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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JUN 11 2009  
SRC 07 281 53380

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

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The petitioner seeks employment as a postdoctoral research fellow. 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 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.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, the petitioner has not overcome the director's basis of denial.

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

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Ph.D. in Animal Science from the University of Minnesota. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

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 (Comm’r. 1998) (hereinafter “NYS DOT”), 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, biological science, and that the proposed benefits of his work, improved treatment of diabetes, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien’s own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYS DOT*, 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 he 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.

The petitioner initially asserted that he had made major contributions to animal nutrition, skeletal muscle growth and development and IGF-I signal transduction and its relationship to atherosclerosis in diabetes. This final area is the area in which the petitioner proposes to continue.

The petitioner obtained his Master of Science degree in Animal Science in 1993 from Zhejiang University. He then worked as an instructor and researcher at that university through August 1999. In 1999, the petitioner entered a Ph.D. program at the University of Minnesota. He received his Ph.D. in Animal Science in 2005 and went to work as a postdoctoral research fellow at the University of North Carolina, the position he held on the date of filing the petition, August 2, 2007.

The record contains only one letter discussing the petitioner's research at Zhejiang University in detail. [REDACTED], Section Head and Senior Investigator at GlaxoSmithKline's Division of Pharmacology, asserts that the petitioner's research at Zhejiang University involved animal nutrition. [REDACTED] notes that this work resulted in 21 published articles that were well cited. These assertions are supported by the record. [REDACTED] further asserts that the petitioner was the principal investigator for three national and regionally funded programs. Finally, [REDACTED] asserts that one of the petitioner's projects received the second grade Zhejiang Science and Technology Progress Award. This award is in the record. Dr. [REDACTED] indicates that he first came to know of the petitioner in 2007 when they both attended a conference in Toronto, Canada, and does not suggest that he personally was influenced by the petitioner's work in China, which all predates 1999.

In 1998, the petitioner received the second grade Zhejiang Provincial Science and Technology Advancement Award for his project "Development and Marketing of Nutrients Partition Additive (Betaine) for Livestock." The petitioner's 1999 article on the effect of exogenous enzyme preparations on activity of endogenous digestive enzymes in livestock has been cited 50 times; his 2000 article on the growth response of pigs fed a pharmacological level of copper has been cited 24 times and his 1998 article on the effect of neutral protease on nitrogen utilization and activities of endogenous digestive enzymes in domestic bison has been cited 14 times. Two additional articles published in China have been cited 12 and 7 times. The remaining articles published while the petitioner was a researcher in China have been cited no more than five times.

The provincial recognition and citation certainly suggest an interest in the petitioner's research in China. This evidence, however, would have been bolstered by letters from researchers with first hand knowledge of the influence of this work explaining why this work was significant and original and how it was actually applied in China. Moreover, the record lacks evidence that this research is relevant to the U.S. national interest or that the petitioner will continue to benefit the national interest on animal nutrition as he is no longer pursuing this research.

The petitioner submitted three letters from members of his Ph.D. advisory committee at the University of Minnesota. [REDACTED] explains that while pursuing his Ph.D., the petitioner displayed a strong background in animal agriculture and **mastery** of several techniques, including the use of SiRNA to suppress expression of a binding protein. [REDACTED] continues that the petitioner's doctoral research focused on the insulin-like growth factor binding protein IGFBP-3. Specifically, according to Dr. [REDACTED] the petitioner discovered and characterized the mechanism of action by which IGFBP-3 regulates proliferation and differentiation of cultured embryonic porcine muscle cells, demonstrating that IGFBP-3 plays a key role in regulating both the rate and extent of muscle growth in pigs. [REDACTED] projects that these studies "along with those he will accomplish in the future, will provide the information necessary to use molecular biology and genetic engineering strategies to increase rate and efficiency of muscle growth in pigs." In addition, [REDACTED] suggests that because loss of sensitivity to IGFBP-3 is "thought to play a role in the uncontrolled proliferation of some cancer cells," the petitioner's research may be applicable to cancer research. [REDACTED] asserts that the petitioner's publication rate was one of the best achieved by any of [REDACTED] Ph.D. students. We will not, however, narrow the petitioner's field to other Ph.D. students. Finally, [REDACTED] notes that the petitioner's research served as the basis for the renewal of a competitive research grant. [REDACTED] does not explain whether it is unusual for him to utilize his collaborations with his students to seek renewals of his grants. [REDACTED] and [REDACTED], the petitioner's other Ph.D. advisors, provide similar information.

[REDACTED] the petitioner's postdoctoral supervisor, discusses the petitioner's somewhat new area of research at the University of North Carolina, insulin-like growth factors and their relation to the control of atherosclerosis in patients with diabetes. [REDACTED] explains that by focusing on cell stress caused by high blood glucose, the petitioner discovered "a new signaling mechanism by which the stress impulse is conveyed to the cells through a unique signaling protein" and showed "how induction of this protein changes the signaling environment such that cells will become much more susceptible to growth stimulation by this growth factor in response to this injury."

[REDACTED] explains that he has advertised the job but has not been able to find U.S. citizens or lawful permanent residents that meet the petitioner's "high standards of technical excellence and intellectual capacity." It cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYS DOT*, 22 I&N Dec. at 221. [REDACTED] projects that because the petitioner has an extensive publication record and has been the motivator of much of that research, "the work that he has undertaken is likely to have a major impact on public health." The

petitioner's most extensive research, including citations, however, relates to animal nutrition, not diabetes. [REDACTED] does not adequately explain how the petitioner's work with animal nutrition projects his success as a medical researcher. We acknowledge that the petitioner's doctoral research, while involving animal science, did involve insulin-like growth factors and, thus, is somewhat related to his current research. The petitioner's doctoral research, however, is not as widely cited as his research on animal nutrition.

Chief of the Division of Endocrinology at the University of North Carolina, asserts that there are few scientists trained to analyze the complexity of multiple cellular pathways and that there "is a general shortage of basic researchers who are able to translate new discoveries into treatments in the United States." As stated above, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYS DOT*, 22 I&N Dec. at 221. Moreover, the petitioner has not provided evidence that he has translated his discoveries or the discoveries of others into treatments.

The petitioner submits letters from members of the field who attended the presentation of his diabetes research. [REDACTED] a senior investigator at GlaxoSmithKline, asserts that the petitioner's work at the University of North Carolina provides new molecular targets to develop a potential new anti-atherosclerotic drug. [REDACTED] does not suggest that GlaxoSmithKline has expressed any interest in pursuing such a drug based on the petitioner's research. [REDACTED], an associate professor at the University of Tokyo, asserts that the petitioner's results on the difference of three amino acids in human and mouse  $\beta 3$  integrin "partially explain why diabetic mouse does not spontaneously form atherosclerotic lesion under the hypoglycemia condition." [REDACTED] explains that this work is important in determining the appropriate animal model to study atherosclerosis.

The remaining independent references provide general praise of the petitioner's work and the importance of his area of research, but fail to explain how the petitioner's work is already impacting the field. Most significantly, the letters from [REDACTED], Dean of the University of Virginia's School of Medicine; [REDACTED], an associate professor at Ciudad Universitaria in Madrid, and [REDACTED], a research Biologist at the Beltsville Human Nutrition Research Center, are in response to a request for the authors to review the petitioner's curriculum vitae and provide an opinion. None of these researchers claim to have ever heard of the petitioner or his work prior to being contacted for a reference letter. We note that the specifics of the petitioner's research have been included within [REDACTED] letter in a significantly different font than the rest of the letter.

The evidence of citation as of the date of filing does not demonstrate that any one of the petitioner's articles reporting his research at the University of Minnesota or the University of North Carolina had been cited more than seven times as of the date of filing with some additional citations after that date. While citations are notable, in the absence of letters that provide examples of the petitioner's influence, we must look to the citations themselves. Many of the citations reviewed by this office are not indicative of the petitioner's unique influence, with several of the articles citing the petitioner's work together with several other articles for the same proposition. For example, [REDACTED] cites the

petitioner and two other articles for the proposition that “TBA increased circulating levels of IGF-I and autocrine synthesis of the growth factor.”

The record reflects that the petitioner’s work in China, before obtaining his Ph.D., is well cited and was recognized with a provincial award, but the record lacks an explanation of this impact. Regardless, the petitioner’s past record must justify projections of future benefit to the national interest. *Id.* at 219. As the petitioner intends to pursue research on diabetes, it is not clear that his past research on animal nutrition is particularly indicative of his ability to benefit the national interest through his future research. The petitioner’s research in the area that he intends to pursue in the United States is not documented to have been notably influential. While this work has been cited, the letters in the record mostly discuss the importance of the petitioner’s area of research and speculate as to the future significance of this work rather than provide an explanation as to how this work has already had some degree of influence.

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.