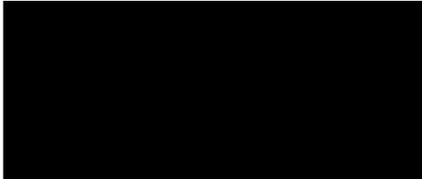




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U.S. Department of Justice
Immigration and Naturalization Service

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



File: LIN-00-070-53962

Office: Nebraska Service Center

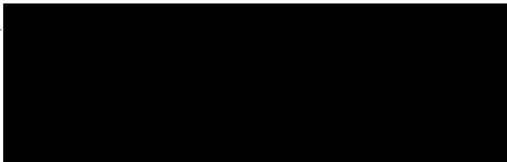
Date: JUL 12 2001

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

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

Robert P. Wiemann, Acting 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 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 question whether the petitioner qualifies as a member of the professions holding an advanced degree. The remaining 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.

In support of the petition, the petitioner submitted several letters, copies of submitted and published articles, and evidence that those articles have been cited.

The director acknowledged that the area of chemistry research was one of substantial intrinsic merit, and that any benefits would be national in scope. The director concluded, however, that granting the waiver to the petitioner would not be in the national interest.

On appeal, counsel reiterates the petitioner's accomplishments, quotes extensively from the reference letters, and provides a ranking of chemical journals as evidence that the petitioner has been published in some of the most esteemed journals.

The record reveals that the petitioner is a doctoral student at the University of Minnesota. The reference letters are from [REDACTED] at the University of Minnesota; Professor [REDACTED] in whose lab the petitioner works at the University of Minnesota; [REDACTED] of the University of Utah who worked with the petitioner in Professor [REDACTED] a postdoctoral fellow working with the petitioner in Professor [REDACTED] a former coworker of the petitioner.

The petitioner's research has focused on improving the general understanding of iron-containing enzymes, including the construction of small synthetic iron compounds. The research has implications for assisting the degradation of toxic herbicides as well as the creation of anti-tumor and anti-viral drugs. The petitioner has also developed synthesized models capable of converting methane to methanol and initiating the synthesis of DNA from RNA.

Several of the letters submitted assert the petitioner's models are the best models to date and contribute to the understanding of how the actual enzymes function. [REDACTED] to the petitioner's "myriad of contributions." [REDACTED] states, "her systematic studies on the structural and spectroscopic properties of these compounds provide a solid foundation for researchers in this area. [REDACTED]"

[The petitioner's] approach involved synthesizing small molecules that mimicked the iron-containing active site of this enzyme. With this approach, she was able to answer questions that would have been all but impossible to address using the complex enzyme system. The great advance [the petitioner] made was to design two ligand systems to test the binding mode of the enzyme cofactor, α -ketoglutarate, a key aspect of the reaction mechanism. These synthetic model studies, which established one binding mode and eliminated several other possibilities, were critical to our work and provided strong support to my enzymatic studies. Because TfdA degrades the persistent and widely used pesticide 2,4-D, [the petitioner's] work has obvious potential in bioremediation. In addition, since TfdA is a member of the α -keto acid-dependent class of oxygenases, enzymes that are involved in a variety of crucial biochemical reactions such as DNA metabolism, collagen formation, and antibiotic biosynthesis, this work also has tremendous potential in the area of drug design.

...

Synthesizing unstable, high oxidation state diiron compounds that mimic the intermediates found in these enzymes is exceedingly challenging, yet [the petitioner] has succeeded in isolating a number of diiron(III) precursors and, remarkably, a highly elusive diiron(IV) species. These complexes are the best models to date and her results, which were published in the *Journal of the American Chemical Society*, the top-ranked journal in the world for chemistry, contribute significantly to our understanding of the enzyme's mechanism.

Dr. Lange states:

It is truly a feat to have synthesized these species in 90% yield and be able to store them in a bottle in a freezer. Her efforts in this area have led to one publication (and another one has been recently submitted) in the prestigious *Journal of the American Chemical Society*, and have provided much needed insight into the reactivity [sic] these enzymes.

Finally, Dr. Dong, a co-author of the petitioner's, states:

[The petitioner's] work was critical and provided a strong synthetic foundation and support to enzymatic studies which are also conducted in our group. . . . Through her extensive spectroscopic studies, very recently she proposed a structure of the iron(IV) intermediate complex which is the first and only example of this type so far

isolated in the synthetic field. The isolation of this iron(IV) complex provided strong support of such species in the catalytic cycle of the enzymes. She developed alternative methods to obtain high yields of such transient high oxidation diiron species at low temperatures and has obtained yields as high as 90%, a remarkable achievement. [The petitioner's] methods not only produce higher yields and cleaner reactions, they also required reduced amounts of chemicals. Previous methods never exceeded 50% yields, including those used in enzyme studies, which makes the characterization and reactivity quantification extremely difficult. Her work has been recently submitted as a short communication to the top journal, the *Journal of American Chemical Society*. It must be pointed out that only breakthrough findings in chemistry research are published as accelerated findings.

While we do not discount the letters from the petitioner's colleagues and professionals, letters from individuals who are personally acquainted with the petitioner's research should supplement evidence of the petitioner's notoriety beyond her current and former colleagues. As discussed above, the letters are all from individuals who either worked with or attended school with the petitioner.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." While the fact that the petitioner's research was published in high ranking publications is impressive, it does not necessarily set her apart from others in her field. While the petitioner's latest research may have been submitted for publication as a rapid communication, there is no evidence that it was accepted for such publication. The record contains no evidence that the petitioner's findings have resulted in clinical trials for anti-tumor drugs, anti-viral drugs, or herbicide degradation. Finally, while it is noteworthy that the petitioner's research has been cited, the record contains evidence of only four citations, one of which is a self-citation by [REDACTED]. It can be expected that if the petitioner's work was truly unique, it would be more widely cited.

The honors awarded to the petitioner consist of scholarships and a teacher's assistant award. While these honors reflect the petitioner's scholastic achievement, they do not demonstrate the petitioner's contributions to her field of chemical research.

Finally, while not discussed on appeal, counsel initially argued that researchers should not be subject to the labor certification process because it is "sterile" and does not take into account the creativity of the researcher. Counsel argues, in effect, that scientists as a class should not be subject to the labor certification requirement. Nevertheless, the plain wording of the statute indicates that members of the professions holding advanced degrees (including scientists) as well

as aliens of exceptional ability in the sciences are, generally, subject to the job offer/labor certification process. The Service is not in a position to rule that legislative error subjected scientists to the labor certification requirement. As long as the statute's plain wording places a job offer requirement on scientists, this office lacks the authority to exempt scientists wholesale from that requirement. While some occupations may be more amenable to the national interest waiver than others, final decisions must remain at a case-by-case level. Regardless, such arguments focus on peculiarities of employment in the sciences, rather than on the merits of the individual alien. Greater weight attaches to arguments specific to this petitioner, which have been addressed above.

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.