

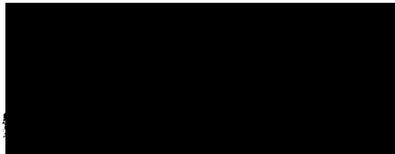


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U.S. Department of Justice
Immigration and Naturalization Service

Identification data deleted to
prevent clearly unwarranted
invasion of personal privacy.

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



File: [Redacted] Office: Nebraska Service Center

Date: APR 29 2002

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 to classify the beneficiary 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 to employ the beneficiary as an assistant professor, tenure track. 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 beneficiary 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 a Master's degree in Pediatric Dentistry from the University of Michigan. 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.

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:

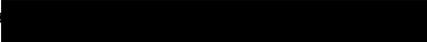
The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the 'prospective national benefit' [required of aliens seeking 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.

We concur with the director that the beneficiary works in an area of intrinsic merit, medical research, and that the proposed benefits of his work, improved treatment for oral cancer by depriving the tumors of blood vessels, would be national in scope. It remains, then, to determine whether the beneficiary will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this beneficiary's contributions in the field are of such unusual significance that the beneficiary merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. The petitioner must demonstrate the beneficiary's past history of achievement with some degree of influence on the field as a whole. Id. at note 6.

 Director of the Ph.D. Program in Oral Health Sciences at the University of Michigan, discusses the importance of studying specific chemicals that control the growth of blood vessels within tumors, also known as angiogenesis. She notes that preventing blood vessel growth in tumors will starve the tumors. She further asserts that an indicator of the importance of this area of research is that the National Cancer Institute, the National Heart, Lung

and Blood Institute and the National Eye Institute have all requested grant applications to research this area of cancer treatment. Regarding the beneficiary's work specifically, she states:

It is also important to note that [the beneficiary's] research in vasculature biology has unique aspects that represent different ways of thinking about how vessel growth is controlled. An example of this unique aspect is his successful application of the biological principles of cell death to understanding control of the life cycle of blood vessel cells. Because [the beneficiary] has devoted a few years to this research, he can be especially creative in his experimental approach and also is able to work very rapidly and efficiently on new directions or hypotheses. Whereas it might be thought that virtually any scientist could step in and work on the projects in which [the beneficiary] is involved, in fact the research would have major setbacks without his continued involvement. Furthermore, [the beneficiary's] special combination of expertise in vascular biology and cell cycle control, creativity in designing and conducting key experiments, and motivation in seeking new approaches for understanding cancer biology, could not be readily supplanted.

[REDACTED] a professor of dentistry at the University of Michigan and the beneficiary's mentor at that institution, writes:

The identification of novel angiogenesis inhibitors is an important area of research for many tumor biologists. It is my belief that the research [the beneficiary] is engaged in will lead to the development of novel strategies for the treatment of solid tumors. Rapid progress has been made in the field of tumor angiogenesis, and these research results have already impacted on the American public, as indicated by several recent articles in New York Times, Washington Post, Time Magazine etc. [The beneficiary's] research is clearly at the cutting edge of this research area and is therefor in the National interest.

[REDACTED] speculates that the beneficiary's work will lead to the development of novel strategies, he fails to identify any specific contribution made by the petitioner or provide examples of treatments in clinical trials inspired by the beneficiary's work. [REDACTED] provides no new specifics in his new letter submitted on appeal.

[REDACTED] a professor of oral biology at the Medical College of Georgia, asserts that the beneficiary spent a two-month rotation at that institution. [REDACTED] discusses the importance of the beneficiary's area of research and asserts that it is "unusual for such a young man to make such important discoveries so early in his career." [REDACTED] fails, however, to identify any specific contributions or discoveries.

[REDACTED] professor at the University of Michigan in whose laboratory the beneficiary worked, discusses the importance of research into angiogenesis, since "others have shown that limiting the blood supply to cancers can reduce the growth or even cause the cancers

to die.” Regarding the beneficiary specifically, Dr. Rutherford states:

[The beneficiary] has exciting new data revealing important molecular mechanisms regulating the growth and death of vascular endothelial cells. These cells play an early key role in the development of new blood vessels. Therefore, understanding how the life and death of these cells is regulated could lead directly to therapeutic strategies that limits cancer angiogenesis. Inhibiting angiogenesis and/or destroying the vasculature of cancerous tissue could literally starve a cancer to death without negatively affecting surrounding tissue. Since these studies could lead to drugs which regulate cancer growth, this work could benefit the large number of people who are incapacitated by or die from cancer.

The purpose of all cancer research is to understand, control, and treat cancer. That the beneficiary’s collaborators speculate that his research could lead to improved cancer treatment is not evidence that he had already influenced his field as a whole at the time of filing. [REDACTED] fails to provide any specific examples of the beneficiary’s breakthrough discoveries. Nor does [REDACTED] provide examples of clinical trials inspired by the beneficiary’s work.

[REDACTED] Dean of the School of Dentistry at the University of Michigan, provides general praise of the beneficiary’s area of research. [REDACTED] professor at the University of Michigan, states that the beneficiary has “developed a number of strategies to block the formation of blood vessels in cancerous tumors,” and that he is “one of the investigators trained in the many techniques and skills needed to do this type of research.” [REDACTED] Chairman of the Department of Cariology at the University of Michigan, elaborates on the beneficiary’s expertise in various techniques. Specifically [REDACTED] states:

[The beneficiary] is one of a handful of scientists in the United States with expertise in such rare areas as the rate corneal micropocket assay of angiogenesis, the SCID (Immunodeficient) mouse model of human angiogenesis and endothelial cell culture in three-dimensional matrices. The SCID mouse model of human angiogenesis, which was recently developed in our laboratory under [the beneficiary’s] guidance, is attracting international interest. . . . The researchers in our laboratory are the first worldwide to implement this methodology and will present it at the next University of Michigan Distinguished Faculty/Graduate Student Seminar Series. The researchers in our laboratory are the first worldwide to implement this technique that allows for the study of engineered human blood vessels on the progression of human tumors. This experimental model system brings the laboratory work as close as possible to the clinical condition since it permits the study of human tissues in a mouse. . . . [The beneficiary’s] findings have enormous implications in how cancer will be treated in the future. Specifically, [the beneficiary’s] findings suggest that it may be possible to starve tumors by selectively killing microvascular endothelial cells (blood vessel cells) and thus limiting the blood and nutrient supply to tumor cells. . . . [The beneficiary’s] role in this project has been to provide the intellectual development

of the strategies for inducing selective death of tumor-associated endothelial cells and to perform the overwhelming majority of the experiments involved in this project.

reiterates this information in a new letter on appeal. While provides more detail regarding the beneficiary's specific contributions, his own evaluation cannot establish the beneficiary's influence on his field as a whole without support from independent researchers, pharmaceutical companies, or government agencies discussing the beneficiary's influence on his field outside his immediate circle of colleagues.

On appeal, the petitioner submitted letters from other dental researchers. an assistant professor at the University of Pittsburgh, discusses his collaboration with the beneficiary studying "the use of anti-microbial chlorhexidine for controlling bacterial infections in the oral cavity of children." Director of Pediatric Dentistry at the University of Michigan, provides general praise of the beneficiary and asserts that it is difficult to find faculty with the same qualifications as the beneficiary. Franceschi, and aff at the University of Michigan, provide general praise of the beneficiary.

another professor at the University of Michigan, provides:

[The beneficiary] has stimulating new data that reveal important mechanisms regulating the survival of vascular endothelial cells. In a recent publication, [the beneficiary] and colleagues describe the ability of tumor-derived VEGF (vascular endothelial growth factor) to enhance the survival of endothelial cells by up-regulating the expression of the survival protein Bcl-2. Also, [the beneficiary] is investigating the use of "artificial death switches" in endothelial cells. These substances mediate the dimerization and activation of caspases (proteases) that are able to induce apoptosis of tumor-related endothelial cells. Understanding mechanisms controlling the cell cycle may lead directly to therapeutic strategies that limit cancer angiogenesis.

The record includes confirmation from the American Academy of Pediatric Dentistry (AAPD) that the beneficiary was one of eight winners of the AAPD's Graduate Student Research Award for 1994-1995. This award included \$500 to the beneficiary and an additional \$500 to the University of Michigan. AAPD also requested that the beneficiary review an article submitted for publication in its journal, *Pediatric Dentistry*. It appears, however, that this award was based on his research on dentin bonding, not regulating angiogenesis. Moreover, recognition from one's peers is simply one of the regulatory criteria for classification as an alien of exceptional ability, a classification that normally requires a labor certification. Meeting one of the criteria for exceptional ability is not by itself sufficient evidence that waiving the labor certification is in the national interest.

On appeal, the petitioner submits evidence that the beneficiary was awarded first prize in both

the American Division of the American Association for Dental Research and the International Division of the International Association for Dental Research. While impressive, these prizes were awarded after the petition was filed, and cannot establish the beneficiary's eligibility at the time of filing. Similarly, after the date of filing the American Academy of Pediatric Dentistry requested that the beneficiary serve on their editorial board. Once again, this request is not evidence of the beneficiary's eligibility at the time of filing.

The beneficiary has presented his findings at several conferences and has been selected for brief visiting professor positions in Brazil and Ecuador. [REDACTED] the University of Pittsburgh asserts that the beneficiary received the highest number of such invitations at the University of Michigan. No one at the University of Michigan confirms this assertion. Regardless, the record contains no letters from attendees of these short courses affirming the beneficiary's influence on their own research projects.

The magazine articles submitted initially are not persuasive. They attribute the interest in angiogenesis to the findings of [REDACTED] of Children's Hospital in Boston and the company EntreMed's clinical trials of angiostatin and endostatin in mice. The article does not mention the University of Michigan or the beneficiary and notes that scientists are investigating 300 different substances which may block angiogenesis and that 20 are in clinical trials. One article singles out Noel Bouck's research at Northwestern University. There is no evidence that the beneficiary's work has led to clinical trials of any treatments.

The petitioner initially submitted two articles and requests for reprints of those articles, but the articles were not related to the beneficiary's work on angiogenesis. Regardless, 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." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of influential contributions; we must consider the research community's reaction to those articles. The record contains no evidence that the beneficiary's work with angiogenesis has been extensively cited by independent researchers.

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.