**U.S. Department of Homeland Security**
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Washington, DC 20529

**U.S. Citizenship and Immigration Services**

B5

[redacted]

FILE: WAC 03 134 53267 Office: CALIFORNIA SERVICE CENTER Date: OCT 29 2004

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

PUBLIC COPY

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

for 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.

The petitioner holds a Ph.D. in Chemistry from the University of Pennsylvania. 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.[1]

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).

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[1] Although the director concluded that the petitioner qualified as an advanced degree professional, starting on page 3 of his decision the director appears to have considered whether the petitioner also qualified as an alien of exceptional ability. We find this issue is moot as the petitioner is an advanced degree professional.

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, biomedical research, and that the proposed benefits of her work, improvements in combating viral 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 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.

As stated above, the petitioner received her Ph.D. from the University of Pennsylvania. During her Ph.D. studies, the petitioner performed research at the university's Wistar Institute, a National Cancer Institute-designated Cancer Center. After obtaining her Ph.D. in December 2002, the petitioner went to work at the Scripps Research Institute in California. The petitioner filed the petition on March 25, 2003.

The record before the director, including the petitioner's response to the director's request for additional documentation, included reference letters from 13 individuals in the petitioner's field. Dr. Ian Wilson, a professor at the Skaggs Institute for Chemical Biology at the Scripps Research Institute, discusses the petitioner's work at that institute. Dr. Wilson explains that the petitioner's research involves the identification

of inhibitors of ATIC, a target for cancer drugs and non-steroidal anti-inflammatory drugs (NSAIDs). Dr. Wilson asserts that the petitioner has been "an integral part" of the institute's efforts to treat cancer. Specifically, she "drives the most important process of this drug-discovery project by crystallizing the enzyme-inhibitor complexes," which "provides valuable structural information on enzyme active site and the residues involved in binding the substrate and inhibitors." In addition, the petitioner evaluates candidate drugs. Specifically, in her short time at the institute, she was the first to establish an experiment to "synthesize the actual natural cofactor," which identified "a few potent inhibitors." Other researchers at the institute provide similar information.

According to the petitioner's supervisor at the Wistar Institute, Dr. Roger Burnett, the petitioner overcame several obstacles to successfully crystallize P2, a critical protein on PRD1, an important antibiotic. At the same time, the petitioner purified and crystallized quantities of adenovirus, which has "direct relevance to a multi-laboratory Program Project on AIDS." Other professors and former colleagues at the institute provide similar praise.

The petitioner's work with PRD1 was related to a collaboration between the Wistar Institute and the University of Helsinki. Dr. Dennis Bamford, a professor at the university, asserts that the petitioner's work on this project "became a major driving force for our breakthrough in this international collaboration in the frontier of virus structural biology." Dr. Michael G. Rossman, a member of the U.S. Academy of Sciences who previously taught Dr. Burnett, asserts that he met the petitioner in Helsinki and "was impressed by [her] work and ability." He does not discuss whether the petitioner has impacted the field at any level.

The only letter from an individual with no association with the petitioner or her advisor is Dr. Hui Li, a medicinal chemist with Pfizer Global Research and Development. Dr. Li claims to have learned of the petitioner and her work through her publication in *Structure*. Dr. Li discusses the promise of the petitioner's results in leading to new gene therapy treatments, but does not identify any treatments in clinical trials based on the petitioner's work. Dr. Li also fails to indicate that he personally has been influenced by the petitioner's work.

The Wistar Institute honored the petitioner with the 2001 Monica Shander Award based on her work with PRD1. Dr. Carmen San Martin, a former member of Dr. Burnett's laboratory, indicates that the award is limited to pre-doctoral trainees at the institute. On appeal, the petitioner submits evidence that the Human Proteome Organization awarded the petitioner the HUPO 2004 Young Investigator award based on one of her abstracts. It is not clear that this award recognizes work completed prior to the date of filing, March 25, 2003. Similarly, the petitioner submitted evidence that Mr. Wilson and the petitioner received a competitive grant on July 14, 2004. Any new evidence must still establish the petitioner's eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Moreover, we note that 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 one criterion, or even the requisite three criteria, warrants a waiver of that requirement. Finally, most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. This office consistently holds that not every researcher working with a competitive grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

The petitioner also submitted evidence of her publication history. The petitioner's work with the P2 protein of PRD1 was allegedly featured on the cover of the journal that published the article, *Structure.* The petitioner did

submit evidence that the issue published a review of the petitioner's article, calling her research "a significant step toward understanding the viral entry of PRD1." While this review suggests that *Structure* attributed some importance to the petitioner's work at the time of publication, without evidence that the petitioner's article has been cited subsequently, the petitioner cannot demonstrate the actual impact the article is having. As stated above, the two references who have not worked with the petitioner do not claim to have been influenced by her work.

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 represented a groundbreaking advance in biomedical research.

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.