



U.S. Department of Justice

Immigration and Naturalization Service

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File: WAC 98 138 51326 Office: California Service Center Date:

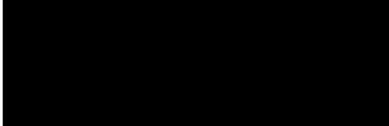
JUL 20 2001

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:



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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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 and as a member of the professions holding an advanced degree. The petitioner seeks employment as a researcher at JH Biotech, Inc. 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 petitioner holds two M.S. degrees from the University of Hawaii at Manoa ("UHM"), one in Food Science and the other in Biosystems Engineering. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The petitioner also 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 remaining issue 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.

Along with copies of the petitioner's published research, the petitioner submits several witness letters. [REDACTED] director of Quality Control at JH Biotech, states:

[The petitioner] was employed to manage a research project -- Biofertilizer for crop growth. Essential nutrients play an

important role on crop growth. Failure to keep enough nutrients in the soil in balance severely affects production yield. In the project, [the petitioner] successfully researched and experimented on the use of biofertilizer (VAM fungi & Phosphate-solubilizing Microorganism) to increase the availability of fertilizer to crops during the growing season and stimulate plant growth. In addition, he also made contributions to improve the quality of products and develop new products, such as natural pesticide (GC-3) and natural repellent (BIO-R).

[The petitioner] is an exceptionally gifted scientist who has made significant achievements in the Agricultural Biotechnology field. . . . He is an accomplished scientist who has done significant research work . . . and his publications are read and respected by the scientific community.

[REDACTED] owner of the FASA Company, states:

In 1997, I did consultant work with JH Biotech where [the petitioner] is employed as a scientist. I found out that [the petitioner's] research led to the establishment of novel model system for pigment production. Owing to concerns on safety, many synthetic pigment[s] have been banned for their use in food products. This has stimulated [the petitioner's] research interest in development of alternative technology for pigment production from natural sources. However, field-grown plants are seasonal and the quality of their color varied due to uncontrolled fluctuations in growing conditions. . . . Thus, the development of [a] novel method for pigment production in a sweet potato culture system, is very significant in biotechnology of food production.

[REDACTED] the petitioner's undergraduate advisor at National Taiwan University, makes similar comments regarding the petitioner's pigment research. Another professor from National Taiwan University, [REDACTED] states:

I do believe that [the petitioner] has provided an important contribution to the area of food and agricultural engineering. His work ranges in the use of Vesicular Arbuscular Mycorrhizal (VAM) in controlling the soil fungi. His present task is to use microbial methods to evaluate the efficiency of VAM fungi in the lab and their applications in the greenhouse and field test, which is going to be scaled up for production. . . . His work will make significant contributions to the improvement of the environment quality and natural resources in the world.

[REDACTED] who knew the petitioner at National Taiwan University, discusses the crop loss caused by powdery mildew and states that the petitioner is experimenting with fungicides that

incorporate "active ingredient[s] in the essential oils that are exempted from federal pesticide regulation because they pose little or no risk to public health or the environment."

UHM [REDACTED] who served on the petitioner's thesis committees, states that the petitioner's "areas of studies are highly useful in terms of economic development in a modern society. . . . With his knowledge, he can be a great asset to many research institutes or industry involving . . . plant or environmental biotechnology."

Several of the witnesses assert that the petitioner's background is notable because his training is particularly broad.

The director denied the petition, stating that the national interest claim appears to be based on general arguments, such as the desirability of natural fungicides over artificial ones. The director concluded that the petitioner has not met the guidelines published in Matter of New York State Dept. of Transportation.

On appeal, the petitioner submits what appears to be a complete duplicate of the record, along with a brief from counsel. Counsel argues that the petitioner "has made significant contributions to improving agricultural productivity, resulting in journal publications as well as a conference presentation." Certainly, the witnesses have attested that the petitioner's work has value; but we cannot ignore that every one of those witnesses has employed, taught, or collaborated with the petitioner. If the petitioner's contributions to the field were of particular significance, it would not be unreasonable to expect direct evidence of the petitioner's impact beyond his own employers and mentors.

Furthermore, a fundamental purpose of scientific research is to add to the general pool of knowledge. It is difficult to imagine a university conferring a degree, or a company paying a salary, to a researcher who was not producing useful new knowledge. Simply listing the petitioner's achievements does not establish their significance compared with the accomplishments of other fully qualified and competent researchers. We do not question the overall value of the type of research which the petitioner has ably conducted; the value of agricultural research is not at issue here. The record offers no evidence to establish the extent of the practical effect which the petitioner's work has already had on agriculture and food production.

Counsel repeats the assertion that the petitioner's published writings "are widely read and respected by the scientific community." The record offers no empirical support for this claim, such as evidence that other researchers have heavily cited the petitioner's work, or letters from researchers who know of the petitioner only through his published articles.

The record presents the petitioner as a highly accomplished and diligent student, who is well-equipped and qualified to work in his professional field. Many of his projects may yet hold promise for significant contributions. At this early stage, however, there is no evidence that the petitioner's work has had a substantial impact beyond those who have worked with the petitioner directly, and the request for a national interest waiver appears to be 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. 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.