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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 29 2008  
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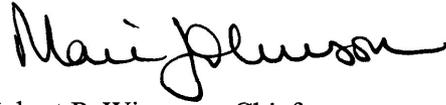
IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:  
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal.<sup>1</sup> 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 seeks employment as a postdoctoral associate. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, 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.

On appeal, counsel submits a brief. For the reasons discussed below, the petitioner has not overcome the director's bases of denial.

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 requirements of subparagraph (A)

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<sup>1</sup> Counsel requests that the appeal "be granted" or "in the alternative, that this matter be treated as a Motion to Reopen and that said Motion [be] granted." The regulation at 8 C.F.R. § 103.3(a)(2)(iii) allows the director to treat an appeal as a motion for the purpose of taking favorable action *prior* to forwarding the appeal to this office. Counsel provides no authority that would allow the director to consider an appeal as a motion after the AAO has already dismissed the appeal on the merits. The AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at \*3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001). The director did not take favorable action pursuant to 8 C.F.R. § 103.3(a)(2)(iii). Rather, the director forwarded the appeal to the AAO. As we are upholding the director's decision on the merits, there is no longer any legal basis for the director to consider the appeal as a motion.

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 Botany-Pharmacology and Environmental Toxicology from the University of Madras. 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. As such, the issue of whether the petitioner is also an alien of exceptional ability as defined at 8 C.F.R. § 204.5(k)(3)(ii) is moot. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment 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 the phrase, "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).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

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, 217-18 (Commr. 1998)(hereinafter "NYSDOT"), 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. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* 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. *Id.* at 217-18.

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. *Id.* at 219. 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. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, pharmacology, and that the proposed benefits of his work, improved understanding and treatment of asthma, 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.

The petitioner has submitted several letters supporting the petition. The letters, which will be discussed in more detail below, outline the petitioner's laboratory skills and areas of past and current research. They attest to original research performed by the petitioner. Several further attest to the severity of asthma and the importance of research in this area to the United States. Some of the references and other evidence submitted by the petitioner suggest a shortage of researchers in the United States. On appeal, counsel asserts:

It is well settled that in cases where no purpose will be served if the applicant is required to re-file the I-140 petition using a labor certification, but would rather lead to an abuse of discretion and grave injustice to the Alien Petitioner, the discretion should be exercised in favor of the beneficiary and his family.

We have already acknowledged the substantial intrinsic merit of the petitioner's area of research and the national scope of the proposed benefits above. These considerations, however, are insufficient by themselves. 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. *NYS DOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." *Id.* at 221. Special or unusual knowledge or training does not inherently meet the national interest threshold. As stated by the director, the issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* While counsel provides no legal citation for his characterization of what he considers "well settled," we note that a purpose would indeed be served by requiring an alien employment certification. The assertion of a labor shortage should be tested through the alien employment certification process. *Id.* at 220.

Ultimately, 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 he seeks. By seeking an extra benefit, the petitioner assumes an extra element 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. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner relies on several letters from members of his field and other fields. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's

eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of laboratory experience and skills are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

The petitioner obtained his Ph.D. in Botany Pharmacology and Environmental Toxicology at the University of Madras in 2000 under the direction of [REDACTED]. Upon graduating, the petitioner worked as a fellow at the Japanese National Institute of Animal Health in the laboratory of [REDACTED]. In 2002, the petitioner began working as a fellow at the National Institute for Environmental Health (NIES) Fellow in Japan. There, the petitioner worked in the laboratory of Dr. [REDACTED]. In 2003, the petitioner accepted a postdoctoral fellowship at the Albany Medical College in New York. In 2004, the petitioner joined the laboratory of [REDACTED] at the Weill Medical College of Cornell University as a postdoctoral research associate. The petitioner remained in this position as of the date of filing in 2005.

[REDACTED] asserts that the petitioner's Ph.D. research investigated "the role of various indigenous medicines in human health." More specifically, the petitioner "isolated two cardiac active phytochemicals from *Aegle marmelos* and he conducted cardiovascular pharmacological and toxicological studies in frogs, rats and dogs." [REDACTED] notes that the petitioner obtained original results and received travel grants to present his work. 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 performs original research that adds to the general pool of knowledge warrants a waiver of the alien employment certification in the national interest. Dr. [REDACTED] does not explain how the petitioner's work has impacted the treatment of heart disease or cardiac research in general.

[REDACTED] asserts that, at the National Institute of Animal Health, the petitioner continued his investigation of *Aegle marmelos*. Specifically, he isolated two biologically active substances and examined the functions of them on the cardiovascular system using a Langendorff isolated heart in a rat model. Once again, [REDACTED] asserts that the petitioner presented this work and that future

publications will follow, but fails to explain how this work has impacted the treatment of heart disease or cardiac research in general.

explains that he had contact with the petitioner while the petitioner was working with and subsequently invited the petitioner to join his laboratory to investigate diesel exhaust particles on the cardiovascular system. lists the laboratory techniques used by the petitioner in this research and notes that the petitioner presented this work at international conferences. In conclusion, praises the petitioner's professionalism and the quality of his experiments. does not identify any significant results or explain how those results have impacted the field of toxicology.

The record contains no letters from the petitioner's colleagues at Albany Medical College. a research scientist at the New York State Department of Health in Albany, asserts that he had interacted with the petitioner to establish a collaboration between his laboratory and the Center for Cardiovascular Sciences at Albany Medical College to study the effects of exposure to environmental pollutants on the cardio-pulmonary system. implies he is still attempting to write a joint grant proposal with the petitioner although the petitioner is no longer in Albany. does not discuss the results of the petitioner's work in Albany or explain how it has impacted the study of environmental pollutants or the treatment of cardio-pulmonary conditions.

explains that the petitioner's current work at Cornell focuses on the role of mast cells and their role in asthma. Specifically, expanding on previous work by , the petitioner used complex surgery to demonstrate that the release of rennin from mast cells triggers a local rennin-angiotensin system that leads to bronchial constriction. asserts that the petitioner is preparing a manuscript reporting this work and speculates that the article "will be enthusiastically received." In a subsequent letter, asserts that the petitioner's recent research has been accepted for presentation at a conference. The petitioner submitted evidence that the petitioner presented this work in 2006, after the petition was filed.

In a similar letter, a professor at the Cornell University Medical Center, asserts that the petitioner's work on mast cells "will be the first demonstration that angiotensin can be made in the airways and then act on the bronchial tissue." then speculates that the petitioner's research "can open new doors for developing therapies in the treatment of asthma." As stated above, the petitioner must demonstrate his eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Thus, in order to establish that a waiver of the alien employment certification process is in the national interest, the petitioner must demonstrate his influence on the field as a whole as of the date of filing. We cannot conclude that research that has yet to be published and, thus, widely disseminated in the field or even subject to peer-review, can demonstrate the petitioner's influence in the field.

The record contains other letters from colleagues and former fellow students, now just postdoctoral associates themselves, reiterating the petitioner's credentials and providing general praise. These letters

provide little information that is not otherwise apparent from the record. Some of the letters appear to be from acquaintances with different areas of expertise, such as [REDACTED] a senior researcher at Hitachi Chemical Co. whose area of expertise includes materials physics and chemistry. Similarly, [REDACTED] pursues fuel cell research at the National Yunlin University of Science and Technology in Taiwan, although he claims to have collaborated with the petitioner. In response to the request for additional evidence, the petitioner provided a letter from [REDACTED] Special Advisor to the Rector of the United Nations University Office at the United Nations. The record contains no evidence regarding [REDACTED] pharmacological expertise, if any. Regardless, [REDACTED] merely recites the petitioner's credentials and concludes that the petitioner will continue to make contributions that will benefit the United States.

[REDACTED], Director of the Residents' Ambulatory Clinic at Sinai-Grace Hospital at Wayne State University, asserts that he knows the petitioner "though his scientific publications and his contemporary research." [REDACTED] explains that the petitioner has made "several important discoveries with phytochemicals, which have the potential to help us fight asthma and heart disease." [REDACTED] does not identify those discoveries or explain how they have already impacted the field by facilitating investigation of new treatments or new avenues of research. [REDACTED] speculates as to the usefulness of the petitioner's current work with mast cells. Finally, [REDACTED] praises the petitioner's experience with various research techniques. The petitioner provides a similar letter from [REDACTED] Director and Owner of Genetics Associates, Inc. That the petitioner has the necessary experience and skills to pursue his research does not establish that a waiver of the alien employment certification process, which would determine the availability of similarly qualified U.S. workers, is warranted in the national interest.

[REDACTED] clinical researcher in heart failure at the University of Hull in the United Kingdom, explains that he was asked to support the petitioner's petition for permanent residence in the United States. He states that he "understand[s]" that the petitioner has done substantial research and is associated with distinguished research teams. He concludes that retaining high quality scientists like the petitioner will help the United States maintain its status as the world leader in scientific research. [REDACTED] does not claim to have ever heard of the petitioner or his research prior to being contacted for a reference and does not claim any first hand knowledge of the impact the petitioner's research has had in the field. It is the position of CIS to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization, such as researchers in a specific area or researchers in general. *Id.* at 217.

Many of the letters reference the petitioner's publications and presentations. The petitioner lists six published articles on his curriculum vitae, one of which is a poster presentation, and submitted copies of those articles. The earliest article was published in 1999. The petitioner's 2004 article in *Phytomedicine* is available as a "book" through Amazon.com and MedicalTextbook.com. While the petitioner also lists four manuscripts under review or in preparation, none of those manuscripts report the results of his recent work with [REDACTED] at the University of Cornell. The petitioner also lists several conference presentations. Initially, the petitioner submitted evidence that one of his articles is

included in a list of articles on pharmacology and toxicology at [www.niscair.res.in](http://www.niscair.res.in). Two of the petitioner's articles are listed as "related publications" on aegle marmelos monoclonal antibodies at [www.exactantigen.com](http://www.exactantigen.com). A search of the annotated bibliography of Indian medicine for the petitioner's name and "aegle" produces three articles by the petitioner. Finally, another research team at the University of Madras, where the petitioner obtained his Ph.D., cited one of his articles. This citation by researchers at the University of Madras is the only true citation submitted initially. The Internet allows for a search of existing articles in many ways. That the petitioner is able to produce Internet searches that locate his articles is not evidence that other researchers have relied on his work as would be demonstrated by actual citations.

In response to the director's request for additional evidence, counsel asserts that the petitioner "was cited by many other researchers found in printed as well as online journals and other internet trade sources." Counsel then notes the submission of "the cited reference sheet and other citations." In support of the response, the petitioner provided more electronic database searches that include the petitioner's articles in the results. Once again, the fact that the petitioner's articles are accessible in databases is not evidence that they are actually relied upon by other researchers. The petitioner also submitted a "Cited Reference Search" which lists nine articles by the petitioner or someone with the same last name and first initial. As noted by the director, four of the articles, including the only two articles to be cited more than twice, were published prior to 1999, the year the petitioner first published his work. On appeal, counsel asserts that "it was not possible to exclude citations from other authors with the same initial and last name" and noted that the petitioner's articles were listed with the original petition. Regardless, it remains that the evidence submitted does not establish that the petitioner "was cited by many other researchers" as claimed by counsel in response to the director's request for additional evidence. A rate of one or two citations for an individual article is not consistent with a track record of success with some degree of influence on the field as a whole.

In addition, the record contains evidence that the petitioner was selected for a prestigious training fellowship in Japan, that he has reviewed a manuscript for a journal and that he is a member of several professional associations with unremarkable membership requirements. Even if we were to conclude that these accomplishments are consistent with an alien of exceptional ability pursuant to 8 C.F.R. § 204.5(k)(3)(ii), by statute, "exceptional ability" is not, by itself sufficient cause for a national interest waiver. *NYS DOT*, 22 I&N Dec. at 218. Thus, the *benefit* which the alien presents to her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated for that classification. *Id.*; *see also id.* at 222.

Finally, a few of the letters reference a scientific poetry composition by the petitioner. Authorship of a poem, even one with a scientific theme, does not appear relevant to the petitioner's alleged influence as a researcher.

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 performs original research that adds to the general pool of knowledge warrants a waiver of the alien employment certification in the national interest. The record includes numerous attestations of the potential impact of the petitioner's work. None of the petitioner's references, however, provide examples of how the petitioner's work is already influencing the field. While the evidence demonstrates that the petitioner is a capable researcher, it falls short of establishing a track record of success with some degree of influence as a whole.

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 alien employment 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 an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.