B5

U.S. Department of Justice

Immigration and Naturalization Service

"Identifying data deleted to prevent clearly unwarranted invasion of personal privacy."

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Nebraska Service Center Date: 18 JUN 2002

IN RE: Petitioner: [redacted]
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:

[redacted]

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. The petitioner seeks employment as a research associate at [redacted] at the University of Michigan. 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 petitioner holds a Ph.D. degree in [redacted] The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus 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:

 [redacted]

> 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.

Along with documentation of her published work and academic credentials, the petitioner submits several witness letters. [redacted] upervised the petitioner's doctoral research. At the time of filing, he was at the University of Chicago, as well as president-elect of the Society for Molecular Biology and Evolution. [redacted] he petitioner's doctoral work:

> [The petitioner] worked on Pax genes, which code for factors (proteins) that control the development of the central nervous system and some organs such as eye, kidney, brain, and pancreas. Mutations in these genes can cause genetic diseases. . . . Some mutations in Pax genes can also cause cancer, e.g. child muscle tumor and child brain tumor. [The petitioner's] research was to understand the function and evolution of Pax genes. . . .
>
> To understand how a gene works, it is usually easier to study its function as a simple organism than in a highly complex one such as human or mouse. So [the petitioner] chose to clone Pax genes from cnidarians such as jellyfish and hydra because cnidarians are the simplest animals that have a nervous system and have eyes, ranging from simple to lens eyes. She cloned several genes from jellyfish and hydra. She then used statistical methods and computer programs to study the evolutionary relationships among all known Pax genes, including 9 types of Pax

genes from human and mouse. This study gave a very useful classification of genes and provided much insight into the function and evolutionary origin of genes. She showed that Pax genes can be clustered into five groups. The genes she cloned in the simple animals belonged to the same groups as the important human Pax-2 and Pax-6 genes. So by studying the functions of the Pax genes cloned by her in the simple animals, we can infer the functions of Pax-2 and Pax-6 genes in humans, which are very complicated to study. The knowledge on functions of the will help to understand the mechanisms underlining the pathology of human diseases that are caused by defects of Pax genes. This work was so significant that it was published in a highly prestigious journal, the Proceedings of the National Academy of Sciences, USA. . . .

I believe she has done very significant work on a set of genes that is so important to human development and health. . . .

In summary, [the petitioner] has done very significant work in molecular biology, human genetics, and molecular evolution and has made excellent contributions to biomedical sciences.

associate professor at the University of Texas, Houston, was among the petitioner's doctoral advisors at that university. describes the petitioner's work with Pax genes, stating that the petitioner "found two new types of PAX gene, one of which probably has the function of human PAX-6." continues:

[The petitioner] decided to try to recreate using an evolutionary approach the PAX-6 like sequence that existed hundreds of millions of years ago in the animal kingdom ancestor, clone it and direct it to make Pax-6 proteins in vitro. This was successful and she tested the properties of this protein and found out the critical functional criteria that can distinguish Pax-6 protein from other Pax proteins. Then she introduced mutations at sites in the protein that she predicted would determine its specific function. By this approach, she found the crucial parts of the Pax-6 protein that are responsible for the functional differences between Pax-6 protein and other Pax proteins. This finding illustrates how the eye master control function of Pax-6 gene evolved from its ancestor and will be very helpful to the understanding of the evolution of [the] eye.

now an associate professor at the Medical College of Georgia, previously held the same position at the University of Texas, Houston offers a description of the petitioner's work that is fundamentally similar to other descriptions already quoted.

supervises the petitioner's work at the

> [The petitioner] has already made remarkable progress and developed critical novel methodologies to approach fundamental problems under study in our lab. [The petitioner] is studying factor V, a central participant in the blood coagulation pathway. Genetic deficiencies of factor V cause a severe bleeding disorder closely related to hemophilia (parahemophilia). Recently, a specific mutation in factor V which increases its function, factor V Leiden, has been shown to be the most common inherited cause of abnormal blood clotting. . . . Factor V is made in the liver where it is then secreted into the blood. It is also contained in blood platelets, small particles which circulate in the blood and perform the first step in blood clotting at the site of injury to a blood vessel. A fundamental question for our field is distinguishing the contributions of this platelet pool of factor V and the plasma pool of factor V to the normal function of this protein and to the abnormal blood clots that occur in factor V Leiden patients. [The petitioner] has developed a novel approach to generating transgenic mice in which factor V is made in only one or the other compartment, but not both. She has recently succeeded in introducing the factor V gene into a large segment of DNA called a bacterial artificial chromosome containing a platelet-specific gene (platelet factor 4) and a liver-specific gene (albimin). These re-engineered BACs have been injected into mouse eggs and used to produce transgenic mice, which are currently being further studied in the lab. The next series of experiments, no made possible by [the petitioner's] advances, should allow us to determine the critical site of action of normal factor V and the abnormal factor V Leiden present in many patients with blood clots. . . . These findings could have enormous impact on the practice of modern medicine, given the widespread implications of abnormal blood clotting for human disease.

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 observed that the letters submitted with the petition, all from university faculty members who have supervised or collaborated with the petitioner, "do not establish that the alien's work is known and considered unique outside her immediate circle of colleagues. The record is not persuasive without collaboration from disinterested parties."

On appeal, counsel states:

> The requirement that [the] alien's work is known and considered unique outside his/her immediate circle of colleagues is not mandated by the law nor is it administratively feasible. It is impossible for every petitioner to make a nationwide investigation as to whether a specific beneficiary is known and considered unique by those outside his circle of colleagues. Such a requirement is a Catch-22 dilemma. Only those who know him and his work can provide testimonial letters. Those who do not know him have no way and no reason for writing such letters. Since beneficiary has made numerous publications, it is

without doubt that he or his work is known outside his immediate circles of colleagues.

Letters from those close to the petitioner certainly have value, for it is those individuals who have the most direct knowledge of the petitioner's specific contributions to a given research project. It remains, however, that very often, the petitioner's projects are also the projects of the witnesses, and no researcher is likely to view his or her own work as unimportant. The director's observation that all of the witnesses have close ties to the petitioner is not intended to cast aspersions on the integrity of the witnesses; the director specifically indicated that the letters accompanying the petition were "credible." Still, these individuals became aware of the petitioner's research work because of their close contact with the petitioner; their statements do not show, first-hand, that the petitioner's work is attracting attention on its own merits, as we could expect with research findings that are especially significant.

Counsel observes that the petitioner's work has been published, and thereby disseminated outside of the petitioner's immediate circle of collaborators and mentors. Publication, by itself, is not a strong indication of impact because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the petitioner's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner herself has cited dozens of sources in her own articles. Outside citations (the more the better) provide firm evidence that other researchers have been influenced by the petitioner's work. Also, the petitioner can contact the authors of those citing articles and solicit their opinions as to the significance of her work. Their citation of the petitioner's work demonstrates their familiarity with it. Finally, it is common for researchers to request reprints of articles of interest to them, in which case the independent party has provided a name and address by their own initiative. No national survey is necessary as counsel contends, and this office has seen independent letters and citation records provided by the exact process described above. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact – and national benefit – a researcher's work can have, if that research does not influence the direction of future research.

We note that the petitioner has, on appeal, submitted a partial printout of an article from a Purdue University web site, containing citations of the petitioner's work. The partial printout identifies no author, so we cannot determine whether the citation is independent, rather than (for instance) a self-citation by one of the petitioner's collaborators.

The question of independent recognition is highly relevant in this instance, because the claimed importance of the petitioner's work is inextricably tied to several deadly or disabling genetic disorders. Research into these diseases serves the national interest to the extent that it leads to cures or treatments. If the petitioner's research has attracted negligible attention, then it is

difficult for us to conclude that the medical community as a whole is significantly closer to the goals of treatment or cure as a result of the petitioner's work. Also, the petitioner appears to have stopped working with the Pax genes; descriptions of her current work do not mention them. Therefore, the petitioner's research regarding Pax genes will prospectively benefit the United States only if her past findings continue to influence the work of others who are still performing such research.

Apart from the partial printout mentioned above, the only new documentation submitted on appeal is a letter from an assistant professor at the University of Michigan. describes the petitioner's past and present research work, already discussed above in the context of previously submitted witness letters letter establishes that another researcher, working at the same university as the petitioner, considers the petitioner's work to be "an important scientific contribution," but the director had not questioned the reaction of the petitioner's co-workers at the University of Michigan.

The director did not conclude that the petitioner's work is without value or potential future applications. Therefore, repeatedly listing the petitioner's specific accomplishments does not address the fundamental issues underlying the denial. Nevertheless, the statute makes it clear that the job offer requirement normally applies to scientists, even to aliens of exceptional ability in the sciences. It cannot suffice for the petitioner simply to establish that those close to her believe her to be better qualified than other researchers in her specialty.

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.