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U.S. Department of Justice

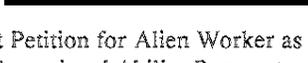
Immigration and Naturalization Service

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



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File:  Office: Nebraska Service Center Date: DEC 13 2011

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)

IN BEHALF OF PETITIONER:



Public Copy

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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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 research associate at the University of Washington, where the petitioner is a doctoral student. 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 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 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 petitioner's initial submission includes several witness letters. The most detailed discussion of the petitioner's work appears in a letter from Professor Irwin G. Sarason of the University of Washington:

[The petitioner] is deeply involved in research on the relationship between stress and coronary heart disease. . . . He is also conducting important research on the impact of the psychological characteristics of Asian-American population on mental health care in the U.S. His contributions are extremely critical and play an essential role in the research of our department. . . .

Coronary heart disease (CHD) is the leading cause of death in America. . . . The research project [the petitioner] is working on studies spouse caregivers of persons with Alzheimer's disease. Taking care of a progressively deteriorating spouse

is a chronic stressor. This situation provides an opportunity to study how stress plays a critical role in the development of CHD.

In the CHD project [the petitioner] is responsible for studying the psychological impacts of caregiving stress and the pathway from psychological distress to physiological disregulation. . . . The kind of study like this one is extremely complicated since it involves multiple aspects of psychology and physiology. Thus it requires that the researcher is not only an expert in psychology, but also has tremendous knowledge in biomedical sciences and clinical experience. [The petitioner] is just such a researcher. . . . [and] he is also a master of advanced statistical analysis. With a new statistical technology, [the petitioner] and his colleague successfully constructed a psycho-physiological model explaining the pathways from chronic stress to CHD. . . .

Another major study that he is conducting involves research on psychological characteristics and mental health services for Asian-American population. His pioneering work on the concept of "Face Concern" in Asian culture and how it changes and regulates people's behavior in the acculturation process significantly impacts the quality of current mental health care. . . . His exceptional abilities have enabled him to introduce the first empirically validated personality assessment instrument that quantitatively measures an individual's tendency of Face Concern. . . .

[The petitioner's] work may turn out to be a landmark study in the role of Face Concern as it relates to the mental health of Asian Americans. What [the petitioner's] research suggests is that Face Concern, a topic very much neglected in the United States, may be as important here as it is in Asian societies. . . .

[The petitioner's] outstanding research talents in stress and behavioral medicine combined with his strength in statistical analysis make him an extremely valuable contributor in the very challenging field of psychological research. . . .

I do not believe our research efforts can reach successful culmination without [the petitioner's] assistance.

Six other researchers and professors at the University of Washington offer letters of support, as do two individuals who previously had worked with the petitioner at the Institute of Psychology at the Chinese Academy of Sciences. These individuals, for the most part, discuss the same projects described above in Prof. Sarason's letter, but they also mention other activities that the petitioner has undertaken.

For example, Dr. Wenbin Mo, who "worked directly with [the petitioner] for three years" at the Chinese Academy of Science, states that the petitioner "developed new national standardized personality and mental health questionnaires, and trained other professionals on psychometrics, clinical psychology, personality theories, research design and statistics," and that the petitioner "was selected as one of the main organizers of a major national research project . . . consisting of over 70 other health care researchers from all over China." Dr. Mo does not describe the project itself.

Dr. James M. Scanlan, a research scientist at the University of Washington, states that the petitioner "was an essential part of the Chinese Personality Project which translated the MMPI (Minnesota Multiphasic Personality Inventory), the world's most widely used clinical personality assessment tool, into Chinese and developed Chinese norms."

Many witnesses emphasize that the petitioner is an indispensable part of projects underway at the University of Washington. They do not explain why the petitioner's continued involvement with those projects is contingent on his receiving permanent immigration benefits. At the time of filing, the petitioner was still a doctoral student, with a valid nonimmigrant student visa unaffected by the outcome of this petition.

The record contains documentation regarding the study of stress among caregiver spouses. This article repeatedly mentions Professor Peter P. Vitaliano, but other researchers are identified only collectively as Prof. Vitaliano's "coworkers" at the University of Washington. Other articles provide general background information, which establishes the intrinsic merit and national scope of the petitioner's work but does not distinguish the petitioner from others working in the same field.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted additional witness letters, background documentation, and scholarly writings by the petitioner.

The most in-depth letter in this response is from Prof. Peter Vitaliano, director of the Stress and Coping Project at the University of Washington, who states:

[The petitioner's] talents in statistical and mathematical analysis make him invaluable to our project. . . . In a recent presentation . . . we developed a path model to describe how stress, psychological characteristics . . . and social factors interact with physiological variables . . . to lead to the development of CHD. . . . This finding has been highly regarded as a breakthrough in the field. The model was developed by [the petitioner] using a Partial Least Squares approach to

Structural Equation Modeling. . . . Without this new technique, it would have been impossible to develop the model. [The petitioner] is one of the few experts (less than 30, I believe) in this country to know the technique. . . . We cannot continue our research without him.

If knowledge of this technique is, in fact, an essential component of the petitioner's job duties, then it is not clear why that requirement could not be listed on an application for labor certification. Given the small number of researchers who know the technique, there would appear to be a good chance that the application for labor certification would be approved. Nevertheless, having asserted that "less than 30" individuals in the United States possess a skill without which the research project "cannot continue," Prof. Vitaliano asserts that "we are not seeking a national interest waiver based on a shortage of qualified workers."

Prof. Vitaliano asserts that the petitioner "has a long history of outstanding achievements" which justifies projections of future benefit, and that the petitioner "is well known," and his "cutting-edge research . . . is also highly regarded by other psychologists." The original submission showed only the reaction of colleagues at the University of Washington and the Chinese Academy of Sciences, with no direct evidence that researchers lacking close ties with the petitioner have viewed the petitioner's work as being especially significant.

The remaining two letters submitted with the petitioner's response do not establish wider recognition. One witness, Dr. Susan K. Lutgendorf of the University of Iowa, has collaborated with the petitioner on several projects. The other witness, Professor Ilene C. Siegler of Duke University, who states that as "a colleague of Dr. Peter Vitaliano" she has "been able to observe [the petitioner's] excellent work," praises the petitioner's "exceptional ability" and states that it would be "beneficial" to approve the petition. Prof. Siegler offers no specific comment on the petitioner's work or how it has affected researchers outside of the petitioner's own group of collaborators.

The director denied the petition, stating that the record does not "establish that the alien petitioner's work is known and considered unique outside his immediate circle of colleagues." The director also noted that the petitioner has not established why the labor certification process, normally mandated by law for the visa classification sought, "is inappropriate in this case."

On appeal, the petitioner submits arguments from counsel, one further witness letter and other evidence. To show the impact of the petitioner's work, the petitioner submits a printout from a citation index, showing that one of his articles has been cited seven times between its 1996 publication and 1999. One of these citations is a self-citation by co-author J.X. Zhang.

The letter on appeal is from Professor Richard M. Suinn of Colorado State University, president of the American Psychological Association, who states:

I met [the petitioner] in a professional activity in Seattle, Washington. I am very impressed by his unique background, exceptional talent, and outstanding achievement in psychological research. Other psychologists who know his work also evaluate him very positively. . . .

[The petitioner] has already applied his research talents and made outstanding contributions to psychology and behavioral medicine. . . .

[The petitioner] and his colleagues are the first to demonstrate the complicated interaction between psychosocial factors and metabolic physiological factors in the etiology of CHD - a significant contribution to our understanding of CHD. No prior studies have applied sophisticated mathematical and statistical modeling method, as used in [the petitioner's] study, in this line of research.

A letter from a top official of a major national organization carries substantial weight, but there remain issues and unanswered questions which prevent the approval of the waiver request. For instance, Prof. Suinn has asserted that the petitioner's work represents a significant advance in the study of coronary heart disease, but the record does not show that this opinion is shared by experts on diseases of the heart (such as cardiologists).

Also, while Prof. Suinn has stated that the petitioner's work is admired by "[o]ther psychologists who know his work," this assertion contradicts nothing in the director's decision. Indeed, the director acknowledged that those familiar with the petitioner's work hold it in high regard. The director also found, however, that most of the psychologists who know the petitioner's work are the petitioner's own collaborators and professors. The record does not contain objective evidence to show that the petitioner's work, prior to the petition's September 1998 filing date, had already influenced the work of researchers at a national level. The petitioner has not shown that six independent citations of one article over the course of three years represents unusually high impact within the field.

Counsel's arguments largely derive from the letters in the record, but those letters do not always support counsel's conclusions. For instance, counsel asserts that the letters establishes that the petitioner's "work is well known in the field." The letters do not, in fact, provide direct evidence that the petitioner's work is well known outside of the universities where he has worked, and the groups with which he has collaborated. Counsel asserts that these witnesses have no motive to submit "false or biased testimony." We do not claim that the witnesses have made false or intentionally

biased statements; but a letter from one of the petitioner's collaborators cannot directly establish that non-collaborators are aware of the petitioner's work and consider it to be of special significance.

While the director has repeatedly observed that the petitioner has not explained why labor certification would not be an appropriate avenue, the petitioner has not addressed this concern. As noted above, the petitioner was a student at the time of filing (and appears to still be a student), in which case he is fully authorized to participate in research projects at the University of Washington under the terms of his existing visa. The regulation at 8 C.F.R. 214.2(h)(16)(i) allows an alien to work in the U.S. under an H-1B nonimmigrant visa for up to six years while an application for labor certification is pending. While a variety of factors may have a bearing on each individual case, an application for labor certification would not automatically prohibit an alien's continued employment. Participation in a relatively short-term research study, funded for a finite period of time, is generally not a strong argument that the alien requires permanent immigration benefits as well as an exemption from statutory requirements that generally apply to the visa classification sought. It appears that the waiver request on behalf of this petitioner (who, at the time of filing, was still evidently several years short of the completion of his professional training) is premature at best.

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. Because aliens of exceptional ability are generally required to conform to the job offer/labor certification requirement, attestations of exceptional ability do not establish eligibility for the waiver. 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.