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U.S. Citizenship
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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: NOV 03 2004

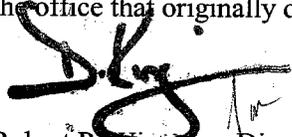
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The director affirmed his decision on motion. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

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. The director affirmed these conclusions on motion.

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 Medicine from Tianjin Medical University. According to the evaluation submitted, this degree is equivalent to a U.S. Doctor of Medicine degree. 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, cardiology and microvessel research, and that the proposed benefits of her work, improved treatment for cardiovascular disease, 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.

After graduating from Tianjin Medical University, the petitioner worked at that institution until 1996, then accepted a research position at the University of California, Davis (UC Davis). As of the time of filing, the petitioner had been worked as a research scientist at the University of Missouri since 1998.

Initially, the petitioner submitted reference letters from her current and former circle of colleagues and an independent researcher at the University of Rochester Medical Center, [REDACTED] also a past president of the Microcirculatory Society.

[REDACTED] the petitioner's collaborator at UC Davis, asserts that the petitioner helped develop a novel method to measure changes in hydraulic conductivity before and after leukocyte adhesion. Dr. Curry states that the petitioner's work was published in *FASEB* and the *American Journal of Physiology – Heart and Circulatory Physiology* and "widely read by [the petitioner's] peer scientists."

the petitioner's supervisor at the University of Missouri, asserts that the petitioner identified "the expression of adenosine receptor A_{2A} and A_{2B} in porcine coronary arterioles and in coronary venules." Another reference from the University of Missouri, explains that "[a]denosine plays an important role in coronary vasodilation by way of acting on coronary smooth muscle cells, resulting in increased oxygen supply to the myocardium." further asserts that the petitioner is following up on that research by examining how these receptors are expressed differently in men and women in an attempt to determine why women have a reduced risk of heart disease prior to the onset of menopause characterizes this work as "key in federal research aimed towards developing therapeutic treatments for heart disease." then describes the petitioner's upcoming work, less relevant to the issue of whether she had already demonstrated a track record of success as of the date of filing.

an associate professor at the University of Missouri, provides somewhat more detail. She explains that little is known about the regulation of the movement of solutes and water across the endothelial cells that line vessel walls. She further explains that adenosine is a molecule released by tissues into spaces between cells "and is believed to function as a 'metabolic signal' from the tissue to the circulation to increase blood flow and thus nutrient delivery." According to there was speculation prior to the petitioner's work that both A_{2A} and A_{2B} receptors existed in coronary microvessels, but the petitioner confirmed that hypothesis. further asserts that the petitioner "individually and independently designed very unique methods to measure[sic] water movement across the wall of small veins, called venules."

discusses the importance of the petitioner's area of research, asserts that he is familiar with the petitioner's published articles, and concludes that she has a "track record of original (novel) research."

In response to the director's request for additional documentation, the petitioner submitted letters from additional independent researchers in her field. The references include past president of the American Physiological Society and Chief Editor of a journal published by the American Heart Association; Dr. and one of eight living individuals who is a member of all three national academies in engineering, science and medicine. All three base their opinions on a review of the petitioner's work; none claim to have had known of the petitioner's work prior to the solicitation for a reference letter. Moreover, none of the references assert that the petitioner has influenced their own work or explain how it has influenced the work of others. Nevertheless, the petitioner need not demonstrate national acclaim, only that she has had a track record of success with some degree of influence in the field. While letters from members of the National Academy of Science are not always sufficient, they carry significant weight. Especially, as in this case, where the member spent three pages explaining his support for the petitioner.

asserts that the petitioner "has indeed been credited with a series of significant discoveries in the field of coronary microvessel research." cites the petitioner's work with adenosine and vascular permeability. provides similar information, stating:

In particular, [the petitioner] has established an important track record of findings related to the discovery and greater understanding of the mechanisms for the regulation of microvessel permeability with a goal towards developing new therapies to prevent and treat coronary artery disease. [The petitioner] has produced these results through her design of novel methodologies and development of techniques for measurement of hydraulic conductivity and solute permeability in single perfused microvessels.

praises the petitioner's original work, asserting that her research "has provided the cardiovascular research community with vital new insights into the adenosine regulation of coronary microvessel permeability under physiological conditions." He concludes that the petitioner's work with adenosine is of "major significance."

The petitioner also submitted evidence that she was listed as one of the "key personnel" on grant applications covering a period prior to the date of filing. Finally, the petitioner submitted evidence that her article on leukocyte adhesion and microvessel permeability had been moderately cited by independent researchers, and that her article on L-Name was cited twice, once by an independent researcher. Of the independent articles that cite the petitioner's work on permeability, two are review articles that cite the petitioner's work favorably.

The director concluded that the petitioner's publication history of two published articles and limited citations did not support the claims made by the petitioner's references. The director noted that the petitioner's results on adenosine had only been published in abstract form at the time of filing.

The petitioner filed a motion to reopen, submitting a new letter from [redacted] and a letter from [redacted] of the Cardiovascular Laboratory at the Johnson Space Center, National Aeronautics and Space Agency (NASA). [redacted] reiterates that the petitioner has produced her results through the "design of novel methodologies and development of techniques for the measurement of hydraulic conductivity and solute permeability in single perfused microvessels." He also states that he is "directly influenced and impacted by [the petitioner's] research."

Dr. Meck discusses the petitioner's work with NASA, performed after the date of filing. This information has little relevance to the petitioner's eligibility as of that date.

The director concluded that the significance of a scientific contribution is objectively demonstrated through publication and citation. The director noted again that the petitioner's work with adenosine had yet to be published and that [redacted] had not explained how the petitioner influenced his work. The director suggested that the petition was filed prematurely, before the petitioner's work with adenosine could be evaluated and utilized by others in the field. On appeal, counsel quotes the reference letters at length.

We agree with the director that citations constitute useful objective evidence of the cited article's significance. Nevertheless, we find that a bright line rule requiring a specific number of citations is not useful. Rather, the complete record must be considered. Where the number of citations is moderate, extraordinary references and other factors may be considered. In this case, the petitioner's article on microvessel permeability, asserted by the references to be one of the petitioner's contributions to her field, has been moderately cited, including in two review articles. The petitioner's references are from the very highest level of the field, including a member of the National Academy of Science, and are unequivocal in their detailed and lengthy support. While these references focus on the petitioner's research on adenosine, which had only been published in abstract form as of the date of filing, they also discuss the petitioner's work with permeability in general, which has been published and cited. Finally, while not decisive by itself, the petitioner is listed as a key member of a research team on a research grant application for research that occurred prior to the date of filing.

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 field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of

retaining this alien's services outweighs the national interest which is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has 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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.