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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

invasion of personal privacy



File: [Redacted] Office: Vermont Service Center Date: 04 NOV 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:
[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, Vermont 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 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. in medicine from Beijing Medical University and an M.D. from Baotou Medical University. 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, 22 I&N Dec. 215 (Comm. 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 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, immunology research, and that the proposed benefits of his work, improved arthritis treatments, 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 219, note 6.

Dr. Ming Jiang, director of the Rheumatology Department at Peking Union Medical College Hospital and the petitioner's former supervisor, writes:

[The petitioner] initiated gene therapy research on the disease of arthritis, which soon became a heavily researched area. He coordinated the world[']s largest Systemic Lupus Erythematosus (SLE) clinical investigation, in which more than 1000 patients were involved. From the investigation, he and his coworkers identified several genes that are related to SLE patients. These genes are currently

stored in Genbank and studied by many researchers. A novel target in SLE treatment regime can be expected from these researchers.

[The petitioner] began his research career in the field of immunology/autoimmunity in 1992, when he was a postgraduate student. He was awarded [the] 1994 Guang Hua Award and [the] 1995 Yang Guang Award, which are awards for outstanding research at Beijing Medical University. He was also invited to Tokyo Medical and Dental University as a visiting scholar in 1995.

[The petitioner's] research has generated many important papers published in prestigious journals. He also wrote two book chapters for "The Development of Dermatology and Venerology" and "Rheumatology[.]" In 1997, [the petitioner] presented his findings at the 11th World Congress of Dermatology, at Sydney, Australia. The response from the science community was overwhelming. For his excellent achievements, the Chinese Academy of Medical Sciences awarded him associate professorship right after his postdoctoral research.

The petitioner submitted letters from his colleagues at DuPont. Dr. Frank W. Lee, director of Pre-Clinical Development, recounts the petitioner's research accomplishments in China and asserts that the petitioner is currently working with Dr. Peggy Scherle at DuPont in a department that has been "a major force in the area of autoimmune disease research, especially arthritis." Dr. Lee continues:

[The petitioner] is currently working on the cellular mechanism of NF- κ B in arthritis. He is also applying his expertise towards setting up drug screens for arthritis treatment. Several new compounds have been selected through his effort, and seemingly very effective in arthritis treatment *in vitro*.

Dr. Peggy Scherle, the petitioner's supervisor at DuPont, writes:

[The petitioner] is currently working on the NF- κ B protein which plays a critical role in Rheumatoid Arthritis and other autoimmune disorders. He and others have screened thousands of chemical compounds and discovered one lead compound that can specifically suppress NF- κ B-mediated processes. He and others are continuing to move this exciting discovery forward. Although [the petitioner] has been on our team for only eight months, he has proved to be an essential member because of his rare expertise and unique experience. In addition, [the petitioner] is on our team of TNF-TNFR discovery research. The interaction between TNF and TNFR is the master culprit in the process of many autoimmune diseases including Rheumatoid Arthritis. The discovery of a drug to block the interaction between TNF and TNFR will be an ultimate goal to achieve in the treatment of Rheumatoid Arthritis and other autoimmune diseases.

She concludes that the petitioner has rare experience and expertise.

Leaf Huang, a professor at the University of Pittsburgh, recounts the petitioner's research history. Professor Huang fails to explain whether he was aware of the petitioner's work or had been influenced by it prior to being contacted for a reference letter or whether his letter is simply based upon a review of the petitioner's resume.

In his initial letter, Dale Wolf, former Governor of Delaware and former Chairman of the Board of DuPont's pharmaceutical business, simply recounts the petitioner's educational and employment history. Governor Wolf asserts:

[The petitioner] now works as an important member of [a] DuPont Pharmaceuticals research team [that is] looking for better treatments for arthritis, which is a common disease in American people. He is carrying out studies designed to develop and screen new medicines for the purpose of curing arthritis.

Governor Wolf further states that the petitioner's skills are "unusual," concluding that "on the basis of his clinical experience and highly specialized expertise, I think that [the petitioner] merits consideration for the permanent U.S. immigration status that he has chosen to pursue." In a subsequent letter, Governor Wolf asserts that he believes that the petitioner would benefit the United States' national interest, not just DuPont's interests. He does not, however, explain how the petitioner has already influenced his field as a whole.

Judy McKinney-Cherry, chairman of the board of the Delaware Chapter of the Arthritis Foundation, writes that while she doesn't know the petitioner personally, she is aware of the work being done by his department at DuPont. She continues:

Screening out the effective medicine for arthritis treatment is one of the major projects of Du[P]ont Pharmaceuticals Company. This important project is being undertaken by the Department of Inflammatory Diseases Research. This department already has one compound in a clinical trial. Hopefully it will pass all the clinical trials and come to the market within 1-2 years. It is an exciting expectation.

She then provides details regarding the projects with which the petitioner has been involved since the filing of the petition. She asserts that the petitioner is the only one on his team with both an M.D. and a Ph.D, concluding:

Not surprisingly, if [the petitioner] were not permitted to remain in the United States indefinitely, our scientific community would suffer from losing him. The national interest waiver category is the most appropriate vehicle to retain [the petitioner's] unique skills and experience in our country indefinitely. It is easy to see how the national interest would be compromised by not permitting [the petitioner] to proceed through the national interest waiver category.

Dr. David J. Pintel, a professor at the University of Missouri-Columbia, asserts that he is familiar with the petitioner's research, that the petitioner has "extensive experience in both clinical and basic research for autoimmune diseases (such as arthritis and SLE), and has also achieved excellent results in this field." Dr. Pintel further asserts that the petitioner's "accomplishments and efforts will bring tremendous hope to millions of American people who are suffering." Dr. Pintel then discusses the petitioner's work at DuPont, much of which was completed after the petition was filed. Dr. Pintel concludes that the petitioner possesses rare skills such as operation of a FLIPR (Fluorometric Imaging Plate Reader) and some complicated cell and molecular biology assays.

Dr. Gustave N. Mbuy, an associate professor at West Chester University, writes that he has reviewed the petitioner's credentials and believes that the petitioner will benefit the United States.

Dr. Xiao-Fang Yu, an associate professor at Johns Hopkins University, writes that he has "paid much attention" to the petitioner's research and that the petitioner "has made remarkable contributions to auto-immune diseases research and will provide substantial benefits to the United States." Dr. Yu reviews the petitioner's research history, including projects with which the petitioner has been involved after the date of filing.

The director concluded that the above letters did not constitute a "wide range of independent opinions from national experts or government officials in the field." On appeal, counsel argues that the director failed to consider the letters submitted in response to the request for additional documentation, many of which are from independent researchers.

While the record contains letters from independent researchers, these references are not persuasive that, at the time of filing, the petitioner had already influenced his field as a whole. Few of the references appear to have known of the petitioner's research prior to receiving his request to review his credentials and provide an opinion in support of the petition. None of the references appear to have applied the petitioner's results to their own work. To the extent that the references assert that the petitioner has rare and impressive skills, such skills do not mandate a finding that the labor certification requirement should be waived in the national interest. It cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

Counsel has argued that the petitioner's employer cannot obtain a labor certification for the petitioner because it has not offered the petitioner a permanent job. While this fact will be given due consideration in appropriate cases, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at 218, note 5.

The petitioner submitted his resume, which includes 12 articles, abstracts, and book chapters published before the date of filing. Initially, the petitioner submitted six published articles and five abstracts of articles either accepted for publication or submitted. In response to the director's request for additional documentation, the petitioner submitted three additional articles, at least one of which was published after the date of filing, and an abstract. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of influence; we must consider the research community's reaction to those articles. The record contains no evidence that independent researchers have cited the petitioner's articles, abstracts, or book chapters.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to present some benefit if it is to receive funding and attention from the scientific community. The record, however, does not establish that the petitioner's work represented a groundbreaking advance in immunology. While the petitioner's research clearly has practical applications, it can be argued that any research, in order to be accepted or published, must offer new and useful information to the pool of knowledge. As stated above, the record lacks evidence from independent researchers who have been influenced by the petitioner's results or evidence that the petitioner's articles have been widely cited. As such, even with the support of independent researchers, the record as it now stands reflects that at best, the petition was filed prematurely.

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.