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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 00 161 53305 Office: VERMONT SERVICE CENTER

Date: DEC 10 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

for Elizabeth Hayward
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. At the time of filing, the petitioner was a research scientist at the State University of New York (“SUNY”) at Stony Brook. The petitioner’s current job title is not in the record, but his most recent correspondence is on the letterhead of Florida International University, where the petitioner continues to conduct similar research. 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, 22 I&N Dec. 215 (Comm. 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:

I will continue to work as a research scientist concentrating on the research of crystal growth and computational fluid dynamics as they relate to the use of state-of-the-art numerical method to model the crystal process. Upon my development and reconstruction of the code, this unique computational technique will enable the crystal growers [to] further develop the growth systems and process, and thereby make significant contributions to advancement in the research of crystal growth and design as well as in the development of next generation crystal growth system[s].

Counsel states:

The national importance of Petitioner/Beneficiary’s current research is first shown by the fact that he is working on the area of crystal growth at SUNY-Stony Brook, and is part of one of the leading research groups in advanced modeling and simulation of crystal processes in the United States. This group is the leading member of a multi-million dollar and multi-university consortium for crystal growth research. . . .

[W]e believe that the United States has more interest in this present petition than in any given individual labor certification application. . . . The truth of this

conclusion will be obvious when we consider that the Beneficiary's research is part of a \$5 million Multidisciplinary University Research Initiative from the U.S. Department of Defense to pursue research on Integrated Intelligent Modeling. . . .

[T]he Petitioner/Beneficiary is a rare and internationally acknowledged expert in his field and the continuation of the current research demands the service of such an expert. . . .

[H]is very expertise is an inseparable part of the ongoing research efforts. . . .

Since Petitioner/Beneficiary plays a crucial role in the research . . . it should be clear that the National Interest inherent in this federally funded project would be in jeopardy, if Petitioner/Beneficiary were not able to participate in it.

Along with copies of the petitioner's articles and other documentation pertaining to the petitioner's field of research, the petitioner submits several witness letters. Professor Vishwanath Prasad, associate dean for Research and Graduate Studies at SUNY Stony Brook,¹ states:

[The petitioner] has been involved in modeling, design and development of the physical vapor transport process for Silicon Carbide crystal growth. Single silicon carbide (SiC) crystal is considered the substrate of choice for the next-generation opto-electronic, and high-temperature, high-power, high-frequency, high-radiation intensity semiconductor devices. . . .

[The petitioner] has succeeded in developing a unique model for the growth of silicon carbide (SiC) crystals that is being used by the second largest SiC substrate vendor in the world. His work involves complex mathematical model development for fluid flow, heat transfer and chemical processes, special numerical schemes and high level of software technology. [The petitioner's] computer algorithm can model and simulate the SiC growth process from beginning to the end, and predict a realistic growth rate. [The petitioner's] work in this area is considered to be one of the most challenging model tasks and his research results are original contributions with far-reaching impact on the Silicon Carbide technology.

The computer model developed by [the petitioner] is being used by two different companies, Sterling Semiconductor, Inc., and Advanced Technology Materials, Inc. to develop the growth process for much larger diameter SiC crystals. Using this model, Sterling has already succeeded in designing a new system that allows them to grow 3 inch diameter crystals compared to their previous technology for only 2 inches. This is considered to be a major leap in the company's business. Now, in joint collaboration with us, they are working on developing a process for

¹ Professor Prasad has since relocated to Florida International University, taking the petitioner along, but he remains director of the consortium.

4 inch diameter crystals. . . . Stony Brook has emerged as the US leader in SiC crystal growth research program. . . .

[The petitioner] has also developed the first model for hydrothermal synthesis and growth of highly pure materials, particularly oxides that are considered critical for optical devices. This work was pursued in collaboration with [the] US Air Force Research Laboratory. Hydrothermal synthesis . . . is commonly used by the research laboratories and industry to grow the very high quality materials that [are] not possible by any other technique.

Various collaborators discuss the above projects in varying degrees of detail. Dr. Ijaz H. Jafri, applications manager at GT Equipment Technologies, Inc., states that the petitioner “is among the few best scientists in the world who have done extensive and detailed research on crystal growth. He has made significant contributions to this material system by achieving a series of exciting and groundbreaking results, which has greatly expanded scientific knowledge in this area.” The initial submission, however, contains nothing from sources outside of the petitioner’s circle of collaborators and professors to show that his contributions have generally been recognized as being particularly important in the field.

The petitioner states “[t]he results and findings in my publications have been widely accepted as significant and cited in 10 journal papers by other scientists.” The petitioner submits documentation showing that three of his articles have been cited an aggregate total of 12 times. The total of independent citations is lower because the aggregate total includes several self-citations.

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 documentation. Counsel argues that the petitioner qualifies for the waiver based on the importance of the consortium project, and the petitioner’s ability to make unique contributions thereto.

One of the new letters is from Prof. Prasad, who states that the petitioner “is indispensable and irreplaceable” to the consortium’s efforts. Professor Wen-Rui Hu of the Chinese Academy of Sciences, where the petitioner had earned his doctorate, states that the petitioner is “one of the most recognized young scientists in China in the field of crystal growth. . . . His contributions have been well received and have impacted the research field as a result.” Prof. Hu adds that the petitioner’s work with the consortium “is recognized internationally.”

Other witnesses do not have such close ties to the petitioner. Professor Jeffrey J. Derby of the University of Minnesota, who denies knowing the petitioner personally, states that the petitioner “has made significant contributions to the research of crystal growth,” and “is one of the leading research scientists in crystal growth. . . . He has been prolific in his research, and I am very impressed by his record of accomplishments.” Dr. David Larson, a senior planner for Space Station Utilization at NASA Headquarters, affirms that the petitioner is “well-recognized . . . in the field of

crystal growth” and asserts that the petitioner’s work has significant military and aeronautic applications.

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 stated that the petitioner has not established that his “level of education and expertise could not be delineated on labor certification forms or that the projects would have to be suspended without [the petitioner’s] presence.”

On appeal, the petitioner submits another letter from Prof. Prasad, who asserts that the continuation of the project is, in fact, contingent on the petitioner’s continued involvement, and that the petitioner’s efforts have already been responsible for the renewal of critical funding (without which the research would, in fact, cease).

In reviewing all of the evidence submitted, we understand some of the director’s concerns and misgivings regarding the petition, but in the final analysis, the petitioner has demonstrated that he is an essential contributor to a major national-level project, who has attracted recognition and even admiration from independent sources. The petitioner has overcome the grounds raised in the director’s decision. The evidence presented, while not the very strongest we have ever encountered, is nevertheless more than sufficient to place the preponderance of evidence in favor of approval of the waiver request, and thus of the petition.

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 scientific 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.