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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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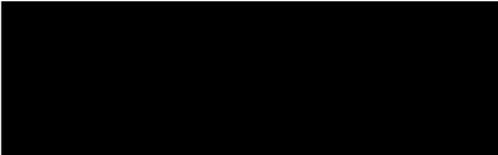
Public Copy

File: [Redacted] Office: Nebraska Service Center Date: 02 NOV 2007

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:



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 sustained.

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 an environmental research scientist. At the time of filing, the petitioner was a doctoral student at the University of Washington ("UW"). 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 an M.S. in Engineering from UW. 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 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.

Along with documentation pertaining to his field of research, the petitioner submits several witness letters. Professor H. David Stensel, the petitioner's research supervisor at UW, states:

Hazardous waste site pollution is a serious nationwide problem. . . . In 1995, I was asked to co-lead the Remediation Technology Group for the Consortium of Risk Evaluation and Stakeholder Participation (CRESP), a national university-based consortium supported by the U.S. Department of Energy. CRESP was created specifically to develop a credible strategy for providing the scientific and technical information needed for risk-based cleanup of complex contaminated environments, especially nuclear weapon waste sites operated by the U.S. Department of Energy. . . .

[T]he application of bioremediation (i.e., using organisms such as bacteria to degrade and detoxify harmful chemical waste) is being driven by its technical and economic advantages over competing conventional technologies (particularly the costly technique of digging up and cleaning contaminated soils). . . . There are great advantages to bioremediation as an environmental cleanup technology, and further research is critical to making this a viable option for enhancing environmental quality in the United States and worldwide. . . .

Over the last three years, [the petitioner] has been extremely successful and has received considerable international recognition for his contributions toward developing bacteria cultures for breaking down and detoxifying harmful chemical waste. Among other things, he successfully developed a high-performance bacteria culture that can completely mineralize (i.e., breakdown into harmless substances) pentachlorophenol (PCP). . . . [The petitioner's] new technique accomplished the world's highest PCP removal rates ever reported for anaerobic PCP degradation. . . .

[The petitioner] has since gone on to make even greater discoveries with respect to carbon tetrachloride (CT). . . .

[The petitioner] has been playing a critical role in investigating the biological degradation of CT by bacteria cultures and developing a scalable biological treatment system to clean up soil-based CT-contaminated gases. He has already successfully developed a system that works under laboratory conditions and has made great strides toward scaling it up for widespread use on large sites. Mathematical modeling indicates that [the petitioner's] system will be capable of reducing the cost of cleaning up CT by 25% and also avoid the risk of human exposure to this toxic compound during transportation. . . .

[The petitioner] has a long track record of important contributions in environmental engineering research, and since coming to the United States has made several internationally recognized accomplishments toward the economic and safe cleanup of some of America's most prevalent and harmful toxic chemicals.

Other researchers discuss the above projects and offer other details. For instance, Dr. Yong Wang, senior research engineer at Pacific Northwest National Laboratory, states:

[The petitioner] demonstrated that the ability of his bacteria culture to clean up one toxic waste (CT) can be substantially increased by "feeding" these bacteria another type of harmful waste, namely propylene glycol. . . . [The petitioner] has also made great strides toward explaining the mechanism through which propylene glycol can induce the bacteria to speed up their degradation of CT. [The petitioner's] unique system is a truly unique and valuable example of "killing two birds with one stone."

The witnesses indicate that the petitioner has produced over 20 articles and conference presentations, which "have been well received" in the field. Most of the witnesses are located in the Seattle area where the petitioner was a student at the time of filing, but there are exceptions such as Dr. Robert Sanford, an assistant professor at the University of Illinois at Urbana-Champaign.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's occupation but stating that the petitioner has not satisfied the third prong of the national interest test described above. The director stated that the petitioner has not shown "that the impact of his achievements to date significantly exceeds that of similarly educated environmental engineers."

On appeal, counsel protests that the director never issued a request for further evidence as required by 8 C.F.R. 103.2(a)(8) "in . . . instances where there is no evidence of ineligibility,

and initial evidence or eligibility information is missing or the Service finds that the evidence submitted . . . does not fully establish eligibility." In the event of such an omission by the director, the most expedient remedy would appear to be full consideration, on appeal, of any evidence which the petitioner would otherwise have submitted in response to such a request for further evidence.

In this instance, the appeal does not contain any additional evidence that pertains directly to the petitioner's eligibility as of the petition's filing date. In Matter of Katicbak, 14 I & N Dec. 45 (Reg. Comm. 1971), the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. The new evidence submitted on appeal all dates from after the filing date. Counsel does not identify any other evidence which the petitioner would have submitted in response to a request for further evidence, but which the petitioner has nevertheless withheld on appeal.

We note that one of the new documents submitted on appeal is an independent review of a recent article by the petitioner, submitted for publication in Environmental Science & Technology. The reviewer deemed the article to be "of very high importance to the field of bioremediation." This article is largely of circumstantial value, as it dates from well after the petition's filing date, but it nevertheless establishes independent and highly positive reaction to the petitioner's work in the field of bioremediation. Indeed, the article is in the specific area of bioremediation of carbon tetrachloride contamination, an area which the petitioner was already exploring at the time he submitted the petition. Thus, this evidence is not entirely unrelated to the petitioner's work as of the date of filing.

Counsel is on stronger footing when arguing that the director disregarded the facts of the petition, or at least did not accord the evidence due weight. Counsel notes that the record contains "independent" testimony from Dr. Robert Sanford of the University of Illinois, demonstrating acknowledgement of the petitioner's work outside of the Seattle area. While many of the witnesses have been more closely connected to the petitioner, some of them have established significant recognition in the field which gives added weight to their comments. For instance, Dr. Yong Wang, identified above, was a winner of a prestigious 1997 R&D 100 Award from R&D magazine. Dr. Wang quotes the Chicago Tribune as deeming the R&D 100 Awards to be "the Oscars of applied scientific research." While independent acknowledgement of the petitioner's work is important, by no means does it follow that the statements of those close to the petitioner are without weight.

The director, in denying the petition, observed that the witnesses have not explained "why the labor certification process is inappropriate in this case." Counsel argues that the witness

letters should not be faulted for failing to discuss that specific issue. Upon consideration, we find that, although the witnesses have not discussed labor certification directly, they have certainly demonstrated that the petitioner is responsible for particularly significant innovations in the important field of bioremediation. From this we can reasonably conclude that the importance of retaining the petitioner's services in the United States outweighs the intrinsic national interest residing in the labor certification process.

The record indicates that the petitioner has been an unusually prolific author in his field, although the evidence regarding the petitioner's published work would arguably have been strengthened if the petitioner had produced evidence to show heavy citation of his published articles. Such evidence would provide direct and measurable corroboration of the vague assertion that his work has been "well received" throughout the field.

While we are able to imagine ways in which the petitioner could have presented a stronger case, we find nevertheless that the evidence that the petitioner has submitted is sufficient to support a finding of eligibility. The petitioner does not appear to be merely a laboratory technician, primarily following the instructions of others while offering few original contributions of his own initiative. Furthermore, the discoveries and innovations attributed to the petitioner do not appear to represent merely incremental advancements in the field of bioremediation. Rather, the petitioner appears to have been a primary force behind significant innovations which have attracted favorable notice not limited to the faculty and alumni of the University of Washington.

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 field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes the significance of this petitioner's research rather than simply the general area of research. Therefore, on the basis of the evidence submitted, the petitioner has 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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn.

ORDER: The appeal is sustained.