

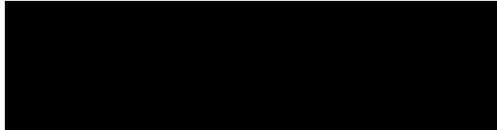


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U.S. Department of Justice
Immigration and Naturalization Service

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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: Self-represented

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 sustained and the petition will be approved.

We note that some of the initial materials were prepared by World Legal Services, Ltd., a Chicago law firm, but the record contains no Form G-28 Notice of Entry of Appearance as Attorney or Representative, and thus that firm has never officially been the petitioner's representative. There is no indication that the firm was involved in the preparation or submission of the appeal.

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 doctoral student and research assistant at Purdue University. The petitioner has since begun working at the University of Washington. 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.

Accompanying the petition, the petitioner has submitted a statement from attorney Thomas D. Rosenberg. Because the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative, we cannot consider Mr. Rosenberg to be the official attorney of record. We note also that the petitioner appears to have prepared his own appeal. Therefore, we shall consider the petitioner to be self-represented. Mr. Rosenberg's assertions will be considered, but the decision will be furnished only to the petitioner. Mr. Rosenberg states:

The research project sponsored by NIH that [the petitioner] is working on is to develop novel bioanalytical systems for monitoring the blood glucose for patients with diabetes. The project includes studying a new way to make a biosensor that would offer easy preparation, increasing sensitivity, and developing a novel detection method by use of the biosensor to reduce operational errors. . . . [The petitioner's] responsibility in this project is to design a new flow system by use of glucose sensors so that glucose detection can be done in a fast and more reliable way. . . .

[The petitioner] has designed a novel biosensor system in which the concentration of glucose can be quantified by an absolute electrical charge. Because the charge does not depend on enzyme activity and temperature, this new method will

overcome the limitations in the current measuring methods. It provides an easy and more reliable way to test blood glucose.

Along with documentation pertaining to his educational background and field of research, the petitioner submits several witness letters, examples of which we discuss here. Professor Harry L. Pardue, who supervised the petitioner's doctoral studies at Purdue University, states:

Biosensors are devices that have the potential to measure biological species directly in complex matrices including external and in-vivo monitoring of body fluids, fermentation broths in industrial processes, etc. A major problem with current applications of these devices is that they are very sensitive to their environment. [The petitioner] has discovered that some changes in the ways that biosensors are used can yield the same information available from conventional applications while virtually eliminating dependencies on sample matrices that plague the conventional methods. A typical application of [the petitioner's] new technology would be in-vivo monitoring of glucose in diabetic patients. Whereas results obtained using conventional technologies would be compromised by changes in both the patient's blood stream and changes in the sensor, [the petitioner's] technology would nullify effects of such changes. . . .

[The petitioner] is the primary person on this project and [his] expertise is critical to the success of the project. Since starting on the project, [the petitioner] has learned and refined several innovative laboratory techniques, has developed new analysis methods and has produced fascinating preliminary data in remarkably little time.

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 additional letters and articles, as well as a personal statement. The petitioner offers various statistics about diabetes, a serious and potentially fatal disease. We do not dispute the gravity of the disease or the need for additional research in order to control and ultimately cure, but it does not follow that every researcher whose work is relevant to diabetes should receive a national interest waiver. The petitioner does not explain how the statistics he cites have been, or likely will be, affected by his work. While it is important for diabetics to monitor their blood glucose levels, the petitioner has not established that a substantial number of fatalities or serious complications result from conscientious, regular, but inaccurate measurements.

Prof. Pardue, in a new letter on the petitioner's behalf, states:

[The petitioner's biosensor] design reduces effects of internal changes and external variables by factors of 10 to 100 fold relative to conventional designs. His design also extends the useful range by factors of 2 to 5 relative to conventional devices. . . .

[The petitioner's] accomplishments have some very important consequences. First and foremost, his design will give health-care providers, toxicologists, food

scientists, environmentalists and others reliable results in many situations in which conventional designs would give erroneous and misleading results. Second, because [the petitioner's] design is insensitive to changes in sensor properties, it eliminates the need for frequent re-calibration, it reduces the frequency with which sensors must be replaced, and it reduces the expertise personnel need to use the device effectively. Because of the extended linear range, [the petitioner's] design reduces the need to reprocess samples with concentrations outside the range of conventional devices.

The petitioner has also submitted letters from other witnesses with varying degrees of connection to him.

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 the absence of letters "from disinterested parties." The petitioner disputes this finding, and submits two new letters from individuals outside of the petitioner's circle of collaborators, co-workers and employers. The remainder of the petitioner's statement on appeal consists of a discussion of previously submitted materials.

Professor Emeritus Stanley R. Crouch of Michigan State University states:

I have been invited by the journal *Analytical Chemistry* to review the important progress that has been made in kinetic aspects of analytical chemistry. . . . It was in doing the literature research for this review that I got familiar with [the petitioner's] novel work on the development of glucose biosensors. . . . [H]e utilized a fundamentally different approach to the design of enzyme-based biosensors that essentially eliminates the problems commonly seen in the applications of biosensors. His creative work has produced important contributions to the scientific literature and has the potential to substantially influence clinical practice. This work, in my opinion, has tremendous significance for the clinical practice of in vivo glucose detection, which, of course, is a key health-care issue in the treatment of diabetes. . . .

Based on my experience I believe that [the petitioner] is one of the leading scientists in this area in the world. He seems to be well ahead of other scientists in understanding what needs to be done in this area.

Dr. Christopher Uhegbu, senior scientist at Cygnus, Inc., states:

[The petitioner] is well recognized as being among the leading experts in the biosensor development and application in glucose monitoring. . . .

Because of my long-time involvement in the diabetes study as well as my scientific achievements in biosensor research, [the petitioner] has asked me to evaluate his work on the glucose monitoring to help his immigration petitions. I

[The] promising potential of biosensors . . . have brought in very active research to adapt the cutting-edge technology to glucose testing for diabetes patients. One of the challenges facing the researchers in this area is to improve the reliability of biosensors in glucose testing for a defined length of time. The problem is mainly caused by one of the components of the device – enzymes, whose chemical stability often deteriorates [over] time. Scientists around the world have proposed various methods to solve the problem, and no satisfactory solutions have been found. [The petitioner's] research has clearly provided a new insight into this problem. Working on a strategy completely different from conventional approaches, [the petitioner] . . . discovered that by changing the way to measure a different output of the biosensor, the problems associated with the devices can virtually be eliminated. Furthermore, he designed a novel flow system to turn his new discovery into a practical protocol. The publications have shown that his method can yield fast and much more reliable results compared to the current practices. . . . [The petitioner] is clearly pioneering [in] the biosensor research and is no doubt a leader in the glucose testing.

The petitioner's appellate submission overcomes the director's finding that the record lacks independent material addressing the importance of the petitioner's work. The director had also objected that the petitioner had not directly addressed the labor certification issue, but if a petitioner establishes the importance and significance of an alien's work, as this petitioner has done, we can readily infer that a waiver of the labor certification will serve the national interest by ensuring the alien's continued presence in the United States.

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.