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U.S. Department of Justice
Immigration and Naturalization Service

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

[Redacted]

Public Copy

File: WAC 98 074 50101 Office: California Service Center Date: **AUG 1 2001**

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)

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 that 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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 an alien of exceptional ability. The petitioner seeks employment as a medical researcher at Charles R. Drew University of Medicine and Science. 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 director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The petitioner claims eligibility as an alien of exceptional ability. Because he qualifies as an advanced-degree professional, however, an additional finding of exceptional ability would be of no further benefit to the petitioner. 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 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.

The application for a national interest waiver cannot be approved. The regulation at 8 C.F.R. 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The director cited this documentary requirement in the denial notice. The record does not contain this document, and therefore, by regulation, the petitioner has not properly applied for a waiver of the job offer requirement.

The petitioner submits several letters in support of his claim.

Dr. Farouk Ezzat, director of Mansoura Medical Center, where the petitioner worked prior to entering the U.S., states that the petitioner conducted research to study "the effect of malnutrition on the immune system specifically with increased incidence of immune deficiency diseases." Dr. Ezzat states "[the petitioner] is making a significant contribution to the field of immunodeficiency virus disease in view of his contribution to biomedical research in our facility and country wide."

Professor Farha El Chenawi of Mansoura University, states that the petitioner "has been engaged in our Immunology studies in a position as a researcher. He is an experienced person in our team. . . . We believe that he will be an excellent addition to research programs in immune deficiency disease and AIDS in [the] USA."

[REDACTED] associate professor at [REDACTED] University of Medicine and Science, describes the petitioner's recent work at that institution:

[The petitioner] joined my research group in March 1996, working on a research project entitled "Enhancement of Natural Killer (NK) activity in immunocompromised individuals." NK cells represent the first line of defense against cancer and viral infected cells. Enhancement of NK activity is very crucial in order to eradicate the cancer and prevent infection.

Several biological response modifiers (BRMs) have been developed to activate the NK cells, but their clinical use was limited because of their severe side effects. We (myself and other investigators, including [the petitioner]) have been successful in developing a new BRM that has no side effects and we are still working to develop BRM with the least side effects that could be a promising agent for clinical trials. [The petitioner's] work in this field has produced interesting results. . . . It is my opinion that [the petitioner] has made a significant contribution to the field of immunotherapy.

The above letters, while complimentary, do not demonstrate that the petitioner's work has had any significant impact beyond the institutions where he has personally worked. Counsel observes that [REDACTED] as published several articles, and asserts that these articles are evidence of the petitioner's contributions, but the petitioner is not a credited co-author of these articles, nor do the articles contain any apparent acknowledgement that the petitioner had made any contribution to the articles.

The director denied the petition, stating that the petitioner has established the intrinsic merit and national scope of his work, but

not that the petitioner, in particular, has established that he has made or is likely to make especially significant contributions to his field.

On appeal, the petitioner submits copies of previously submitted documents as well as some new exhibits and a brief from counsel. The only new letter submitted on appeal is from Professor [REDACTED] of [REDACTED] University of Medicine and Science, who states:

[The petitioner] is considered a key investigator who has been successful in development the BRM treatment for AIDS patients with excellent results. This has been submitted for publication in the American Journal of Medicine.

It is our impression that [the petitioner] has an excellent first hand experience in the development of new remedies for AIDS disease and the very near future for cancer patients.

This will bring upon a breakthrough in modern medicine in the battle of fighting diseases that were considered incurable.

The assertion that a future breakthrough will result from the petitioner's current work is necessarily speculative, and the petitioner offers no evidence to show that any of his past work qualifies as a "breakthrough in modern medicine." The submission of an article for publication carries relatively little weight because, if the article has not been published yet even as of the appeal date, then this research presumably cannot have had significant influence as of the earlier filing date of the petition.

Counsel argues that "experts of national and international renown have written testimonial letters" on the petitioner's behalf. The record does not establish that the petitioner's witnesses are especially prominent in the field of immunological research, and even if it did, as noted above, every one of these witnesses is a former employer, supervisor, or instructor of the petitioner himself. If the petitioner's past research has been especially important in the field, then it would not be unreasonable to expect some degree of attention outside of the universities where the petitioner has performed his research.

The petitioner submits a copy of an undated research abstract on which the petitioner's name does not appear. The majority of the resources cited in the abstract's bibliography are articles by Dr. Ghoneum. The petitioner also submits a copy of a research paper, co-authored by the petitioner, presented at a 1997 conference. The record offers no evidence regarding the response of the scientific community at large to the petitioner's work. The sheer number of research papers published in journals and presented at conferences

is such that we cannot conclude that the very act of publication or presentation is presumptive evidence of eligibility for the national interest waiver.

Counsel describes the petitioner's various research ventures at length, and discusses their promise and the clearly desirable goal of fighting AIDS and other immunological disorders. These arguments and observations, however, fail to establish that the petitioner's contributions in this important field stand out from those of others conducting similar research. The overall national interest of immunological research, as an abstracted whole, is not in dispute here. Nevertheless, 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.¹

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.

¹A limited exception, established by recent legislation, applies only to certain clinical physicians and not to medical researchers.