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FILE:

SRC 07 101 52061

Office: TEXAS SERVICE CENTER Date:

APR 29 2009

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

#### INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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*  
John F. Grissom

Acting 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 (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 physician. At the time he filed the petition, the petitioner was a fellow at Albert Einstein Medical Center, Philadelphia, Pennsylvania. 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 statement 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.

In a statement accompanying the petition’s initial filing, counsel stated that the petitioner is “a foremost expert in the field of hepatology,” a medical specialty relating primarily to the liver. Counsel stated that the petitioner’s “impressive research studies in addition to her [*sic*] superior clinical skill, render him exceptional and unique. He clearly stands out as one of the very few at the top of her [*sic*] field.”

Counsel stated that the petitioner “is one of literally only a few physicians in the nation with expertise in” SEPET, a treatment modality used at “only four centers in the United States.” Simple exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an

application for a labor certification. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dept. of Transportation* at 221. If the machine is used at “only four centers in the United States,” then it is not surprising that doctors elsewhere are not versed in SEPET’s use. Furthermore, counsel’s attempt to compare the petitioner with all “physicians in the nation” is misguided because most physicians are not hepatologists. The petitioner’s familiarity with a device used only by hepatologists does not establish his superiority to other physicians; it is, rather, a hallmark of his specialization. Counsel listed other functions that are said to distinguish the petitioner from most other physicians, but here again this is largely because most physicians are not hepatologists, and they would not be expected to know any advanced hepatological procedures.

With regard to counsel’s assertion that SEPET is in use at “only four centers,” the petitioner’s *curriculum vitae* indicates that the petitioner participated in “[a] Phase I prospective longitudinal feasibility trial of safety, tolerance and efficacy of SEPET in patients with Acute Exacerbation of Chronic Liver Disease. . . . Albert Einstein is only one of the 4 medical centers in the country which is participating in this FDA approved trial.” Counsel, in describing the petitioner’s involvement in the SEPET project, failed to point out that the regimen was in limited use because it was an unproven method still in Phase I clinical trials.

We note that, in his detailed *curriculum vitae*, the petitioner did not claim any specialized training in hepatology prior to July 2006, when he began what he described as a one-year fellowship in hepatology at Albert Einstein Medical Center, giving him about eight months of training in hepatology at the time he filed the petition in February 2007. The petitioner stated that he would then move on to a two-year gastroenterology fellowship from July 2007 to June 2009. The petitioner referred to these fellowships as part of his “training”; there is no evidence that the petitioner, as of the date of filing, had ever independently practiced as a fully-trained and qualified hepatologist. Rather, it appears that the petitioner’s medical training is still ongoing as of this writing. The record shows that, as of July 1, 2006, the petitioner was licensed as a Graduate Medical Trainee in Internal Medicine.

Counsel related several instances in which the petitioner’s care saved the lives of acutely ill patients. Anecdotal assertions of this kind carry little weight in this proceeding. Acute care is a basic job requirement for many physicians. Furthermore, individual clinical patient care is inherently local rather than national in scope. *Cf. Matter of New York State Dept. of Transportation* at 217 n.3.

Counsel asserted that the petitioner’s “role as a physician extends beyond merely attending to a small community of patients in clinical or research settings. . . . His original research has had a direct impact on the field and has gained him nationwide recognition. . . . [The petitioner] has also gained international acclaim for both his clinical and novel research works.” Counsel is correct that published research has broader reach than clinical care. It is through this avenue that the petitioner’s efforts are national in scope. Nevertheless, national scope is only one necessary criterion for the waiver; it cannot suffice merely to establish that the petitioner conducts and publishes hepatology research. The petitioner must also establish the impact of his research, in comparison with research performed by

others in his specialty. In this regard, counsel asserted that the petitioner's "research innovations have revolutionized the field." We shall examine, presently, the evidence put forward to support this claim.

In discussing the petitioner's impact as a researcher, counsel referred to the petitioner's "unprecedented number of research studies." Counsel did not elaborate or cite any evidence to show that the petitioner has conducted more research studies than any hepatologist who came before him. Without such evidence, there is no support for the claim that the petitioner is responsible for an "unprecedented number of research studies." 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).

The petitioner submitted five witness letters in support of the petition. All five witnesses are, like the petitioner, based in Philadelphia; none claim primary expertise in hepatology. [REDACTED] is an Associate Professor at Drexel University and Director of Drexel's Internal Medicine Residency Program at Graduate Hospital, where the petitioner trained from 2003 to 2006. Dr. [REDACTED] stated that the petitioner "is considered an expert" in various areas of hepatology, and "has acquired extensive skills matched by few others in the management of" hepatitis.

[REDACTED], Medical Director for Ambulatory Care Services at Graduate Hospital, deemed the petitioner to be "truly an innovator at the cutting edge of medical technology at Albert Einstein Medical Center." [REDACTED] highlighted the petitioner's work with the experimental SEPET technology, but gave no indication that the petitioner was in any way involved in its design.

[REDACTED], a Clinical Associate Professor at Thomas Jefferson University and an Adjunct Associate Professor at Drexel University, stated that the petitioner "is currently conducting important and novel research" relating to various experimental treatments for hepatitis C." [REDACTED] claimed that the petitioner is "regarded as one of the nation's most distinguished hepatology fellow[s]," but the record contains no credible evidence of any sort of reputation outside of Philadelphia. [REDACTED] claimed that the petitioner "is a crucial member of the medical team that won the 2005 Albert Schweitzer Gold Medal. This honor was bestowed upon the hepatology team at Albert Einstein Medical Center for the leading work they've done to advance organ transplantation procedures." This assertion is somewhat misleading, because the petitioner was not at the Albert Einstein Medical Center in 2005; he joined that team after they received the award. The prestige of an institution that employs or trains the petitioner is not affirmative evidence that the petitioner qualifies for immigration benefits because of that reflected prestige. (When noting that all of the petitioner's initial witness letters came from physicians in Philadelphia, we observe, also, that the petitioner submitted no letters from the faculty at Albert Einstein Medical Center, despite claims of his widely influential leadership role there.)

[REDACTED], a Clinical Assistant Professor of Rheumatology at the University of Pennsylvania, stated:

[The petitioner] is a physician-scientist of the highest caliber. [The petitioner] is a noted hepatology expert who performs the most innovative life saving procedures using state of the art technology in his treatment of liver diseases. . . .

Based on his outstanding record as a physician, [the petitioner] was selected for an Advanced Hepatology Fellowship at Albert Einstein Medical Center.

As noted previously, the petitioner himself referred to the fellowship as “training.” [REDACTED] went on to describe each of the petitioner’s professional memberships, conference presentations, and other activities as being a singular hallmark of influence and acclaim. Hyperbolic assertions of this kind carry negligible weight without documentary support. Documentation of the petitioner’s memberships and other activities does not prove that they are as significant as witnesses claim. We note that Dr. [REDACTED] and the petitioner both attended K.J. Somaiya Medical College in Bombay (Mumbai), India, in the mid-1990s, and both [REDACTED] and the petitioner were at Drexel University’s Graduate Hospital in 2003-2004.

[REDACTED], Attending Physician at the University of Pennsylvania’s Presbyterian Medical Center, praised the petitioner’s “extraordinary” qualifications and called him “a leader in the field of medicine” who “has led groundbreaking research that has had a direct impact on the future of the field throughout the nation.”

Given the nature of the witnesses’ claims regarding the petitioner’s reputation and influence in the field, there ought to exist evidence of that reputation and influence beyond the attestations of physicians in the city where the petitioner works. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). The petitioner’s supporting evidence showed him to have participated in research projects, and to have joined various professional organizations, but the petitioner’s initial submission is devoid of documentary evidence to establish anything resembling the renown described by his local colleagues.

On October 2, 2007, the director issued a request for evidence, instructing the petitioner to submit documentary evidence to support the claims put forth in the initial submission. In response, the petitioner submitted three new witness letters. Two of the new letters were from prior witnesses.

[REDACTED] stated: “I strongly believe that [the petitioner] is one of the country’s leading hepatologists today. . . . I have . . . found it a rare occasion to see someone with [the petitioner’s] level of national and international regard.” Evidence of such regard outside Philadelphia continues to be elusive.

[REDACTED] claimed: “It is common knowledge in our medical community that he is seen as a pioneer and lead expert in liver and biliary diseases. In fact, his peers rely upon his work as a clinician and researcher all over the country. Furthermore, I know that his publications are read

nationally.” [REDACTED] did not explain how he knew this to be the case. If he examined objective evidence to that effect, he neither identified nor shared that evidence. The director had specifically instructed the petitioner to submit documentary evidence to show that the witnesses’ claims were credible and grounded in fact. The petitioner has responded to that request by submitting more letters from the same witnesses. The petitioner’s response to the director’s notice is, therefore, deficient.

The only new witness was [REDACTED] now a Clinical Fellow at Harvard Medical School. This letter would seem to show an extension of the petitioner’s reputation outside of Philadelphia. The record, however, shows that [REDACTED] trained at Graduate Hospital in Philadelphia from 2001 to 2004 and again from 2005 to 2006, and collaborated with the petitioner on a 2004 conference presentation. [REDACTED] stated that the petitioner “has truly distinguished himself in his field by demonstrating his extraordinary ability to perform the most innovative procedures in his field,” but offered no details in this regard. [REDACTED] only specific assertion concerned the petitioner’s “novel discovery as to how all Patients with Hepatitis C over the age of 50 should have screening colonoscopy prior to such therapy.” This appears to be a recommendation rather than a “discovery,” and the record is silent as to how widely this recommendation has been implemented.

The director denied the petition on February 1, 2008, stating that the petitioner had failed to establish that the petitioner’s “accomplishments are of such unique significance that the labor certification requirement can be waived.”

On appeal, counsel states: “We respectfully again point to the evidence initially submitted with the original filing as well [as] the response to the request for evidence.” The AAO has examined that evidence. The gulf between the objective documentary evidence on the one hand, and the witness letters on the other hand, is such that we can afford little credibility to the exaggerated claims in those letters.

Counsel asserts that the petitioner is “able to master many of the most advanced procedures in the field and also to teach those procedures to peers . . . thereby creating a ripple effect in making the performance of these very important cutting-edge modern procedures more widespread on a national level.” The assertion that the petitioner can learn new methods and teach them to others does not distinguish him from others in his field, absent reliable evidence that few physicians are capable of learning these techniques and even fewer are capable of passing them on. The only indication of the national scope of the petitioner’s work is in the form of research, and the petitioner has carried out that research in the context of continued university training. The record does not show that the petitioner intends to continue pursuing published research after his training is complete, or that any entity that conducts such research has shown any interest in employing the petitioner over the long term. Thus, while the petitioner’s research work has at least the potential for national scope, the record does not indicate that the petitioner will continue to engage in such research. His main focus appears, instead, to be the local, clinical practice of medicine. With respect to the petitioner’s published and presented research, the record contains no documentary evidence (such as independent citations) to show that the petitioner’s work has indeed had anything like the influence that his witnesses have claimed.

The record demonstrates that the petitioner is a qualified physician who has received some training at well-regarded institutions, but there is no credible support for the claim that the petitioner is an internationally renowned researcher whose methods have influenced the entire field of hepatology. The intrinsic merit of the petitioner's specialty is not in dispute, but the petitioner has failed to submit persuasive evidence to show that he, individually, serves the national interest to a substantially greater degree than other physicians trained in that same specialty. 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.