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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

File: EAC 99 264 50727 Office: VERMONT SERVICE CENTER

Date: NOV 18 2004

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: SELF-REPRESENTED

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 seeks employment as a biotechnology consultant. At the time of filing, the petitioner was a manager and consultant for business planning and research and development at DR. Chip Biotechnology, Inc., in Taiwan (the "DR." is capitalized in every document of record that refers to the company). 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 petitioner holds a Ph.D. in Biochemistry from Boston University School of Medicine ("BUSM") as well as a Master of Business Administration degree from the University of Toronto. 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, 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 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 explains why he believes he qualifies for a national interest waiver:

The petition is based on the fact that my career in the United States will greatly benefit the development of biotechnology and biomedical industry of this country, and possibly, the well being of millions of Americans. The compelling reasons behind my petition are:

1. My achievements in biological science as indicated by the research conducted during my Ph.D. study.
2. My combined educational background in both life science and business management.
3. My current career as a manager and business consultant for biomedical industry.
4. My ability to assist companies and professionals in biomedical science at a higher level.

Along with a copy of a published article that he co-authored, the petitioner submits six witness letters. Four of these letters are from BUSM faculty members. Dr. Carl Franzblau, chairman of the Department of Biochemistry and associate dean of Graduate Medical Sciences, describes the petitioner’s doctoral research:

He undertook a project in the laboratory that bridged the gap between understanding the structure and the function of a protein and the influence that the structure of a protein might have on the expression of the gene that controls the synthesis of that protein.

[The petitioner] worked extremely hard to produce a very fine thesis, which examined the C-terminal portion of the protein that we were working on. The protein called tropoelastin is responsible for the elasticity of blood vessels and ultimately, in the development of atherosclerosis when things begin to go awry. . . .

With his science background and a business degree, he would have the unique capability to bridge still another gap. This time it would relate to strong business sense together with an understanding of the potential commercial value of molecular biology and protein biochemistry.

Paul Toselli, an associate professor at BUSM, states that the petitioner's "research represents a major interest for our department and should yield an important contribution for our understanding of connective tissues biology. Thus, his scientific attributes have already benefited the U.S. greatly." The various BUSM faculty members assert that the petitioner's dual training in science and business is a valuable resource in the growing biotechnology field. For example, Professor Philip J. Stone states that the petitioner's "business training . . . combined with his experience and his scientific expertise ensure a productive future. In summary [the petitioner] would be a valuable asset for our biotechnology science and industry."

One of the remaining two witnesses also has close ties to the petitioner. Dr. John T. Chen, now a clinical fellow in General Dentistry at Columbia University Presbyterian Hospital, states:

[The petitioner] worked at Pei-Tai Trading for Chinese herbal medicine during the summers of 1992 and 1997 as a summer manager and contracted consultant, when I was vice president of the company. His knowledge in the field of herbal medicine and life science has helped us greatly in managing, producing and trading of health products.

In the field of developing and selling health products, a person with knowledge and training in both life science and management will be a great asset. The unique combination of Ph.D. training in biochemistry and management expertise provides [the petitioner] great advantages in assisting companies in the health product fields.

Dr. Chen states that the petitioner's "research work has already received significant international recognition," but does not elaborate or cite any evidence in this regard.

The final witness is Dr. Herren Wu, associate director of Ixsys, Inc., who states that the petitioner's "resume and articles have been forwarded to me so that I may provide an independent evaluation of his achievements." Dr. Wu describes the petitioner's doctoral research, stating that the petitioner studied "a very important topic in the pharmaceutical industry" and that the petitioner's findings resulted in new funding from the National Institutes of Health. Dr. Wu then asserts that the petitioner, by virtue of holding degrees in both science and management, "will be a great asset to the country" and, by acting as a private consultant, "will be able to serve as a bridge between scientists and business professionals."

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 observes that he was the first-credited, and thus primary, author of his published article. The petitioner states that he does not “have a clear answer” regarding the level of impact that his work has had on his field. The petitioner states “it’s not my intention to work as a bench scientist in the US. . . . I don’t believe my research experience and accomplishments are unique and significant enough to distinguish myself from other excellent bench scientists.” Rather, he states, he has submitted documentation of his research work in order to demonstrate “that I have the capability and training to conduct, to manage and to understand a research project.” The petitioner repeats the assertion that he believes that he will benefit the United States by virtue of being both a trained scientist and a trained business manager.

The petitioner submits copies of various business documents that he has executed while working for DR. Chip Biotechnology, and states “[t]he accomplishments that I have achieved in the past two years are an indication that I have moved towards my career goals.” The petitioner lists those goals:

1. I will help companies and research institutes to conduct R&D projects and help them to commercialize potential products.
2. I will be able to help US biotech companies to market their products in the Asian market because of my Asian background and my business experience in those areas.
3. I will be able to facilitate and establish research collaborations among U.S. and international companies and research institutes, which is what I have been engaged in currently.
4. Because of my connections built up during the past two years, I plan to bring in foreign venture capital funds to invest in US biotechnology companies. I am capable to serve as a bridge between foreign investors and US biotech companies. Venture capital funding at the initial stage is vital for scientists and researchers who want to conduct R&D projects and subsequently, to commercialize their products.

The petitioner states that he requires “great flexibility and independence” to achieve the above goals, and therefore labor certification is not an option.

The director denied the petition, stating that the petitioner has not established a track record of significant impact in the area in which the petitioner intends to work. On appeal, the petitioner states “it would be hard to translate or measure the magnitude” of his impact on “the proposed bio-industry field.” The petitioner asserts that the director based the denial decision on a single statement, quoted out of context, rather than on the record as a whole.

The petitioner has stated that he will serve the national interest by creating new opportunities in biotechnology that have not previously existed, owing to his training in both science and business. The petitioner, however, has not established a prior track record of achievements in this area that would justify our conclusion that his future achievements in that area will significantly serve the national interest. The petitioner has negotiated license agreements and

product development agreements on behalf of his current employer in Taiwan, but such agreements appear to be routine in biotechnology. While there may be relatively few individuals with advanced training in both science and business management, the petitioner has not established that his combination of those skills has had a significant impact on the U.S. biotechnology industry. His assertion that he will eventually have such an effect, given the opportunity to do so, is inherently speculative.

In essence, the petitioner's waiver request rests on the fact that he holds advanced degrees in two very different areas, rather than on any consistent history of accomplishment that the petitioner has built as a result of, and subsequent to, his professional training. The petitioner's conjecture that the biotechnology field will benefit from having trained manager/scientists assumes that everyone with that combination of training will have a similar effect, and as such the petitioner essentially argues for an education-based blanket waiver. The statute establishes only one blanket national interest waiver (for certain physicians)¹, and the fact that such a waiver has been added to the statute, by amendment, demonstrates that no such blanket waivers are implied elsewhere in the statute (otherwise the amendment would have been redundant).

In sum, while the petitioner sincerely believes that his training provides him with the unique ability to help scientists compete in the business community, he has not demonstrated that his past experience in that area has stood out or otherwise made so notable an impact that he qualifies for the special benefit of a waiver of a requirement which, by law, attaches to the immigrant classification he seeks. We base this conclusion not merely on one sentence in a letter from the petitioner, but from evaluation of the record as a whole. The petitioner's future goals cannot form the foundation of a successful national interest waiver claim if his existing progress toward those goals has been minimal at best. We must give greater weight to what the petitioner has accomplished than what he hopes to accomplish at some future time.

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.

¹ See section 203(b)(2)(B)(ii) of the Act, 8 U.S.C. 1153(b)(2)(B)(ii).