhibitor (ARI) IDD 676, which effectively healed chronic diabetic wounds in [an] animal model" by improving skin innervation and blood supply in the skin.

Dr. Robert Lavker, a professor at Northwestern University who also claims to have known the petitioner at Emory, also provides similar information. He further states that the petitioner "found ascomycins ASM and ASD732, powerful anti-inflammatory drugs, effective in the treatment of allergic contact dermatitis." In a

subsequent letter, Dr. Ansel asserts: "Based on [the petitioner's] very promising results, in the very near future, we expect to begin Phase I human studies to treat allergic contact dermatitis with spantide II or ASM 981." Dr. David Ryan, an assistant professor at Northwestern University asserts that "successful outcome" of the ARI IDD 676 study prompted the petitioner "to further investigate IDD676 for diabetic ulcer healing in human trials." The record does not contain any evidence of an approved grant proposal, or even a grant application, for human testing of these drugs.

The petitioner provided a letter from Dr. Anna Shakarishvili, a medical epidemiologist at the Division of Sexually Transmitted Diseases Prevention, Centers for Disease Control (CDC) in Atlanta. Dr. Shakarishvili does not appear to be an expert in dermatology, and claims to have become acquainted with the petitioner's research at Emory University, also in Atlanta. While she provides similar information to that discussed above, she does not assert that the CDC has adopted any of the petitioner's results or is supporting clinical trials of the petitioner's treatments. Her opinion does not appear to be the official opinion of the CDC.

Colleagues at Emory University and collaborators with the petitioner's laboratory at Emory University provide similar information. Dr. Kenneth Walker, a professor at Emory University, adds that "only a small number are invited to work at Emory University or Northwestern University, premiere research institutions in the field." Dr. Walker acknowledges, however, that Emory University has an exchange program with Tbilisi State Medical University, where the petitioner obtained his medical degree. Regardless, this office has never held that a waiver of the job offer and labor certification process is warranted based solely on the prestige of the research institution with which the alien is associated. Rather, the petitioner must demonstrate his own track record of success in the field.

While Dr. Mandip Singh, a professor at Florida A&M University, asserts only that his collaborative study with the petitioner on Spantide II "is expected to have a significant impact on the treatment of contact dermatitis and atopic dermatitis in the future." Dr. Singh does not identify how the study has already impacted the field.

Dr. Vakhtang Bochorishvili, an employee in the Division of Infections Diseases at Rush University who knew the petitioner at Emory University, asserts that the petitioner's work with Spantide II "launched for physicians a new route of using peptide, biologically important molecules, as topical agents in the treatment of [a] variety of skin diseases." Dr. Bochorishvili does not provide his own title, explain what type of medicine he practices or researches or explain how he has first hand knowledge of how physicians are treating skin diseases. He does not assert that he personally treats any skin diseases with Spantide II.

Dr. Brad Harten of the Department of Dermatology at Emory University reiterates much of the information provided above and asserts that the petitioner "discovered expression of pain receptors, vanilloid-1 receptors, on skin cells." Dr. Harten concludes that this finding will be very important in order to understand the physiology of pain and to design new pain relieving medications.

As noted by the director, all of the letters in the record are from the petitioner's own collaborators. On appeal, the petitioner does submit a letter from Dr. Stephen Malawista, a professor at Yale University, who is not acquainted with the petitioner. Dr. Malawista asserts that there is a time lag between important discoveries and recognition of the importance of those discoveries beyond those who made the discovery. Thus, Dr. Malawista concludes that the best way to confirm the identity of the discoverer and the importance of the discovery is confirmation by "qualified scientists in the field who are familiar with them." Dr. Malawista professes no opinion as to the significance of the petitioner's work.

Dr. Malawista's letter is not persuasive. While it may be true that it takes time for independent researchers to learn of and confirm the importance of discoveries, we fail to understand how discoveries can be said to have influenced the field prior to this independent confirmation. Any petition filed before the field as a whole has

recognized any of an alien's findings is premature. It remains, while letters from colleagues are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's influence over the field as a whole.

We note that the references make broad claims as to the petitioner's recognition. Dr. Cheryl Armstrong, an associate professor at Northwestern University who worked with the petitioner at both Northwestern and Emory, asserts that the petitioner "is an internationally recognized expert in the field of inflammatory disorders." Dr. Walker asserts the petitioner is "one of the top researchers in this area throughout the world." Dr. Irina Tabidze, an epidemiologist with the Chicago Department of Health, asserts: "Results of [the petitioner's] studies were published in peer reviewed scientific journals and already have had considerable public health impact."

Evidence to support such sweeping claims should be readily available, such as such as letters from independent dermatologists attesting to their reliance on the petitioner's work, independent researchers attesting to their reliance on the petitioner's results as a basis for their own work, or frequent citation of the petitioner's publications by independent researchers. The record contains no such evidence to support these broad claims (unsupported even by examples in the reference letters) of the petitioner's international influence.

The record does contain evidence that the petitioner is a member of the Society for Investigative Dermatology and that he has refereed an article for publication in *Dermatological Research*. The petitioner has not demonstrated that these are significant achievements. Some professional memberships merely require certain academic degrees, years of experience, or the recommendation of one's colleagues. Moreover, membership in a professional association is merely one requirement for aliens of exceptional ability, a classification that normally requires labor certification. We cannot conclude that meeting one, or even the requisite three criteria for that classification warrants a waiver of the labor certification requirement in the national interest. Further, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer has already impacted the field.

The record contains three published abstracts and two published foreign-language articles authored by the petitioner. 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 Citizenship and Immigration Services' position that publication of scholarly articles is not automatically evidence of influence; we must consider the research community's reaction to those articles. As stated above, the record contains no evidence that the petitioner's abstracts and foreign articles have been frequently cited, or even cited at all.

Finally, the petitioner provides a letter from David Freedman, a Distinguished Fellow at the CDC, criticizing the labor certification process in the sciences. Congress did not create a blanket waiver for research scientists. Thus, we must look at the qualifications of the individual seeking the waiver, and not simply the field in which he works.

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 postdoctoral or other research, in order to be accepted for presentation at conferences, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who presents his work at conferences, publishes abstracts 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 represented a significant advance in dermatology.

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.