135

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

[redacted]

File: LIN 00 165 53518 Office: NEBRASKA SERVICE CENTER Date: SEP 26 2002

IN RE: Petitioner: [redacted]
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:

[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 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 an alien of exceptional ability and as a member of the professions holding an advanced degree. At the time of filing, the petitioner was a postdoctoral research associate at Purdue University. 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 also claims eligibility as an alien of exceptional ability. Because he qualifies as an advanced-degree professional, however, an additional finding of exceptional ability would be of no further benefit to the petitioner. 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.

Counsel states that the petitioner "plays a significant role in research conducted by [the] Department of Agronomy at Purdue University and that the research he performs substantially benefits prospectively the United States and, thus, that he should be exempt from the requirements of a labor certification because an exemption would be in the national interest of the United States." We note that counsel argues that the petitioner is an alien of exceptional ability. By statute, all aliens of exceptional ability must show that they will substantially benefit prospectively the United States, but they remain nevertheless subject to the job offer requirement. By the plain wording of the statute, substantial prospective benefit to the U.S. is not sufficient grounds for a national interest waiver.

Along with copies of his published work and documentation pertaining to his education, the petitioner submits several witness letters. Professor Xiongwei Zhang of the Cotton Research Institute of the Chinese Academy of Agricultural Sciences ("CRI, CAAS") describes the petitioner's work there:

> [The petitioner] came to CRI, CAAS . . . in 1982. He spent over 13 years . . . as a plant breeder and geneticist. [The petitioner] was leader of a research team, including 4-5 research scientists, and 5-7 field-oriented workers.

> [The petitioner] is an exceptional scientist. He made tremendous contributions to plant breeding and genetics when working at CRI, CAAS. The most important contribution is the development of three superior cotton varieties. . . . When tested in the provincial, national regional variety trials, or large-scale production tests, these three varieties yielded significantly more than the controls and other experimental varieties. They have superior fiber and are highly resistant to Fusarium wilt, the most destructive cotton disease in China. Because these varieties have become the major varieties, they are playing [an] important role in cotton production in China. It is estimated that the profit for Chinese farmers has been about 3 billion yuan (about US $400 million) due to the extension of these three varieties.

Dr. Gerald O. Myers, associate professor at Louisiana State University, supervises the petitioner's work as a graduate research assistant at that institution. Dr. Myers states:

> [The petitioner's] research focused on a classical genetics problem relevant to the pressing national debate over the lack of genetic diversity in many of our main agricultural crops. Investigating historically important cotton varieties, [the petitioner's] work has helped identify important sources and types of variability that will be needed to ensure that U.S. agriculture remains competitive.

Professor Manjit S. Kang of Louisiana State University states:

> [The petitioner] is an experienced, **award-winning** cotton geneticist/breeder from China. His credentials indicate that he received three awards for developing superior cotton varieties in China. It is my understanding that some of the cotton varieties that he and his group developed in China have earned national importance and recognition there. He has produced some productive cotton populations that are a good source of productive and elite cotton varieties in the world.

Dr. D. Steven Calhoun, a cotton geneticist at Stoneville Texas, Inc., was previously employed by Mississippi State University, during which time he met the petitioner at a 1998 professional conference. Dr. Calhoun states:

> Working with Dr. Myers at Louisiana State University, [the petitioner] analyzed general and specific combining ability for yield, yield components and fiber quality among these influential varieties. He also studied the genetic diversity among these varieties using molecular genetics techniques. The major findings from his research were (1) that these influential varieties vary in their combining ability for different characteristics, (2) that additive genetic effects play a major role in inheritance of economically important characters, (3) that these varieties have a low genetic diversity, which strongly suggests that US breeders should broaden the genetic base of cotton to develop new, more distinct varieties, and (4)

> that a specific DNA fragment is tightly associated with cotton yield, which is the first such report in cotton of which I am aware. These discoveries could have a profound impact on cotton improvement.

Dr. Rex Bernardo, associate professor at Purdue University, describe the petitioner's past and present work:

> He is [a] key research scientist conducting investigations in efforts to map important genes in corn. . . .
>
> [His] remarkable achievements indicate that [the petitioner] is clearly superior in reputation and background to others similarly employed in the field of plant breeding and genetics because there are very few individuals with the same level of education and training who have made such outstanding contributions to this field. Two of the cotton varieties developed by [the petitioner] and his group in China have been introduced to the United States and should be extremely beneficial to the U.S. cotton industry as they contain the new genes for increased yield and disease resistance. A specific DNA fragment that he identified at Louisiana State University should have major applications in cotton breeding for advanced yield.
>
> The research we are currently conducting involves the identification of DNA markers for genes that control popping expansion volume in popcorn. Popping expansion is the most important trait in popcorn, yet its genetics is still poorly understood. [The petitioner] plays a pivotal role in this important research project. . . . In corn, we are the **only** researchers who have ever attempted to map QTL [quantitative trait loci] controlling popcorn expansion volume and thus this is the pioneering work in this area. . . . The popcorn production in [the] USA is 540 million pounds per year, which is 64 million in dollar terms. I speculate that [the petitioner's] research here at Purdue will increase popcorn production by one to two percent and will thus put 1 million more dollars into the U.S. economy annually.

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 has submitted copies of background documentation and two new witness letters. Dr. Ping Song, senior research scientist at Dow AgroSciences, states:

> I have known [the petitioner] and his research for [a] long time. . . . We often exchanged ideas with each other and discussed various subjects in cotton breeding and genetics. . . .
>
> He (as a project leader) and his research group released three superior cotton varieties in China that were widely used by Chinese farmers. He also developed

> several promising breeding methods that could increase the breeding efficiency. . . . [The petitioner] was extensively recognized for his outstanding research in plant breeding and genetics in China, given the fact that he had been successively honored with three renowned awards. . . .
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> [The petitioner's] work has shown that he is very capable of using traditional technology and biotechnology to improve crops. Therefore, [the petitioner's] expertise in the field of plant breeding and genetics is [of] great importance to the national interests of the United States.

Professor John D. Axtell of Purdue University states that he has "no working relationship with" the petitioner, but that he has observed the petitioner's work at Purdue. With regard to the petitioner's research with popcorn, Prof. Axtell states "I have seen his results and they are wonderful." Prof. Axtell states that, in the petitioner's absence, "the research program would stop instantly and it would be impossible to locate popping genes in popcorn." The remainder of Prof. Axtell's letter consists primarily of general assertions regarding the petitioner's field of research and the importance of retaining highly qualified scientists, as well as repetition of claims and assertions made by other individuals, which we already discussed above.

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. The director stated that the record does not "establish that the alien petitioner has been solely the lead researcher in his projects" or that the petitioner "has yet established a history or pattern of significant contributions to the field." The director further found that the petitioner has not shown that his "work is known and considered unique outside his immediate circle of colleagues."

We note that the petitioner has prepared and filed his own appeal, apparently without the involvement of counsel. Nevertheless, absent evidence that specifically indicates that counsel no longer represents the petitioner, we consider counsel to remain the attorney of record.

On appeal, the petitioner asserts "I have [submitted] lots of evidence that indicate that I am (was) the key researcher in most of [the] research projects in which I am (was) involved and that I have established a history or pattern of significant contributions to my field." The petitioner cites various passages from the previously submitted witness letters, and explains why he believes those letters rebut the director's conclusions.

The petitioner cites his membership in Sigma Xi as evidence of special recognition within his field. We note that the petitioner's membership certificate, dated April 1998, identifies him as an associate member. Sigma Xi materials in the record defines an "associate member" as "[a]ny individual who has, through initial research achievement in a field of pure or applied science, shown aptitude for research which is expected in due course to lead to the fulfillment of the requirements for full membership." Full membership is reserved for [a]ny individual who has

shown noteworthy achievement as an original investigator in a field of pure or applied science." Thus, as late as 1998, Sigma Xi considered the petitioner not to have "shown noteworthy achievement," but rather to have "aptitude for research which is expected" to result in "noteworthy achievement."

The record does not show that the petitioner's research in the U.S. has attracted significant attention outside of the universities where that research has been conducted. The petitioner has not shown, for instance, that his published writings are heavily cited by other researchers. The assertion, made by more than one witness, that the petitioner's work with cotton "should" have implications for future research is inherently speculative. The record does not show to what extent, if any, the petitioner's work has actually affected the U.S. cotton industry.

With regard to the petitioner's work at Purdue, general arguments about the undeniable importance of corn as a major crop do not show that the petitioner serves the national interest by attempting to bring about a one percent increase in the size of a popped popcorn kernel. It appears to be a routine goal of agricultural research to attempt incremental improvements in major cash crops. Furthermore, postdoctoral positions at universities are generally temporary by nature, and a nonimmigrant visa should suffice for such short-term employment. There is nothing in the record to indicate that Purdue University has offered the petitioner a permanent position, or intends to do so. General assertions to the effect that the petitioner is more talented than others in his field may speak to exceptional ability, but as we have observed, exceptional ability in the sciences does not automatically secure a national interest waiver.

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.