

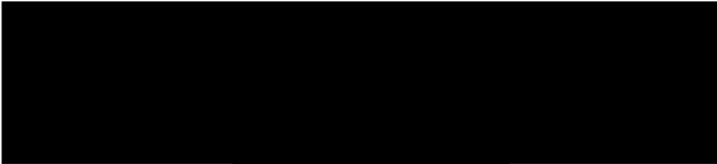
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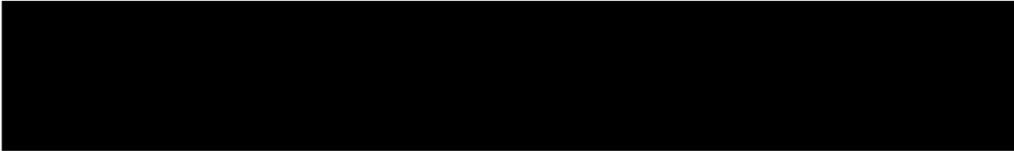


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **FEB 26 2008**  
SRC 06 800 21550

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:



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, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

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. The petitioner seeks employment as a postdoctoral research fellow at Penn State University. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states, in pertinent part:

(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, who holds a doctorate in cardiology and who works in an occupation that meets the regulatory definition of a profession at 8 C.F.R. § 204.5(k)(2), readily qualifies as a member of the professions holding an advanced degree. Additional discussion of the petitioner's claim of exceptional ability would serve no constructive purpose here. The sole issue in contention 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 the 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 [now Citizenship and Immigration Services] 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 (Commr. 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 also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

In a letter accompanying the initial submission, the petitioner described his research:

In heart failure, exercise always elicits excessive increases in sympathetic nerve activity, vascular resistance, heart rate, and arterial blood pressure. . . . It has been suggested that the exaggerated cardiovascular responses to exercise in heart failure are mediated primarily by an overactive exercise pressor reflex. Unfortunately, too little has been known about the receptor mechanism of the overactive exercise pressor reflex in heart failure. . . .

The objective of my present research is to explore the receptor mechanisms of exercise pressor reflex in normal subjects and in patients with cardiovascular diseases, and thus pave the path for classification and quantization of disorder affecting the cardiovascular system

and provide important clues toward identifying novel therapeutic targets aimed at improving quality of life and prognosis in heart failure.

. . . I have been playing a key role in three significant research projects **by National Institute of Health (NIH) and have earned widespread acclaim due to the overall impact and implications of my new findings in the field.** I have established myself as a critical contributor to the national biomedical research efforts, and **have enabled myself to greatly exceed others in this profession: All my following demonstrable achievements have been extensively recognized, and they also represent major advancements in the field:**

1. I am **The first one in the world who successfully** identified the role that spinal P2X receptors play in modulating cardiovascular response to exercise. . . . This finding . . . sheds new light for better understanding of the circulatory regulation during exercise. . . .
2. I am **the major contributor who originally found** that the mechanoreflex is overactive in heart failure and P2X receptors in group III afferent fiber among the skeletal muscle play an important role in the exaggerated muscle pressor reflex. . . .
3. **I was the pioneering scientist to successfully illustrate** that 1) P2X3 receptors were upregulated in the dorsal root ganglia neurons of thin fiber afferent nerves following heart failure in rats; 2) muscle afferent-mediated pressor response of P2X3 activation was exaggerated in myocardial infarcted rats and the greater response was related to severity of heart failure. . . .
4. I was also **the first scientist who successfully established** the state-of-art research technique, the transphagous echocardiography in small animals, for the study of heart failure. This technique directly leads to a new kind of heart failure animal model developed in our lab. It should be emphasized here that heart failure model caused by heart valvular disease had never been done in small animals such as rats before. . . .
5. I am **a key member who originally found** that in metaboreflex (one to two reflexes in muscle pressor reflex), vanilloid receptors (VR1) and ASCI channel have engaged and they work together to play a coordinated and interactive role in regulating cardiovascular responses to exercise. . . .
6. I **played a critical role in identifying** that the effect of P2X receptor on reflex muscle response is sensitive to alternations of muscle temperature and that elevated muscle temperature attenuates the P2X-sensitizing activation of muscle mechanosensitive and metabosensitive afferents. . . .
7. I was **among the initiative scientists who successfully tested** the hypothesis that intense activation of central command is engaged in evoking exaggerated sympathetic activation and inducing excessive peripheral vasoconstriction during exercise in congestive heart failure. . . . [The finding] opened up a new avenue to study the “central mechanism” of heart failure.

(Emphasis in original.) The petitioner’s own assessment of the importance of his work is of limited value in this proceeding. Far more significant is the reaction of others in the scientific community. One gauge of this

reaction is independent citation of the petitioner's published work; the petitioner lists 60 citations in his initial filing.

The petitioner submitted several witness letters in support of the petition. A number of these witnesses are Penn State faculty members, such as Professor [REDACTED], Director of the Penn State Heart and Vascular Institute, who stated:

[The petitioner] is an outstanding research scientist of international caliber and has made important contributions to research in heart disease. . . . He has made significant contributions to our understanding of cardiovascular disease and provided important clues toward identifying novel therapeutic targets aimed at improving quality of life and prognosis in heart failure. . . .

His research effort is directed towards exploring the underlying mechanisms of circulatory regulation; which has particular relevance to prevention and treatment of circulatory disease such as heart failure and hypertension. . . . [S]oon after his arrival in my laboratory, [the petitioner] successfully helped establish a heart failure animal model, and set up a noninvasive method to assess left ventricular structure and function in this model.

After describing some aspects of the petitioner's work in technical detail, Prof. [REDACTED] stated that the "discoveries from [the petitioner's] work not only provided new information about the mechanism of altered exercise pressor reflex in heart failure but also open new avenues into the potential development of novel treatment modalities in heart failure."

The petitioner submitted letters from a number of independent witnesses. Professor [REDACTED] Deputy Director for Research at the Mayo Clinic, Rochester, Minnesota, stated:

I am familiar with [the beneficiary's] work because of our common interests in autonomic regulation of the cardiovascular system during exercise and his related contributions on cardiovascular disease. . . .

I have written an independent editorial on one of [the petitioner's] papers that was published in *Circulation*. This work provides key insight into how changes in muscle sensory nerve function contribute to the excessive sympathetic activation that is observed during exercise in congestive heart failure. . . .

In summary, I am very impressed by [the petitioner's] academic achievements. His research in [REDACTED]'s laboratory will exert a strong positive impact on cardiovascular research with important implications for US science, and the research [the petitioner] is conducting will also lead to a better understanding of the cardiovascular response to exercise and provide a scientific basis for the prevention and treatment of cardiovascular disease.

The record contains a copy of [REDACTED] editorial, entitled "Congestive Heart Failure: More Bad News From Exercising Muscle?" (*Circulation* 2004;110:2978-2979). Below are relevant portions of the editorial:

In this issue of *Circulation*, Li and colleagues from [REDACTED] laboratory at the Penn State Milton S. Hershey Medical Center provide key insight into how changes in muscle sensory nerve function contribute to the excessive sympathetic activation that is observed during exercise in CHF [congestive heart failure]. Their findings also provide important clues about how dysfunctional muscle blood flow and metabolism are linked to the early and excessive peripheral sympathetic activation during exercise in CHF. . . .

In some ways, the downward spiral of dysregulation in exercising skeletal muscle suggested by Li and colleagues is similar to the larger picture in heart failure in which initially many of the physiological responses appear adaptive only to turn maladaptive over time.

[REDACTED] of the University of California, Davis, stated that the petitioner's "findings may possibly be helpful in identifying novel therapeutic targets aimed at improving exercise capacity in congestive heart failure," having "opened a new research direction for further study." [REDACTED] an assistant professor at the University of Texas Southwestern Medical Center, Dallas, asserted that the petitioner "has become one of the best young research scientists working in the areas of cardiovascular physiology and neuroscience within the United States."

[REDACTED] an associate professor at Kyushu University, Japan, stated:

Although I do not know [the petitioner] personally and have not worked with him, I am aware of the results of his research due to his publications and conference presentations. . . . His contributions in the specialized field of research studies of the heart and circulation function place him among the leading researchers in this vital area of medical research.

. . . [The petitioner's findings at Penn State] are groundbreaking in autonomic circulatory regulation as they shed new insight into mechanisms of exaggerated exercise pressor reflex in heart failure and provide a broad base of knowledge necessary for promoting and developing therapies to treat patients with congestive heart failure.

[The petitioner's] work has gained international recognition and impact with the publications of findings in prestigious journals with international circulation and presentation at international conferences. When I presented lectures on the autonomic control of cardiovascular reflexes in the Journal club meetings at Kyushu University, [the petitioner's] publications in the *American Journal of Physiology* . . . and *Journal Applied Physiology* . . . were [a] 'featured topic' and generated much thought and discussion. Inspired by [the petitioner's] findings . . . , we were able to investigate the effect of disuse atrophy on the muscle mechanoreflex and renal sympathetic & circulatory responses to activation of the exercise pressor reflex. . . .

In summary, what [the petitioner] has accomplished is original and has high significance, and has extremely unusual application in the field of cardiovascular science.

The director denied the petition on February 9, 2007, stating:

After review of the record as a whole, it appears the petitioner is basing the majority of the request for the waiver on the urgency or future hope of an issue facing the United States by “engaging in the field or seeking an as yet undiscovered solution to the problematic issue” (New York State Dept of Transportation at 215). The petitioner has provided testimonials from experts in the field, which all express the idea of possible success. . . . While the record demonstrates the petitioner has achieved success in his particular field of research, success alone does not merit an exemption of the labor certification.

The director noted that the petitioner had previously sought a waiver in another proceeding (receipt number LIN 03 070 53237), and asserted that the record of proceeding for the instant proceeding “varies little” from the prior filing. The first petition, however, was filed in 2002, before the publication of some of the petitioner’s most influential work. While there are similarities between the two petitions, the petition filed in 2006 is not identical or a close match to the 2002 petition.

The director, in denying the petition, quoted an unpublished appellate decision from 2006: “if the director can articulate a material doubt, it is appropriate for the director to either request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.” In the present instance, however, the director did not specify what “claim is probably not true.” The assertion of eligibility, implied by the filing of the petition, is not a “claim” in this sense, and there is no indication that the petitioner has made any false assertions of fact.

Rather, by the logic quoted by the director, a more appropriate course of action would have been “for the director to . . . request additional evidence,” as 8 C.F.R. § 103.2(b)(8) requires in instances where the initial submission neither establishes nor rules out eligibility. Here, the director issued no such request, basing the denial on the initial submission alone.

That denial appears to rest largely on passages from witness letters that refer to the possible future benefit that may arise from the petitioner’s work, such as [redacted]’s assertion that the petitioner’s work “findings may possibly be helpful in identifying novel therapeutic targets.” In isolation, these passages seem to suggest a tentative and unproven nature to the petitioner’s findings, whereas more thorough consideration of these same letters indicates that the petitioner has already had a significant influence on others in his field. The petitioner has submitted statements from credible, independent witnesses whose familiarity with the petitioner’s work stems not from his attempts to seek immigration benefits, but from his published and presented work. The independent letters go beyond vague endorsements of the petitioner’s work or general attestations regarding the importance of the area of research. The petitioner has also established dozens of citations of his work, especially a 2004 article from *Circulation* singled out in [redacted]’s editorial. The record establishes the influence of this article as far away as Japan.

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 field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the medical research community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has 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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.