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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 01 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

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 a member of the professions holding an advanced degree or an alien of exceptional ability. At the time of filing, the petitioner was working as a Medical Researcher for Dr. Robert Peterson's Plastic and Reconstructive Surgery Clinics at the Kapiolani Medical Center for Women and Children in Hawaii. 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 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 a Bachelor of Medicine degree from the Shanghai Second Medical College in China. An educational evaluation report presented by the petitioner from the Foundation for International Services, Inc. indicates that this degree is the foreign equivalent to a Doctor of Medicine degree from an accredited U.S. 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 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.

Along with documentation pertaining to her work, the petitioner submitted several witness letters.

Dr. Robert Peterson, a plastic and reconstructive surgery specialist at the Kapiolani Medical Center for Women and Children in Hawaii, is the petitioner's current supervisor. He states:

I have known and worked with [the petitioner] for the past several years.... She is currently involved in several important projects for which her participation is critical. These projects include the following:

1. [The petitioner's] work on the er123.org project has become her main focus and has taken the bulk of her time and work. This on-line medical information repository is very important for medical and disaster preparedness, and has taken on a higher level of importance as the country develops response teams against terrorism. It is available for scrutiny at er123.com. We are now working with Bruce Anderson (head of the Department of Health of the state of Hawaii), the American Red Cross, and the hospital systems of Hawaii to deploy this for the benefit of the citizens of Hawaii, as a prototype for deployment in the rest of the country. Obviously, this has and will require a

significant amount of time on [the petitioner's] part, and has forced her to put her other projects on the back burner. I feel that the importance of this er123 project merit this diversion of her time and energies.

2. I have also asked [the petitioner] to develop a research plan for investigating mechanisms of fat cell resistance to weight loss. She is coordinating this with the University of Hawaii, clinical researchers, and the Center for Health Outcomes of the Hawaii Pacific Health Centers. This project involves looking at the mRNA of fat cells to look at expression of various proteins in human tissues. Although less important than her work on er123, I feel that the payoff in terms of treatment of obesity are very high.

[redacted] letter does not explain how the petitioner's past achievements have measurably influenced the field to a substantially greater degree than that of other medical researchers.

[redacted] Pediatrician [redacted] Center, states:

I know [the petitioner] quite well as we work at the same medical complex. [The petitioner] received her medical doctorate (MD) Degree in 1984 from one of the top medical universities in China, the Second Medical University of Shanghai.

* * *

[The petitioner] joined [redacted] Plastic and Reconstructive Surgery Clinics in December 1998, and she has been a medical researcher of the Clinics since then. She is currently examining the effect of a novel therapy system, vacuum assisted closure (VAC) system, on the healing of burns. The establishment of an effective treatment and healing method is very important since there are over 2 millions of [sic] burn cases in the U.S. Currently, treatment for chronic wounds includes closure by sutures, skin grafts, flap closure, and secondary intention. However, these techniques are not optimal and many patients show very slow response or no response at all to the treatment. The newly developed VAC system raises hope to chronic wound patients. This new therapy system is reported not just cost-effective in comparison to traditional treatment, but also facilitates a faster recovery. The VAC technique is based on the production of the negative pressure which will assist to improve flap graft survival, increase blood flow, enhance epithelial migration and prevent contamination of the wound site from outside bacteria.

Currently, the VAC therapy system is under the clinical evaluation and [the petitioner] at Dr. Peterson's Clinic is pioneering the intensive testing of this new device for use in clinics. Data from [the petitioner's] clinical study together with other researchers will provide baseline information for the future use of this VAC therapy system.

In addition, [the petitioner] and [redacted] Clinic has recently established an ER123.com website system. This system enables the patients to put in and maintain their medical record on the internet which provides to be an unique window for emergency care and physicians worldwide for a better

understanding and communication with their patients. This ER123.com system would be a valuable asset for the study, analysis and treatment of varied human diseases.

The petitioner may have contributed to various research projects undertaken by her employer, but there is no evidence showing that the vacuum assisted closure therapy or the er123 system that she is working on have had a nationally significant impact. The petitioner's impact on the field beyond the state of Hawaii has not been demonstrated.

Assistant Researcher in the Department of Pacific Biomedical Research Center, University of Hawaii, and President-Elect of the Hawaii Branch of the American Society for Microbiology, states that he specializes in the "molecular epidemiology of HIV-1 infection and viral diseases of endangered marine vertebrates."

I have been acquainted with [the petitioner] since two years ago at a local medical conference. We met and talked many times since then.

* * *

[The petitioner] has been well-trained in medical technology and she also has some experience in medical research. Her knowledge and experience enable her to become a core member of Clinic team. [The petitioner] is studying the effect of vacuum assisted closure (VAC) system on the healing of burns. There are over 2 millions of [sic] burn cases in the U.S. and current treatment for chronic wounds is not effective. Thus, the development and identification of an effective treatment method is urgent and important. Vacuum assisted closure is a novel therapy system. This new system depends on the negative pressure generated to assist patients to exert a negative force on the cells of the wound, to draw them close together and to distort the wall of the cells, resulting in rapid proliferation of cells and formation of granulation tissue to healing. However, the VAC therapy system is a newly developed device and is currently under evaluation. [The petitioner] is one of a few pioneer medical researchers who are currently examining this device for clinical uses. [The petitioner's] work is apparently important and her research findings will be very informative and will provide baseline information for the use of this VAC therapy system in future.

We note here that [redacted] area of expertise is "molecular virology" rather than treatment therapies for burn victims. [redacted] assertions that the petitioner's research findings "will be very informative and will provide baseline information for the use of this VAC therapy system in future" are not adequate to demonstrate the petitioner's eligibility for a national interest waiver. Such statements pertain to the expectation of future results rather than a past record of demonstrable achievement. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. See *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (legacy INS) held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. In this matter, the petitioner must submit evidence to demonstrate that her work has already significantly influenced her field to a substantially greater degree than that of other researchers in her field with the same minimum qualifications.

Additional letters in the record (bearing Hawaiian addresses) from individuals such as Julie Schweitzer, [REDACTED] and [REDACTED] discuss [REDACTED] ER123 medical records system, but their letters do not specifically mention the petitioner or describe how her past efforts have measurably influenced the greater medical field. For example, in a letter dated January 24, 2003, [REDACTED] Chairman of the Department of Pediatrics at the Kapiolani Medical Center for Women and Children, states:

[REDACTED] M.D., requested that I write a letter of endorsement with respect to the ER123 medical records system that he has developed. My understanding is that he is launching a charitable project that will enroll a significant number of Hawaii residents into this new system with an eye to expanding the system to a statewide program sometime in the future.

According to [REDACTED] letter, [REDACTED] (rather than the petitioner) is primarily responsible for developing the ER123 system, which has not yet been implemented at the statewide or national level.

[REDACTED] Research Statistician, Epidemiology Branch, Communicable Disease Division, Department of Health, state of Hawaii, states:

I have known [the petitioner] for over four years.... [The petitioner] is an exceptional researcher and she demonstrated the ability to conduct theoretical and empirical research at the frontier of the profession. [The petitioner] is currently conducting and coordinating several research projects for which her participation is critical. Her work and contributions to those projects are widely recognized by all who came in contact with her.

In 1999, [the petitioner] and [REDACTED] initiated and developed ER123 project – an online instantaneous electronic transmission of patient [sic] medical history information. ER 123 allows patients the ability to put pertinent medical information on the Internet that can be accessed by emergency and other appropriate medical staff worldwide. All essential patient medical information will be automatically translated into every major language in the world, enabling worldwide health coverage without language impediments. The importance of this project in emergency situation [sic] is obvious and it will significantly minimize time and costs for urgent medical treatment. ER123 is a new invention in the medical information market and it could be applied to all other fields within the health care industry. [The petitioner] created process technology and templates for ER 123. These templates could become the de facto standard for admission and discharge information worldwide.

Like the letter from [REDACTED] a letter from [REDACTED] House Republican Leader, state of Hawaii, states: “The obvious potential worldwide application of the ER 123 repository will benefit patients, the medical services, and the work of medical research.” [REDACTED] further discusses the ER 123 system’s “potential for contributing to the world’s benefit.” Such observations regarding the future impact of the petitioner’s work are entirely speculative and are not adequate to significantly distinguish her from other capable researchers. With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the petitioner’s work, rather than how her past efforts have already had a discernable impact on her field.

Dr. He further states:

ER 123 also has significant applications in statewide health surveillance and emergency preparation plan. Recently, the Institute of Medicine cited "a glaring need" to strengthen disease surveillance to prepare for the threat of bioterrorism and address emerging pathogens. Health surveillance is essential for protecting public health. Precious [sic] evaluations of health surveillance in Hawaii and elsewhere have found most reports of notifiable diseases are often submitted late and that communicable diseases are substantially underreported. The multilingual online medical summary generated by ER 123 has significantly improved the quality and timeliness of our statewide health surveillance. ER 123 is being integrated into the emergency management plans of the department of health as part of the homeland anti-bioterrorism program. [The petitioner's] continued research in this project will be a great asset to our department. Retaining her to allow her to conduct this vital research is without doubt in the national interest.

observations about the overall importance of health surveillance systems may establish the intrinsic merit and national scope of the petitioner's work, but such general arguments are not adequate to show that an individual worker with expertise in that area 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. In this case, it has not been shown that the petitioner's individual accomplishments are of such an unusual significance that she qualifies for a waiver of the job offer requirement.

A letter from [redacted] Chief of the Medical Department, Shanghai Dianli Hospital, discusses three research articles authored by the petitioner. We do not find, however, that publication of the petitioner's work in a medical journal is presumptive evidence of eligibility for the national interest waiver. Publication, by itself, is not a strong indication of impact in one's field, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the petitioner's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner herself has cited sources in her own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work. Their citation of the petitioner's work demonstrates their familiarity with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and national benefit — a researcher's work would have, if that research does not influence the direction of future research. In this case, the record contains no evidence showing that the petitioner's work has been heavily cited.

Also provided in support of the petition were evidence of the petitioner's professional memberships and two local awards (presented to her by her former employer, Dianli Hospital in Shanghai). Recognition and memberships, however, relate to the criteria for classification as an alien of exceptional ability, a

classification that normally requires an approved labor certification. We cannot conclude that meeting one, two, or even the requisite three criteria for this classification warrants a waiver of the labor certification requirement in the national interest. Beyond establishing her eligibility for the underlying visa classification, the petitioner must demonstrate that her work has had a significant impact throughout the medical field.

The petitioner also submitted evidence of her participation in professional conferences. Participation in scientific conferences and symposia, however, is routine and expected in the medical research community. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not justify projections of future benefit to the national interest, nor does it warrant a waiver of the labor certification process. The record contains no evidence showing that the petitioner's conference presentations commanded an unusual level of interest in comparison to the other conference participants.

In response to the director's request for further evidence that the petitioner had met the guidelines published in *Matter of New York State Department of Transportation*, the petitioner submitted a second letter from Dr. [REDACTED]. [REDACTED] second letter is virtually identical to his previous letter. The second page of [REDACTED] most recent letter adds the following sentence: "Because of the importance and potential value of this VAC therapy system for clinical application, [the petitioner's] work has been well funded through several different national organizations and institutions in the United States."

The assertion that the petitioner's work is well funded carries little weight in this matter. The argument that contributing to a project which was awarded funding by "several different national organizations and institutions in the United States" elevates the petitioner above other U.S. researchers is flawed in that it applies equally to all individuals who receive such funding for their studies. We note here that the U.S. Government routinely provides billions of dollars in research grants to many thousands of scientists and research institutions on an annual basis. The record contains no statement from any official U.S. Government source or national medical organization indicating that petitioner's findings were viewed as particularly important when compared those of other medical researchers in her field. Moreover, [REDACTED] who heads the "Hawaii Branch" of the American Society for Microbiology, does not hold a national-level position in that organization, nor does he claim to specialize in treatment therapies for burn victims.

The director denied 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.

On appeal, counsel argues that the petitioner has met the eligibility factors set forth in *Matter of New York State Dept. of Transportation*. Counsel's brief cites the various witness letters previously submitted in support of the petition. The content of these witness letters has already been addressed above. We note here that aside from [REDACTED] (the petitioner's former supervisors from Dianli Hospital in Shanghai), the petitioner's witnesses consist entirely of individuals from Hawaii. The absence of witness letters from research institutions from throughout the greater United States is a significant omission from the record. It is further noted that almost all of the witnesses in this case have direct ties to the petitioner [REDACTED]. These individuals became aware of the petitioner's work because of their

association with the petitioner or Dr. Peterson; 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 contributions that are unusually significant. While the petitioner may have contributed to various research projects undertaken at Dianli Hospital and in her current position, her ability to significantly impact the field beyond those projects has not been adequately demonstrated.

Counsel's appellate brief provides a detailed discussion of the petitioner's educational background, medical skills, and employment experience. Such qualifications, however, are amenable to the labor certification process. Pursuant to *Matter of New York State Dept. of Transportation*, 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.

No additional evidence addressing the director's specific findings was presented on appeal.

Clearly, the petitioner's witnesses have a high opinion of the petitioner and the work that she does for Dr. Peterson. The petitioner's work, however, does not appear to have yet had a measurable influence in the larger field. While numerous witnesses discuss the potential medical benefits resulting from the petitioner's efforts, there is no indication that these benefits have yet been realized at the national level. The petitioner's work has added to the overall body of knowledge in her field, but this is the goal of all such research; the assertion that the petitioner's work may eventually have a national impact does not persuasively distinguish the petitioner from other competent researchers.

For the reasons set forth above, the petitioner has not established that her past accomplishments set her significantly above her peers such that a national interest waiver would be warranted. While the petitioner has plainly earned the respect and admiration of her 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.

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.

ORDER: The appeal is dismissed.