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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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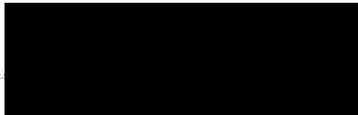


File: EAC 99 032 51205 Office: Vermont Service Center Date: 13 MAY 2002

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, 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 postdoctoral researcher at Pennsylvania State University ("Penn State"). He has since begun working at Harvard University. 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 Ph.D. degree in Plant Physiology from Penn State. 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:

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 petitioner describes his work:

Since the plant hormone abscisic acid (ABA) can reduce water loss from plants, my finding of an ABA-activated protein kinase will be very useful for generating drought-tolerant crops by genetic manipulation of this kinase. Drought-tolerant crops will help increase the yield while conserving natural resources such as fresh water and avoiding the problems caused by irrigation.

The record indicates that ABA reduces water loss in plants by closing tiny pores on leaves through which moisture can escape. Preventing such evaporation can provide obvious benefits for crops growing in water-poor soil.

The petitioner submits copies of his published research work. The petitioner was the first author of an article published in Plant Cell in late 1996. The editor in chief of that journal, Professor Ralph S. Quatrano of Washington University in St. Louis, states that the petitioner’s “Plant Cell article has been cited by other research groups 16 times in less than two years.” Prof. Quatrano states that this citation rate (supported by documentation in the record including partial copies of the citing articles) is “extraordinary”; Professor Steven C. Huber of North Carolina State

University calls the citation rate “inconceivable.” Professor Huber, who is also a research plant physiologist with the U.S. Department of Agriculture’s Agricultural Research Service, states that the high number of citations “highlight[s] the novelty and importance of [the petitioner’s] work.”

To support the assertion by several witnesses that the petitioner’s work has been frequently cited, the petitioner submits partial copies of numerous articles (from many different countries) that contain citations of his work. One of the petitioner’s articles (from the journal Plant Cell) has been cited 16 times in less than two years. The petitioner submits evidence to show that Plant Cell has the highest impact factor (i.e., average citation rate per article) among journals devoted to plant science. As of 1997 the average Plant Cell article was cited 9.85 times, while other leading journals in the field had citation rates between 3.0 and 6.5. Thus, the petitioner has submitted firm documentary evidence to show that the petitioner’s work has had a substantial global influence compared to the published work of others in his field.

Prof. Quatrano, who states that he has never worked with the petitioner but that they share the same general area of research interest, asserts that the petitioner “has made significant contributions” and played a “critical role” in high-impact research. Prof. Quatrano asserts “[t]he outcome of [the petitioner’s] research will have a great impact on crop improvement.”

Prof. Huber, who states that he does not know the petitioner personally, states that the petitioner’s work engineering drought-resistant plants “will help the United States maintain a stable food supply without increasing its dependence on irrigation.”

Witnesses from several other prestigious universities throughout the country offer similar letters in support of the petition. Many of these witnesses assert that they do not personally know the petitioner but that they have followed his work closely because of its significance. While this work is at a relatively early stage, we cannot ignore the attention that the petitioner’s work has received from the University of Texas, the University of California, Duke University, and other institutions. These letters confirm that the petitioner’s work is seen as important outside of his own circle of collaborators at Penn State; the heavy citation of the petitioner’s work shows that other researchers not only read his work, but also implement his findings in their own studies.

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 still more witness letters and documentation regarding further publications and citations. Professor Gerald A. Berkowitz of the University of Connecticut states that the petitioner “has played a unique and indispensable role in his field.” Professor Julian I. Schroeder of the University of California, San Diego, states “[t]here is no doubt that his continued presence in the United States is vital to the success of research on how plants can be engineered to conserve water loss during drought.” The petitioner submits evidence of three more independent citations of his work.

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 found that the petitioner has not “shown that an individual with similar skills and education could not do the job.”

On appeal, the petitioner asserts that he has, in fact, met the applicable requirements, and that his work remains influential in the field. The petitioner establishes that he is the first author of an article that appeared in the highly prestigious journal Science. While this article cannot, by itself, carry significant weight because it was published after the petition’s filing date, it nevertheless demonstrates the continuation of an already-established pattern.

Counsel has asserted that a brief would be forthcoming within seven days of the filing of the appeal. To date, however, despite contact with counsel, the only further submission from counsel that the record contains is a status inquiry that makes no mention of the brief.

The petitioner has established, through voluminous evidence, that researchers across the country and internationally regard his work as being particularly important. The letters from these researchers are not based on personal relationships or collaboration with the petitioner, the general importance of the petitioner’s area of research, or the reputation of Penn State where the petitioner was working when he filed the petition. Rather, the record shows that a considerable number of researchers throughout the country have followed the petitioner’s work for its own sake rather than any pre-existing relationship with the petitioner, and that the petitioner’s published work has had an international impact that is significantly higher than the average citation rate of articles in the field’s most-cited journal. We find it difficult to disregard or lightly dismiss this combination of objective documentation and independent expert opinion.

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 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.