

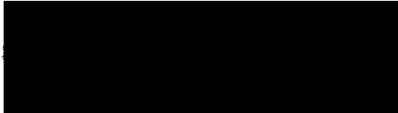


B5

U.S. Department of Justice  
Immigration and Naturalization Service

Following case referred to  
properly clearly unarranged  
position of person's status;

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



File: EAC 99 012 51220 Office: Vermont Service Center

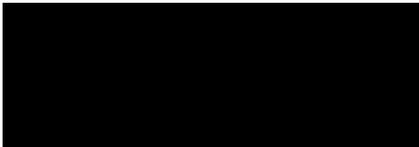
Date: APR 29 2002

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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary 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 postdoctoral fellow at the University of Pennsylvania. 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 a Ph.D. degree in Pharmacology from the Ohio State University. 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.

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.

The petitioner describes her work:

I am currently researching the characterization of PPAR—a nuclear protein that acts as a switch which “turns on” the development of fat cells in the body. This protein, when introduced into cells that are not fat, can turn them into fat cells. In addition, I am studying the regulation of this very important protein. Elucidating pathways that regulate the levels of PPAR . . . is enabling [researchers] to detect potential targets for the development of safer, more effective anti-obesity drugs. . . . My research work on PPAR is leading to novel new drug treatment methods to better deal with obesity and obesity-related illnesses. In particular, my research on PPAR has special applications on diabetes research. Recently, anti-diabetic drugs have been designed targeting the PPAR protein, however, the mechanism by which these drugs act as anti-diabetic agents through PPAR has not been clearly elucidated. My research explores this mechanism and how it relates to the regulation of diabetes.

Along with documentation pertaining to her field of research, the petitioner submits several witness letters. Professor [REDACTED] chief of the Division of Endocrinology, Diabetes, and Metabolism at the University of Pennsylvania School of Medicine, states:

The research that [the petitioner] is conducting in my laboratory is crucial for developing new approaches to the prevention or treatment of obesity and diabetes.

...

[The petitioner] is studying new ways of preventing fat cell development and diabetes using model systems developed in my laboratory. Since obesity is due to increased number of fat cells, in addition to increased fat per cell, her work may directly lead to novel therapeutic and preventive strategies, which would in turn reduce health care costs and improve the average American lifestyle and lifespan dramatically. . . . [The petitioner] has already had great success in her work on fat cell differentiation and diabetes, which can only be done in my laboratory in Philadelphia because we have been the world leader in this area. . . .

We are lucky that she is working on the problem in our country, and she is essential to the success of this NIH-funded project. Indeed, it would be a great and irreplaceable loss if she were unable to continue her work on obesity and diabetes.

[REDACTED] now at the University of Mississippi, supervised the petitioner's doctoral research at the Ohio State University. [REDACTED] describes the petitioner's efforts during that time:

During her graduate work, she examined the potential relationship between peroxisome proliferators and their effects on liver function which modify how fat is stored and broken down. [The petitioner] demonstrated that a currently used class of drugs (fibrates) and widely used industrial lubricants (perfluorinated fatty acids) bound to nuclear components (receptors) to activate genes in liver cells, which in turn increase the synthesis of enzymes involved in fat metabolism. She was able to use molecular biologic techniques in attacking the research project, and she showed that these agents may be useful for the treatment of coronary artery disease. These results provided the first evidence that it is possible to discover stereospecific drugs for the different forms of these receptors.

Another professor at the Ohio State University, [REDACTED] offers a fundamentally similar overview of the petitioner's studies there. [REDACTED] of the University of Kentucky states:

[The petitioner], in 1996, spent 6 months conducting research in my laboratory. . . . This work centered on a novel mechanism linking fat, steroid hormones and cancer. Although the physical correlations have always been there, this was the first mechanistic evidence for the correlations, and have provided [sic] critical insight into potential drug targets for treatment of these conditions. . . . [The petitioner's] contributions have been, and will continue to be, of essential

importance to an efficient identification of cures or treatments of these disease processes.

██████████ senior research biochemist at ██████████ states:

I first met [the petitioner] when she was working ██████████ laboratory at the University of Mississippi. We had set up a collaboration to study the potential role of fatty acid binding protein in peroxisome proliferator signal transduction. Her role in the project was to perform biochemical analysis on the ability of various clofibric acid and fatty acid analogs to bind to irregular proteins. It was through these studies that [the petitioner] began to unravel the complex interactions of these chemicals with the various biological targets inside the cell. . . . These studies have enhanced our understanding of lipid metabolic pathways and will contribute to the development of therapies for cardiovascular disease. . . .

[The petitioner] has the unique opportunity to integrate her training in the regulation of lipid metabolism with her research in diabetes and obesity in Dr. Lazar's laboratory. These studies will help identify the molecular basis of such important diseases as cardiovascular disease, diabetes, and obesity.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted further witness letters, background information, and arguments from counsel. The background information helps to establish the intrinsic merit and national scope of the petitioner's work, but it does not set the petitioner's accomplishments apart from those of other competent researchers in the field.

Counsel contends that the petitioner has already established that she "has made exemplary contributions to her field of endeavor" and that "[h]er discoveries are of immense benefit to Americans suffering from obesity and obesity-related disorders, such as diabetes."

██████████ states in his second letter that it is crucial for the petitioner to continue working for him at the University of Pennsylvania. He also states that a labor certification is not an option because the petitioner is employed in a temporary postdoctoral position. He does not explain how the petitioner will be able to continue working at the University of Pennsylvania after the termination of her temporary postdoctoral position. If the university intends to offer the petitioner a permanent position, then labor certification would then be a viable consideration. If, on the other hand, the university has no such intention, then it is far from clear why the petitioner would need to be a permanent resident to continue working in a temporary position, for which the petitioner already holds a valid nonimmigrant visa. This issue is not a trivial one; it makes little sense to argue that the petitioner must be allowed to remain permanently in the United States for the sake of pursuing another year or two of temporary research. The temporary nature of post-doctoral employment does not automatically prevent the approval of a waiver, but neither is it a strong factor in favor of such approval.

██████████ states that the petitioner's "past history demonstrates achievement which has had a significant degree of influence on the field as a whole." To establish that the petitioner's influence extends outside of her circle of collaborators, the petitioner must submit persuasive evidence from outside that group. Further letters in the record are intended to establish such influence.

██████████ senior investigator and chief of the Receptor and Hormone Action Section at the National Institute of Diabetes and Digestive and Kidney Diseases, states that the petitioner works in "a critical area of research." ██████████ describes the petitioner's projects and states that the petitioner's "presence in the United States is critical to the success of these projects. Her past accomplishments are significant and of high impact." ██████████ describes one of the petitioner's recent publications as "a major breakthrough in understanding the regulation of the PPAR."

██████████ associate professor at the University of California, San Diego, concurs that the petitioner's "contributions to these research projects are vital." ██████████ asserts that the petitioner "is an exceptional scientist of high impact whose past [contributions] to the field are indicators of her future contributions."

██████████ a member of the U.S. National Academy of Sciences, asserts that the petitioner has had an unusually significant impact on her field. ██████████ states that the petitioner "has accumulated significant knowledge and expertise. . . . Her research will continue to have a great impact" on obesity research.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work but finding that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. On appeal, the petitioner has submitted additional witness letters and arguments from counsel.

Counsel maintains that the petitioner "is the originator and pioneer of research techniques" in her specialty. Counsel's arguments derive chiefly from witness letters, and therefore detailed analysis of counsel's arguments would be somewhat redundant, as we have already discussed the bulk of the letters.

██████████ his second letter on the petitioner's behalf, states that the petitioner's work has been innovative and "invaluable" in the study of obesity and its health effects. In his latest letter on the petitioner's behalf, ██████████ maintains that the petitioner "has become an integral and irreplaceable part of our ongoing research projects—projects which require her continued presence for completion." ██████████ discusses the petitioner's "seminal contributions" which include a published article in *Nature*, one of the world's top scientific journals. ██████████ continuing need for the petitioner's presence is not, by itself, a compelling factor, because (as stated above) the petitioner's nonimmigrant visa covers her temporary postdoctoral appointment. If, however, the petitioner's accomplishments have truly had a major impact throughout the field (as several independent witnesses have attested), then the

benefit of ensuring the petitioner's continued presence in the United States transcends the individual temporary projects on which she has worked.

While the letters from [REDACTED] and other collaborators have provided valuable specifics about the nature of the petitioner's work, more compelling were the letters from more independent witnesses. Such individuals will necessarily have less detailed knowledge about the petitioner's work, having not witnessed it themselves, but their familiarity with the petitioner's work despite this distance demonstrates that the petitioner's work is highly valued throughout the field, and not only at the laboratories where she has worked. This outside perspective is also useful because an alien does not warrant a waiver purely by virtue of playing an indispensable role in a given project, if that project itself is of only marginal interest to the rest of the field. Thus, while letters from collaborators spell out the petitioner's specific role in a given project, outside letters from independent sources demonstrate the importance of the overall project itself. The independent witnesses in this case have not stopped at saying that obesity research, overall, is important, and therefore the U.S. needs as many researchers as it can get. Rather, they have singled out the petitioner as having made valuable contributions as a key member of a highly regarded research group.

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 that the community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. 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 and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.