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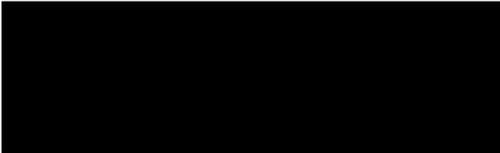
U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

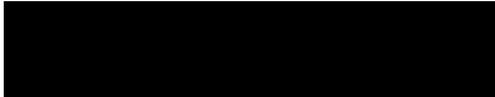


File: WAC 02 089 52983

Office: CALIFORNIA SERVICE CENTER

JUN 03 2003
Date:

IN RE: Petitioner:
Beneficiary:



Petition: Immigration 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 (AAO) 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. At the time of filing, the petitioner was a postdoctoral research scientist at the University of California San Diego. 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. -- The Attorney General may, when he 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, who holds a Ph.D. and works in a field that meets the regulatory definition of a profession, claims eligibility as an alien of exceptional ability. Because he readily qualifies as an advanced-degree professional, however, an additional finding of exceptional ability would be of no further benefit to the petitioner. 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 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 [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. The director found that the area of proposed employment has substantial intrinsic merit and its benefits could be national in scope. We concur. 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.

The petitioner indicates that he is "an internationally recognized scientist" and that his "research has been extremely important to the field of genome research and signaling pathways." The evidence provided by the petitioner indicates that the petitioner has conducted various experiments in biology, biochemistry and molecular biology. Along with documentation pertaining to his field of research, the petitioner submits several witness letters, copies of his published articles, and citation figures for those articles. We will discuss this evidence further below.

The director's notice of decision contains several findings and assertions that must be addressed as they deviate from established policy regarding the national interest waiver. For instance, in denying the petition, the director made several references to "prizes", "competitions", and "national and international acclaim". Such references give the appearance that the director erroneously based a part of his decision on the standard for aliens of extraordinary ability.

Further, the director also made several flawed assertions regarding the petitioner's articles. The director stated that virtually all Ph.D. students are required to conduct research and document such research as part of their degree program. The director concluded, therefore, that because all

individuals who have a Ph.D. will be able to present evidence of authorship of scientific articles, the petitioner's work could not be distinguished from the work of countless other Ph.D. recipients in the field.

This finding, however, is not consistent with the evidence contained in the record. While the research work done by the petitioner for his dissertation may have been similar to the research necessary to write subsequent articles, such articles should certainly not be ignored merely because the dissertation was on a similar subject. The articles submitted by the petitioner are clearly separate from what the petitioner wrote for his dissertation. In fact, three of the four articles were published after the receipt of his degree. Most importantly, the evidence shows that the petitioner's published work has garnered an aggregate total of 90 citations as of the petition's filing date. That number has since grown. A high citation rate is generally a reliable indicator of the impact of a researcher's work, as it shows that others have relied on the work reported in the cited article. The fact that the petitioner's articles continue to be cited several years after their original publication indicates their continued relevance to the field.

In addition to these citations, the petitioner submitted evidence of the field's recognition of the importance of the petitioner's current research project, the *DictyWorkBench* research portal. The August 31, 2001 publication of *Science Magazine* lists the petitioner's DictyWorkBench portal as an important research tool for those working on *dictyostelium*. The National Institute of Health's website also lists the petitioner's research portal as a major resource.

The petitioner has also submitted several witness letters in support of the petition. In his decision, the director stated that while some witnesses were highly complimentary of the petitioner, their own accomplishments outweighed those of the petitioner who was "a student until recently." In response to the director's statement that the petitioner was "a student until recently", we note that the petition was filed nearly four years after the petitioner received his Ph.D.

Further, while a number of the witnesses have taught, worked with, or collaborated with the petitioner, other letters are from more independent witnesses. Certainly, some questions arise when a given research project is said to be of major importance, but no one outside of the research group itself appears to have heard of the project or to have recognized its claimed significance; but such is not the case here. Dr. [REDACTED] University of Illinois Beckman Institute for Advanced Science and Technology, states:

[The petitioner's] work is in improving the accuracy, speed, and ease of usability of computational tools for annotating genes whose sequences are being produced by various gene sequencing projects. This work is critically important as a foundation for advances in basic biological research, biotechnology, and medicine. It directly addresses one of the main limiting factors in progress in these areas, namely our ability to rapidly and accurately interpret the enormous amount of data coming from the machines that are sequencing the genomes of humans and other organisms.

D. [REDACTED] Vice-Dean of the Medical Faculty at Università degli Studi Torino, in Torino, Italy, states:

[The petitioner] has been involved in the automated functional annotation of the predicted Dictyostelium genes....Such work is of importance for the scientific community working on Dictyostelium all over the world, since the results of the annotation and other analysis tools are made immediately available to the research community. For the development of postgenomic research this kind of work is paramount.

It is clear from a review of the notice of the decision that it is the product of considerable effort, rather than a "boilerplate" decision consisting of "stock language." At the same time, however, we cannot ignore that this decision relies on what are, at times, irrelevant standards and inaccurate assessments of the petitioner's work. The AAO cannot uphold a decision with such errors. In this instance, the petitioner has submitted evidence that his research is influential and has attracted highly favorable attention outside his circle of mentors and collaborators. This evidence is sufficient to justify approval of the petition and waiver request.

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. That being said, the evidence discussed above, and further evidence contained in the record, establishes that those in the petitioner's field recognize the significance of his 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.