

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

Identifying information decided to
prevent clearly unwarranted
invasion of personal privacy

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

B5

File: WAC 02 136 52181 Office: CALIFORNIA SERVICE CENTER

Date:

JUL 18 2003

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: SELF-REPRESENTED

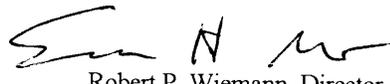
INSTRUCTIONS:

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, California 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 seeks employment as a postdoctoral research associate at the Scripps Research Institute (Scripps). 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.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements 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 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 the 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 regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now the Bureau] 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.

Along with copies of three published articles and various background materials, the petitioner submits several witness letters. Dr. Cheng Liu of Scripps states:

[The petitioner] is a well-trained molecular biologist. . . . During her graduate study, [the petitioner] discovered and cloned a new protein LuxT from marine bioluminescent bacteria *Vibrio harveyi*. . . .

Presently, [the petitioner] is working in the field of breast cancer biology under [REDACTED] a talented and productive professor in the cell signaling/cancer biology field here in Scripps. During a very short period of time, [the petitioner] has discovered that Lasp1 gene product inhibits cell migration and associates with a leukemia related gene c-abl, the target of the blockbuster cancer fighting medicine Gleevec recently launched by [REDACTED] These [findings] broadened our understanding of breast cancer progression and metastasis, a process that is critical for the lethality of breast cancer, and are likely to have significant impact.

[REDACTED] acknowledges that the petitioner “is at the beginning of her career,” and describes her work primarily in terms of the significance that it may someday have; for instance, [REDACTED] mentions the petitioner’s “great promise” and states that her “studies will likely provide the bases for the development of treatment or preventive measures for breast cancer.”

Several other Scripps faculty members offer similar endorsements. [REDACTED] states "I believe that [the petitioner's] studies in Lasp-1 gene will contribute to the advanced understanding of the cause of breast cancer and lead the development of anti-cancer drugs for breast cancer patients."

Outside of Scripps, the other two witnesses are [REDACTED] who supervised the petitioner's graduate studies at [REDACTED] discusses technical aspects of the petitioner's graduate work and states that she "made very good progress . . . in terms of independently developing and/or applying a variety of complex research techniques." [REDACTED] essentially repeats claims put forth in letters already discussed above.

The petitioner states:

My research goal over the next five years is to continue to dissect the signals involved in Lasp-1 mediated breast carcinogenesis and determine at the molecular level how these signals specifically impact cell proliferation, differentiation, and invasion using in vitro models. However, an important career goal is to determine whether critical signaling events identified in carcinogenesis experiments in vitro actually contribute to tumor growth in vivo. If important signals are linked to breast cancer in animal models, I will also like to take advantage of the excellent medical facilities at Scripps to screen breast cancer patients for aberrant activation of these signaling pathways. Identification of such signals may serve as prognostic indicators of metastatic breast cancer leading to preventive therapy as well as future work directed at developing specific antagonists of these molecular events.

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 various articles and presentations she has co-authored, and a copy of her membership card from the American Association for the Advancement of Science (AAAS). The petitioner maintains that her findings regarding the Lasp-1 gene are highly significant because they "may . . . lead to the development" of drugs or preventive therapies. The petitioner's description of her own work cannot demonstrate that her work is of especially great significance compared to that of other qualified scientists in the specialty. The petitioner's membership in AAAS, a large professional organization, does not appear to distinguish her from others in the field.

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's decision contains several references to criteria set forth at 8 C.F.R. § 204.5(h)(3). These criteria apply to a different visa classification, for aliens of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. This analysis was in error. Nevertheless, the director's decision does

not rely on these criteria to the exclusion of more appropriate criteria relating to the national interest waiver. The decision as a whole contains sufficient relevant findings to support the outcome of that decision. The director found that the documentation of the petitioner's work does not show "a major significant contribution" or otherwise demonstrate that the petitioner's "work has been of substantially greater significance than that of others in the field." The director added "[t]he letters are from professors, employers, former and current coworkers, collaborators and other esteemed experts in the field, including some independent testimonies." The director concluded that the petition may have been filed prematurely, with many key arguments resting on speculation rather than the petitioner's demonstrated track record.

On appeal, the petitioner states "the notice stated that the references were written by acquaintances whose own qualifications were questionable." This is not true; the director did not question the qualifications of the petitioner's witnesses. Rather, the director stated that "their own qualifications and achievements appear to far outweigh those of the self-petitioner." The director's chief comment regarding the witness letters was that the witnesses all have obvious close ties to the petitioner, except for one witness, [REDACTED] whose relationship with the petitioner is not clear.

With regard to the significance of her work, the petitioner asserts "my works are all published in peer-reviewed journals, which only accept research work of original contributions" (sic). Certainly there is little reason for a research journal to publish unoriginal results, except in cases where researchers seek to confirm the replication of controversial findings by others. It does not follow, however, that the authors of published articles stand out from their peers to an extent that justifies the special additional benefit of a national interest waiver. 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 was the acknowledgement 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" among postdoctoral researchers. We must consider the research community's reaction to those articles. In this instance, the record is silent as to citations, independent evaluation, or other evidence that the petitioner's work has attracted significant attention outside of the institutions where she has worked and studied.

The petitioner asserts that the director underestimated the petitioner's experience, because while the petitioner did not receive her doctoral diploma until May 2001, she completed the requirements for the degree the previous October. The precise timing of the petition's filing, however, is not at issue. Whatever the exact span of time that elapsed between completion of the petitioner's doctorate and the filing of the petition, it remains that the record does not establish that the petitioner's work has, to date, had significant impact or attracted appreciable attention outside of [REDACTED]. Instead, the petitioner's witnesses write of the petitioner's potential, promise, and what may ultimately result from the petitioner's future endeavors. The assertion that the U.S. would especially benefit from the petitioner's work thus relies primarily on speculation.

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.