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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 06 027 52058 Office: NEBRASKA SERVICE CENTER Date: JUN 02 2008

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.

Marie Johnson

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 an alien of exceptional ability or a member of the professions holding an advanced degree. At the time of filing, the petitioner sought 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 and new evidence. For the reasons discussed below, counsel's legal assertions are not persuasive and the record does not support his assertions of material factual errors.[1] 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 has submitted evidence relating to the regulatory criteria for aliens of exceptional ability set forth at 8 C.F.R. § 204.5(k)(3)(ii). Specifically, the petitioner has submitted evidence of professional memberships and her remuneration. This issue is moot, however, because the record

[1] The gender of the petitioner is not a material fact in the context of her eligibility for the benefit sought. In fact, one of the petitioner's references, [redacted] makes this error in the second sentence of the final paragraph of his letter. Yet, we will not discount [redacted]s letter on this basis.

establishes that the petitioner holds a holds a Ph.D. in neuroscience from the University of Illinois. 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, neuroscience, and that the proposed benefits of her work, both at the time of filing (improved understanding of how estrogen effects the brain) and subsequently (development of preclinical models for evaluation of anxiety and depression drugs), 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.

Counsel appears to be asserting that a waiver of the alien employment certification can be justified by examining the utility of the certification process itself. For example, in response to the director's request for additional evidence, counsel stated that being hired "as a senior scientist/team leader at a salary that with benefits exceeds $100,000 per year should be proof by itself that [the petitioner] is extraordinary, and stands head and shoulders above her peers."[2] Counsel continues:

> This is not a low salary paid to attract cheap foreign laborers. This [sic] the whole purpose of labor certification, protecting the job market for Americans, means absolutely nothing in this instance.
>
> One hopes that at the [Service Center], people are actually mindful of the purpose of labor certification. One hopes as well that even an ordinary person can see that a job paying $100,000 per year is not a job that Americans are shunning because the salary is too low.

The director rejected the implication that the alien employment certification process was designed solely for low paying jobs and noted that the petitioner was not employed in this well-paid position as of the date of filing. On appeal, counsel asserts that the alien employment certification process is to protect American salaries, not to give American workers an advantage over foreign workers. Counsel submits materials from the website of the Department of Labor (DOL) which provides that DOL "must certify to the USCIS that there are no qualified U.S. workers able, willing, qualified and available to accept the job at the prevailing wage for that occupation in the area of intended employment and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers." This language derives from section 212(a)(5)(A)(i) of the Act.

While section 212(a)(5)(A)(i) of the Act mentions workers willing to accept the prevailing wage and evidences Congress' concern about the potential for an adverse impact on the wages of U.S. workers, that section also focuses on the existence of qualified U.S. workers who are able, willing and available. In designing the alien employment certification process, Congress stated that those classifications requiring alien employment certification "must be entering for the purpose of meeting a shortage of employable and willing U.S. workers in specified labor that is not temporary or seasonal in nature." H.R. Rep. No. 101-723, 61 (Sept. 19, 1990). Congress clearly and unambiguously expressed the need for employers to document their efforts to locate able, willing and qualified workers. *Id.* at 62.

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[2] Remuneration alone is never sufficient by itself to meet the regulatory definitions of extraordinary or even exceptional pursuant to sections 203(b)(1)(A) and 203(b)(2) of the Act. Rather, remuneration is merely one of the regulatory criteria for both classifications, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(ix); 8 C.F.R. § 204.5(k)(3)(ii)(D).

Congress further expressed its expectation that employers be able to provide evidence of their recruitment efforts, including "interviews of available workers and why they were found not qualified." *Id.* at 63. Thus, there can be no doubt that beyond protecting U.S. wages in any field[3] from being depressed, Congress also intended the alien employment certification process to demonstrate that the alien was filling a job for which there were no qualified, able, willing and available U.S. workers. In other words, the employer must demonstrate a shortage of qualified, able, willing and available U.S. workers.

This intent is acknowledged in *NYSDOT,* 22 I&N Dec. at 218. The AAO stated that the alien employment certification process "exists because protecting the jobs and job opportunities of U.S. workers having the same objective minimum qualifications as an alien seeking employment is in the national interest." To expand on that premise, the alien employment certification process was designed by Congress and it must therefore be presumed that Congress intended the process to serve the national interest. Nothing in the legislative history of the Act suggests that the national interest waiver of that process was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223. We do not find that this logic is any less persuasive simply because the proposed employment pays well.

Moreover, Congress expressly made the alien employment certification the rule, not the exception, for members of the professions and aliens of exceptional ability. Section 203(b)(2) of the Act. 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). By applying the alien employment certification process to section 203(b)(2) of the Act, Congress clearly did not intend the process to be limited to only low-paying jobs that are unlikely to require an advanced degree professional or alien of exceptional ability.

Regardless, on appeal, counsel acknowledges that the petitioner was not employed in her current position as of the date of filing and attempts a different strategy for attacking the utility of the alien employment certification. Counsel states that the alien employment certification process was not contemplated for postdoctoral positions where "few, if any qualified Americans apply." Counsel claims to know of postdoctoral positions where no qualified Americans applied and asserts that employers would hire U.S. applicants before foreign applicants because of the hassle of hiring foreign workers. Thus, counsel implies that the very act of hiring a foreign worker demonstrates the lack of a qualified U.S. worker, a proposition that would seem to render the entire alien employment certification process with its recruitment requirements superfluous in all situations, a position Congress certainly does not take. Counsel concludes: "The reality is that Americans are not competing for these jobs any more than they are competing for jobs picking peas."

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[3] Congress expressed an interest in preventing the depression of wages in general, not merely for those positions that are already low paying.

First, these statements regarding the lack of U.S. workers are unsupported. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). Further, the practical result of counsel's assertion is that we would have to waive the alien employment certification process if the process would likely result in an approved alien employment certification or, in fact, for every case because, according to counsel, the U.S. employer has demonstrated the lack of U.S. workers simply by expressing a desire to hire a foreign worker. Moreover, if we accepted counsel's logic, we would be usurping the jurisdiction of DOL and making determinations we are not qualified to make. As stated in clear and unambiguous terms in *NYSDOT,* 22 I&N Dec. at 221, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of DOL. That decision further states that it is the position of Citizenship and Immigration Services (CIS) to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization. *Id.* at 217. Thus, even assuming there is a shortage of qualified U.S. workers to fill postdoctoral positions, that is not an issue under our jurisdiction and it would be inappropriate for us to establish blanket waivers for postdoctoral associates based on that assertion.

In fact, it is not appropriate for CIS to create new blanket waivers for any reason. Significantly, in section 203(b)(2)(B)(ii) of the Act, Congress created a blanket waiver for certain physicians. This statutory provision proves two important points. First, it demonstrates Congress' ability and willingness to create blanket waivers. Thus far, Congress has not done so for postdoctoral associates. Second, the existence of this specific blanket waiver argues against the existence of *implied* blanket waivers; otherwise, section 203(b)(2)(B)(ii) of the Act would arguably be superfluous. As stated above, a statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel.*, 472 U.S. at 249; *Sutton,* 819 F.2d. at 1295.

The Department of Labor has acknowledged that some occupations warrant a blanket certification. Specifically, 20 C.F.R. § 656.10 provides:

> The Director, United States Employment Service (Director), has determined that there are not sufficient United States workers who are able, willing, qualified, and available for the occupations listed below on Schedule A and that the wages and working conditions of United States workers similarly employed will not be adversely affected by the employment of aliens in Schedule A occupations. An alien seeking a labor certification for an occupation listed on Schedule A may apply for that labor certification pursuant to § 656.22.

An occupation's listing on Schedule A modifies, but does not waive, the labor certification process for aliens in that occupation. Furthermore, the list of Schedule A occupations at 20 C.F.R. § 656.22 does not include postdoctoral associates specifically.

For all of the reasons discussed above, whether qualified U.S. workers are able, willing and available for postdoctoral positions is not a question that can properly be considered by CIS.

Finally, counsel asserts on appeal that while the petitioner was not working as a senior scientist at the time of filing, she was qualified for that position at the time of filing as is demonstrated by her move to that position shortly after the petition was filed. As acknowledged by counsel, the petitioner must demonstrate 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). More significantly, we cannot "consider facts that come into being only subsequent to the filing of a petition." *Matter of Izummi,* 22 I&N Dec. 169, 176 (Commr. 1998) (*citing Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981)). Regardless, we note that remuneration consistent with a degree of expertise significantly above that ordinarily encountered in the field is one of the regulatory criteria for aliens of exceptional ability, a classification that normally requires an alien employment certification. We cannot conclude that meeting (or being qualified to eventually meet) one of those criteria, of which an alien must meet at least three to be eligible as an alien of exceptional ability, warrants a waiver of that requirement. *See NYSDOT,* 22 I&N Dec. at 218, 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. *NYSDOT*, 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. 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 she 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.

As noted by the director, the petitioner relies on several letters, some of which are from distinguished members of the petitioner's field, including a member of the National Academy of Sciences. On appeal, counsel asserts that the director "lists the number of professor and researchers from around the world who state that they have used or been influenced by [the petitioner's] research" and questions how the director could then conclude that the petitioner had not established her impact on the field. Counsel mischaracterizes the letters in the record. As will be discussed in greater detail below, not one of the petitioner's independent references claims to "have used or been influenced" by the petitioner's research. Rather, they provide general praise and discuss how the petitioner's results are original and applicable to clinical practice.

Prior to discussing the content of the reference letters, we note that 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. We acknowledge that several letters appear to be from independent members of the field, although they did not include their curriculum vitae. In evaluating such letters, we note that letters from 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 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 received her Master of Science in Neurobiology from the Capital University of Medical Sciences in China under the direction of [redacted]. As stated above, the petitioner received her Ph.D. from the University of Illinois in 2003. While there, she worked in the laboratory of Dr. [redacted] The petitioner then accepted a postdoctoral associate position in the laboratory of Dr. [redacted] at the Rockefeller University in New York. After the date of filing, the petitioner began working as a senior scientist and team leader at AstraZeneca in Delaware.

[redacted] asserts that while at the Capital University of Medical Sciences, the petitioner adapted a capsule-delivery system that could prevent the immune rejection after intracerebral transplantations to ameliorate motor deficit in Parkinson's patients without reducing the efficacy of transplanted cells. Dr. [redacted] asserts that this system significantly improved the outcomes of neural transplantation but provides no examples of this system being used at the Capital University of Medical Sciences or being adopted by other hospitals. The record does not include letters from a selection of hospitals in China or elsewhere that have adopted the petitioner's capsule-delivery system.

[redacted] praises the petitioner's graduate research on the estrogen effect on CREB signaling and her ability to "handle difficult experimental approaches." Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *NYSDOT*, 22 I&N Dec. at 221. [redacted] does not explain how this work has impacted the field. [redacted] further notes that the petitioner won four academic awards. The record contains the honors themselves. While favorable evidence consistent with local recognition of the promising nature

of the petitioner's work, they cannot establish that the petitioner's work had already influenced the field beyond her school.

[redacted]n further asserts that the petitioner was "the first to demonstrate an estrogen effect on the second messenger calcium/calmodulin-dependent protein kinase IV" and "reported an estrogen-induced decrease in calcineurin in the medial amygdala, thereby defining a possible mechanism by which estrogen can regulate cyclic AMP response element-binding protein (CREB) phosphorylation." Dr. [redacted] then discusses the petitioner's work published two months before the date of filing in *Neuroendocrinology*. This work detailed the effects of estrogen on the brain-derived neurotrophic factor (BDNF) protein, mRNA and the CREB signaling pathway and showed that estrogen "affects the same pathway as does antidepressants and in related brain areas." [redacted] opines that this work "will have fundamental significance in understanding the role of [sic] estrogen plays in precipitating emotional changes that women undergo during life cycle events."

Finally, [redacted] explains that the petitioner extended her work to the rat model of alcoholism, demonstrating "a link between estrogen and the amelioration of alcohol withdrawal-related anxiety *and* the regulation CREB signaling pathway by estrogen." This work was to be presented in November 2005, the month the petition was filed.

Clearly, the petitioner's Ph.D. research was original. Any Ph.D. thesis or other research, however, 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 stated above, original innovation by itself is insufficient; the petitioner must demonstrate the significance of the original work. *Id.* at 221, n.7. Moreover, we will not presume the significance of the work from the reputation of the journal in which it appeared or the conference where it was presented. Rather, the petitioner must demonstrate the impact of the individual article or presentation. [redacted] does not provide examples of how the petitioner's work, some of it published or presented immediately before the petition was filed, had already influenced the field. Counsel has twice asserted that citations of the petitioner's work were being submitted. As correctly noted by the director, however, the petitioner did not, in fact, submit any citations. The petitioner does not submit any evidence of citation on appeal and counsel does not explain the discrepancy between the assertions in his initial brief and the brief submitted in response to the director's request for additional evidence and the evidence actually submitted on those occasions.

The petitioner also submitted a letter from [redacted], Chief of the Cytoskeletal Protein Regulation Section of the Laboratory of Neurochemistry at the National Institutes of Health (NIH). Dr. does not explain how he came to know of the petitioner's work and his letter reproduces entire paragraphs nearly verbatim from [redacted]s letter. We acknowledge that signed the letter, affirming the sentiments expressed in the letter. The use of so much nearly verbatim language from Dr. letter, however, suggests that the language in [redacted]s letter is not his own.

[redacted] a member of the National Academy of Sciences, asserts that the petitioner's work is "absolutely essential" to the progress of his laboratory. While he provides general accolades about her past work, his focus is on her "potential," concluding that she is "irreplaceable" and "essential to the success of our research program." We note, however, that the petitioner no longer works in his laboratory. Thus, her potential to contribute to the future work in his laboratory is no longer relevant.[4]

Other references discuss the significance of the petitioner's past research. [redacted], a research associate at Rockefeller University, explains that estrogen is known to have effects on the brain but that the mechanism of these effects is not known. The petitioner investigated estrogen action on the CREB messenger signaling pathway, discovering an estrogen pathway that "could be the mediator of estrogen effects on emotional and cognitive functions." While [redacted] asserts that this work could lead "to better treatments and prophylactics for mood-related disorders and memory loss during aging," he does not provide examples of any academic or pharmaceutical company research team pursuing such research based on the petitioner's results. [redacted] further asserts that the petitioner investigated "the interaction between estrogen and other neurotransmission systems, such as GABA and histamine." [redacted] notes that the results of this work was accepted for publication in the *Proceedings of the National Academy of Sciences (PNAS)* and the record demonstrates that the article was actually published the month before the petition was filed. [redacted] asserts generally that this work "literally opens up a new field of study in the estrogen field," but does not explain the results or their impact on the field.

[redacted], a professor at Loyola University Chicago, asserts that she does not know the petitioner personally, but through the petitioner's graduate and postgraduate accomplishments and that she has reviewed the petitioner's publications. [redacted] asserts that the petitioner's findings "established positive evidence of how estrogen replacement therapy works, its consequences, and important information about how to modify these consequences." While [redacted] concludes that the petitioner's work has "given critical direction to drug development and clinical therapeutic strategies," [redacted] does not provide examples of the petitioner's work being applied in either drug development programs or clinical guidelines.

The remaining letters, including many from apparently independent members of the petitioner's field, provide similar information. They affirm the importance of the petitioner's area of research, which has not been contested, and the potential of her work to have clinical implications. They praise her ability to use patch clamp electrophysiology but do not explain why this skill is not amenable to enumeration on an application for alien employment certification.

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[4] While the petitioner must establish eligibility as of the date of filing and we will not consider evidence of accomplishments after that date, *see* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49, the petitioner's change in future plans is relevant as the proposed benefits of her work is an essential element of the national interest waiver adjudication.

[redacted], an assistant professor at the University of Guelph in Canada, and [redacted], an assistant professor at the University of Maryland, both assert that "it should certainly be self-evidence that the Rockefeller University would only select those research scientists who are at the very top of their profession." It is not self-evident to us that any institution only selects those at the "top of their profession," which presumably includes the most renowned and experienced members of the profession, for postdoctoral positions, which are characterized as "trainee" positions in the article counsel submits on appeal. Regardless, we will not infer the petitioner's influence on the field from the distinguished nature of her employer. She must demonstrate her individual impact on the field.

[redacted] further asserts that the petitioner asserts that the petitioner's research published in *PNAS* in 2005 changed previous perceptions by "making arousal a measurable parameter instead of a vague definition." While we do not doubt that the petitioner reported original findings in her 2005 *PNAS* article, the record does not support [redacted]s characterization of this work. Specifically, the August 15, 2003 article posted on medicalnewstoday.com, submitted with the petition, suggests that [redacted] had already, in 2003 developed the parameter discussed by [redacted] Specifically, the 2003 Internet article reports that scientists were historically divided into those who consider arousal to be a single physiological function and those believe that arousal is a collection of small specific abilities. According to the Internet article, in a 2003 article in *PNAS*, [redacted] presented "a mathematical equation that for the first time unifies these two disparate schools of thought and combines generalized arousal with various specific forms of arousal, such as sex, hunger and fear." The article further indicates that [redacted] showed "that experiments can be designed to measure arousal in laboratory mice." The list of [redacted]s coauthors for this 2003 *PNAS* article at the end of the Internet article does not include the petitioner.

It remains, none of the references provide examples of how the petitioner's work is being used in the field beyond her immediate circle of colleagues or claim to have been personally influenced by the petitioner. While [redacted], Executive Director for Business Development at the Forest Research Institute, asserts that he has developed an expertise in the evaluation of early-stage, basic research and that he has run clinical development programs for estrogen, he does not indicate that the Forest Research Institute is pursuing or considering pursuing clinical programs based on the petitioner's research results.

In considering the petitioner's publication record, the director stated:

> The record indicates that the petitioner has co-authored four English language articles and one Chinese language article that have been published in scholarly journals as of the filing date. The petitioner also participated in conferences in the field.

On appeal, counsel asserts: "In reality, [the] petitioner had 15 publications, including conference abstracts and proceeding papers as of the filing date, including an article that appeared in *PNAS*." Counsel subsequently acknowledges that postdoctoral associations are expected to publish their work, but asserts that the petitioner has published more than the typical postdoctoral associate and that

publication in *PNAS* is beyond what the typical postdoctoral associate accomplishes. The petitioner submitted an article in *American Scientist Online* reporting that postdoctoral associates average 1.2 peer-reviewed publications per year. Counsel then totals the petitioner's articles in peer-reviewed publications *and* abstracts to conclude that the petitioner's "rate of publication" was five per year.

First, the director correctly characterized the petitioner's publications as documented in the record. The record does, in fact, document four English-language articles as follows: three in *Neuroendocrinology* and one in *PNAS*. The record also contains a single Chinese-language article published in the *Chinese Journal of Neuroanatomy*. While the director did not specifically list the number of abstracts, the director did acknowledge this evidence separate from the petitioner's articles in peer-reviewed publications. We note that the record contains eight abstracts for conference presentations. The record does not establish whether the presentations were oral or poster presentations. Finally, the petitioner submitted an unpublished manuscript prepared for a book chapter. Thus, the director's characterization of the petitioner's documented publication record as of the date of filing is entirely accurate.

Second, counsel's comparison of the petitioner's peer-reviewed published articles *and* presentation abstracts with the average of peer-reviewed publications only is disingenuous. In fact, the petitioner's postdoctoral research had resulted in a single article in a peer-reviewed journal as of the date of filing. The petitioner's other peer-reviewed articles published in journals as of the date of filing report the petitioner's graduate research conducted in collaboration with [redacted] although some were not actually published until the petitioner had begun her postdoctoral research. Regardless, at issue is not whether the petitioner is a more prolific author than other postdoctoral "trainees" (the term used in the article provided by counsel) but whether she has influenced the field as a whole to some degree.

Finally, we recognize that *PNAS* is a distinguished journal published by the National Academy of Sciences, of which the petitioner's coauthor, [redacted]f is a member. It is still the petitioner's burden to demonstrate that her individual article has proven influential. The record lacks testimonials from independent researchers who are applying this work in their own research or evidence of any citations. The petitioner submitted a single request for a reprint of her article in *PNAS*. This single request, which cannot even establish that the individual requesting the article subsequently found it useful and applied the results, cannot establish the petitioner's influence in the field. Thus, the petitioner has not demonstrated the impact of her articles.

We acknowledge the submission of published material about research on estrogen in general and Dr. [redacted]s work specifically. None of these materials, however, appear to discuss the results of the petitioner's collaboration with Thus, they cannot establish the impact of the petitioner's work.

While the petitioner's research clearly has practical applications, it can be argued that any Ph.D. thesis or published article, in order to be accepted or published, must offer new and useful information to the pool of knowledge. As stated above, 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.