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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

[REDACTED]

File: [REDACTED] LIN 012 625 2932 Office: NEBRASKA SERVICE CENTER

Date: APR 21 2003

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)

ON BEHALF OF PETITIONER:

[REDACTED]

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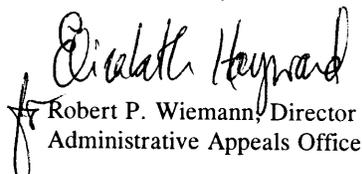
INSTRUCTIONS:

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.


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 Administrative Appeals Office 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 associate. At the time he filed the petition, the petitioner was a postdoctoral researcher for the Oregon Regional Primate Research Center of Oregon Health Sciences 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 concluded 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.

(i) Subject to clause (ii), the Attorney General may, when the Attorney General 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 obtained a Ph.D. from Southern Illinois University School of Medicine in 1999. 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 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 pertinent 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.

We concur with the director that the petitioner works in an area of intrinsic merit, biomedical research and that the proposed benefits of his work, improved understanding of human disease, are national in scope. It remains to determine whether the petitioner has established that he will serve the national interest to a substantially greater degree than would 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 it 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. *Matter of New York State Dept. of Transportation*, at 219, n.6.

The record contains evidence relating to the petitioner's membership in four professional associations and evidence establishing that the petitioner's academic work resulted in several student awards. While this evidence may reflect recognition for achievements and significant contributions to his field, it would establish one regulatory criterion for aliens of exceptional ability, a classification that normally

requires a labor certification as set forth in 8 C.F.R. § 204.5(k)(3)(ii) enumerating the criteria for an alien of exceptional ability. Similarly, membership in professional associations is another possible criterion to establish eligibility for exceptional ability. We cannot conclude that satisfying two requirements or even the requisite three requirements for this classification makes one eligible for a waiver of the labor certification process.

The petitioner submits several reference letters in support of his petition. [REDACTED] Director of the Falk Cardiovascular Gene Therapy Laboratory at Loyola University, Chicago, met the petitioner at a meeting at the University of Chicago in 1998. Dr. [REDACTED] was acquainted with the petitioner's Ph.D. advisor, Dr. [REDACTED]. Dr. [REDACTED] was impressed with the petitioner's knowledge of the stress protein field and describes the petitioner as "one of the brightest young scientists I have met in the past few years." Dr. [REDACTED] states:

This is evident from his early contributions in the field of human cervical carcinoma and papillomavirus studies where he participated in five important studies. Subsequently, he focused his interests to the heat shock field where he has up to now contribute [sic] to four very significant publications in this field of research during the performance of his Ph.D. work. But above all his most recent contributions to yet another important field of research that of the generation of transgenic non-human primates clearly demonstrates that [the petitioner] is on his way to becoming an outstanding biomedical researcher.

Dr. [REDACTED] President of Meigen Biotechnology Corporation, was a member of the petitioner's doctoral committee at Southern Illinois University School of Medicine. Dr. [REDACTED] describes the petitioner's research on the control of genes that protect the heart from damage during a heart attack as "unique and exceptionally creative" that has the potential of saving tens of millions of dollars in post-cardiac arrest health care costs. He notes that the petitioner's work in this field led to publications in respected molecular cardiology journals. Dr. [REDACTED] confirms the petitioner's participation in the team that produced the first transgenic monkey that has the potential to "provide a long needed model for Down syndrome."

[REDACTED] a professor of pharmacology at Southern Illinois University School of Medicine, was a former director of the graduate program and was also a member of the petitioner's dissertation committee. Dr. [REDACTED] states:

Before he joined our graduate program, [the petitioner] was already an experienced researcher in molecular cancer research field. He has published seven papers in the well-known international peer-reviewed journals. . . . He always demonstrated exceptional ability in his research work and originality.

* * *

While the cardioprotective effects of inducible form of HSP70i have been widely studies [sic], the possible contribution of a second heat shock protein, constitute form

of HSP70c, was largely ignored. [The petitioner] was the first to demonstrate an important function for HSP70c in cellular oxidative resistance. . . . His report on this issue was selected as a highlight in the March 1998 Journal of Molecular Cellular Cardiology. Recent studies by others have indicated that heat shock proteins also are closely linked to stroke protection. Accordingly, [the petitioner's] findings that oxidative resistance can be induced by either hyperthermia or pharmacological intervention suggest a novel approach to protect myocardial or neuronal ischemia/reperfusion injury in the future. He has published four papers from his graduate study in the well-known international peer-reviewed journals.

Dr. [REDACTED] provides similar information about the petitioner's work at the Oregon Regional Primate Research Center as part of a research team that produced the first transgenic non-human primate as a model for the study of human diseases and which received international notice.

Dr. [REDACTED] a professor and chairman of the pharmacology department at Southern Illinois University, also confirms that the petitioner is highly skilled and well trained. Dr. [REDACTED] reiterates the petitioner's contributions to the creation of the model "ANDi" at Oregon, confirms the media coverage of the event, and asserts that the petitioner's "expertise in applying molecular biological techniques in creating the plasmids to implant in the viral vectors used to create the transgenic primate are critical to the success of this important project."

[REDACTED] the Chief of the Recombinant DNA Laboratory of the Veterans General Hospital-Taipei, indicates that he collaborated with the petitioner prior to the petitioner's pursuit of his Ph.D. in the United States. Dr. [REDACTED] also offers high praise for the petitioner's abilities and currently collaborates with him in the research of transgenic and embryo manipulation technology because of the petitioner's expertise in the technology of transgenesis. Dr. [REDACTED] explains that transgenic technologies are producing significant improvements applicable in the agricultural and pharmaceutical fields.

[REDACTED] a professor at the University of Rochester and the Director of the George Hoyt Whipple Laboratory for Cancer Research, states that he is well acquainted with the petitioner who collaborated with him in the study of heat-shock protein and was a co-author of the article published in the March 1998 issue of *Molecular Cellular Cardiology*. Dr. [REDACTED] states:

It was the work by [the petitioner] who demonstrated the functional importance of HSP70c in cellular oxidative resistance. These findings suggest that constitutively expressed heat-shock proteins [sic] may play a key role in maintaining cardiac function during stress.

* * *

In the past I have written letters for non-US employees seeking permission to continue their work in the United States. In my opinion, [the petitioner's] request has the greatest probability of enhancing U.S. health care than of any of the other applicants I have recommended.

[REDACTED] a professor and senior scientist at Oregon Health Sciences University, led the research team at the Oregon Regional Primate Research Center that produced "ANDi." Dr. [REDACTED] summarizes the petitioner's ten years of experience prior to his joining the team and states:

It is my professional opinion that with his achievements and contributions in the field of transgenic animal for human disease model research, [the petitioner] has risen to the very top of his profession and is among very few outstanding scientists in broad biomedical sciences background and training.

* * *

The [petitioner] and colleagues have concentrated the research efforts on creating a model for the study of human diseases at his research center. This model is a genetic modification in a non-human primate. His model, "ANDi" was published recently in *Science* (January 2001) as the world's [sic] first transgenic non-human primate. The creation of ANDi has been widely publicized by the media and press, including *Time*, *New York Times*, *USA today*, *CNN*, *The Oregonian*, etc., and has been reported all over the world in many different languages. The extensive coverage on this work clearly suggests the importance of this study and also commands the acceleration of research for cures to human diseases such as reproductive disease and Alzheimer's disease. [The petitioner] has played an important role as a molecular biologist in the successful-development of this cutting-edge research

As noted in the director's denial, virtually all of the letters in the record are from the petitioner's supervisors, mentors, collaborators or colleagues from his past and present research institutions. Letters from those with direct ties to the petitioner certainly have value, because such persons have direct knowledge of the petitioner's contributions to a specific research project; however, their statements do not show, by themselves, that the petitioner's work has attracted attention on its own merits from the wider scientific community, as might be expected with research findings that are especially significant. The director found that the petitioner's contributions did not establish his eligibility of a national interest waiver.

That said, it is notable that the record contains corroborative evidence that the petitioner was second author of the article describing the "ANDi" project published in the prestigious journal *Science*, and that this project has attracted significant international attention from a variety of highly regarded sources.

The record also contains evidence that at the time of filing the petition, the petitioner had published at least twelve articles and was a lead author on three. 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 acknowledgment 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.” When judging the influence and impact that the petitioner’s work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner’s findings. Frequent citation by independent researchers, on the other hand, would demonstrate more widespread interest in, and reliance on, the petitioner’s work.

In this case, the record contains evidence of the petitioner's wider impact in the field. Eliminating self-citations by the petitioner or his colleagues, the citation index contained in the record shows 92 citations of the petitioner's work from 1991 to 2001, including a 1993 article which has been cited 35 times. This evidence suggests that researchers worldwide have consistently relied upon the petitioner's work to further their own research and provides objective confirmation that the petitioner's work has attracted significant attention. Together with the other evidence submitted, the petitioner has established that he has significantly influenced his field as a whole.

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 field of research, rather than on the merits of the individual alien. However, the above evidence establishes that the medical research community recognizes the significance of the 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, 8 U.S.C. § 1361. In this case, 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.