

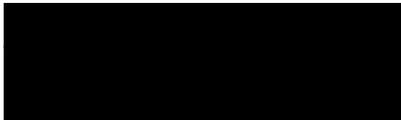


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U.S. Department of Justice
Immigration and Naturalization Service

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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: 25 MAR 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

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.

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 assistant at the University of Illinois at Chicago ("UIC"). 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 has not disputed 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.

Richard Van Breemen, Associate Professor of Medicinal Chemistry in the College of Pharmacy at UIC, describes the nature of the petitioner's research:

In essence, our research seeks to advance drug discovery through combinatorial chemistry by developing techniques and methods for high throughput screening of combinatorial libraries using ultrafiltration mass spectrometry. The methodology of combinatorial chemistry has two major advantages over traditional drug discovery and development approaches; it allows scientists to synthesize numerous compounds in a very short period of time and permits scientists to perform simultaneous testing of the compounds as mixtures for biological activity or facilitates high throughput bioassays of individual compounds. [The petitioner] has contributed to a new method for screening combinatorial libraries as a means of new drug discovery, pulsed ultrafiltration mass spectrometry. Recently, he has applied our new technology toward the next step in the drug development process, metabolism and screening for metabolic activation. Specifically, drug candidates must be tested to determine how they are changed or metabolized in the body and whether they are metabolized into toxic products. Our lab has discovered a means to facilitate this process using pulsed ultrafiltration mass spectrometry.

Richard Silverman, Professor of Chemistry and Biochemistry at Northwestern University, states:

[The petitioner's] most recent endeavor seeks to develop a technique by which scientists may predict the viability of compounds when they encounter metabolizing

enzymes. If scientists can predict the viability of compounds in contact with enzymes, we can eliminate one step in the long road of drug development.

The implications of this research are immense... [The petitioner's] research will cut the cost and amount of time invested in this process; thus limiting the financial risk to the pharmaceuticals industry and forging a path to new drug therapies. If advances can be made in this area, the pharmaceutical industry can develop drugs faster and more accurately, saving millions of Americans the costs pharmaceutical companies often pass onto the customers.

Professor Duane Venton, Professor of Medicinal Chemistry and Pharmacology at UIC, states that the petitioner is "rapidly becoming a leader in the field of mass spectrometry and combinatorial chemistry." Professor Venton also states: "[The petitioner's] tenacity appears to be paying off with the development of the Pulsed Ultrafiltration Electrospray Mass Spectrometry method." He adds that the technique can be used for a variety of applications related to drug discovery and development.

Other researchers from outside UIC who have collaborated with the petitioner state that his knowledge of mass spectroscopy, combined with an understanding of medicinal chemistry, make him a critical asset not only in Dr. Van Breemen's laboratory, but at other laboratories as well. It should be noted that all of the initial witnesses endorsing the petitioner are his research collaborators and trainers.

Along with the witness letters, and copies of his published and presented work, the petitioner submits evidence reflecting the citation of his work by others in the field. While one of the citations appears in an article written by the petitioner's collaborators at UIC, four of the citations are from independent researchers.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Department of Transportation. In response, the petitioner has submitted further letters, publications and background materials.

Professor Van Breemen, in his second letter, credits the petitioner with discovering that "pulsed ultrafiltration mass spectroscopy can be applied to the molecular screening process." He further states:

This new method is versatile and its impact will be broad based. It will supplement, and in many instances, replace current screening methods. This new methodology enables researchers to identify potential lead compounds, optimize lead compounds, and test their metabolic and toxicological properties all with the same device. Current methods are typically specialized and a completely different experimental setup is required for each task.

In his second letter, Ron Huang of the Bristol-Myers Squibb Pharmaceutical Research Institute credits the petitioner with discovering that the pulsed ultrafiltration process can be applied to natural, as well as synthetic, products. Ron Huang states that the petitioner proved that the pulsed ultrafiltration mass spectrometry method rapidly provides answers regarding the stability of potential new drugs against metabolizing enzymes. He further notes that the petitioner's latest results suggest that toxicity of potential drugs can be predicted as well. Mr. Huang indicates that in the pharmaceutical industry it is necessary to learn such information as soon as possible so unpromising drug candidates can be discarded before additional research monies are invested needlessly.

The director denied the petition, indicating that the petitioner met the first two prongs of the above-described national interest test, but that the petitioner had not established his ability to serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. The director acknowledged the petitioner as "a talented individual who is making contributions in his present role," but noted a lack of evidence demonstrating his work was "known and considered unique outside his immediate circle of colleagues." The director concluded that the record was "not persuasive without corroboration from disinterested parties."

On appeal, counsel argues that the petitioner's work has indeed attracted attention outside his immediate circle of colleagues. In support of this claim, the petitioner submits several additional witness letters.

In referring to the petitioner's pulsed ultrafiltration mass spectrometry method, Paul Vouros, Professor of Chemistry at Northeastern University, states:

His method will be of great use to academic and industrial laboratories throughout the country. This new methodology enables researchers to identify potential lead compounds, optimize those compounds and test their metabolic and toxicological properties using the same device. Other methods are highly specialized and different experimental setups are required for each task. This novel method is very versatile and will supplement current screening technologies. [The petitioner] has used his technique in screening several significant enzymes for potential drug discovery... These enzymes play a key role in the development of medications for the effective treatment of diseases such as AIDS, cancer and arthritis.

Another area in which [the petitioner] has made an important contribution to both science and industry is his having applied the pulsed ultrafiltration mass spectrometry process to more rapidly determine the stability of potential new drugs against metabolizing enzymes. This discovery, which was first reported in *Drug Metabolism and Disposition* was an accelerated communication reserved only for findings of the most timely and innovative nature, has again provided scientists with an important tool for promoting a key step in drug research and development.

Roderick Davis, Research Scientist at Glaxo Wellcome, credits the petitioner with presenting “a novel method that used bioaffinity selection to identify potential drug candidates.” Dr. Sohrab Habibi-Goudarzi, Mass Spectrometry Group Leader at Monsanto Company, states: “When [the petitioner’s] work was brought to my attention, I evaluated the technology for our internal use and determined that his innovative technique would be immensely valuable in our pharmaceutical research.” Similarly, Dr. Joseph Loo, Mass Spectrometry Group Leader at Parke-Davis Pharmaceutical, acknowledges the petitioner’s work on the development and application of the pulsed ultrafiltration mass spectrometry and its use for screening large compound mixtures. Additionally, Dr. Ray Wieboldt of Abbott Laboratories indicates that the petitioner developed “an original method for screening properties of potential drug candidates.” He adds that “academic and industrial groups have recognized this research as an important and practical technological contribution.” Other letters from scientists at INH Technologies, Pharmacia & Upjohn, Merck Research Laboratories, and Novartis Pharmaceuticals Corporation offer further support in affirming the impact of the petitioner’s research. In sum, the witness letters offered on appeal support counsel’s contention that the petitioner has earned a reputation “outside his immediate circle of colleagues.”

The individuals attesting to the value of the petitioner’s work have not been limited to the petitioner’s research colleagues at UIC. Furthermore, the value of the petitioner’s contribution is not tethered to one single short-term project; witnesses have described valuable contributions arising from the petitioner’s work in past projects, indicating that the petitioner has established a prior track record of achievement.

The petitioner submits additional documentation to establish how frequently other researchers have cited his published work. The petitioner includes a citation index showing that citations of his published articles have appeared in at least thirty subsequent articles. While a few of these citations are self-citations by the petitioner or his collaborators, there remain a significant number of independent citations. The new citation evidence submitted on appeal offers further support of counsel’s claim that the petitioner’s work has indeed attracted widespread interest.

Upon careful consideration of the documentation submitted, we find that the petitioner has established that the significance of his work is not limited to the laboratory where he works. The witness letters from scientific researchers and scholars throughout the pharmaceutical field, combined with the complete citation history of the petitioner’s published work, demonstrate that outside researchers have followed his work with particular interest. Certainly, not every Ph.D. candidate qualifies for a national interest waiver, but in this case the petitioner has developed methods which the scientific community outside his laboratory deem to be of special significance. We find that the evidence offered in support of the appeal overcomes the deficiencies found by the director.

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. 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 which 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.