



U.S. Citizenship
and Immigration
Services

AS

[Redacted]

FILE: [Redacted]
WAC 98 213 50497

Office: CALIFORNIA SERVICE CENTER

Date: OCT 28 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:

SELF-REPRESENTED

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.

Mari Johnson

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent [unclear] [unclear]
[unclear] [unclear] [unclear]

PRINTED AT [unclear]

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, California Service Center. On the basis of further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on December 10, 2002. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.¹

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. A letter from the petitioner's disbarred representative (hereinafter "counsel") accompanying the petition, dated May 8, 1998, states: "[The petitioner] currently volunteers for the Department of Medicine and the Joseph Gottstein Memorial Cancer Research Laboratory, of the University of Washington School of Medicine..." 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 two doctorates in Medicine from Tbilisi State Medical University in the Republic of Georgia. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The

¹ Although the petitioner has a January 25, 2001 Form G-28, Notice of Entry of Appearance as Attorney or Representative, on file indicating that he is represented by an attorney, the AAO notes that the petitioner's representative was disbarred by the Washington State Bar Association on June 24, 1998. See Washington State Bar Association website, http://pro.wsba.org/PublicView-Discipline.asp?Usr_Discipline_ID=301 (accessed October 27, 2004). There is no indication that this individual has advised CIS that she was disbarred, and it is noted that she has continued to file immigration petitions and appeals, submit responses to service center requests for evidence (RFEs), and otherwise represent aliens in immigration matters before CIS, contrary to 8 C.F.R. §§ 292.1(a)(1) and 1003.102(e).

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 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:

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 Dept. of Transportation, 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.

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 he merits the special benefit of a national interest waiver, over and above the visa classification sought. 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 note 6.

The petition in this matter was filed on July 30, 1998. Along with documentation pertaining to his field of research, the petitioner submitted several letters of support.

Professor [REDACTED] director of the Gottstein Laboratory, states that the petitioner "has demonstrated an unparalleled concern for quality and shown himself to be a hard worker, eager to learn, and with an abundant curiosity and dedication to scientific excellence." Professor [REDACTED] briefly describes the techniques that the petitioner uses at the Gottstein Laboratory, but does not specify what significant new findings the petitioner's work has yielded.

[REDACTED], formerly of [REDACTED] and now on the faculty of the Gottstein Laboratory, discusses the petitioner's past and present research but, again, concentrates on describing the petitioner's techniques rather than the outcome of the projects. Several other witnesses, all of whom have worked or studied with the petitioner, assert that the petitioner is highly skilled but do not indicate what exactly the petitioner has contributed to his field or how that contribution distinguishes the petitioner from his peers. Several witnesses offer the general statement that cancer research is beneficial, but it does not follow that the United States does not owe U.S. cancer researchers the protection that labor certification affords (which is the same thing as saying that every alien cancer researcher should receive a national interest waiver).

One witness who offers greater detail is [REDACTED] head of the Department of [REDACTED] Obstetrics and Gynecology, [REDACTED] who states:

[The petitioner's doctoral] dissertation shed light on the molecular-biological changes that take place in the erythrocyte membranes during gestosis in pregnant [women]. . . . His dissertation has a very important scientific and practical significance. For the first time in the world we can provide early prognosis and prophylaxis of gestosis even in the first half of pregnancy. The method suggested by [the petitioner] does not demand high expenses and is 96% accurate. The results of his dissertation were implemented at the Institute of Perinatal Medicine and continue to bring positive results.

[REDACTED] does not describe the impact that the petitioner's work has had outside of the institution where he performed it.

A review of the record shows that most of the witnesses know the petitioner from his student days in the Republic of Georgia, and all of the witnesses are personal acquaintances rather than recognized experts who know of the petitioner by reputation only. The record contains no evidence that researchers outside of the petitioner's circle of co-workers and supervisors have, thus far, regarded the petitioner's work as being especially significant. Many of the witnesses restrict their comments to general assertions about the importance of the petitioner's field of endeavor. However, we generally do not accept the argument that a given field of research is so important that any alien qualified to work in that field must also qualify for a national interest waiver. The observations from various witnesses about the importance of the petitioner's research adequately establish the intrinsic merit and national scope of the petitioner's work, but their comments are not adequate to show that the petitioner's individual accomplishments are of such an unusual significance that he qualifies for a waiver of the job offer requirement. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule.

On June 10, 1999, the petition (WAC9821350497) was approved in error by the California Service Center. It is noted here that Part 4 of the Form I-140 petition includes the following questions: “[a]re you filing any other petitions or applications with this one?” and “[h]as an immigrant visa petition ever been filed by or on behalf of this person?” If the response is “Yes,” the respondent is requested to attach an explanation to the petition.

Under Part 4 of the present Form I-140, the petitioner responded "No" to both of the preceding questions. Under Part 8 of the petition, the petitioner signed the form under penalty of perjury that this petition is true and correct. Similarly, under Part 9 of the petition, counsel signed the form, declaring that she “prepared the form...and it is based on all information of which [she] has knowledge.” *See* 8 C.F.R. § 1003.102(j)(1).

Contrary to the petitioner's response under Part 4 related to whether an immigrant visa petition has “ever been filed by or on behalf of this person,” Citizenship and Immigration Services’ (CIS) records reflect that the petitioner had already filed his first I-140 petition (LIN9720252354) under this classification with the Nebraska Service Center on July 8, 1997. This petition was denied on April 21, 1998, and the AAO subsequently dismissed the related appeal. It is further noted that present counsel represented the petitioner during that proceeding and prepared and signed the petitioner’s Form I-140.

In fact, CIS records reveal that the petitioner has filed a total of three I-140 petitions under this classification, each at a different Service Center.² After the director of the Nebraska Service Center denied LIN9720252354 on April 21, 1998, the petitioner filed two subsequent petitions, EAC9822253477 and WAC9821350497 (the present case), with the Vermont and California Service Centers on the exact same date – July 30, 1998. The regulation at 8 C.F.R. § 204.5(b) requires that “Form I-140...must be filed with the Service Center having jurisdiction over the intended place of employment.” For the present case and LIN9720252354, the intended place of employment was stated on Form ETA-750B as the Joseph Gottstein Memorial Cancer Research Laboratory in Seattle, Washington. Additionally, the regulation at 8 C.F.R. § 204.5(k)(1) allows an alien to file on his or her own behalf when seeking an exemption from the job offer requirement. In such a case, the alien beneficiary may be listed as the petitioner on the Form I-140 and the self-petitioning alien would be required to list his or her place of residence. *See* 8 C.F.R. § 103.2(a)(6).

In an apparent attempt to obtain inconsistent decisions contrary to law, the petitioner, with the assistance of present counsel, filed three different Form I-140's at three different service centers: Vermont Service Center, California Service Center, and Nebraska Service Center. The petitioner’s stated address of record is different on each of the petitions, as the petitioner provided addresses in Queens, New York; La Jolla, California; and Seattle, Washington. Unless the alien in the present matter maintains a place of residence at each of the listed addresses, and specifically the addresses in the most recent concurrently filed petitions, the different addresses would constitute a serious misrepresentation relating to the filing jurisdiction of these petitions.³ It should be

² Remarkably, the petitioner’s disbarred representative was the attorney of record for all three of the petitioner’s Form I-140 filings, preparing and signing each of his I-140 petitions.

³ Considering the different addresses, the director would be within reason to investigate whether the alien actually resides at these three addresses. The director may also choose to review CIS records to determine whether other immigrant and nonimmigrant petitions have been filed for other aliens purportedly residing at these addresses.

noted that there is no evidence in the record that the alien ever submitted an official change of address notice Form AR-11 as required under section 265(a) of the Act, 8 U.S.C. § 1305.

Aside from altering the address of the alien to fall under the jurisdiction of a particular service center, the three petitions and their initial supporting documentation were virtually identical in content. In regard to the two petitions filed on July 30, 1998, counsel prepared two separate cover letters, both dated May 8, 1998, and addressed one to the Vermont Service Center and the other to the California Service Center. It is inexplicable as to why counsel checked "No" under Part 4 of the I-140 forms filed on July 30, 1998 when asked "[a]re you filing any other petitions or applications with this one?" and "[h]as an immigrant visa petition ever been filed by or on behalf of this person?" As counsel clearly had knowledge of both filings based on her simultaneous preparation and submission of the two petitions, it appears counsel's intent was to mislead or misinform the Service (now CIS) regarding the petitioner's actual address, the potential filing jurisdiction, and the existence of a previously denied immigrant visa petition. *See* 8 C.F.R. § 1003.102(c). In addition, these actions may also constitute frivolous behavior. *See* 8 C.F.R. § 1003.102(j). The AAO must express its deep concern and strongly discourage this behavior.

As previously noted, on April 21, 1998, the Director, Nebraska Service Center, denied the petition filed under receipt number LIN9720252354. As attorney of record for that case, the director mailed a copy of the decision to counsel. On May 22, 1998, counsel filed an appeal, which was dismissed by the AAO on July 13, 2000. Once again, present counsel received notice of the decision.

On June 11, 1999, the petition filed at the Vermont Service Center, EAC9822253477, was denied by the Service Center director. As attorney of record for that case, counsel was once again mailed a copy of the director's decision.

In regard to LIN9720252354 and EAC9822253477, both petitions were denied on the basis that the petitioner had not established that a waiver of the requirement of an approved labor certification would be in the national interest of the United States.

Upon consolidation of the three petitions into the same file and further review of the evidence of record, it became apparent that the petition in this matter had been approved in error. By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

On July 8, 2002, the director issued a notice of intent to revoke the approval of the petition. The director stated: "While adjudicating the adjustment of status application, it was realized that the Form I-140 was approved in error as the alien does not qualify for the benefit sought..." The director noted that the preceding letters of support did "not identify how [the petitioner's] work sets him apart from any other similarly qualified research scientist." The notice of intent to revoke granted the petitioner thirty days to provide further evidence that he had met the guidelines published in *Matter of New York State Department of Transportation*.

In response, the petitioner submitted further letters, background materials, and a letter from counsel dated August 1, 2002. Counsel states: "I am quite surprised in receiving your notice of intent to revoke..." It is rather interesting that counsel was "quite surprised" to receive the director's notice of intent to revoke given that she had received three detailed decisions from the Vermont Service Center, Nebraska Service Center, and the AAO, all

explaining how the evidence presented by the petitioner was not adequate to meet the guidelines published in *Matter of New York State Department of Transportation*.

In her August 1, 2002 letter, counsel further states: “The petitioner has the right to submit more than one application for national interest waiver [sic]. Since applying for a national interest waiver in 1997, the applicant has since made additional contributions to cancer research. Relying on an old decision to revoke the [approval of the] I-140 petition is an abuse of discretion.”

We agree with counsel that there is no prohibition regarding the number of national interest waiver petitions an alien may choose to file. Nevertheless, neither the alien nor his attorney of record is permitted to deliberately conceal the existence of the July 8, 1997 I-140 filing (under Part 4 of this I-140 petition), nor misrepresent the alien’s actual address of record on the two petitions that were filed simultaneously on July 30, 1998.

In regard to counsel’s assertion regarding the petitioner’s cancer research contributions that occurred subsequent to July 8, 1997, it is noted that the initial evidence submitted with each of the three petitions (i.e., witness letters), regardless of their filing date, was the same.⁴ As the initial evidence was the same for all three petitions, and no evidence had been added to the present case until after the notice of intent to revoke was issued, it is not clear as to the “additional contributions to cancer research” to which counsel is referring in her August 1, 2002 letter. Moreover, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, any “additional contributions” as described by counsel must have occurred prior to this petition’s filing date of July 30, 1998.

In regard to counsel’s statement that “[r]elying on an old decision” to revoke the approval of an “I-140 petition is an abuse of discretion,” it is clear that the director issued the notice of intent to revoke based on the petitioner’s failure to present adequate evidence establishing his eligibility pursuant to the statute and standing precedent. While the director briefly mentions the denial and subsequent AAO decision related to LIN9720252354 in the July 8, 2002 notice of intent to revoke, the bulk of the notice of intent to revoke discusses the inadequacy of the petitioner’s initial evidence under the guidelines published in *Matter of New York State Department of Transportation*.

The petitioner’s response to the notice of intent to revoke included updated letters from [REDACTED] (who has known the petitioner since their educational training at Tbilisi State Medical University). Also submitted was a letter from [REDACTED] who worked with the petitioner in [REDACTED] laboratory from 1995 to 1996. The petitioner also provided a letter from letter from lhunnaya Frederick, Research Manager, Center for Perinatal Studies, Swedish Medical Center, Seattle, Washington, where the petitioner began working on June 17, 2002.

[REDACTED] the petitioner’s current supervisor at the Center for Perinatal Studies, states:

[The petitioner’s] research involves a feasibility study designed to assess the extent to which cDNA micro array analysis performed on placental and other tissues can potentially distinguish between normal and pathological pregnancies.

⁴ In fact, for all three petitions, the initial evidence bears identical exhibit numbers.

* * *

The pilot studies that [the petitioner] is involved in will determine the feasibility of using cDNA microarrays in the context of perinatology and document the potential variability in gene expression profiles in normal and abnormal pregnancies.

It is noted that the petitioner did not commence employment at the Center for Perinatal Studies until June 2002. While we note that the petitioner's work shows that he has continued to work in the molecular biology field, we cannot consider the petitioner's work at the Center for Perinatal Studies as this petition was filed long before the petitioner had commenced employment there. *See Matter of Katigbak*, 14 I&N Dec. at 49. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date.

In his second letter, [redacted] states:

[The petitioner] has been conducting research in my lab from 1995 until June of 2002. During this time his research seeks [sic] to identify mutations and carcinogen functions, and the role of oxygen-free radicals in cancer.

[The petitioner] has been working on the development of an analysis (assay) which focuses on the study of the mechanisms of mutation.

* * *

[The petitioner] has contributed significantly to the testing of different mutations in HIV reverse transcriptase and their effects on drug resistance in AIDS. This analysis is unique in that it is possible to measure viral mutations in bacteria. [The petitioner] was instrumental in performing this complex assay analysis in our laboratory...

The record contains no evidence showing that the petitioner had published or presented the results of the above study as of the petition's filing date. While the record contains two articles authored by [redacted] that appeared in the *European Molecular Biology Organization Journal* and *The Journal of Biological Chemistry* in 2001, the record contains no evidence of published or presented work demonstrating the petitioner's authorship of a study regarding the mechanisms of mutation while working at the Gottstein Laboratory.

[redacted] lists the petitioner's accomplishments as follows:

1. [The petitioner] was the first person to use modified spectrophotometry in studying plasma membrane components (proteins, enzymes, and lipids) to determine blood cell membrane changes with aging.
2. [The petitioner] demonstrated that nickel compounds might lead to the decrease of the membrane water permeability through the erythrocyte membrane.
3. [The petitioner] developed spectrophotometer membrane analysis in studying miscarriages for early problem's diagnosis.
4. Past research in metal-induced carcinogenesis and the role of the oxygen-free radicals.

The record, however, contains no evidence showing that the impact of petitioner's research accomplishments extends beyond the institutions where he has studied and worked. The petitioner has not presented evidence showing that independent researchers throughout the molecular biology field view the above findings as particularly significant. According to the petitioner's resume submitted in response to the director's notice of intent to revoke, the petitioner has not authored a research publication since his work at Tbilisi State Medical University in the early 1990's.

While we acknowledge that the petitioner published the results of some of his work in *Proceedings of Tbilisi State Medical University* in the early 1990's, we do not find that publication of one's work 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 petitioner, however, has provided no evidence showing that his work has been independently cited.

letter provides a detailed discussion of the petitioner's educational background and research experience. We note, however, that objective qualifications (such as advanced education and years of research 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.

The updated letters from repeat the assertions of . In fact, the majority of the content of letters is identical to that of letter. For example, the paragraphs beginning on page 3 and ending on page 6 of letter are identical to those beginning on page 4 and ending on page 8 of letter. In addition, the paragraphs on page 5 of letter are identical to the paragraphs on page 2 of letter. We find it highly improbable that all three of these individuals independently formulated the exact same wording.

In this case, the weight of the witnesses' statements is diminished by the lack of direct evidence that the petitioner's findings have measurably influenced the greater field. Witness' statements to the effect that the petitioner's findings represent key contributions in his field are not adequate to establish such influence, when the petitioner provides no evidence from citation indices to support these claims.

On December 10, 2002, the director revoked the approval of 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 found that evidence was "not persuasive that the...petitioner will have a significant impact in his field that will be so substantial as to be in the national interest."

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

On appeal, the petitioner submits a letter from [REDACTED], Research Scientist, Center for Perinatal Studies, Swedish Medical Center. [REDACTED] discusses the petitioner’s recent accomplishments at the Center. As stated previously, these developments all occurred subsequent to the petition’s filing date. See *Matter of Katigbak*, 14 I&N Dec. at 49. Regardless, [REDACTED] offers no evidence showing that the petitioner’s work at the Center has had a nationally significant impact.

Counsel argues that “letters from experts around the world all attest to the fact that there are very few individuals in the world that possess [the petitioner’s] experience and skill.” Pursuant to *Matter of New York State Dept. of Transportation*, however, a shortage of qualified workers possessing particular skills or experience is an argument for obtaining, rather than waiving, a labor certification.

Counsel further states that the witness letters clearly show the petitioner’s work is in the national interest. While the petitioner’s work certainly has intrinsic merit, it has not been shown that his work has had a national impact. In this case, the witnesses consist entirely of individuals from 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 at Tbilisi State Medical University, the Gottstein Laboratory, and most recently, the Center for Perinatal Studies, his ability to significantly impact the field beyond these projects has not been adequately demonstrated.

Clearly, the petitioner’s current and former colleagues have a high opinion of the petitioner and his work. The petitioner’s findings, however, do not appear to have yet had a measurable influence in the larger field. While numerous witnesses discuss the potential applications of these findings, there is no indication that these applications have yet been realized at the national level. The petitioner’s work has added to the overall body of knowledge in his field, but this is the goal of all such research; the assertion that the petitioner’s findings may eventually be published or benefit the greater medical field does not persuasively distinguish the petitioner from other competent researchers.

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. While the petitioner has plainly earned the respect and admiration of his witnesses, it appears premature to conclude that the petitioner’s work has had and will continue to have a nationally significant impact. In sum, the available

evidence does not establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner.

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.

In *Matter of Ho*, the Board found that approval of a visa petition vests no rights in the beneficiary of the petition but is only a preliminary step in the visa or adjustment of status application process, and the alien is not, by mere approval of the petition, entitled to an immigrant visa or to adjustment of status. The board further found that because "there is no right or entitlement to be lost, the burden of proof in visa petition revocation proceedings properly rests with the petitioner, just as it does in visa petition proceedings." The decision also notes that, pursuant to section 205 of the Act, CIS may revoke the approval of a petition "at any time for good cause shown." We find that *Matter of Ho* supports CIS' determination.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968), affirmed in *Matter of Estime* and *Matter of Ho*. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.