



U.S. Department of Justice

Immigration and Naturalization Servi

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536



BE

File: EAC-99-004-50026 Office: Vermont Service Center Date: JAN 7 2000

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)

Public Copy

IN BEHALF OF PETITIONER:
[Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations 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 researcher. 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 had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

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. -- The Attorney General may, when he 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.

The record indicates that the beneficiary received a Master of Science degree from Gujarat University in 1985 and a Doctor of Philosophy degree from Saurashtra University in 1997. Both of these universities are located in India. The record further demonstrates that the beneficiary received a Bachelor of Science degree from Delaware Valley College in 1995. All three of the petitioner's degrees were in the field of zoology/animal science. The petitioner has been employed as a research scientist since 1996.

8 C.F.R. 204.5(k)(3)(i) requires that a petition be accompanied by:

(A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The petitioner has documented that he has a United States baccalaureate degree; however, he has not documented that he has the foreign equivalent of an advanced degree. The petitioner has not submitted any evidence that shows the "advanced" degrees that were awarded to him in India are comparable to advanced degrees awarded to individuals in the United States. Further, the petitioner does not have at least five years of progressive post-baccalaureate experience in the specialty.

The petitioner also submitted a letter from the University of Pennsylvania Medical Center's Business Manager which indicated that the University "would like to continue to employ [the petitioner] . . . at an annual salary of \$25,050." The petitioner claimed to be a member of the World Wide Fund for Nature - India, the Storks Ibises and Spoonbills Specialist Group, and the Bombay Natural History Society. The petitioner submitted a photocopy of his membership card for the Bombay Natural History Society for the year 1989.

8 C.F.R. 204.5(k) (3) (ii) states that in order to show that an alien is an alien of exceptional ability in the sciences the petition must be accompanied by at least three of the following:

(A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The petitioner indicated that his area of exceptional ability involves researching treatments for coronary artery disease. The petitioner has not documented that his degrees in zoology and animal science are directly related to this field. The petitioner

does not have ten years of experience, nor does he have a license or certification for the particular occupation. The petitioner's salary does not demonstrate exceptional ability. The petitioner's membership in the Bombay Natural History Society ten years ago cannot be considered to be membership in a professional association. Moreover, the petitioner has not documented any significant contributions made by himself to his field of expertise.

The petitioner has not demonstrated that he qualifies as a member of the professions with education equivalent to an advanced degree. As the director denied the petition finding that the petitioner does not qualify for a waiver of the job offer requirement, we will address that issue as well.

Neither the statute nor Service 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 Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

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 Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 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.

In a letter dated September 29, 1998, counsel stated that:

The Petitioner is currently engaged in the study of controlled effect of certain therapeutic agents on coronary artery disease (CAD). CAD is the chief cause of death in most industrialized societies which is caused by artherosclerolosis of the epicardial coronary arteries resulting in acute ischemic cardiac arrest. The Petitioner has been evaluating the effects of several therapeutic agents for their use as a blocker of platelet aggregation using pharmaco-kinetics . . . There is no question that research in this area will benefit the health care of the population of the United States. Attached are selected articles and information concerning the risk and instances of this horrible health care problem . . .

The Petitioner teaches his scientific discoveries to others. The important and original nature of the Petitioner's research is evidenced by his authorship of scholarly articles in some of the most prestigious international peer reviewed publications in his field including the International Environmental Education News. The Petitioner's resume . . . lists all of his publications. Further, the Petitioner was employed as a tutor in the Learning Center at Delaware Valley College in the past. Also, he has received Dean's List Recognition.

The petitioner submitted several letters of recommendation. Dr. [REDACTED] of the Vanderbilt Medical Center stated that:

[The petitioner] has invested the past three years of his career at the University of Pennsylvania to an important area of clinical cardiological research, namely, the development of new anti-thrombotic agents for the treatment of acute coronary syndromes (heart attacks). His expertise and technical skills in assessing the anti-clotting effects of these agents in on going clinical trials is of significant importance to the future care of patients with cardiac disease.

[REDACTED] a Staff Scientist at the Thomas Jefferson University, stated that:

[The petitioner's] contribution as a research teammate in the field of cardiovascular studies is noticeable. [The petitioner's] recent work under the guidance of Dr. [REDACTED] is to be presented at the Conference held by the European Society of Cardiology . . . This area of research [the petitioner] has chosen has a high potential for the development

of diagnostic and therapeutic applications that are of foremost necessity for the cardiovascular patients. [The petitioner's] contribution is well received by the peers in his area of expertise. He has always been a dedicated researcher and he is highly motivated, which makes him an asset to any Institution.

[REDACTED] a faculty member of the Environmental Medicine, University of Pennsylvania, stated that:

[The petitioner's] research work has been recited in well-reputed conferences. His recent team effort on assessment of platelet glycoprotein IIb/IIIa blockade is accepted at the international conference to be conducted by the European society of Cardiology at Vienna, Austria. [The petitioner] also contributed his knowledge on the study of comparative effects of an oral glycoprotein antagonis and aspirin on novel indices of receptor blockade, which has been submitted to the American Heart Association for the 71st Scientific Sessions.

I am highly impressed by the scientific capabilities of [the petitioner]. I have always found him to be an observant, meticulous and dedicated researcher. I have no doubt that he will certainly develop into an outstanding biomedical scientist. I believe granting permanent residence would allow him uninterrupted opportunity for professional contribution and personal growth.

[REDACTED] Assistant Professor of Medicine at the University of Pennsylvania, stated that:

[The petitioner] is performing over fifty different assays on technically specific instruments. He is expert at this point in Radio Immuno Assay Technique, Enzyme Linked Immuno Sorbent Assays, Calorimetric, Platelet Aggregation, and biochemical methods. His hard work and keen interest augmented his dexterity to become a co-author [sic] of my recent paper presented in a European Cardiology conference (Vienna, Austria). He has also worked on different phases of clinical trial of new cardiovascular drugs of different pharmaceutical companies . . . I could see [the petitioner] is climbing the ladder of success in the biomedical field.

On February 11, 1999, the director requested that the petitioner submit evidence to show that the proposed benefit will be national in scope. In response, counsel stated that the petitioner "is one of the few scientists involved in research on the assessment of hemostatic function in human blood." The petitioner submitted five separate letters of recommendation from doctors at the University of Pennsylvania. Also, Dr. [REDACTED] a research scientist at Rhone-Poulenc Rorer in Collegeville, Pennsylvania, stated that:

[The petitioner's] contributions are of such an exceptional nature that they substantially exceed those of other scientists in the same field.

[The petitioner] has provided a service to the cardiac drug assessment study been [sic] held at the Presbyterian Hospital of Philadelphia and conducted by the Center for Experimental Therapeutics of the University of Pennsylvania for the period of over twelve months. Currently he is at the General Clinical Research Center supported by National Center for Research Resources, National Institutes of Health, and Department of Health and Human Services; established in 1962 to provide an institutional resource for conducting specialized multidisciplinary research devoted to the improvement of human health.

The petitioner submitted several articles attesting to the promise of clot-busting drugs and the expense of heart disease. The petitioner was not named in any of these articles.

The director denied the petition, stating that the petitioner's "request for a 'national interest' waiver is based on a worker shortage." On appeal, counsel argues that "it would be contrary to the national interest to potentially deprive the prospective employer of the services of the alien by making the position available to U.S. workers." [REDACTED] Study Coordinator at the University of Pennsylvania, states that the petitioner's "contributions are of such an exceptional nature that they substantially exceed those of other scientists in the same field."

The importance of research into finding a more effective treatment for heart disease is beyond serious dispute. It does not follow, however, that every researcher studying treatments for this disease qualifies for a national interest waiver. An alien cannot establish qualification for a national interest waiver based on the importance of his or her occupation. It is the position of the Service to grant national interest waivers on a case by case basis, rather than to establish blanket waivers for entire fields of endeavor.

The petitioner has not demonstrated that his past accomplishments are indicative of a potential future contribution to the national interest. On his resume, the petitioner provided a list of his scientific publications. Of the five articles he has published, four dealt with ecologic studies. The only article which dealt with CAD is the previously discussed article which was primarily written by [REDACTED]. The petitioner was one of seven contributors to this article. The extent of his participation in this paper has not been explained. Moreover, though the petitioner has stated that the findings of this paper were presented at an international conference, their impact on the study of CAD have not been documented.

Furthermore, although the petitioner has submitted several letters of recommendation; the vast majority of these letters were written by people associated with the University of Pennsylvania, the petitioner's current employer. All of the authors of the letters of recommendation had a personal relationship with the petitioner. The petitioner has not documented that his work has been read or studied by anyone outside of his academic circle. The petitioner has not established that a waiver of the job offer would be in the national interest.

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, 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.