

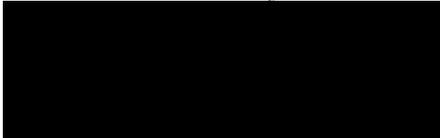


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U.S. Department of Justice  
Immigration and Naturalization Service

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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: 08 FEB 2002

IN RE: Petitioner:  
Beneficiary:



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 which 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 which 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 which 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. 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 a Master of Business Administration degree from the University of North Carolina. The director did not contest that the petitioner's occupation falls within the pertinent regulatory definition of a profession. The remaining issue 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 director concluded that the petitioner worked in an area of intrinsic merit, marketing biotechnologically engineered crops, and that the proposed benefits of the petitioner's work, improved nutrition and more efficient farming, would be national in scope. In general, we concur, although even the materials submitted by the petitioner suggest that the benefits of biotechnologically engineered crops are somewhat controversial.

Counsel argues that since the director concluded that the petitioner meets the first and second prong of Matter of New York State Dept. of Transportation he must meet the third. Specifically, counsel argues that if an area has intrinsic merit with a national benefit then it must outweigh the labor certification process. Under counsel's interpretation, there would be no need for the third prong. Every petitioner who satisfies the first and second prong would be eligible. An alien would not need to demonstrate any personal achievement at all. Counsel, however, misinterprets the first two prongs. That an alien meets the first prong by working in an area of intrinsic merit does not mean that he personally contributes to that area to a greater degree than an available U.S. worker. The second prong merely looks at the *proposed* benefits of the petitioner's employment in the United States. No record of accomplishment is required to meet the second prong. If a petitioner establishes that he meets these two prongs, he must then establish that his past history justifies a conclusion that he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum skills. It is noted that the word "minimum" refers to the skills needed to perform the job, which might be quite high and exclusive.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. Matter of New York State Dept. of Transportation, supra, note 6.

Dr. Jorge F.S. Ferreira, a residue chemist at the AgrEvo Research Center in North Carolina, indicates that he met the petitioner while he was consulting for scientists at the United States Department of Agriculture (USDA). [REDACTED] asserts:

[The petitioner] is a respected business developer and consultant in the field of biotechnology. Through some of his publications he has helped US companies to better understand the agricultural revolution and prepare for it. He has also helped many research companies directly, by approving funding to their research programs, based on his technical, economic, and market analyses. Finally, as an employee of Cargill, the giant US grain handler and processor, he has helped that company by crafting a series of profitable deals with key technology providers.

[REDACTED] a research entomologist with the USDA Agricultural Research Service Beneficial Insects Introduction Research Laboratory, writes:

[The petitioner] is part of the very limited pool of agribusiness professionals that actually understand the technology and its implications. Because of this, I understand that he is in the front line of strategic planning for his company Cargill, helping steer the company towards the future. But the impact of his work clearly goes beyond his own company. By talking to the industry and putting together a number of important research and commercial agreements such as the joint venture with Monsanto Company of St. Louis, he has been building the business case for the new crops and providing a vital link between scientists and resources, and between research and the market place.

Based upon his resume, a few specific examples come to mind. He has been involved in the development of high oleic canola (a healthier canola oil), nitrogen efficient corn (corn with lower nitrogen intake needs), and high-oil-lysine-methionine corn (corn specifically targeted to more efficiently feed monogastric animals). While high oleic canola is helping prevent coronary disease, the other two products will save virtually millions of dollars to farmers and animal producers.

statements do not appear to represent the official opinion of the USDA. [REDACTED] Director of Specialty Plant Products at Cargill, Inc., indicates that the petitioner is a business consultant in Cargill's Strategy and Business Development department, leading and coordinating a number of internal biotech teams. [REDACTED] praises the petitioner's knowledge of biotechnology, asserting that the petitioner is one of ten in the firm of 70,000, with a technical and business understanding of biotechnology. [REDACTED] continues:

[The petitioner] has had a critical role in the negotiation team that set the foundations for a new biotech company to be formed from resources contributed by Cargill and Monsanto. In addition[,] his work with universities and evolving technology companies has been of great importance to our company and this country as well.

[The petitioner]-has led the negotiations with Kimeragen, Ribozyme, Biosource and other emerging companies. The each have research programs on cutting-edge technologies that represent the next step in biotechnology discoveries, but need funding to keep developing their concepts. The objective of the work [the petitioner] has done with these companies is to analyze which of them has/have the most promising technologies and then recommend where Cargill should "place its bet(s)[.]" If his analyses prove to be correct, we will be helping develop new technologies that significantly improve the ability to target specific genes in plants to increase yields, lower production costs, and minimize the environmental impact of agriculture on the environment through the development of sustainable farming techniques. By injecting capital in some of these programs, a secondary but not negligible effect may be that we help find new, more effective genetic therapies to treat some diseases such as cancer, since the technology of these companies applies to humans as well as plants. All of these activities have the benefit of improving the economic position of the United States now and in the future.

An example of this type of work that is in progress is our project with the University of Wisconsin on nitrogen fixing corn. [The petitioner] was instrumental in the negotiations and joint studies with University of Wisconsin professors and researchers that resulted in our funding of their research on nitrogen-fixing corn (based on a discovery originally made in Brazil, [the petitioner's] country of birth). If successful, this new corn hybrid can reduce today's nitrogen fertilizer requirements by as much as 70%.

Most of the benefits discussed by [REDACTED] are speculative. [REDACTED] the biotechnology manager for Cargill adds:

It is worth mentioning a publication that [the petitioner] put together early last winter. The *Technical Assessment of the Major Lifesciences Platforms* broke new

ground in terms of identifying, analyzing and comparing the technology being developed by the several research labs in this country.

██████████ the new business development manger for Monsanto in Brazil describes the joint project between that company and Cargill.

[The petitioner] himself was a key negotiator of that agreement. As part of the broader agreement, it was decided that Cargill and Monsanto would launch a pilot program in the Cerrados (Mid-West) region of Brazil to test how the two companies could work together in commercializing a biotech product, in his case RoundUp Ready (RR) soybeans.

As an international grain handler, transporter and processor, Cargill has an enormous network of consumers and farmers through which it can market a new biotech product in a most efficient manner, thus offering the new product at the lowest cost possible to farmers and consumers alike. Monsanto has been he leading biotech research company in the area of agriculture, but does not have the commercial muscle Cargill has. The global cooperation between he two companies makes much sense because Monsanto's inventions now have a clear and strong path from the research bench to the supermarket shelf or farm gate.

...

I must say that since the very beginning, I was very impressed with [the petitioner.] Despite his relatively young age, he is extremely experienced in handling the complexities of biotech products, both in terms of the technology behind them and the appropriate commercialization strategies for each type of technology and application.

██████████ the director of research at D&PL International, indicates that he met the petitioner when the petitioner became interested in the biotechnologically transformed (Bt) cotton D&PL was introducing into the market. While Mr. Stefany provides general praise of the petitioner's abilities in marketing biotechnology, he does not indicate how the petitioner influenced the success of Bt cotton sales.

The petitioner submitted a list of "publications," but, as noted by the director, failed to provide any evidence that these articles or books have been published. On appeal, the petitioner submits copies of some of these "publications" which appear to be internal company reports and presentations. These do not constitute "publications," and, as they are confidential, do not represent the petitioner's influence on the field beyond his own company.

The petitioner also submits on appeal, several promotional materials printed by Cargill and newspaper articles about the merger between Cargill and Monsanto. While the articles indicate that the joint venture between Cargill and Monsanto was extremely significant in the industry, it

is not clear that the concept of merging a grain company with a biotechnology company was a concept developed by the petitioner. The article in the *Wall Street Journal* indicates that Monsanto was previously in discussions with Archer-Daniels-Midland Company for a similar project. This information suggests that the petitioner's work on the joint venture, while beneficial to his employer, did not result in an original concept.

It is acknowledged that the petitioner seeks to operate his own biotechnology consulting firm which would provide services to biotechnology companies around the country. Counsel argues on appeal that the labor certification process is inapplicable because the petitioner seeks to work for himself in a position which did not previously exist and requires a unique set of skills. The inapplicability of the labor certification process, however, does not automatically warrant a waiver of the process, rather it is simply one factor to be considered. *Id.* Regardless, the record does not contain sufficient evidence that the petitioner has the national contacts or a past history of achievements which would justify projections of national benefits from such a consulting firm. For example, the petitioner has not provided letters from independent biotechnology firms indicating that they are aware of the petitioner's contributions to the field and would be interested in his services should he become an independent consultant.

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.