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

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**U.S. Citizenship
and Immigration
Services**



B5

DATE: DEC 28 2011

OFFICE: NEBRASKA SERVICE CENTER

FILE: 

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 AAO will dismiss the appeal.

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 is a resident physician at the [REDACTED], who ultimately seeks employment as an electrophysiologist. 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 requests oral argument, stating:

My case is unique because of the complexity of the medical training system in the US that prevents me from obtaining labor certification. Medicare who is the nation-wide employer of residents/fellows will not perform labor-certification. I believe if I present orally my circumstances I will be able to convey in full the complexities of the medical training system.

The regulations require the requesting party to explain in writing why oral argument is necessary. Furthermore, U.S. Citizenship and Immigration Services (USCIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner presented no coherent basis for oral argument. He simply asserts that “the complexities of the medical training system” defy written description and therefore he must address them orally. The petitioner submits no support for this claim and, as the AAO will show, the petitioner has a history, throughout this proceeding, of making unsupported claims. Consequently, the AAO denies the request for oral argument.

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 USCIS] 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 (NYS DOT), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show 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.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish 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 intention behind the term "prospective" is 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.

The AAO also notes 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 Form I-140 petition on February 8, 2010. The record indicates that the petitioner earned a bachelor’s degree in computer engineering and a master’s degree in electrical engineering, both at the [REDACTED] and worked as a software design engineer at [REDACTED] before attending medical school at [REDACTED]

In a letter accompanying the initial filing, the petitioner described his work and his claim of eligibility for the waiver:

I am an electrical engineer, physician and biomedical researcher at the [REDACTED] [REDACTED] I am currently a resident in the department of [REDACTED] . . .

This petition provides evidence of my extraordinary and extensive contributions in the areas of biomedical engineering, information technology, orthopedic oncology and most recently in cardiology. Some of my exceptional contributions include:

- (1) Development of a novel signal processing algorithm for analysis of Neuronal Signals.
- (2) Contributions in the field of Information Technology
- (3) Contributions in the field of Orthopaedic Oncology
- (4) Contributions in the field of Cardiology.

I have made significant original contributions in the development of signal processing technology for analysis of neuronal signals in the field of neuroscience and medicine. I have developed a novel algorithm that is currently being used and being investigated for the analysis of large-scale neuronal system. Some of the technologies I have developed [are in use] by commercial systems and investigators from other laboratories to advance their own research. My research has implications in the diagnosis and treatment of complex diseases such as **Parkinson’s, spinal cord injury, amputations which affect millions each year in the United States.** Also these research areas are of high priority to the nation – it includes cochlear implants, deep brain stimulation – both tremendously successful technologies – as well as work in brain computer interfaces for aid to ALS patients and promising work in retinal implants, plus a host of neural control problems ranging from incontinence to migraines. I have also written promising work about exciting developments in the

area of molecular oncology and is likely to result in wider practical applications in the clinical setting. . . .

Finally, the level of my expertise and the contributions I have made are well beyond and substantially greater than what would be expected of another U.S. worker with the same minimum qualifications. . . .

My unique training as both a physician, engineer and a scientist . . . allows me to not only care for patients but also to work in the laboratory to solve long standing clinical problems and to bring the next generation of cures to the bedside. . . .

The evidence of my extensive and groundbreaking contributions in the area of genomic, proteomic and drug discovery technologies provided in this petition predicts enormous prospective benefit to the United States. Furthermore, it argues that granting a national interest waiver will greatly benefit the United States and significantly outweigh the benefits of the labor certification process.

(Emphasis in original.) In a separate statement, the petitioner stated: “I have published my research findings in some of the very top journals in my area of research.” The petitioner also claimed: “**My research has been cited and extensively discussed in the scientific literature.** . . . As objective evidence of the influence I have had on biomedical sciences, please refer to **Exhibit 3A** which provides a list of **citations** I have garnered for my publications **within the last four years**” (emphasis in original). Exhibit 3A is a printout from <http://scholar.google.com>, listing two citations of one of the petitioner’s articles. The petitioner documented no other citations.

Elaborating on the claim that his work “has been . . . extensively discussed in the scientific literature,” the petitioner stated: “Not only has my research been cited by other scientists, but my work is now a rising topic of interest in the field of biomedical engineering and is **discussed in great detail in several papers** showing that **my research has spurred other scientists to follow on my leads**” (emphasis in original). The only evidence the petitioner submitted to support this claim is Exhibit 3B, “**the cover page of [the] most recent edition of [redacted] engineering in [redacted]**”

The title of the cover is [redacted]

(emphasis in original). The petitioner does not explain how this journal cover shows that other researchers have “discussed [his work] in great detail in several papers.” The petitioner’s name does not appear on the cover, and the petitioner did not submit copies of any of the articles from that issue of the journal. The cover, by itself, is not evidence that anyone is discussing the petitioner’s work at all, much less proof of “extensive” discussion and widespread influence. 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 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Some of the petitioner’s past work has involved wavelets, but this neither proves nor implies that any subsequent publication mentioning wavelets must discuss the petitioner’s work or show the petitioner’s influence.

Several witness letters accompanied the initial submission. The petitioner asserted: "Some of these scientists have had no professional or personal association with me," but all of them have demonstrable ties to institutions where the petitioner has studied or worked. [REDACTED] now at the [REDACTED] stated:

Before coming to the [REDACTED] I was at the [REDACTED]

My research interests lie in the application of electrical engineering methodologies to neuroscience. My work influenced the development of neural spike sorting technologies, demonstrated that microelectrode array recording from brain slices was possible and productive, and has been a leader in the development of lithography to control the growth in culture of neurons and other cells. This work is aimed at basic science understanding of the behavior of small populations of neurons, in hopes of creating better insights into the functioning of the brain.

[The petitioner] trained under me as an undergraduate student and graduate student. . . . His work primarily focused on the development of neural spike sorting technologies and algorithms. Neural spikes are the tiny electrical signals detected by microelectrodes placed very close to individual neurons. By distinguishing the spike or wave shapes – one unique shaper per nerve cell – one can enhance the amount of data gathered from a single recording. . . . Thus, [the petitioner's] field of study is of growing importance as scientists try to understand more about how the hugely complex brain processes information. . . .

[The petitioner's] work as a Master's student was excellent. He attacked the spike sorting problem by applying the novel technique known as wavelet analysis to identify features of the spike waveforms that are much better suited to automatic sorting algorithms. . . .

Overall, I find [the petitioner] to be an extremely talented and versatile scientist with expertise in [an] extraordinarily diverse array of disciplines such as, Engineering, Information Technology, Neuroscience and Clinical medicine.

[REDACTED] stated:

My professional association has been with [the petitioner] in an instructional capacity as his staff professor for courses he taught with me as a graduate student assistant. . . .

I initially met [the petitioner] when he was assigned to be a teaching assistant with me for the junior and senior level biomedical engineering instrumentation lecture and lab courses at the [REDACTED]. He is a gifted educator in the field of biomedical engineering, particularly in biomedical device design and

testing. He was instrumental in developing the course materials for the first biomedical engineering lab course offered at the [REDACTED]. He was the first graduate student lab instructor for the Biomedical Engineering Lab which has now grown to become among the most popular courses to be taught in the biomedical engineering department. . . .

From a research standpoint [the petitioner] is a prominent scientist in the area of neural signal analysis and has made outstanding contributions towards the advancement of neural signal processing. I am familiar with the work that was being done in [REDACTED] lab when [the petitioner] was a graduate student such [sic] technologies for the study of small neuronal networks, micropatterning the growth of individual neurons and neural signal processing. [The petitioner's] work will improve the understanding of how the human nervous system works.

While scientists all across the world are working frenetically to make such a technology a reality, significant technical hurdles still remain. Fortunately, some of the recent advances made by [the petitioner] and co-workers address some of these fundamental challenges. [The petitioner] has made exciting progress towards construction of a novel mathematical technique known as wavelet analysis, to sort neural spike trains. His preliminary studies suggest that this algorithm may play an important role in [the] future of spike sorting, with even early implementation in commercial spike sorting systems.

. . . [The petitioner] established a platform technology that may truly allow neuroscientists to perform multivariate analyses of multiple spike train data. This technology is developing and will hopefully become useful for analyzing signals from virtually any neuron in the body. [The petitioner's] technology represents one of the most promising and exciting developments in the area of neuronal spike train analysis and is likely to result in practical applications. Early adoption has begun in certain commercial spike sorting software program [sic]. This is particularly invaluable in the development of neural prosthesis for patients with absent limbs such as amputees and even paraplegics in the future.

In summary, I consider [the petitioner] to be an exceptional biomedical scientist whose scientific contributions have had and will continue to have profound influence on the scientific and medical community of the United States.

[REDACTED] stated: "Although I have never had any professional association with [the petitioner], I have closely followed his scientific career through his publications in the biomedical sciences." [REDACTED] called the petitioner "a prominent scientist in the area of biomedical engineering and sciences [who] has made outstanding contributions towards the advancement of orthopaedic oncology and neural signal processing technologies." [REDACTED] described at length the goals and "significant technical hurdles" of molecular oncology, and stated