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U.S. Department of Justice

Immigration and Naturalization Service

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

identification data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: [redacted] Office: Nebraska Service Center Date: 23 MAY 2002

IN RE: Petitioner:
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:

[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 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 scientist at Brigham Young University ("BYU"). 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 master's degree in Chemical Engineering from the Beijing Institute of Technology. His acceptance into a U.S. doctoral program at BYU demonstrates the equivalence of this degree to a U.S. master's degree. 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 remaining issue 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.

We concur with the director that the petitioner works in an area of intrinsic merit, analytical chemistry, and that the proposed benefits of his research would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. Id. at note 6.

Milton Lee, Professor of Chemistry at BYU, is the petitioner's research advisor. Professor Lee describes the petitioner's research and accomplishments:

> In my opinion, [the petitioner] is one of the most promising young scientists in the country in the area of separation science, which is the largest area in the field of analytical chemistry. In particular, he is one of the few who have developed expertise

in capillary electrochromatography, which is a new technique that has tremendous potential for application in environmental analysis. His paper entitled "Voltage Programming in Capillary Electrochromatography" which has just been accepted in an international scientific journal, the *Journal of Microcolumn Separations,* describes a method for reducing the analysis time of environmental pollutants by as much as fifty percent. This technique is so innovative that a patent disclosure was filed with the U.S. Patent Office. This exciting new technique has been demonstrated for the analysis of polycyclic aromatic compounds, which comprise the largest class of environmental carcinogens known today, and for triazine herbicides, an important class of agrochemicals used in the United States.

Subsequent to this truly noteworthy discovery, [the petitioner] designed and built a complete capillary electrochromatography system, including the hardware, electronics, and computer control software. This had never been accomplished previous to the work of [the petitioner] because of the unique skills that he possesses. [The petitioner] was invited by special request of the major scientists in the field to describe this new instrumentation at the Second International Symposium on Capillary Electrochromatography that was held in San Francisco, California, on August 24-25, 1998. His presentation was entitled "Development of Capillary Electrochromatography Instrumentation and Application in Environmental Analysis." This work was heavily supported for the past three years by the U.S. Environmental Protection Agency.

[The petitioner's] outstanding contributions in developing powerful new tools for environmental analysis have brought him international recognition. His work has led to new analytical equipment for addressing significant present and future health and environmental problems.

[redacted] Associate Professor of Chemistry at BYU, states:

The techniques [the petitioner] is developing are crucial in such diverse areas as the high sensitivity detection of herbicides an polycyclic aromatics (many of which are carcinogens) in the environment, minimization of the amount of solvent waste generated in chemical analyses, development of molecular diagnoses for disease conditions, for understanding of biochemical processes, for characterizing the purity of new synthetic pharmaceuticals, for sensitive detection of drugs *in vivo*, and for monitoring chemical process streams in real time.

[redacted] Professor of Chemistry at BYU, repeats information provided by Professors Lee and Dearden and credits the petitioner with "developments on the cutting edge of analytical chemistry."

[redacted] Research Associate at Oak Ridge National Laboratories, states:

> [The petitioner] designed an ion focusing device for a time-of-flight mass spectrometer which allowed the instrument to perform extremely sensitive analysis. Some of the best results in the world in terms of sensitivity were reported on this instrument. Presentations at prestigious symposia have drawn international respect. [The petitioner] also demonstrated exceptional instrumental talent in the design and development of a capillary electrochromatography system. Capillary electrochromatography is a cutting edge technique, relatively new in separation science, which allows the very efficient and selective separation of a large variety of compounds of environmental, pharmaceutical, and biological interest. Numerous drug mixtures, and polyaromatic hydrocarbons with carcinogenic activity, have been successfully analyzed using this technique. [The petitioner] had the sole responsibility in the group to fully develop and test this new instrument. His exceptional skills in computer programming allowed him to efficiently interface and integrate all the processes performed on his instrument in a computer controlled environment. His creativity, state-of-the-art experience, perseverance, and dedicated work resulted in a high quality instrument and impressive results which were recently reported at the International Symposium on Capillary Electrochromatography. Compared to the conventional liquid chromatography and capillary electrophoresis techniques, the newly developed method is a real breakthrough, which will have a tremendous impact in the coming years in environmental monitoring, drug development, and biochemical analysis. [The petitioner's] unique qualifications and superior expertise in these high performance separation techniques make him an invaluable scientist who's continued participation in this area of competitive research is absolutely necessary for their rapid progress in the United States.

[redacted] Monsanto Corporation Research Fellow and Project Team Leader, states:

> [The petitioner] has designed, constructed, and programmed a high voltage capillary electrochromatography system. This work has already demonstrated the improvements high voltage capillary electrochromatography applications can provide to separations of interest to our company. His work has lead to the development of new analytical instrumentation that could have significant impact on pharmaceutical analysis.

Tammy Jones-Lepp, Research Chemist, U.S. Environmental Protection Agency, states that the petitioner's work with Professor Lee "has been of great help in solving some critical environmental problems, especially those dealing with finding low amounts of chemicals of environmental significance in complex mixtures."

All six of the petitioner's initial witnesses are either faculty members at BYU or collaborators on research projects involving the petitioner. The testimonials submitted indicate the petitioner's expertise and value to his research projects at BYU, but do not to demonstrate the petitioner's influence on the field beyond his university. The witness letters submitted with the petition do not establish that the petitioner's work has attracted significant attention from independent researchers in the chemistry field.

Along with the witness letters, the petitioner provides copies of his published and presented work. The record contains no evidence that the presentation or publication of one's work is a rarity in chemistry research, nor does the record sufficiently demonstrate that independent researchers have heavily cited or relied upon the petitioner's work in their research.

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.

On appeal, counsel asserts that the petitioner "should have been given an opportunity to submit additional evidence" in accordance with 8 C.F.R. 103.2(b)(8). At this point, the decision already having been rendered, the most expedient remedy for this complaint is the full consideration on appeal of any evidence that the petitioner would have submitted in response to such a request.

Counsel argues that the petitioner's work has indeed attracted attention beyond his projects at BYU. The petitioner submits five additional witness letters in support of this claim.

[redacted] Associate Professor, Department of Chemistry and Biochemistry, Texas Tech University, states:

> While he has done a great deal of excellent work, in my mind the most impressive is the development of a complete electrochromatography instrument and the subsequent application of this device for pollutant analysis. First, the instrument is novel and second it allows for vastly improved environmental analysis schemes.
>
> In summary, capillary liquid chromatography and electrochromatography are areas of intense worldwide interest and expected to have a significant impact on environmental and biomedical research in the future. Thus, the United States must maintain a strong effort in this area in order to remain competitive. [The petitioner] is at the forefront of this technology and research effort and has already made significant contributions in this field... If [the petitioner] were not allowed to remain in the United States, progress in this area would be extremely hampered.

[redacted] Professor at Iowa State University, and Senior Chemist and Program Director for the Ames Laboratory's Physical and Biological Science Program, U.S. Department of Energy, states:

> The emerging areas of capillary liquid chromatography and electrochromatography are vital to the development of biotechnology and for the monitoring of the environment... [The petitioner] has made substantial scientific contributions to these emerging areas. In fact, he is now one of the few experts in the world with such qualifications.

[redacted] Professor of Chemistry at the University of Florida, states:

> Mass spectrometry combined with capillary separations is probably the technique of the future for many of the analytical challenges that we will face. [The petitioner's] design of a mass spectrometer and its interface to the capillary separation system is a unique accomplishment and one which suggests a highly skilled person with a unique set of abilities. Besides that however, [the petitioner] has also developed the chemistry for novel columns which are going to be required for improving our analytical capabilities... He is certainly a leader among his peers.

[redacted] Professor of Chemistry and Department Head at the University of Tennessee, credits the petitioner's technique as having "high separation efficiency, rapid speed, great versatility in terms of the types of chemicals analyzed, and minute sample consumption and waste generation."

[redacted] Chief Scientist and Technical Group Leader at the Pacific Northwest National Laboratory, states that the results of the petitioner's capillary liquid chromatography and electrochromatography developments are likely to have a significant impact on environmental and biomedical research.

In sum, the witness letters offered on appeal support counsel's contention that the petitioner has impacted the chemistry field beyond his educational institution. The individuals attesting to the value of the petitioner's work have not been limited to the petitioner's research collaborators at BYU. 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.

Upon careful consideration of the documentation submitted on appeal, we find that the witness letters from scientific researchers and scholars throughout the chemistry field demonstrate that independent researchers have followed the petitioner's 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 university 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 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.