

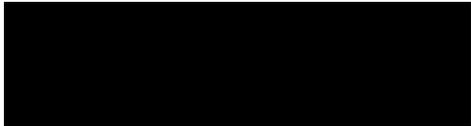


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U.S. Department of Justice  
Immigration and Naturalization Service

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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: AUG 27 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, 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. At the time of filing, the petitioner was a research associate at Case Western Reserve University ("CWRU"). 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 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 states that the petitioner's "research in particular focuses on Alzheimer's Disease and human prion disease, the so-called Mad Cow Disease." Both of these disorders cause fatal brain degeneration with no known cure. Counsel asserts that the petitioner "is an extraordinarily talented researcher . . . [who] is responsible for key discoveries in his field."

Along with copies of his published research, the petitioner submits several witness letters. CWRU professor Pierluigi Gambetti states:

[The petitioner] has been a critical member of my research team since 1997. He is a highly skilled and adept research scientist who is an expert in a number of state-of-the-art experimental approaches associated with molecular biology.

The most extraordinary research [the petitioner] has been conducting is on Human Prion Disease or spongiform encephalopathies (SE), the human form of the so-called Mad Cow Disease. Prion diseases are unique neurodegenerative disorders that are genetic, sporadic or infectious. . . . Since the incubation period of the disease is very long and effective diagnostic tests are not available, it is not clear how many people are carrying the infection. . . .

[The petitioner] and my research team members are working to elucidate the pathogenic mechanisms of human prion disease at the cell and molecular level

using cell and animal models of these diseases. Since his arrival at CWRU, [the petitioner] has made a significant contribution to the ongoing research projects. For example, his research has revealed that the mutant prion proteins causing an inherited form of prion disease are processed differently by the cell than the normal protein and one form of the mutant prion protein aggregates in the cell and acquires several features of the infectious form. These results have been very critical in giving us important leads into the mechanism of development of the disease and designing a strategy to prevent the disease. Specifically, [the petitioner] has studied the synthesis and processing of the mutant prion proteins in transfected human neuroblastoma cells. He has made tremendous progress in his research projects, and some findings are providing possible explanations for the pathology observed in these diseases. For example, his research has demonstrated for the **first time** that a mutant prion protein is degraded through the proteasomal pathway, and that a protein engaged in the secretory pathway is mistargeted to the nucleus. The findings widen the spectrum of pathogenic mechanisms that may be involved in prion diseases and provide a possible explanation of the Human Prion Disease and further to the prevention and the treatment of the Disease.

Dr. Neena Singh, assistant professor at CWRU, states that the petitioner "has been very successful in giving us important leads into the mechanism of development of this disease in humans" and that the petitioner's work "is anticipated to provide the foundation for developing therapeutic strategies of intervention and treatment of these disorders. . . . [w]e are now far closer to the more fundamental question that relates to designing a strategy to prevent the aberrant processing of the mutant prion." Dr. Robert B. Petersen, associate professor at CWRU, states "[t]he theories that are being explored originated with" the petitioner, and that the petitioner's "research is . . . vital in the scientific field described." Other researchers with ties to the petitioner offer similar endorsements of his work.

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 states that "letters from the alien petitioner's current employer, coworkers, a friend, and a former professor . . . do not establish that the alien petitioner's work is known and considered unique outside his immediate circle of colleagues." The director also asserted that the petitioner does not necessarily qualify for a waiver by virtue of his success in his field.

On appeal, the petitioner submits copies of additional articles, a brief from counsel, and three new witness letters. Dr. Xuemin Xu, an associate professor at the University of Tennessee, states "I came to know [the petitioner] through reviewing his research papers on degenerative diseases, such as Human Prion disease. . . . He has played a leading role in the initiation, development, and implementation of research protocols being used in research projects based upon his great innovation, insight and creativity." Dr. Xu contends that holding the petitioner to the labor certification requirement will jeopardize the ongoing research by making the position open to a less qualified U.S. worker.

Dr. P.K. Epling-Burnette, assistant professor at the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida, states:

I know [the petitioner] through our collaborations of exchanging constructs and plasmids in the past years. . . .

In just a few years, [the petitioner] has already made significant contributions to molecular regulation and function of chaperone protein in brain cells from patients suffering from Alzheimer's disease. One of his most significant contributions is his study of the effect of BiP protein bind to a mutant prion protein and mediates its degradation by the proteasome. . . . The data provides new insight into the diverse pathways of mutant PrP metabolism and neurotoxicity.

Prof. Gambetti, in his second letter on the petitioner's behalf, states that the petitioner "has carried out high quality work on [neurodegenerative] diseases. . . . [The petitioner's] ability in molecular and cell biology and his productivity have clearly demonstrated that he has made and continues to make significant contributions to our division."

Clearly, those who work with the petitioner value his contributions and input. The petitioner's submission on appeal, nevertheless, does not resolve the director's concerns about a lack of evidence to show the reaction of independent researchers to the petitioner's work. The petitioner has been the author of published work, but published articles appear to be the rule rather than the exception for postdoctoral researchers.<sup>1</sup> The record does not contain evidence to show that the petitioner's published work has had an especially significant impact on prion disease research. Such evidence could take a number of forms, such as documentation of heavy citation of the petitioner's articles, letters from the publishers of the journals explaining the significance of the petitioner's work, documentation showing that the petitioner's findings have been implemented at independent laboratories, etc. Some witnesses emphasize that the National Institutes of Health ("NIH") have provided grant funding for the petitioner's work, but the record contains nothing from any NIH official to show that NIH has taken special notice of the petitioner's work and considers it to be of particular importance relative to other research endeavors in the same area.

The assertion that the petitioner's continued employment is critical to the project raises the question of why CWRU employs the petitioner as a postdoctoral research associate, which is an inherently temporary position. If it is the petitioner's argument that he must remain with a specific employer (in this case CWRU), it is reasonable to question whether that employer has

<sup>1</sup> 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. The committee stated that a postdoctoral appointee "is expected to publish the results of his or her research or scholarship during the period of the appointment."

ensured the petitioner's continued employment upon resolution of the petitioner's immigration status.

Counsel's appellate brief consists mostly of excerpts from witness letters. The remainder is a discussion of CWRU's reputation as a top medical research facility, the severity of the diseases that the petitioner studies, and the reputations of journals that have carried some of the petitioner's articles. These factors do not directly address the petitioner's specific work; he does not merit a waiver on the basis of working at a good university, or having chosen a particular field of research. The petitioner has shown what specific contributions he has made in an important field of study, but the record does not adequately establish the special significance of these contributions outside of his circle of collaborators and supervisors. Without such evidence, we cannot conclude that it is in the national interest (rather than the more restricted interest of CWRU) to waive the job offer requirement that, by law, attaches to the classification the petitioner seeks.

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.