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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



Public Copy

JUN 18 2001

File: [Redacted] Office: Nebraska Service Center Date:

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: Self-represented

Identification 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 seeks employment as a research fellow at the University of Michigan Medical Center. 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.

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.

The petitioner holds an M.S. degree in Microbiology from the University of Nebraska. 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 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.

Matter of [REDACTED] 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 states that his past research achievements include the identification of "a novel silent hemolysin gene from enterotoxigenic *E. coli*," although the petitioner indicates that these findings were never published because "European people caught up so fast" and funding problems prevented the completion of the petitioner's research. The petitioner states that he also "found mutation of [hepatitis B virus] surface antigen is induced after liver transplant by prophylactic therapy with high titer anti-HBV surface antibody," and asserts "[t]his finding is helpful . . . to design better strategy to prevent HBV reinfection after liver transplant."

Finally, the petitioner describes his current research, pertaining to mosquito-borne dengue fever. The petitioner states that he has identified a receptor for the dengue virus on human endothelial cells, and that drugs to block a key viral protein have, in the laboratory, prevented the penetration of such cells by the virus. The petitioner states that he is "expressing the chimerical protein for isolating putative receptor on human endothelial cell. This is a key step of this project for further identifying this receptor function and cloning its cDNA."

The petitioner's initial submission includes copies of articles and presentations which the petitioner co-wrote, as well as letters from several witnesses, all of whom have been on the faculty of the University of Nebraska or the University of Michigan.

associate professor at the University of Nebraska, is supervising the petitioner's research at that institution. Dr. Marks states:

Work in my laboratory is leading to an understanding of how dengue virus infection causes disease in blood vessel-derived endothelial cells. We have discovered that dengue virus binds specifically to a glycoprotein expressed on blood vessel cells. As we have been able to inhibit cellular infection by blocking this binding, we believe that further investigating chemical compounds that inhibit binding may lead to the development of drugs that could be used as a treatment for dengue virus infection. . . .

[The petitioner] is currently the only person in my laboratory working on this important aspect of the pathogenesis of dengue virus infection. . . . Specifically, he is using techniques in molecular and cellular biology to generate a recombinant form of the dengue virus envelope protein, such a molecule could then be used in further studies to identify the exact structure of the vascular endothelial cell dengue virus receptor, and identify the regions of the dengue virus envelope protein responsible for binding to this receptor. This work could lead to development of vaccines to prevent infection, and drugs to treat infection.

Other witnesses discuss the above work, and attest to the originality of the petitioner's research.

The director requested further evidence that the petitioner has met the guidelines published in Matter

In response, the petitioner states:

[The project I am working for is not only to target Dengue virus, the generated results will discover an unknown mechanism of interaction between viruses and human target cells in several genera viruses in *flaviviruses* including *hepatitis C*

virus, [REDACTED] viruses, encephalitis virus, yellow fever virus, tick-borne virus and pestiviruses.

The petitioner asserts that, while "the mechanism of hepatitis C virus invasion to liver cell is still unclear," his research "will give a breakthrough in this area." The petitioner does not clarify how he knows that his work "will," as opposed to "may," yield a "breakthrough" in this regard. The petitioner submits documentation demonstrating the dangers of dengue fever, hepatitis C, and *E. coli* poisoning, which confirm the intrinsic merit and national scope of the petitioner's past and present work (although they do not address the importance of this petitioner in the study of those pathogens).

The petitioner submits further letters from faculty members at the various universities where the petitioner has trained and studied, as well as other individuals who have collaborated with him. These individuals praise the petitioner as a creative researcher who has independently formulated research plans and produced significant results. The witnesses do not, however, demonstrate that the petitioner's past work has already shaped the research of other scientists (for example, through heavy citation of the petitioner's published work by independent researchers) or that the petitioner's efforts at the University of Michigan have thus far yielded practical results against dengue virus and related flaviviruses.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work, but concluding that the petitioner has not shown that his past work is of a caliber which warrants a national interest waiver.

On appeal, the petitioner contends that the director failed to consider two letters which the petitioner had submitted in response to the director's request for further information. One of these letters is the second letter from Dr. Rory Marks. In this letter, Dr. Marks states:

[W]e know little about the interaction of most viruses with their specific target cells. Understanding these interactions will be necessary for us to develop strategies for preventing, controlling, and treating these diseases. [The petitioner] is attempting to purify and identify a specific receptor utilized by dengue virus for binding to its target cells. If this approach is successful, we would be in an excellent position to develop new pharmaceuticals for treating this currently untreatable infectious disease. Further, the application of his findings would not be limited just to the area of dengue virus pathogenesis; results obtained may reveal common mechanisms of virus-target cell interactions used by other viruses. . . .

[The petitioner's] project is technologically demanding. [The petitioner] has degrees both in medicine and in basic medical science. [REDACTED] he is in a good position to conduct productive research in the area of human diseases. . . .

He is performing a critically important role in this study. In view of the difficulty of this project, the quality of his work, and the independent creativity he has exhibited in problem solving, I believe he qualifies to be considered as unusually highly skilled.

The other letter is from [REDACTED] assistant professor at the University of Michigan, who states:

[The petitioner's] work on understanding the receptor for Dengue virus on vascular endothelial cells will be critical for developing new pharmaceutical approach[es] for treating this serious disease where no current treatments exist.

The technology in both basic science and medicine required to complete this project is difficult and demanding. [The petitioner] has the training and experience to perform this work. He has demonstrated exceptional productivity and technical expertise in the laboratory.

A plain reading of the statute and regulations shows that aliens of exceptional ability are generally required to present a job offer with a labor certification at the time the petition is filed, and only for due cause is the job offer requirement to be waived. Clearly, exceptional ability in one's field of endeavor does not, by itself, compel the Service to grant a national interest waiver of the job offer requirement.

These individuals indicate that the petitioner plays an important role in the particular project underway at the University of Michigan. The petitioner is already cleared to work on this project through his nonimmigrant visa, which (pursuant to 8 C.F.R. 214.2(h)(16)(i)) remains valid even if the University of Michigan applies for labor certification on his behalf. If the University of Michigan does not seek to employ the petitioner permanently, then it is not clear why the petitioner would require permanent immigration status in order to work on the project.

The researchers assert that the project, if successful, could have significant impact on the prevention and treatment of several viral diseases. Nevertheless, they clearly do not regard the success of the project as inevitable. General arguments regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual alien benefits the national interest by virtue of engaging in the field or seeking an as yet undiscovered solution to

the problematic issue. See Matter of New York State Dept. of Transportation, supra.

The petitioner has clearly earned the respect and admiration of faculty members at institutions where he has worked and studied. He has also published his findings, making them available for use by other scientists with similar research interests. The petitioner has not shown, however, that his research has attracted particularly heavy interest outside of the institutions where he has conducted that research, or demonstrated that his past findings are inherently more significant than the findings of many others in his field. While the petitioner is a skilled and dedicated researcher, capable of making worthwhile contributions in his field, the record does not indicate that the petitioner stands out from his peers in a manner that would warrant a waiver of the job offer requirement which, by statute, applies to the classification sought.

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.