U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 04 2007
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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:

[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.

Maura Deadrick
for 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 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 is a postdoctoral researcher. 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, asserting in general that the director failed to consider the letters from purportedly independent references. For the reasons discussed below, 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 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 Neurophysiology from [redacted]. 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 "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 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, neurophysiology, and that the proposed benefits of her work, improved understanding and treatment of deafness, 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. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." 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 221.

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. 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 director acknowledged the submission of reference letters, but concluded that they were not sufficiently corroborated in the record, such as by evidence that the petitioner was frequently cited. On appeal, counsel asserts that the director erred in dismissing the opinions of several references purported to be independent.

We will consider the letters below. At the outset, however, we acknowledge that 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 (Comm. 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 795-796. 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 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of originality and applicability are less persuasive than letters that provide specific examples of how the petitioner has already influenced the field. Regarding work that has yet to be published and, thus, disseminated in the field, the petitioner bears a heavy burden in establishing that such work has already influenced the field. In addition, letters from truly independent references who were previously aware of the petitioner through her reputation *and* who have applied her work are far more persuasive than letters from references who are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review and the assertions of the petitioner's supervisor.

After receiving her Ph.D. from N[redacted]n 1998, the petitioner worked as a postdoctoral researcher under the supervision of Professor[redacted]h at the Neuroscience Research Institute in Beijing. In September 2000, the petitioner joined the laboratory of Dr.[redacted]b at the University of Wisconsin-Madison. While the petitioner published one abstract reporting the results

of her work with Dr. , none of the petitioner's references discuss this work. Thus, the significance of that work is not established. As of the date of filing, the petitioner was working in the laboratory of Dr. at the same university.

Professor asserts that while at the petitioner investigated pain tolerance, demonstrating that CCK antagonists can enhance opioid actions and that vitamin B_2 has an analgesic effect. Professor asserts that the petitioner's work with vitamin B_2 led to two published papers and was recognized with a competitive award from Ji-Lin Province. The petitioner submitted a 2004 certificate advising the petitioner that the results of a project on which she worked "has been recognized as a scientific accomplishment in the Province of Ji-Lin." The certificate further indicates that the project was conducted at the University of Ji-Lin, although the petitioner does not claim to have worked at that institution. Moreover, the petitioner worked on this project from 1995 through 1998. While Dr asserts that the petitioner's finding regarding vitamin B_2 "is now used in the treatment of pain," the record lacks letters from clinics or hospitals relying on the petitioner's work in their pain management policies or evidence that the use of vitamin B_2 has been incorporated into government or other official pain management guidelines.

In Professor laboratory, the petitioner discovered that "substance P (SP)" enhances the hyperpolarization-activated current (Ih) in treated dorsal root ganglion neurons and "could contribute to cutaneous pain and mechanical hyperalgesia during certain diseases and injuries of the spine." Professor characterizes this work as "groundbreaking" and asserts that it resulted in a research grant whereby the petitioner was the principal investigator. While the record contains the grant, as noted by the director, research funded by grants is the rule rather than the exception. This research resulted in four published articles and conference presentations. While Professor asserts that this work attracted wide attention in the field and has been highly regarded, the record lacks testimonials from researchers who have been influenced by this work or evidence that it has been well cited. Significantly, this work was published several years before the petition was filed and has been available for perusal and citation.

In joining Dr. laboratory, the petitioner shifted focus from pain management to hearing loss. Dr. asserts that the petitioner "has been using electrophysiology to examine mice that suffer from genetic deafness," including testing whether synaptic transmission is altered in the absence of hearing. Overall, Dr. predicts that this work "will lead to improved use of cochlear implants." More specifically, Dr. asserts that the petitioner demonstrated that the synaptic current evoked by activity in the auditory nerve is greater in *jerker* deaf mice than normal mice, a possible compensatory mechanism. This work was presented at two conferences but had yet to appear in a peer-reviewed journal.

In addition, the petitioner's study of the behavior of the voltage-dependent ion channels that are the basis of electrical activity in the brain led to two "major findings."

> First, her work revealed that the number of ion channels that mediates the hyperpolarization-activated current is controlled dynamically in neurons and that it is very sensitive to changes in temperature. This current controls the excitability of most neurons as well as of heart and skeletal muscle cells and thus reveals how excitability is controlled as environmental conditions vary. Second, she showed that to understand the physiological function of ion channels it is essential to study them at physiological temperatures. She demonstrated for the first time that the macroscopic currents of cells in the mammalian cochlear nucleus vary over the range of temperatures generally used and that, because they respond differently to changes in temperature, electrophysiological properties of neurons are distorted at reduced temperatures.

This work was both presented at a conference and published. While Dr. asserts that the significance of the petitioner's work is apparent from publication in a prestigious journal, we will not presume the influence of a given article from the prestige of the journal in which it appeared. Rather, the petitioner must demonstrate the influence of the individual article.

Two other faculty members at the University of Wisconsin, Dr. provide general praise of the petitioner's work and assert that the petitioner's work is highly relevant to improving cochlear implants. They do not, however, provide any examples of the petitioner's work influencing the work of other research teams.

The petitioner does provide letters from researchers not currently at the University of Wisconsin. While we will discuss these letters, we note at the outset that the record lacks letters from researchers designing cochlear implants affirming their reliance on or at least interest in the petitioner's work.

Dr. , a professor at the Oregon Health Science University,[1] asserts that he met the petitioner at a conference and that the petitioner's work reveals "important properties of synaptic transmission" in genetically deaf mice. He further asserts that the petitioner is one of a limited number of researchers who has mastered Patch clamp recording in the auditory system. Special or unusual knowledge or training, however, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 221.

Dr. an associate professor at Northwestern University, asserts that he has "followed [the petitioner's] research quite closely over the last several years," witnessed her presentations and reviewed her curriculum vitae and publications. He provides a favorable assessment of the petitioner's unique skills and concludes that her results "have profound implications for the understanding and treatment of hearing loss."

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[1] Dr. is also a former member of the faculty at the University of Wisconsin who has coauthored articles with Dr according to www.ohsu.edu and www.jneurosci.org.

The record also includes a letter from Dr. Ann Stuart, a professor at the University of North Carolina at Chapel Hill and, like Dr. completed a postdoctoral appointment at Harvard Medical School.[2] She asserts that she is "familiar" with the petitioner's "very important and beautiful work." She expresses her intent to continue following the petitioner's work "and its implications." Dr. t states that the petitioner's results "are significant and will lead to improved use of cochlear implants." While Dr. asserts that the petitioner is irreplaceable, she fails to explain how the petitioner has already influenced the field.

Dr. s, Director of Research Training and Education at the University of North Carolina at Chapel Hill, asserts that the petitioner's research is both fundamental and translational in that it will have an impact on human medical treatments. He does not provide an example, however, of medical treatments that are being developed based on the petitioner's work, very little of which has been published in the field of hearing loss. Dr. concludes that the petitioner is leading the way on investigating changes in the brain resulting from hearing loss and praises her skills.

Dr , a professor at Johns Hopkins University,[3] asserts that he is aware of the petitioner's work "from her resume and publications." Dr. acknowledges having known Dr. "for many years." Dr. explains the importance of the petitioner's findings regarding temperature as most experiments on neurons are done at a temperature well below body temperature, requiring a correction. Dr. does not suggest that, based on the petitioner's work, accurate corrections are now possible and are being applied in laboratories studying neurons.

Dr. , a professor at National University and a former visiting associate professor at the University of Wisconsin according to his curriculum vitae, asserts that his evaluation is based on the petitioner's "achievements and review of her resume and publications." He concludes that the petitioner's results "are very significant and will lead to improved use of cochlear implants, which will potentially direct the development of novel and more effective treatments of deafness." This conclusion does not identify how the petitioner has already influenced the field.

Finally, Dr. g concludes:

> [The petitioner] has made substantial and essential contributions to the research of hearing loss and deafness. Her original works improve fundamentally our understanding of these neuro-related diseases. Her impact in the field is evidence from her numerous landmark publications in prominent scientific journals.

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[2] Dr. t and Dr. coauthored an article together in 1981 according to www.pubmedcentral.nih.gov.

[3] Dr. and Dr. coauthored a chapter in *The Synaptic Organization of the Brain* according to www.oup.com/uk.

While the petitioner has presented her work at several conferences, the record contains only a single article on hearing loss published in a peer-reviewed journal. Dr. s reference to "numerous" published articles on hearing loss is not consistent with the record.

Moreover, articles that are truly "landmark publications" receive considerable attention in trade journals or through frequent and wide citation. The record contains no more than two independent citations for any one of the petitioner's articles. Dr. asserts that the petitioner's work is recent and that it takes time in the field for an article to be disseminated, reviewed and ultimately relied upon and cited. While this may be true, it remains that much of the petitioner's work on hearing loss remained unpublished as of the date of filing. At best, the petition was filed prematurely, before the bulk of the petitioner's work on hearing loss was widely disseminated and subject to evaluation in the field.

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 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 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 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.