

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B2



FILE: [REDACTED]  
LIN 07 250 50185

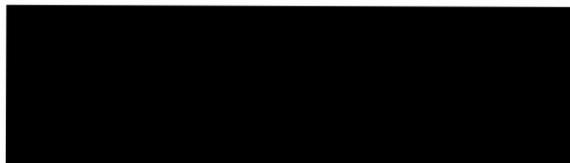
Office: NEBRASKA SERVICE CENTER

Date: SEP 08 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter 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 fellow at the University of California, San Diego (UCSD). 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 has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

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 director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. 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 regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. 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.

The petitioner filed the petition on July 27, 2007. Several witnesses described the petitioner’s work in the field of molecular medicine. [REDACTED] Associate Professor at the Chinese Human Genome Center at Shanghai, China, stated:

I first met [the petitioner] six years ago when he was a Ph.D. candidate in Wuhan University. Due to our common field in molecular medicine, [the petitioner] and I interact frequently regarding our ongoing work in our respective research topics. . . . [The petitioner] is a brilliant and creative scientist. Those gifts have been shown since

beginning his research in [REDACTED] laboratory [at Wuhan University]. At this stage, he made significant discoveries regarding purification of a new deoxyribonuclease (DNase) . . . [and] provided valuable data leading to a better understanding of the function of acid DNase in the cell cycle. . . .

[The petitioner also] used a bioinformatics method to study the structure of the active site of the subtilisin nattoxinase, which has been used as a clot-dissolving drug for the treatment of intravascular coagulation. [The petitioner] has demonstrated that four amino acid residues . . . are crucial for subtilisin nattoxinase's enzymatic active structure.

Most of the remaining witnesses work at UCSD. UCSD, stated:

Assistant Adjunct Professor at

I have known [the petitioner] since 2005 when he began a postdoctoral position in my laboratory. . . . During this time, I have been enormously impressed with [the petitioner's] remarkable research abilities. During his time here he has truly become a pioneering researcher in the field of molecular medicine. . . .

Jacobsen syndrome is characterized by partial deletion of the distal long arm of chromosome 11. . . . Fifty-six percent of patients have serious cardiac defects, most of which required surgical intervention. . . . Five to ten percent of Jacobsen syndrome patient[s] have hypoplastic left heart syndrome (HLHS) . . . [which] is one of the most severe congenital heart defects. . . . [The petitioner] is working on identifying the gene in 11q that causes HLHS and other heart defects. . . . His research involves identifying human candidate genes for congenital heart defects in 11q. He has then generated gene-targeted knockouts of these genes in the mouse in order to understand the role of these genes in normal heart development, as well as in causing disease. [The petitioner] has been working on a number of key molecules, including PINCH 1, JAM3, ATSV and OBCAM, each of which has been hypothesized to have an important role in cardiac development and pathogenesis. His goals have been to create distinct forms of heart disease in animal models and study those disease states by using state-of-the-art scientific techniques.

[REDACTED] stated that the petitioner's "work is an absolute necessity to the interests of the American scientific community. . . . He has made substantial contributions to the field of molecular medicine research and will continue to impact on this field in the future." Other researchers at UCSD offered similar assessments of the petitioner's work, and described that work in technical detail.

The only independent letter in the petitioner's initial submission is from [REDACTED] Director of the Human Genetics Institute at Rutgers University, Piscataway, New Jersey. Prof. [REDACTED] stated:

I have had no personal communication with [the petitioner], but through his professional publications in top-tier journals and scientific conference presentations, I have become well acquainted with his accomplishments and ongoing research. . . .

[The petitioner] has proven to be an essential scientist to the research in cardiology field [sic].

The petitioner submitted copies of his published and presented work, but no objective evidence of the impact of that work. The petitioner's *curriculum vitae* (CV) listed nine articles (one of them unpublished), most of which date from the petitioner's earlier work in China. Only one article related to the heart research that the petitioner has overwhelmingly emphasized in this proceeding.

On September 19, 2008, the director issued a request for evidence, instructing the petitioner to submit evidence showing that other researchers have cited the petitioner's work. In response, counsel acknowledged that "[o]ne of the most compelling, independently verifiable measures of a scientist's contributions to their field is his or her publication and citation record," and asserted that the petitioner's work has earned "extensive citations by top scientists worldwide."

The petitioner submitted printouts from the Google Scholar database (<http://www.scholar.google.com>). The search parameters were the petitioner's first and last names, yielding results not just for articles by the petitioner, but any other article containing both names, whether in reference to the petitioner or to others. The petitioner identified five English-language citations of the petitioner's work. The petitioner's one article relating to heart research showed two citations. Two of the petitioner's older Chinese-language articles, pertaining to a medicinal fungus, showed 17 and two citations, respectively. Because most of the citing articles are identified only in Chinese, we cannot determine how many self-citations are included in the above totals. The totals provided do not indicate that the petitioner's work in the United States has attracted significant interest.

Counsel stated that the petitioner "is *the first scientist in history* who successfully established a mouse model that decreased NOTCH-1 signaling in mice recapitulates the development of congenital heart defects in human patients with NOTCH-1 mutations" (counsel's emphasis). It can be argued that the purpose of much published research is to report new developments or discoveries, in which case countless researchers have each been "the first scientist in history" to accomplish one thing or another. (While it is important to verify contentious claims and replicate surprising findings, there would be little value in systematically reporting redundant research that added nothing new to the general pool of knowledge.) It cannot suffice simply to show that the petitioner was the first to do a particular thing. He must also show how his original accomplishment is more significant and important than the original accomplishments of thousands of peers who, like him, conduct original research that produces new findings. Given the considerable size of the mouse genome, it is not self-evident that the petitioner's work with a handful of those genes distinguishes him as a particularly valuable researcher.

The petitioner submitted three additional witness letters. Counsel referred to the three witnesses as "independent experts," but two of the witnesses work at UCSD ( [redacted] and [redacted]

██████████; the third witness is ██████████ of the National Institute on Aging, Baltimore, Maryland. ██████████ described the petitioner's work with "NOTCH-1 mutant mice" and his efforts "[t]o address whether PINCH 1 and PINCH 2 have redundant roles in myocardium." Following a discussion of the technical details of the petitioner's work, ██████████ stated: "In summary, [the petitioner] is one of the top researchers in the field of molecular medicine." This, however, is not a "summary" of the preceding content of the letter. We repeat that the relative importance of the petitioner's work is not self-evident from description of the details or goals of that work.

██████████ like ██████████ discussed the petitioner's work with NOTCH-1, PINCH1 and PINCH2. Rather than point to existing concrete implementation of the petitioner's work, ██████████ asserted that the petitioner's "work will give us critical insights into the most common and severe forms of congenital heart disease" and "is expected to lead to novel and effective therapies for human heart disease."

██████████ covered similar ground, asserting that the petitioner's "expertise and contributions to the cardiovascular research and Chinese herbal medicine have gone far beyond his peers. . . . His research accomplishment clearly distinguishes him from his peers of similar backgrounds."

The director denied the petition on December 1, 2008, stating that the minimal citation of the petitioner's present work did not support the petitioner's claims regarding the depth of his impact on his field. The director also found that the petitioner's witness letters failed to make a persuasive case for approving the waiver application.

On appeal, counsel states that the director "failed to give due consideration to [the petitioner's] pioneering work on genetic etiology for heart defects, and his impressive publication and citation record as a result of his groundbreaking research accomplishments." As noted previously, at the time he filed the petition, the petitioner had published only one article directly relating to heart defects, and the petitioner documented only two citations of that one article. Counsel fails to explain how this amounts to an "impressive publication and citation record." The petitioner has other published and cited articles, but these do not relate to "genetic etiology for heart defects," and therefore to refer to them in that context is misleading.

Counsel attempts to paint the petitioner as a pioneer in "exploring the genetic etiology for heart defects," observing what is, at present, a grim prognosis for infants born with HLHS and related disorders. The record, however, does not show that the petitioner's work has improved survival rates or treatment options for those disorders. At best, witnesses (heavily concentrated in La Jolla where the petitioner works) have found promise in the petitioner's work, and expressed confidence that the petitioner's "work will give us critical insights into the most common and severe forms of congenital heart disease."

Having previously asserted that "[o]ne of the most compelling, independently verifiable measures of a scientist's contributions to their field is his or her publication and citation record," counsel now protests that the director's "sole reliance on citation record in judging the significance of a scholarly

article is misleading.” Counsel contends that the significance of an article is already evidence from its “publication by a top ranking journal.” Counsel claims: “In order to be approved by journal editors and peer reviewers for publication in a high impact journal, an article has to report research results of groundbreaking nature and considerable influence to the field as a prerequisite.” The unsupported assertions of counsel do not constitute evidence. *See 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).

Furthermore, counsel discusses the impact factors of “high impact journal[s],” but fails to acknowledge that the impact factor of a journal is calculated from the citation rate of articles appearing in that journal. In effect, counsel faults the director for focusing on the minimal citation of the petitioner’s own articles, rather than the higher citation rate of articles that appeared in previous issues of the same journals.

Counsel asserts that the petitioner “has a total of nine peer-reviewed journal papers, which well exceeds the number of publications expected of a post-doctoral researcher of the similar education background and research experience.” The petitioner’s CV listed nine articles, but one of which was identified as “in prepare” (*sic*); there is no evidence of its subsequent publication. The petitioner wrote almost all of his articles before his arrival in the United States; his postdoctoral work in the United States appears to have produced two published articles.

With respect to the petitioner’s published output, the petitioner produced eight published articles in the seven years after he completed his medical degree. Many witness letters included the CVs of their respective authors. [REDACTED] completed his medical degree in 1974; he published 15 articles from 1973 to 1980. [REDACTED] graduated from medical school in 1996, and published eight articles by the end of 2003. [REDACTED] earned his medical degree in 1970; he published his 15<sup>th</sup> article in 1976. [REDACTED] CV indicates that he completed his Ph.D. in 1973, and published 18 articles between 1972 and 1974. Therefore, even if the quantity of articles implied their quality, which it does not, the record fails to show that the petitioner’s postdoctoral output has been especially prolific.

Counsel asserts that the director failed to give sufficient weight to “*ten* letters of testimony . . . *four* of which are provided by independent appraisers” (counsel’s emphasis). Counsel numbers UCSD researchers among the “independent appraisers.” In considering the witness letters, we must look not only at their existence and their sources, but also their content, and the extent to which the rest of the record supports the assertions in those letters.

While the letters contain details describing the petitioner’s work, the letters are vague in describing how the petitioner’s work has affected the field. Speculation about promise, potential, or possible future impact is not evidence of existing impact. The petitioner has not shown that his work has been more influential or produced greater results than that of others in the field.

Counsel rhetorically asks “*do we really want someone with ‘minimum requirements’ working on issues that profoundly impact the lives of Americans?*” (counsel’s emphasis). Counsel, here, seems to imply that some areas of research are so important that United States workers in those areas should be

presumptively denied the protection afforded by the labor certification process. We can find no justification for this interpretation of the statute and regulations. The intrinsic merit of a given occupation is an important factor, but it is only one factor among several. Furthermore, counsel seems to presume a false dichotomy, specifically that UCSD has only two choices: to employ the petitioner, or to employ a “minimally qualified” United States worker. Counsel also seems to equate the phrase “minimum requirements” with incompetence. A worker who cannot carry out the duties of a given position is “unqualified,” not “minimally qualified.” If the position is highly demanding, then it stands to reason that the “minimum requirements” of that position would be of a high standard. Therefore, we do not find counsel’s argument to be persuasive.

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 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 not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.