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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: EAC 99 096 53158 Office: Vermont Service Center

Date: 30 APR 2002

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)

Public Copy

IN BEHALF OF PETITIONER:  
[Redacted]

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 researcher at the University of Maryland, Baltimore County (“UMBC”). At the time she filed the petition, the petitioner was a doctoral candidate at UMBC.. 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. degree in Biochemical Engineering from UMBC. 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.

Counsel describes the petitioner’s work:

During her doctoral studies . . . the [the petitioner] has accomplished a major discovery in the field of protein studies. [The petitioner] has made several other important and remarkable contributions in said field studies. . . . [The petitioner] has successfully separated protein C from human blood plasma Cohn Fraction IV01 using immobilized metal affinity chromatography to produce large quantities of protein C at low cost for protein C deficient patients.

In a personal statement, the petitioner explains that she works with protein C, which “is the only molecule that has both anticoagulant and antithrombotic functions, which means it can prevent blood clot formation and dissolve blood clots when they are formed.” The petitioner also notes the absence of “any known side effects.” The petitioner states that the currently dominant methods of isolating and purifying protein C are inefficient and costly, and that her research group’s “studies are focused on the development of processes to produce protein C from different sources in large quantity at low cost.” The petitioner states that her major contributions involve the development of methods to separate protein C from other proteins as part of the purification process.

Along with documentation pertaining to her field of research, the petitioner submits several witness letters. Professor Duane F. Bruley, graduate program director at UMBC, states:

Our laboratory and students are making groundbreaking discoveries in a very complicated research arena. [The petitioner's] research has been outstanding. Her contributions are very significant and the potential for the future is very promising. The scientific and engineering knowledge base that she has helped to develop is unique to only a few investigators in the United States.

[REDACTED] of the Medical College of Wisconsin states that the petitioner's work "could result in the clinical application of protein C as an anticoagulant that would preserve tissue viability when thrombotic episodes threaten or actually occur." Prof. Hudetz states that protein C is difficult to isolate from homologous (i.e., similarly structured) proteins by conventional means, and that the petitioner's work with immobilized metal affinity chromatography ("IMAC") has "generated confidence that protein C can be separated from Cohn Fraction IV-1 and transgenic animal milk using IMAC."

[REDACTED] of Georgetown University Medical Center states that the petitioner "has contributed greatly to the possibility of low cost production of protein C and other blood factors" through her work with IMAC and artificial antibodies grown in E. coli bacteria. Dr. [REDACTED] of the Plasma Derivatives Laboratory of the American Red Cross, Rockville, Maryland, emphasizes the difficulty of separating protein C from homologous proteins, such as prothrombin, that can have serious side effects if administered with protein C. [REDACTED] states that the petitioner's separation methods are "very promising." Documents in the record show that the work underway at [REDACTED]'s laboratory has attracted the attention of trade publications.

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 arguments from counsel and new documents. Counsel asserts that the petitioner's work has attracted the interest of "researchers around the world" and that the petitioner's "studies . . . have benefited the whole nation, even the world." Counsel cites a new letter from Prof. Bruley, who states that "researchers around the world have called to inquire about additional information related to the work." Counsel states that the previously submitted letters show that "the methodology developed by the [petitioner] is NOW being used to produce many kinds of antibodies for different purposes."

The petitioner submits evidence that she won the Melvin H. Knisely Award. There is no support for counsel's assertion that this award (which can only go to researchers under 36 years of age) is "one of the most important awards in the field of Bio-chemical researches." Nevertheless, the record shows that the award is international, and there is only one recipient per year throughout the international community. The petitioner received the award after the filing date, but we note that it was her work conducted prior to the filing date that secured the award, indicating that as of the date of filing, the petitioner was performing work deemed important by an international professional organization. For the purposes of this petition, the award is significant not so much for its own sake – we have previously held that an award is not a strong argument for the waiver – but rather as one part of a larger pattern of independent acknowledgement of the petitioner's work.

The director denied the petition, acknowledging the intrinsic merit of the petitioner's work, but stating that the petitioner's "research has not been shown to have already produced tangible benefits to the nation." The director also found that the petitioner has not shown that her work is of greater significance than that of others in the same field of endeavor. The director concluded that the record does not establish the wider impact of the petitioner's findings, and that the petitioner has not shown that the labor certification process cannot adequately suit the national interest.

Documents submitted on appeal establish the national scope of research regarding protein C and other areas relating to the petitioner's work, thus overcoming this apparent objection by the director.

On appeal, counsel argues that the petitioner "need not demonstrate why a labor certification would be detrimental to the national interest, particularly when the national interest waiver option is the only one available." Counsel does not explain why the waiver is "the only option" for the petitioner. Certainly, as a doctoral student or postdoctoral associate, the petitioner would not be in a situation amenable to permanent employment. Nevertheless, these situations are, by nature, temporary steps toward eventual permanent employment either in academia or in private industry. The fact that the petitioner is not yet eligible for labor certification does not establish an urgent need for the petitioner to immigrate before she has reached a career stage where she is prepared for permanent employment.

The above arguments notwithstanding, an individual can qualify for a national interest waiver even if the waiver is not the individuals' "only option." Certainly the national interest waiver should be more than simply an option for petitioners who would prefer to avoid the burdensome labor certification process. Still, if a petitioner is able to demonstrate that a given alien's admission would truly serve the national interest to a substantial degree (beyond the benefits inherent in the occupation), that petitioner should not in every case be required to establish that there exists no other immigration avenue for the alien. As we noted in Matter of New York State Dept. of Transportation, the unavailability of a labor certification is only one factor out of many to be considered. If an alien cannot automatically obtain a waiver simply because labor certification is inapplicable, then it stands to reason that the waiver should not be denied automatically simply because the alien could conceivably obtain a labor certification. The individual facts of each case require scrutiny.

The paramount concern must be service to the national interest. Other considerations, while not without weight, are secondary. We acknowledge that this position somewhat complicates national interest waiver adjudications, but the current statute and regulations offer no simple "checklist" of unambiguous, immediately recognizable factors. Because of this lack of statutory and regulatory guidance, and because of the constraints of the Administrative Procedures Act, the Administrative Appeals Office had no choice but to offer only very general guidance in its decision in Matter of New York State Dept. of Transportation.

Counsel cites an unpublished appellate decision, indicating that "substantial experience" is a favorable consideration, because an individual with such experience will likely benefit the U.S. more than a "newcomer." Counsel's argument has little force in this instance. The petitioner in this matter was still a graduate student when she filed the petition (and, for that matter, the appeal).

In contrast, in the unpublished decision cited by counsel, the alien had already obtained his Ph.D. degree and then had worked for roughly twenty years in his specialty. Clearly, the earlier decision cited by counsel does not closely parallel to the matter at hand. Any decision made regarding the present petition must rest on the related record of proceeding, rather than on unsupportable claims of similarity with unpublished, and therefore non-binding, earlier decisions.

The petitioner submits two further letters on appeal. One letter is from [REDACTED] dean of Engineering at the University of Louisville, who states that the petitioner's "work . . . is of great significance to the health of the citizens of the United States and all people around the world." [REDACTED] like the previous witnesses, discusses the overall importance of protein C and the fact that some individuals are born with a protein C deficiency. [REDACTED] also states that, subsequent to the filing date, the petitioner has begun working to increase the quantities of protein C that she can purify through her technique.

The other letter submitted on appeal is another letter from [REDACTED] lists various events which, although they took place after the petition's filing date, nevertheless show increasing interest throughout the field, at an international level, in the work that the petitioner was already doing in [REDACTED]'s laboratory before she filed the petition. [REDACTED] also asserts that the petitioner is virtually irreplaceable at his laboratory. The record amply establishes [REDACTED]'s own reputation within his specialty, lending weight to his assertions. Several of the witnesses of record appear to have first learned of the petitioner's efforts primarily as a result of their familiarity with [REDACTED]'s work. This is not to say, of course, that an alien can qualify for a waiver simply by virtue of working under the supervision of a prominent professor.

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.