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

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ADMINISTRATIVE APPEALS OFFICE
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Washington, DC 20536



File: [REDACTED] (LIN-99-017-52705) Office: Nebraska Service Center

Date: AUG 19 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)

PUBLIC COPY

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 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 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 molecular biology from the University of Science and Technology of China. 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 Dep't. of Transp., 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, molecular biology and bioinformatics, and that the proposed benefits of his work, improved understanding of genetics and gene therapy for the treatment of disease, 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. Robert J. Trumbly, in whose laboratory the petitioner worked while a doctoral candidate at the Medical College of Ohio, summarizes the petitioner's doctoral work as follows:

[The petitioner] investigated the mechanism of gene regulation by the Mig1 protein in yeast. Mig1 is a protein that binds to specific DNA sequences upstream of genes in yeast that are turned off when the growth medium contains high concentrations of glucose. This mechanism is of general interest since gene repression by Mig1 is an example of coordinate control of a large number of genes by a single factor, namely glucose. [The petitioner] showed that the DNA-binding site for Mig1 was sufficient to confer glucose regulation to other genes not normally controlled by glucose. He did this by inserting a DNA fragment containing the Mig1 binding site upstream of a series of reporter plasmids and measuring the expression levels of these reporters in the appropriate yeast strains. He also showed that the Mig1 binding site under certain circumstances activated rather than repressed gene expression.

Dr. Trumbly also discusses the petitioner's skills with the software UNIX and asserts that these skills in addition to his background in molecular biology "places him in a select group with the required skills to prosper in the new field of Bioinformatics." (Emphasis in original.) Neither Dr. Trumbly nor counsel explains why this combination of skills could not be expressed on an application for labor certification.

Dr. Sankaridrug M. Periyasamy, an assistant professor at the Medical College of Ohio, discusses the petitioner's doctoral work at that university. Dr. Periyasamy provides similar information to that discussed above, explaining that the petitioner's work with yeast genes also relates to human gene transcriptional regulation. In addition, Dr. Periyasamy asserts that the petitioner also utilized the novel gene-knockout PCR technique "to make a variety of plasmids with different select marker[s]," and "designed a pair of 'universal primers' from the original vector."

Dr. Hubert E. Appert, another professor at the Medical College of Ohio, provides similar information, noting that the petitioner's project is supported by the American Cancer Society. Most research, however, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. Dr. Appert further asserts that the petitioner has "made great contributions to the project," and that "the project is shedding new light on how gene expression is regulated in response to extracellular stimuli." Dr. Ming You, Director of the DNA Profiling Laboratory at the Medical College of Ohio, and Dr. Ming Li, a research assistant professor at the college, provide similar information.

Dr. Xian-en Zhang, Director of the Wuhan Institute of Virology, asserts that the petitioner successfully discovered the virus responsible for ramie mosaic disease, despite the several challenges that search entailed. Dr. Zhang asserts that based on this discovery, the petitioner received a cooperative fellowship to study at the Institute of Physical and Chemical Research in Japan. At that institute, the petitioner "successfully constructed a cDNA library of *Fusarium oxy*, which is very useful for the screening and discovering [of] novel genes related to infection and host-resistance."

In a request for additional documentation, the director noted, "Evidence that those outside of your circle of colleagues and acquaintances consider the work important is especially valuable." In response, the petitioner submitted evidence that after graduating from the Medical College of Ohio, he obtained a postdoctoral fellowship at Harvard University. Counsel asserts that only the most talented researchers can obtain such a fellowship. We do not determine eligibility for the waiver based on the prestige of an alien's employer. Further, while the petitioner submitted a letter from Dr. Guido Guidotti discussing the petitioner's work at Harvard on insulin receptors, that work was conducted after the date of filing and cannot be considered evidence of the petitioner's eligibility as of that date.

The petitioner also submitted letters from more independent researchers. Dr. Zhongming Ge, a research scientist at the Massachusetts Institute of Technology, asserts that the petitioner's work with yeast represented "a new achievement in the field." Dr. Ge further asserts that "many plasmids and mutant strains that [the petitioner] constructed in these studies have become valuable tools for other labs to perform similar research." Dr. Ge notes that his laboratory obtained some of the petitioner's mutant strains.

Dr. Mark Johnston, a professor at the Washington University School of Medicine, states that the petitioner's yeast research is significant for the following reasons:

First, it adds to our knowledge of how the yeast Wilms' tumor protein (Mig1) works, which almost certainly speaks to its function in human cells. Second, the large number of strains and reagents that [the petitioner] produced for his study will be useful to other scientists working in this area. I'm *sure* that Dr. Trumbly has received several requests for these materials, and that they will catalyze research in other labs (I may have use for them in my own research in the future.)

(Emphasis in original.)

Finally, Dr. Bogi Andersen, an assistant professor of medicine at the University of California, San Diego, provides general praise of the petitioner's work with Dr. Trumbly. Dr. Andersen also states that one of his own postdoctoral students is using plasmids constructed by the petitioner.

These independent letters suggest that the petitioner's plasmids have generated some interest in the scientific community. The petitioner, however, has not established their influence. For example, the record does not establish that the petitioner received an unusual number of requests for his plasmids and mutant strains or that the researchers who requested the plasmids and mutant strains were able to successfully utilize those products. Specifically, the record contains no evidence that the petitioner's article presenting his research in Dr. Trumbly's laboratory has been frequently cited in other, peer-reviewed articles.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive attention from the scientific

community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation or publication must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains a Ph.D. or is published inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

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, 8 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.