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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: MAY 14 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 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 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 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 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.

Counsel describes the petitioner’s work:

[The petitioner’s] research relates to the identification of the causes of diabetes and the design of new drugs to prevent and treat the disease. . . .

Studies conducted by the Laboratory of Molecular Endocrinology of the University of Illinois at Chicago are aimed at an understanding of the mechanism(s) by which insulin regulates hepatic gene function, and such studies are essential to identification of the causes of diabetes and the design of new drugs or therapies to prevent and treat the disease. . . . [The petitioner] plays a crucial role in the research program. . . .

Using his expertise and skills in recombinant DNA technology, [the petitioner] endeavors to identify and elucidate the mechanism(s) by which insulin regulates metabolism. In this area, [the petitioner’s] work has led to great progress and his significant contributions and achievements are widely recognized by experts in the field. . . .

[The petitioner] discovered that protein kinase B (PKB) mediates the effects of insulin on IGFPB-1 gene expression in the liver. . . . [The petitioner’s] discovery is regarded as a major step forward toward the goal of the research, . . . in that it

led to the publication of an article in the prestigious Journal of Biological Chemistry. . . . This article has been widely cited by other scientists. . . .

Recent efforts by [the petitioner] have led to another and further important advance in [the petitioner's] field of research. [The petitioner] was able to identify that a specific transcription factor, FKHR, functions downstream from PKB in mediating sequence-specific effects of insulin on hepatic gene expression. . . . As a matter of fact, by using an antisense construct, [the petitioner] was able to block the activation of gene expression by FKHR. . . . [The petitioner's] new discovery is regarded as "a great progress" in the field.

Counsel asserts that the petitioner's "education and training put him at the very top of all advanced degree professionals." With regard to the labor certification process, counsel notes that labor certification requires the petitioner to remain with a single employer throughout the process, whereas "scientists of [the petitioner's] caliber need to be able to 'migrate' among the nation's leading scientific institutions." The argument that the petitioner needs to be free to leave UIC appears to be somewhat inconsistent with the argument that the petitioner is "crucial" to ongoing research at the UIC and therefore, presumably, ought to remain there to ensure the success of the project.

Along with copies of his published articles, the petitioner submits several witness letters.

UIC Professor [REDACTED] who runs the laboratory where the petitioner works, states that the petitioner "has made critical contributions to the progress of research in my laboratory and our understanding of molecular mechanisms mediating effects of insulin on hepatic gene expression." [REDACTED] states that he believes the petitioner's findings "represent a major step forward in our understanding of the mechanisms of diabetes mellitus pathogenesis and treatment, which would not have been possible without [the petitioner's] major contributions." Other UIC faculty members concur that the petitioner has made significant contributions in Prof. Unterman's laboratory. All but two of the letters submitted with the petition are from UIC faculty members.

[REDACTED] director of Developmental Biology and Genetics at the Chinese Academy of Sciences, supervised the petitioner's postdoctoral studies there. [REDACTED] states that the petitioner "led a research group to identify the gene differentially expressed in early embryo of zebrafish, a very important research animal model suitable to address developmental and genetic questions."

Professor [REDACTED] states that the petitioner's "contributions . . . are recognized at the national and international levels. . . . [The petitioner's] continued effort is required to ensure continued progress in this important line of research." [REDACTED] is the only witness who is not at a university where the petitioner has trained, although we note that the petitioner lists [REDACTED] as a reference on his resume.

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.

On appeal, counsel argues "the petition and supporting materials clearly established that [the petitioner's] past record justifies projections of future benefit to the national interest." Counsel does not elaborate upon this point on appeal. The record shows that UIC's faculty considers the petitioner to be indispensable to the project, but the faculty members have not explained why the denial of this petition would necessarily force the petitioner to cease working there. The petitioner already has permission to work there as a J-1 nonimmigrant, and the disposition of this appeal has no bearing on his valid nonimmigrant status. Considering that a postdoctoral position is inherently temporary, and there is no indication that UIC intends to employ the petitioner permanently, it is not clear why the petitioner's nonimmigrant visa is not adequate to secure the petitioner's continued short-term involvement for the period of the project.

Counsel states "the petitioner's achievements should [be] compared with the entire category of advanced degree and exceptional aliens and not merely with similarly educated aliens. . . . [T]here are not many who can match [the petitioner's] achievements." The "entire category" includes tenured professors, department heads, and others with decades more experience than the petitioner has had. The record contains no objective evidence to reliably compare the petitioner's achievements with those of others in the field. Counsel has claimed that the petitioner's work "has been widely cited by other scientists," but the record does not contain any direct documentation of these citations (in the form of copies of the citing works, or a printout from a citation index) to support that claim. In all, the record contains little evidence that the petitioner's work has already had a substantial impact on research outside of the universities where the petitioner has worked or studied. The assertions by UIC faculty members are, without a doubt, sincere, but these assertions cannot represent first-hand evidence that researchers outside of UIC share these opinions. Counsel has stressed that the petitioner's research is government-funded, but there is nothing in the record from the funding agencies to show that those agencies consider the petitioner's work to be more important than similar studies underway elsewhere, or to establish the implied claim that the funding itself is evidence of that importance.

Counsel states "[t]he Director totally ignored the fact that a government agency has confirmed that [the petitioner's] continued presence is in the national interest of the United States in that the Department of Health and Human Services has requested a J-1 waiver for the Petitioner." Counsel cites no statute, regulation or case law that indicates that a section 212(e) waiver for a J-1 nonimmigrant implies eligibility for a national interest waiver of the job offer requirement.

We note, with regard to section 212(e) waivers of the J-1 foreign residency requirement, that the General Accounting Office (GAO) reported that "USIA and INS officials said that they recommend and approve virtually all waiver requests. USIA officials said that . . . they almost always rely on the interested government agencies' assertions that the waivers are in the public

interest.”<sup>1</sup> Even then, counsel does not even claim that the petitioner actually received the J-1 waiver; counsel asserts only that such a waiver has been requested.

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.

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<sup>1</sup> Foreign Physicians: Exchange Visitor Program Becoming Major Route to Practicing in U.S. Underserved Areas (GAO/HEHS-97-26, December 30, 1996), page 15.