



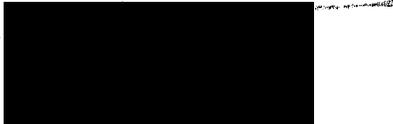
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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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



25 OCT 2002

File: LIN 99 053 52181 Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:



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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

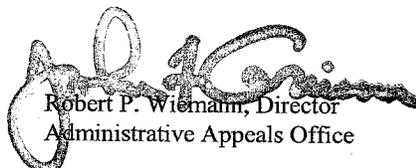
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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. At the time of filing, the petitioner was a senior research technologist at the University of Chicago's Ben May Institute for Cancer Research. 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, 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 states "I have established myself as a key member of research group efforts in attacking cancers." The petitioner's introductory letter focuses on his cancer research, and the petitioner argues that his admission is in the national interest because of this cancer research. Along with copies of his published work, the petitioner submits several witness letters. In a letter dated October 8, 1998, Professor Jeffrey Bluestone of the University of Chicago states that the petitioner "is one of those individuals who has made important contributions" to cancer biology, and that the petitioner's "scientific expertise is indispensable to the institute. The continued success in this cancer research effort depends on [the petitioner's] long-term and full-time participation."

Several other witnesses echo the assertion that further progress on the research project at Ben May Institute is impossible without the petitioner's continued long-term participation. We note that the petitioner left the institute in April 2000 to become a research associate at the Research Center for Alcoholic Liver and Pancreatic Disease. We will consider the petitioner's specific achievements at the Ben May Institute, but the petitioner's departure from that facility nullifies any argument to the effect that the petitioner's continued employment there is in the national interest.

Dr. Wei Li, assistant professor at the University of Chicago, was the petitioner's supervisor at the Ben May Institute and one of several institute faculty members to provide letters on the petitioner's behalf. Dr. Li describes the petitioner's work at the institute:

The focus of [the petitioner's] current research is on cancer-causing genes. One of them causes the human chronic myelogenous leukemia (CML) and acute lymphoblastic leukemia (ALL). This gene comes from genetic alterations, in which two normal genes are fused to generate the disease-causing gene called Bcr-Abl. Bcr-Abl acts as an "ignitor", and then many other cellular components carry and amplify the fire to the end points, which are cell transformation and leukemia. . . . A recently identified cellular gene, p62^{Dok}, is believed to be a key component of Bcr-Abl signaling. Thus, the aim of [the petitioner's] research is to understand mechanisms of p62^{Dok} action in Bcr-Abl-transformed leukemia cells, and ultimately provide guidance for blocking the function of this cancer-causing gene. [The petitioner] discovered that the gene for Wiskott-Aldrich Syndrome is a downstream target of cell surface tyrosine kinases, providing some scientific data which could be used for drug design and therapy in the future.

Dr. Yang Shi, associate professor at Harvard Medical School, states:

I am acquainted with [the petitioner's] research both through his supervisor Dr. Wei Li and through his publications. He demonstrated that the human Wiskott-Aldrich Syndrome gene product WASP, which regulated actin cytoskeleton, is a target for growth factor receptors and oncogenes. He showed that one of the upstream activators of WASP, called Nck, is actually composed of multiple genes and has recently cloned a novel Nck family member. This new Nck-related gene exhibits a potent inhibitory effect on growth factor stimulated DNA synthesis. The significance of these studies is that it is now clear that understanding of the mechanisms of cell growth control is the prerequisite for cancer drug design and therapy.

Dr. Xiao-Fan Wang, associate professor at Duke University, states that the petitioner is "a highly achieved research scientist who has made invaluable contributions to the field of cancer research. . . . [The petitioner's] research efforts have led to the development of novel concepts as to how certain human cancers develop which may form the basis upon which potential new treatment for those cancers with novel technologies can be developed."

The initial submission shows that one of the petitioner's abstracts has been cited four times (one of those a self-citation by the petitioner) but says nothing about the citation history, if any, of the petitioner's other published work.

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 argues at length that he qualifies as an alien of exceptional ability. Because the petitioner readily qualifies as a member of the professions holding an advanced degree, an additional finding of exceptional ability would have no effect. Exceptional ability does not automatically establish eligibility for the waiver the petitioner seeks. Therefore, it would serve no constructive purpose to address the petitioner's arguments in this vein.

The petitioner submits letters from USC faculty members, offering rather different portraits of the petitioner's work there. Professor David T. Woodley states "it is difficult to present all of [the petitioner's] achievements and contributions to the field of cancer research." Prof. Woodley states "[t]he main area of [the petitioner's] current work is on cancer-causing agents that control cell behavior. This relates to many cancers, but particularly to blood-borne cancers such as acute lymphoblastic leukemia (ALL) and human chronic myelogenous leukemia (CML)." He refers to "a cancer-causing neo-gene called Bcr-Abl which initiates a cascade of events leading to transformation of the normal cell into a malignant cancer cell." These statements indicate that the petitioner's research under Dr. Li at USC is similar to the research conducted by the pair at the Ben May Institute. Prof. Woodley is clearly referring to the petitioner's work at USC, rather than at the Ben May Institute; he refers to the above cancer research as the petitioner's "current work" and states elsewhere that the petitioner is "now at USC."

Professor Hidekazu Tsukamoto, in contrast, does not even mention cancer in his letter. Instead, he states:

Our Center promotes integrated cutting-edge research on how alcohol and secondary risk factors cross-interact to damage the liver and pancreas. . . . [The petitioner] has applied to a Research Associate position that was specifically created for the Cirrhosis Research Program. . . . [The petitioner] has created cell culture model systems to analyze functional mechanisms of how one group of chemicals functions to prevent or treat liver fibrogenesis, a pathological process leading to cirrhosis. This work will serve as an extremely important foundation for future experiments. . . . Additionally, he will be involved in establishing a viral vector for gene therapy for liver cirrhosis.

Prof. Tsukamoto does not explain even in passing how the petitioner's cancer research is directly relevant to the petitioner's current work, apart from requiring general laboratory skills. His letter focuses on the petitioner's work with liver cirrhosis, a topic that does not appear in Prof. Woodley's three-page letter about the petitioner's "current work" at USC. The two letters are dated within a week of each other. A third USC professor, Zoltan A. Tökés, states that the petitioner "adheres to the highest standard for integrity" but does not offer any description of the petitioner's current work at all. Prof. Tökés mentions the petitioner's past cancer research but does not mention liver cirrhosis. Finally, Professor Amy S. Lee states that the petitioner continues to work under Dr. Wei Li's supervision, researching genetic causes of cancer. Thus, some letters indicate that the petitioner engages in genetic cancer/leukemia research, similar to his work at the Ben May Institute, but another letter that never mentions cancer states that the petitioner studies alcohol-induced diseases of the liver and pancreas. No single letter or document mentions both projects or even generally states that the petitioner divides his time between different projects.

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, to demonstrate the impact of his work, the petitioner submits evidence that shows 33 independent citations of one of his published articles, and six independent citations of a second article. These citations pertain to work that the petitioner published while at the Ben May Institute. The citations are undeniable evidence of the impact of the petitioner's cancer research, but we cannot determine with any certainty that the petitioner is still engaged in cancer research. The letters from USC's faculty members, dated within days of each other, offer seemingly contradictory descriptions of the petitioner's most recent work, and none of the letters mention both the cancer project and the cirrhosis project. Without further clarification from credible, documented sources, we cannot determine the extent to which the petitioner's current research relates to the work for which he had initially sought a waiver. The petitioner's departure from the Ben May Institute has effectively nullified a principal initial argument offered in support of the waiver request, i.e. that the research project at the Ben May Institute cannot continue without the petitioner. If the petitioner has entirely ceased the cancer studies that formed the foundation of his waiver request, then the petitioner has dissociated himself from any factors which may have rendered him eligible as of the petition's filing date. If the petitioner had demonstrated a sustained history of significant influence in the field, ranging over numerous projects, then the change of projects would be of less concern. In this instance, however, one heavily-cited article (when the petitioner's other articles have been cited lightly or not at all) cannot suffice to establish a general track record of achievement extending beyond a single project.

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.