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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

AUG 18 2003

File: (LIN-98-198-51548) 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)

ON BEHALF OF PETITIONER:

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 Bureau of Citizenship and Immigration Services (Bureau) 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 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.

(i) . . . 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 holds a Master's degree in computer science from the University of Illinois at Urbana-Champaign and a Master's degree in chemical physics from the Moscow Institute of Physics and Technology. 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 pertinent 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 the 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, computer modeling of human biological processes, and that the proposed benefits of his work, improved understanding of these processes, 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, n. 6.

Dr. Klaus J. Schulten, Director of the Theoretical Biophysics Group at the Beckman Institute for Advanced Science and Technology and a professor at the University of Illinois at Urbana-Champaign, discusses the petitioner's work at the institute. Dr. Schulten asserts that the petitioner researched the vitamin biotin and its binding to the protein avidin. This project has many practical applications,

including targeted drug delivery to the human brain. Subsequently, the petitioner developed computer modeling and simulation of the general binding mechanisms of biological modules software. Dr. Schulten explains that the visualization and computer simulation programs developed for this second project have been adopted by other groups at the institute as well as by “hundreds of researchers at other institutions in the U.S. and around the world.” According to Dr. Schulten, at the time of his letter, the petitioner was researching a protein whose interaction with cell membranes is related to arthritis, asthma and toxic shock syndrome, is also found in bee and snake venoms, and plays a role in the obstruction of the flow of arterial blood. In this project, the petitioner had already conducted “successful computer simulations which describe mechanisms involved in the destruction of the cell membrane.” Finally, the petitioner is also currently investigating the binding mechanisms of a thyroid hormone receptor.

Dr. Shankar Subramiam, Director of the Computational Biology Group and a professor at the University of Illinois at Urbana-Champaign, asserts that the petitioner has already completed three important projects and will likely continue to “pioneer advancements in his field of expertise.”

The petitioner also submitted a letter from an independent reference, Dr. V. Arian Parsegian, Chief of the Laboratory of Physical and Structural Biology, National Institute of Child Health and Human Development at the National Institutes of Health (NIH). Dr. Parsegian indicates that he is a former president of the Biophysical Society, a former Chief Editor of the *Biophysical Journal* and Founding Editor of *Biophysical Discussions*. Dr. Parsegian asserts that the petitioner “produced exceptional work as a student under the renowned Alexander Grosberg, who is probably the outstanding polymer theorist of his generation,” and that he “is leading groundbreaking research at the University of Illinois at Urbana-Champaign.”

In response to the director’s request for additional documentation, the petitioner submitted letters regarding his work after the date of filing and asserting that the labor certification process was inapplicable to the petitioner. More significantly, the petitioner also provided reference letters from more independent witnesses, including a new letter from Dr. Parsegian, who asserts that the petitioner’s past work is “directly contributing to the worldwide efforts to find treatments for many serious diseases.” Dr. Eugene I. Shakhnovich, a professor at Harvard University, discusses the importance of the petitioner’s area of work and asserts that the petitioner has played a key role in leading edge work in the field. Dr. Evan A. Evans, a professor at Boston University, provides general praise of the petitioner’s work.

Initially and in response to the director’s request for more documentation, the petitioner submitted evidence that he had authored articles but no evidence of whether they had been cited or other objective evidence of their influence in the field. The director concluded that the petitioner had not established that a waiver of the labor certification requirement would be in the national interest because the reference letters did not specify the size of the research group in which the petitioner worked.

On appeal, the petitioner argues that the record demonstrates the leading role he has played in his projects. The petitioner submits new reference letters from Don C. Wiley, a professor at Harvard

University, and Dr. Michael Levitt, Chair of the Structural Biology Department at the Stanford University of Medicine.

Dr. Wiley discusses the importance of several of the petitioner's projects, asserting that they have already benefited the national interest. Dr. Levitt, in addition to providing general praise of the petitioner, states:

[The petitioner] has also designed and implemented new computational algorithms and software systems for the analysis and 3-dimensional visualization of combinatorial libraries within 3DP's DirectedDiversity[®] technology development program. . . . I would like to point out that this technology is now being used by 3DP in collaboration with many drug development companies, including DuPont Pharmaceuticals Company, Boehringer Ingelheim Pharmaceuticals, Inc., Aventis Crop Protection GmbH, E.I. DuPont de Nemours, Heska Corporation, Inc., and BioCryst Pharmaceuticals, Inc.

In addition, the petitioner submitted evidence that 10 of his articles have been cited, including three articles which have been cited 14, 16, and 48 times. Thus, the petitioner has now established that his work is widely cited. We find that the evidence submitted on appeal, in addition to evidence previously submitted, sufficiently establishes that the petitioner's work has had some degree of influence on the 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. That being said, the above testimony, and further testimony in the record, establishes that the biophysical research community recognizes the significance of this 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. 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.