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U.S. Citizenship
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Services

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FILE: WAC 03 152 53200 Office: CALIFORNIA SERVICE CENTER Date:

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:



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, California 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 an alien of exceptional ability or 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.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Ph.D. in Stomatology from Shanghai Second Medical 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 for lung 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.

The petitioner submitted her associate membership in the American Association for Cancer Research (AACR). Counsel characterizes this association as requiring outstanding achievements of its members. In fact, associate membership is open to "graduate students, medical students and residents, clinical fellows in related subspecialties, and postdoctoral fellows who are enrolled in educational or training programs that could lead to careers in cancer research." Regardless, professional memberships are merely one requirement for aliens of exceptional ability, a classification that normally requires a labor certification. Meeting one, or even the requisite three criteria, does not warrant a waiver of that requirement in the national interest.

At the time of filing, the petitioner had authored five published articles and had submitted a manuscript to *Cancer Research*. As of the date of filing, *Cancer Research* had rejected the petitioner's manuscript, however, the article was subsequently accepted and published in August 2003, four months after the date of filing. The petitioner submitted evidence that *Cancer Research* is one of the most prestigious and well-cited cancer

journals. In evaluating a particular article, however, it is necessary to see evidence of the impact of that article as opposed to the journal that published it. The petitioner provided no evidence that independent researchers have cited any of her articles. The petitioner also presented her work as a poster presentation at a conference by the American Thoracic Society (ATS), the largest gathering of lung-related specialists in the world, according to the president's letter.

Initially and in response to the director's request for additional evidence, the petitioner submitted several letters from her colleagues at the University of California, Los Angeles (UCLA) School of Medicine where the petitioner is a postdoctoral researcher. Dr. [REDACTED] the petitioner's postdoctoral advisor at UCLA, explains that the petitioner is working towards developing a therapy for lung cancer that promotes cancer cell death through radioiodide uptake and retention, an effective therapy for thyroid cancer. Towards that goal, the petitioner has established lung cancer cell lines that express human NIS and TPO thyroid proteins. Dr. [REDACTED] further asserts that the petitioner's future studies with mice "will be a key step for future clinical trials." Dr. [REDACTED] professor at UCLA and Chief of a Division at the Veterans Administration Los Angeles Healthcare System, provides similar information and asserts:

Her findings are the foundation of this revolutionary new cancer therapy and make the treatment of lung cancer, as well as other cancers[,] a promising prospect. Her findings offer a highly effectible therapy for cancer that is [sic] remarkably low adverse effect.

Dr. [REDACTED] concludes that the petitioner's current animal model research is necessary to advance to human trials. Dr. [REDACTED] an assistant professor at UCLA, asserts that the petitioner is the first researcher to put the "hypothesis" of using a modified virus to infect cancer cells "to practical use." Dr. [REDACTED] an assistant research professor at UCLA, asserts that this type of research is not as widespread as it should be.

In response to the director's request for additional evidence, the petitioner submitted a brief letter from [REDACTED] a biosafety officer in the research administrative office of the Department of Veterans Affairs. Mr. [REDACTED] confirms that the petitioner's work is federally funded, beneficial, and exceeds "well qualified, experienced and highly skilled" researchers. Mr. [REDACTED] letter does not appear to represent the official position of the Department of Veterans Affairs. Regardless, most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. Mr. [REDACTED] provides no examples of how the petitioner's work has already had some degree of influence on the field. The petitioner also provided additional letters from other researchers at UCLA providing similar information to that discussed above.

The director concluded that the letters "by and large describe rather than evaluate" the petitioner's research. On appeal, counsel quotes several of the opinions evaluating the petitioner's accomplishments. We concur with counsel that the letters do evaluate the petitioner's work. Nevertheless, the petitioner has not overcome other concerns raised by the director. Specifically, on page 6 of his decision, the director notes that none of the petitioner's references "describe how the petitioner's findings have specifically influenced other independent researchers in the field." The director further notes the lack of citations of the petitioner's work or other evidence that the petitioner's results "have already been relied upon or have already impacted the scientific community as a whole to any significant degree." The director specifically stated that he was not questioning the credibility of the references, but looking for evidence of an impact beyond the petitioner's immediate circle of colleagues. Counsel's appellate brief does not address these issues other than to assert

that the letters point to past achievements that project future contributions to the national interest. We concur with the director that without evidence that independent researchers have cited or have otherwise been influenced by the petitioner's research, the petitioner cannot demonstrate that she has a track record of success with some degree of influence on the field as a whole.

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 attention from the scientific community. Any postdoctoral research, in order to be accepted for publication, must offer new and useful information to the pool of knowledge. It does not follow that every published researcher performing original research 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 groundbreaking advance in her field. The petitioner submitted evidence that independent science news Internet sites, including BBC News, have, prior to the petitioner's employment at UCLA, covered the work by the petitioner's Chair at UCLA, Dr. Steven Dubinett, involving the use of SLC proteins and a non-steroidal arthritis drug to treat lung cancer. The petitioner, however, has not demonstrated that her work has received such attention.

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.