



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



File: [Redacted] Office: Nebraska Service Center

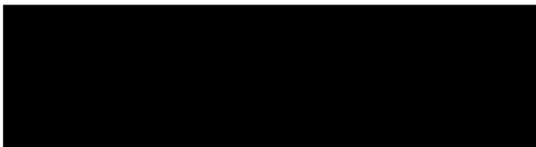
Date: FEB 25 2003

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)

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:



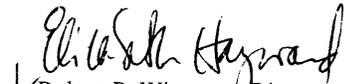
INSTRUCTIONS:

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 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 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 Ph.D. in biochemistry from the University of Utah. 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 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.

We concur with the director that the petitioner works in an area of intrinsic merit, medical research, and that the proposed benefits of his work, improved understanding of the HIV viral structure, 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, note 6.

The petitioner submitted letters from the faculty at the University of Utah discussing his accomplishments while a student there. His laboratory supervisor, Wesley Sundquist, provides significant detail regarding the petitioner's work. Specifically, Professor Sundquist enumerates the following four contributions. First, the petitioner, in collaboration with another graduate student,

provided the first explanation for how a single protein can form a cone as the HIV viral capsid appears to do. Professor Sundquist asserts that “this work was published in 1999 in *Science*, with [the other graduate student] and [the petitioner] as co-first authors.” Second, the petitioner “also demonstrated that short amino acid extensions at the N-terminal end of [the] CA [capsid] redirect assembly of protein from tubes and cones to spheres.” According to Professor Sundquist, “this observation provides a simple model system for studying the process of viral maturation of its N-terminus.” Professor Sundquist notes that this research was published in the *EMBO Journal*. The third contribution was the petitioner’s major thesis project. In this project, the petitioner “completed a 3D cryo-EM [electron microscope] image reconstruction of the tubes formed by the HIV-1 CA protein.” This project required a collaboration with (and two summers at) the Medical Research Council (MRC), Laboratory of Molecular Biology in England. Professor Sundquist discusses the complexity of this project and notes that the results were published in *Nature* with the petitioner as the first author. Finally, the petitioner has been involved in a project to determine the co-crystal structures relating to an HIV complex. While Professor Sundquist’s highly technical explanation of this project does not provide a clear explanation of its significance, he asserts that the project “has turned out to be much more interesting than we had expected” and that two papers presenting the results are in process.

Christopher Hill, another professor at the University of Utah, asserts that the petitioner’s Ph.D. thesis work “is a landmark achievement that significantly advances our understanding of HIV replication, and is therefore an important advance in the fight against AIDS.”

A non-technical article appearing in the Salt Lake Tribune provides a layman’s explanation for the significance of the petitioner’s work in the context of the ongoing work at the University of Utah. The article provides:

The outer shell of the AIDS virus is made of a “matrix” protein, “envelope” proteins and a fatty membrane. In 1996, Sundquist and others at the U. [of Utah] determined the structure of the matrix protein that helps HIV latch onto white blood cells it attacks.

Inside the HIV shell is the cone shaped core that houses the virus genetic blueprint. HIV’s core is made of two kinds of proteins. Sundquist and Utah colleagues outlined the structure of the “capsid” (CA) protein in 1996 and 1997 studies in *Science*. Summers determined the structure of the “nucleocapsid” (NC) protein.

About 1,500 copies of the CA and NC proteins form about 250 six-sided or hexagonal clusters and a dozen five-sided or pentagonal clusters, which then come together to form HIV’s core. The new study [authored by the petitioner and appearing in *Science*] suggests how that happens.

That is important because assembly and subsequent disassembly of the viral core is an essential step as the virus leaves one cell and infects another to spread through the body. New drugs might be aimed at blocking that process.

The director dismisses this article because the petitioner is “mentioned only as one of those conducting” the research being discussed in the article. The director concludes that an article in which the petitioner is the topic would be more probative. The standard imposed by the director comes close to one of the ten criteria for extraordinary ability, a higher classification than the one sought by the petitioner. While a local newspaper article that is not primarily about the petitioner is not evidence of national acclaim, a term used later in the director’s decision, a local newspaper article discussing the positive reaction of non-local experts to the petitioner’s work is highly suggestive of his influential contribution to the field, the proper standard set forth in *Matter of New York State Dept. of Transportation*.

Dr. J. T. Finch, a member of the staff at the MRC of the Laboratory of Molecular Biology and elected fellow of the Royal Society, asserts that the petitioner’s presence was crucial to the success of their viral structure research published in *Nature* due to his expertise in cryo-electron microscopy. [REDACTED] a senior scientist at MRC, provides similar information, adding that the petitioner has received requests for reprints from top international scientists in the field.

In addition, the petitioner submitted a letter from [REDACTED] a senior scientist at the Laboratory of Structural Biology Research, National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), National Institutes of Health (NIH). While [REDACTED] curriculum vitae (C.V.) reflects that he was on the faculty at Peking University while the petitioner was an undergraduate student there, [REDACTED] indicates that the petitioner is a long-standing colleague in the field of structural biology and virology. [REDACTED] indicates that he and the petitioner both are interested in and work on HIV. [REDACTED] C.V. reflects several publications on virus structures, including three articles published in the *Proceedings of the National Academy of Sciences*, and articles published in *Science* and *Nature*. [REDACTED] asserts that the petitioner has conducted milestone research on HIV and that his work is internationally well known.

[REDACTED] a staff scientist at NIAMS, attests to his positive impression of the petitioner’s presentation at NIH as part of the interview process for a postdoctoral fellowship with NIAMS. Dr. [REDACTED] asserts that the petitioner’s work published in *Nature* “gives significant insight into HIV.”

The petitioner also submitted evidence of fellowships, scholarships, and graduate awards. The director concluded that these failed to establish “international or national acclaim.” While we agree with the basic conclusion, nothing in the law, regulations, or precedent decisions requires international or even national “acclaim” for the national interest waiver. We acknowledge, however, that recognition by one’s peers is simply one of the factors for establishing exceptional ability, a classification that normally requires a labor certification. We cannot conclude that meeting one, or even all, of the requirements for exceptional ability warrants a waiver of the labor certification requirement. Nevertheless, the petition is not based solely on the fact that the petitioner received student awards. Rather, the Harold M. Weintraub Graduate Student Award, awarded to 17 students nationally on the basis of original theses, is consistent with the other

evidence in the record reflecting that the petitioner's thesis, ultimately published in the prestigious journal *Nature*, was highly influential.

The petitioner submitted three articles, published in *Nature*, *Science*, and the *EMBO Journal*, as well as seven abstracts. The director dismisses these publications, noting that original contributions, publications, and presentation of research are inherent to the position of researcher. While the director is essentially correct, it is improper to dismiss published articles without any analysis of the evidence submitted to demonstrate the influence of the articles beyond the fact that they were published in a peer-reviewed journal. The petitioner in this case submitted such evidence, which the director failed to consider. First, as stated above, two of the articles were published in *Nature* and *Science*, two of the most prestigious science journals, accepting only significant articles from every field of science. Second, the petitioner submitted four international requests for reprints. The final evidence relating to this issue, however, is the most persuasive. The petitioner submitted a review article covering recent developments in molecular assembly research. The review cites the petitioner's article in *Nature*, concluding that his "analysis of helical tubes and cones that resemble native viral capsids" represents "a significant advance." Some of the references at the end of the article are specially designated "of special interest" and "of outstanding interest." The petitioner's article is designated as "of outstanding interest."

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, in combination with the petitioner's publication record, establishes that the 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, 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.