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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: JUL 26 2007

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 sustained and the petition will be approved.

In this decision, the term "prior counsel" shall refer to Fuad B. Nasrallah, who represented the petitioner prior to the filing of the appeal. The term "counsel" shall refer to the present attorney of record.

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. The petitioner seeks employment as a research scientist at the University of Illinois at Urbana-Champaign. 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.

Prior counsel states that the petitioner's "research uses molecular biology, plant biotechnology, and medicine to develop forms of plant vaccines to protect against serious pathogens that cause human diseases." The petitioner states that his goal "is to develop an apple cultivar which can produce apple fruits that deliver a vaccine to protect against the serious pathogen, respiratory syncytial virus (RSV), that causes bronchiolitis and pneumonia-type diseases in all human age-groups." The petitioner notes "this vaccine can be readily distributed throughout the world including poorer countries that lack refrigeration and health-care infrastructure." The petitioner has conducted similar work with tomatoes to explore the principles behind genetically engineered vaccines of this kind.

Along with documentation pertaining to his field of research (describing various efforts to include edible vaccines in potatoes, apples, and other plant-based food sources), the petitioner submits several witness letters. [REDACTED] who has supervised the petitioner's work at the University of Illinois at Urbana-Champaign, states that the petitioner "has already successfully transferred the gene that encodes for the protein envelop of the viral disease respiratory syncytial virus . . . into tomato, and he has regenerated transgenic plants that express this vaccine. This is a crucial first step in our effort to develop an edible human vaccine" to fight

RSV. Prof. Korban states that the petitioner's involvement has been "essential to the successful progress made so far."

Other University of Illinois faculty members explain specifics of the planned vaccine (the apples will contain a protein which, in turn, induces cells in the intestinal wall to produce antibodies against RSV) and attest to the petitioner's importance in executing the project. The petitioner also submits letters from faculty members at Michigan State University, where he had worked prior to moving to the University of Illinois. Professor Kenneth C. Sink states that the petitioner "was recruited to MSU specifically to work on the fusion of two *Mentha* species." Prof. Sink continues:

At the start, we both thought mint would be rather easy for biotechnology applications, but as it turned out, this species needed a new scheme at every step of the project.

[The petitioner] took charge of the project and devised new protocols for protoplast isolation, culture and fusion that led to success in the project. He not only completed the somatic hybridization work, but also transformed mint both via direct-gene mediated method and agrobacterium.

Other researchers who have worked with the petitioner offer similar descriptions of his work. [REDACTED] now a research scientist at Monsanto, supervised the petitioner's work at the Institute of Cytology and Genetics in Novosibirsk, Russia. [REDACTED] states that the petitioner "became a worldwide recognized expert in transformation and tissue culture of agronomically important crops." [REDACTED] adds that, although the petitioner's articles about his latest work with edible vaccines have not yet been published, "through word of mouth they are already known to the scientists working in the field."

The petitioner submits other letters from further outside his circle of collaborators. [REDACTED] Hahne, director of research at the *Centre National de la Recherche Scientifique*, Strasbourg, France, states that he "knew of [the petitioner's] contributions to the field of sunflower biotechnology and for this reason, invited him to give a seminar in our institute." [REDACTED] states that this was his only personal meeting with the petitioner. [REDACTED] asserts that the petitioner's "publications are indicative of the quality of [the petitioner's] contributions." The record shows that [REDACTED] has cited the petitioner's work on more than one occasion, demonstrating that he relies on it in his own published work.

In all, the record contains 17 articles by other authors in many countries, independently citing the petitioner's published work. These citations establish a sustained pattern of international influence in the field, and represent objective evidence that the petitioner's work has attracted serious interest outside of his own circle of collaborators and superiors.

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

manuscripts of further articles and a confidential invention disclosure regarding his work with edible vaccines, as well as a personal statement.

The petitioner discusses the importance of developing an inexpensive, easily administered vaccine for RSV. The general importance of the endeavor establishes the intrinsic merit and national scope, but such general information cannot establish that it is important that the petitioner be the one conducting such research. Similarly unpersuasive is the petitioner's assertion that "the uncertainty which necessarily follows any Labor Certification application would also serve as a chilling factor to researchers in this field." By that logic, all scientific researchers should be exempt from the job offer/ labor certification process. Congress, nevertheless, has specifically indicated that the requirement applies to aliens of exceptional ability in the sciences. This office has no authority to "second guess" Congress through a finding that Congress, in effect, made a mistake when they passed legislation imposing the job offer requirement on scientists.

More persuasive is his observation that he has invented new protocols that have been "recognized by many scientist[s] worldwide," an assertion corroborated by the relatively frequent international citations of his work. The petitioner has documented a track record of productive and influential research.

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 citations of the petitioner's work, but found the citations to be "insufficient to establish how [the petitioner's] work has resulted in an appreciable improvement in his or her field of specialty."

The petitioner's citation record would, indeed, be insufficient to establish a degree of influence that would show eligibility as an alien of extraordinary ability under section 203(b)(1)(A) of the Act. In this instance, however, the petitioner seeks a lesser classification with a lower burden of proof. An individual citation, by itself, does not establish significant influence in the field, but in this instance the petitioner has documented what appears to be a relatively high number of citations. The citations also corroborate witness statements to the effect that the petitioner is an internationally recognized authority in his field, thus lending greater weight to those statements.

On appeal, counsel argues that the petitioner has established eligibility for the waiver, and observes that the petitioner's superiors have attested to the importance of the petitioner's contributions. In this case, the documentation regarding the petitioner's past work establishes a track record of documented achievement, rather than simply academic skill or competence in the laboratory. A number of researchers worldwide have relied on the petitioner's work in furthering their own studies, and there is nothing in the record to suggest that this trend is temporary or short-lived. The evidence also shows that the petitioner's benefit is not limited to the one short-term project at the University of Illinois; he has conducted influential work in other areas as well.

There is nothing in the record before us that would call into question the authenticity or credibility of the petitioner's evidence.

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. Considering the many factors presented in this petition, we conclude that a waiver of the job offer/labor certification requirement would 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.