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U.S. Citizenship
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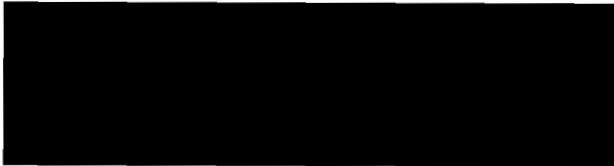
Petitioner:

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:



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. 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. The petitioner seeks employment as a postdoctoral research fellow. 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 and additional evidence, most of which postdates the filing of the petition. For the reasons discussed below, we find that the most persuasive evidence postdates the filing of this petition and, thus, cannot be considered evidence of the petitioner's eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Thus, we uphold the director's decision.

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) 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 Master's Degree of Medicine from Zhejiang Medical University in China and a Doctor of Medical Science degree from Hokkaido University in Japan. 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 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, medical research, and that the proposed benefits of his work, improved treatment of melanomas, 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.

On appeal, counsel provides a lengthy discussion of how this final issue should be evaluated. Counsel essentially asserts that the director used a flawed theoretical analysis. Counsel asserts that

rather than attempt to weigh the proposed benefits of the petitioner's work with the benefit inherent to the alien employment certification process, the adjudicative test is whether the alien will benefit the national interest to a greater extent than an available worker with the same minimum qualifications.

We note that a simple comparison of the petitioner's credentials with those of a U.S. worker with the same "minimum qualifications," as urged by counsel, would be insufficient. Aliens of exceptional ability are those with a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(k)(2). By statute, however, "exceptional ability" is not, by itself, sufficient cause for a national interest waiver. *NYS DOT*, 22 I&N at 218. Thus, in order to qualify for a national interest waiver, the benefit which the alien presents to his field of endeavor must greatly exceed the "achievements and significant contributions" contemplated for aliens of exceptional ability. *Id.*; *see also id.* at 222.

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. *Id.* 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. 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.*

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.

While the director discussed whether the national interest would be adversely affected by requiring that an employer test the labor market through the alien employment certification process, we find ample language in the director's decision addressing the petitioner's record of achievements in the field.

As stated above, the petitioner has advanced degrees from China and Japan. From June 1998 to September 2000, he worked as an associate professor and physician at the Zhejiang University School of Medicine. The petitioner then accepted a position as a postdoctoral research fellow at the Fred Hutchinson Cancer Research Center (FHRC) in Seattle, Washington, where he remained as of the date of filing.

██████████, Director of the Immune Monitoring Laboratory at FHRC and one of the petitioner's coauthors, discusses the petitioner's achievements prior to entering the United States and at FHRC. Specifically, prior to entering the United States, the petitioner found that extracellular matrix proteins are important for full activation of lymphokine activated killer (LAK) cells, which play a vital role in cancer immunotherapy. According to ██████████, the petitioner also discussed the intracellular signal transduction mechanisms through media cytokine gene expression in human cytotoxic T lymphocytes. As evidence of the significance of this work, ██████████ notes that this work has been cited. Initially, the petitioner submitted his own self-serving list of citations. On appeal, the petitioner now submits the search results from an electronic database documenting the citations of his articles. These results reflect that, as of the date of filing, the petitioner's articles reporting his work in China and Japan have generated no more than 15 citations from independent sources for any one given article. The director noted that the articles for which the petitioner was listed as "first author" are minimally cited. The record lacks letters from the petitioner's colleagues in China and Japan explaining his role on the projects that resulted in moderately cited articles.

then discusses the petitioner's work at FHRC. Specifically, according to ██████████ the petitioner contributed to the national effort to develop antigen-specific immunization and tumor vaccines by developing a novel technology for enhancing tumor antigen RNA transfection of mature dendritic cells, resulting in a 1000 to 2000 percent increase in the transfection efficiency of these cells. We note that the petitioner's first article reporting these results was published the same month as the petition was filed. Thus, it is difficult to gauge its impact as of that date, although we acknowledge that this article has been favorably referenced since the petition was filed. Moreover, while the petitioner's second article on this subject was published in the *Proceedings of the National Academy of Sciences*, it appeared in this prestigious journal well after the petition was filed.

In addition, ██████████ explains that the petitioner demonstrated that interleukin-15 (IL-15) is 4.5 to 6 times more effective than the current best expansion reagent, IL-2, and is twice as effective in killing cancer cells. More specifically, ██████████ asserts that the petitioner's "IL-15 expansion method results in substantially higher numbers of T cells with much better cancer killing ability." Finally, ██████████ asserts that the petitioner demonstrated that a newly discovered cytokine, IL-21, "may greatly enhance human anti-tumor immunological activities." ██████████ further asserts that this work has "provided important support for initiating a clinical trial for melanoma patients using this cytokine (IL-21)." The record does not establish that the petitioner had published his work on either of these two final projects as of the date of filing.

As noted by counsel, the petitioner submitted seven letters from independent references. Counsel cites a non-precedent decision by this office for the proposition that expert witness letters must be afforded evidentiary weight. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

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 industry interest and positive response in the field 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.

Only one of the petitioner's independent references, [REDACTED], Director of the Immunologic Monitoring and Cellular Products Laboratory at the University of Pittsburgh Cancer Institute, expressly asserts that she was aware of the petitioner's work prior to being contacted for a reference letter. She does not, however, explain how she came to know of the petitioner's work other than to acknowledge that she knows "the senior members of his group" and that she is "very much impressed by the quality, innovation and significance of this work." The petitioner cannot establish eligibility through his affiliation with a distinguished laboratory; rather, he must demonstrate his individual achievements.

[REDACTED] notes the petitioner's work in Japan, the distinguished reputation of the journals that published this research, and asserts that she "believes he is one of the first researchers to demonstrate that [extracellular matrix proteins] enhance and regulate LAK cell activities." [REDACTED] does not assert that this research has influenced her own research or identify an independent laboratory that has applied the petitioner's results from his work in Japan. [REDACTED] then asserts that she is even more impressed with the petitioner's work at FHCR. As noted above, however, this work was not widely disseminated in the field as of the date of filing. Specifically, the petitioner had only published a single article on this work and it only appeared in print the same month as the petition was filed.

[REDACTED], Chief of the Experimental Immunology Branch of the National Cancer Institute, asserts that his opinion is based on his review of the petitioner's curriculum vitae and "several" of the petitioner's articles that have been or will be published. His discussion focuses on the importance of the petitioner's work that had yet to be published as of the date of [REDACTED]'s letter, April 21, 2004.

[REDACTED] Director of Translational Research at the University of Pennsylvania Cancer Center, asserts that his opinion is based on the petitioner's curriculum vitae, published articles and articles to be

published as well as “conversations with other scientists who know [the petitioner] personally.” Like [REDACTED] then focuses on research that had yet to be published as of the date of his letter, April 26, 2003.

In response to the director’s request for additional evidence, the petitioner submitted four additional independent reference letters. The letters affirm the significance of the petitioner’s research in Japan, but fail to provide examples of how that work has influenced the field. In discussing the significance of the petitioner’s work at FHCR, they reference articles reporting his results and commentaries on this work that were published after the date of filing. None of these references assert that they were aware of the petitioner’s work prior to being contacted for a reference or that they have applied the petitioner’s work in their own research. At best, these letters suggest that the petitioner filed the instant petition prematurely, before his most significant research had had an opportunity to have an impact in the field. To conclude otherwise would be to allow an alien to secure a priority date on the hope that research just published or about to be published will ultimately prove influential.

On appeal, counsel challenges the director’s assertion that publication of one’s research results is inherent to the petitioner’s field, even at the postdoctoral level. Specifically, counsel asserts that a publication record alone sets the petitioner apart from available U.S. workers with the same minimum qualifications. We concur with the director that a publication record, in and of itself, cannot establish that a waiver of the alien employment certification process is warranted in the national interest. As stated above, while publication establishes that the petitioner’s work is original, original innovation, such as demonstrated by a patent, is insufficient by itself. *NYS DOT*, 22 I&N Dec. at 221 n.7. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221. Moreover, it is significant that the Department of Labor’s Occupational Outlook Handbook 151 (2006-2007 ed.) states that a “solid record of published research is essential in obtaining a permanent position involving basic research” in the biological sciences.

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 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 inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

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 the petitioner relying on achievements that postdate the filing of this petition or 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.