



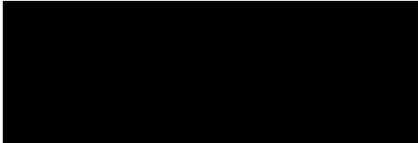
B5

U.S. Department of Justice

Immigration and Naturalization Service

Deleting 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]

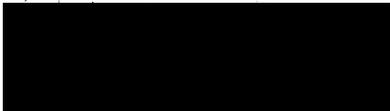
Office: Nebraska Service Center

Date: AUG 03 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)

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. The petitioner filed an appeal, which the Associate Commissioner for Examinations summarily dismissed. The petitioner has now demonstrated that the summary dismissal was in error, and moved to reopen the petition. The petition will be reopened and 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. At the time of filing, the petitioner was a visiting postdoctoral research associate at Michigan State University ("MSU"). The petitioner then worked as a postdoctoral fellow at Wake Forest University School of Medicine, and the appeal documents refer to the petitioner's acceptance for a position at Harvard Medical School. 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 director did not dispute that the petitioner 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 his work:

[M]y research focuses on the following areas:

- (1) Certain congenital (inherited) blood diseases of hemoglobin, also known as hemoglobinopathies. These diseases include sickle cell disease which predominantly affects African-American individuals and thalassemia (also known as Cooley's anemia) which affects individuals of Mediterranean and Far Eastern descent.

- (2) Research related to cyclooxygenase (COX). COX is the cellular enzyme that is the inhibitory target of all non-steroidal anti-inflammatory drugs (NSAIDS) such as aspirin and ibuprofen. The blocking of COX by these drugs is the basis for the treatment and clinical management of chronic pain in a variety of human diseases, the most widespread of which is arthritis. It is also the treatment of choice for a number of other diseases including thrombosis in cardiovascular disease, fever, inflammation and colon cancer.

The petitioner states that individuals with hemoglobinopathies require frequent blood transfusion, which causes a dangerous buildup of excess iron in the bloodstream. The only widely used drug currently available to reduce excess iron (by a process called chelation) can only be administered by injection which "has to be done for long periods, typically 8-10 hours, several times a week and often results in poor patient compliance." The petitioner asserts that he has developed "an original technique" to monitor toxic iron levels in patients with hemoglobinopathies, and "played a key role in developing iron-reducing drugs" that "have shown great promise." The petitioner has also studied the actions of NSAIDS at the molecular level "in order to better understand the precise manner in which these drugs act," and thus assist in the development of better pain relief drugs.

Along with copies of his published articles, the petitioner submits several witness letters. Professor William L. Smith, the petitioner's supervisor at MSU, states:

[The petitioner] has and will continue to contribute importantly to basic biochemical and molecular biological studies on COXs that will facilitate the development of new drugs to treat pain and prevent colon cancer. For example, [the petitioner] has engineered procedures for expressing large quantities of COXs . . . for actual structural and mechanistic studies important for drug development. And indeed, [the petitioner] has performed studies on the biochemical mechanism of COX action by examining the nature of the free radical chemistry associated with these enzymes. . . .

[The petitioner] has made important contributions to his field and I expect that the continued exceptional level of his work will significantly advance the national interest in developing new ways to treat cardiovascular disease, colon cancer, and inflammation.

Dr. David DeWitt, assistant professor at MSU, states:

While I am aware that [the petitioner] has conducted seminal research in the field of inherited blood diseases . . . I will confine my comments on [the petitioner's] research to the prostaglandin field, which is what I am most familiar [sic]. While working at Michigan State University, [the petitioner] has been conducting some cutting-edge research on the biochemical mechanism of **cyclooxygenase (COX)** catalysis. . . . This research . . . is allowing us to understand how the enzyme works and how inhibition occurs.

These findings will increase our understanding of how aspirin and other drugs inhibit the enzyme, and may help us design new, safer more effective drugs. . . .

There is no doubt that the research that [the petitioner] is conducting is of fundamental importance.

Professor R.C. Hider is head of the School of Life, Basic Medical and Health Sciences at King's College, London, United Kingdom. Prof. Hider states:

[The petitioner] has devised an original technique to measure toxic iron in patients' blood. . . . He has served as a lead author in many peer reviewed, international academic and scientific journals in both Britain and the United States. I am quite familiar with his publications, and it is my opinion that his work stands out from the norm in the field. . . .

Without question, [the petitioner's] work with sickle cell disease and thalassemia is of enormous importance in the development of new, effective and affordable drug therapies for these diseases. His research with COX is of similar importance.

Prof. Hider, in his letter, does not specify the extent to which he has worked with the petitioner, but the record shows that Prof. Hider and the petitioner have collaborated on published articles, along with other researchers. One of those other researchers is Dr. John B. Porter, associate professor at University College, London, Medical School. Dr. Porter states that the petitioner's work "is of great importance to the development of novel, cost-effective drugs."

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. The director noted that the petitioner's witnesses have worked with the petitioner, and therefore their statements do not directly establish the impact of the petitioner's work beyond his own circle of collaborators and superiors. The director also concluded that "[t]he letters are very general about the individual accomplishments of the petitioner," and that the petitioner's role in the research leading to the published articles is not clear from the record.

On appeal, the petitioner submits a brief from counsel and new exhibits. Counsel states that the director unfairly disregarded the letters that accompanied the initial filing of the petition. Counsel asks, rhetorically, "[w]hat better witness could there be than those who are most familiar with [the petitioner's] work?" Certainly, such individuals are in the best position to describe details of the nature of the petitioner's work, and their statements are not without value. At the same time, however, if an individual's work is being described with such superlatives as "seminal" or "of enormous importance," it is not unreasonable to expect such opinions to be shared outside of the group that is conducting this research with that individual. If an alien is conducting research which he, and his immediate associates, truly consider to be of great significance, but which other researchers do not appear to view as particularly important, then the extent of the alien's contribution to the national interest is not established.

The petitioner submits further letters on appeal. Some of these letters, like the initial letters, are from individuals connected to the petitioner, whereas other letters are copies of courtesy letters that do not comment on the quality of the petitioner's research. One letter deals strictly with the

importance of fighting thessalemia, and the need for additional research in the area. This last letter does not mention the petitioner at all, and therefore it is relevant only to the uncontested first two prongs of the national interest test.

Perhaps the most significant of the new letters is from Dr. Kenneth R. Bridges, an associate professor at Harvard Medical School and a staff member at Brigham and Women's Hospital in Boston, Massachusetts. Dr. Bridges states that the petitioner's "work is well known and respected . . . [and] has been recognized as at the top of the field."

In terms of evidence of the petitioner's wider impact in the field, the most persuasive evidence consists of a citation index showing 134 citations of the petitioner's work from 1993 to 2000. While some of these citations are self-citations by the petitioner or his collaborators, there remains a very substantial number of apparently independent citations of the petitioner's work. Many of the citations are dated prior to the petition's filing date. This evidence establishes that researchers worldwide have consistently and heavily relied upon the petitioner's published work, using it to further their own research. Such evidence of heavy citation is considerably more persuasive than simply demonstrating the existence of published material by the petitioner. The very act of publishing an article does not ensure that the article will not be ignored by the larger scientific community. Independent citations are objective proof of the petitioner's influence, and the more citations, the greater the evident impact. This documentation serves to corroborate Dr. Bridges' statement that the petitioner's "work is well known and respected" in the field.

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 medical research 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 record further shows that the evidence establishing the petitioner's eligibility was in the Service's possession, and should have been in the record, at the time of the initial appellate adjudication. The delay in incorporating that evidence into the record prejudiced the appellate adjudication, resulting in the summary dismissal of the appeal.

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 petition is approved.