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U.S. Department of Justice
Immigration and Naturalization Service

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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 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 assistant at the Medical College of Ohio, where the petitioner was a doctoral candidate at the time he filed the petition. 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 has 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 director did not dispute that the petitioner qualifies as 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.

Along with copies of his published articles and background documentation pertaining to his field of research, the petitioner submits several witness letters. The witnesses all either knew the petitioner in China, or are faculty members at the Medical College of Ohio.

██████████ senior staff fellow at the National Institute of Diabetes and Digestive and Kidney Diseases, states:

I have known [the petitioner] for six years. . . . From July 1994 to August 1997, he worked as a Research Investigator in the Department of Genetics at the Shanghai Institute of Mental Health. He did an excellent job and was awarded one of the highest prestigious prizes in China, the Prize for Great Contributions to Progress in Medical Science and Technology from the Chinese Public Health Ministry.

██████████ states that the petitioner, in China, made significant findings regarding genetic factors that contribute to Alzheimer's disease, and has since worked "to further his research to a more general pattern by studying the developmental basis of the nervous system and related diseases." ██████████ describes some of the petitioner's recent projects:

[The petitioner] found that bone morphogenic protein 4, a growth factor, has the function of promoting the differentiation of catecholamine neurons. In addition, he also found that a signal molecule, MAPK, is involved in the process of growth factor induced catecholamine neuron differentiation. . . . This is very important for understanding the mechanisms of catecholamine neuron differentiation and the defects in the differentiation pathways in related nervous system diseases. This is also helpful for designing therapeutic approaches to these diseases by administering neurotrophic factors or manipulating the deficiency in differentiation pathway.

██████████ assistant professor at the University of Michigan Medical Center, states that the

petitioner's "work provides a valuable clue for further elucidating the molecular mechanism of Alzheimer's disease" and "provides great insight into the molecular pathogenesis of mood disorder and is very important for further understanding the mechanisms underlying this disease." [REDACTED] deems the petitioner "a superb expert in the area of biomedical research. He has contributed substantially to the field of neuron biology." Other witnesses in China, who supervised the petitioner's studies and early employment, offer similar comments regarding the petitioner's work.

Several faculty members at the Medical College of Ohio indicate that the petitioner's work there is progressing well, and that the petitioner is a talented student. These individuals acknowledge that the petitioner "won a prize," but they do not indicate its prestige. Not all of these faculty members discuss the petitioner's work in any detail. [REDACTED] states:

[The petitioner] has begun an ambitious set of experiments that are determining the factors that permit neurons in the neural crest to differentiate into adult neurons. In these experiments he has used cultures to show that bone morphogenic factor 4 (BMP4) and other growth related factors initiate intracellular cascades that activate transcription factors for genes that regulate differentiation of crest neurons. He is using molecular techniques to identify the molecules, transcription factors, and genes that contribute to these cascades.

The individuals at the Medical College of Ohio all make statements such as the assertion that the petitioner "will mature into a professional and well-trained scientist" and that "[t]he likelihood that he will perform research . . . that will be of vital interest for the health care profession in the United States is very high." These statements imply that the petitioner is not yet "a professional and well-trained scientist" who has already made important contributions; otherwise, the use of the future tense makes little sense.

While the record shows that the petitioner has published several scholarly articles, the record shows only one citation. This evidence therefore does not establish that the petitioner's published work has been particularly influential in the field. The petitioner has also submitted copies of several mass media articles discussing various research projects pertaining to Alzheimer's disease and depression. While this evidence indicates that many significant studies and projects claim national headlines, none of the articles are about the petitioner's work. Therefore, while the articles establish the intrinsic merit and national scope of the petitioner's work, they cannot show that the petitioner, above others in the field, has earned the special consideration of the national interest waiver.

With regard to the petitioner's prize, which the U.S. witnesses mention only in passing but which the Chinese witnesses classify as one of China's highest, the record documents the petitioner's receipt of a "third class" prize, with no accompanying evidence as to the nature of the award, media coverage surrounding it, the number of people who receive the prize annually, the distinctions between the various "classes" of the prize, and so on. The lack of such evidence makes it difficult to come to a definitive conclusion regarding the prize.

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 labor certification is not the most appropriate and applicable avenue for the petitioner to immigrate. The director noted that simply describing the petitioner's work does not establish its significance. The record amply

demonstrates that many other researchers are studying the intricacies of the human brain in general, and Alzheimer's disease specifically. While this disease is a major cause of death and dementia among the elderly, it does not follow that every alien researcher studying it qualifies for a waiver, or that U.S. researchers in the specialty are not entitled to the protection afforded by the labor certification process.

On appeal, counsel describes the petitioner's achievements, asserting that these achievements are self-evident demonstrations of the importance of the petitioner's work. For instance, counsel states that the petitioner's articles were accepted for publication "[b]ecause of the critical nature of [the petitioner's] accomplishments." The submission of evidentiary exhibits does not confirm or support counsel's interpretation of the significance of those exhibits. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submits several documents on appeal, mostly regarding new published articles and the petitioner's participation in professional conferences. Most of this evidence came into existence after the filing date and therefore cannot directly establish eligibility as of that filing date. See Matter of Katigbak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which 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 record shows that the petitioner is a prolific author and a capable researcher who has earned the approval of those who supervise his continuing training at the Medical College of Ohio. The record does not, however, establish that the petitioner's research findings stand out from the findings of countless other researchers, or that the petitioner's work in the U.S. has gained significant attention outside of the college where he was studying at the time of filing.

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.