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Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
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Washington, D.C. 20536



File: WAC 01 296 56026

Office: California Service Center

Date:

JUN 05 2005

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 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 computational chemist. 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 director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The petitioner holds a Ph.D. in Chemical Physics from the University of Minnesota as well as a Masters degree from Peking University. 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 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 petitioner has established that he seeks employment in an area of substantial intrinsic merit, and that the proposed benefits of his research would 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.

As evidence to support his request for a national interest waiver the petitioner submitted five witness letters, his curriculum vitae, evidence of current employment, photocopies of written work, and the diploma for his Ph.D. In addition, the petitioner submitted a personal statement stating that his work will benefit the American economy and make productive use of national resources.

Although the petitioner claimed to have submitted eight photocopies of published documents, not one of these had actually been published at the time of filing. At that time, only one of the petitioner's documents had even been "accepted for publication," while five others were either "submitted" for publication or referred to by the petitioner as "manuscript[s] in preparation." Thus, under the best circumstances, the articles were published too late to establish the petitioner's eligibility at the time he filed the petition. See *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (now the Bureau) held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Three of the five witness letters written to document the petitioner's work are from fellow colleagues at The Scripps Research Institute (TSRI). The petitioner's colleagues describe the beneficial impact the petitioner's work has had on projects at TSRI and the likelihood of future successes based on the work. Dr. [REDACTED] Associate Professor of Molecular Biology, describes the petitioner's research:

Working with us, Dr. [REDACTED] has made major contributions both in computer programming and in applied calculations directed toward our mission of

understanding the physical properties of enzymes containing metal centers. These metalloenzymes and their catalytic reaction cycles are biologically and environmentally of great importance. Their economic impact is also major.

Dr. [REDACTED] had made an outstanding contribution to our research program on metalloenzymes... With [his] strong background... he will be able to make major contributions to the chemical, pharmaceutical, or biotechnology fields.

[REDACTED] a professor at TSRI, states, “[t]he software that [the petitioner] has been developing is unique in allowing a proper description of the biological environment to be included into electronic structure calculations. Professor [REDACTED] also states that the petitioner made “valuable contributions to a study [Professor [REDACTED] group has made on the reaction of pathway of protein tyrosine phosphatase....”

[REDACTED] Associate Professor at TSRI, states that:

[The petitioner] has made some important improvements to the computer programs implementing this hybrid methodology allowing it to keep up with the latest advances in the quantum chemical software. He also used the method to carry out or assist in calculations for studies of several proteins. In particular he made valuable contributions to a study my group has made on the reaction pathway of protein tyrosine phosphates....

The remaining two letters are written by witnesses having close ties to the petitioner from his time spent at the University of Minnesota. [REDACTED] Director of the Minnesota Supercomputing Institute, states:

[The petitioner’s] research requires a high level of scientific and technical expertise. He has played a critical role in conducting theoretical and computational research involving quantum mechanics and high-performance computers... [I]t is clear that [the petitioner] has made extremely important contributions in the field of catalyst research.

The final witness, Professor [REDACTED] knows the petitioner because he was a member of the petitioner’s doctoral dissertation committee. Professor [REDACTED] states that the petitioner’s work “included a substantial amount of programming and technology transfer of developed codes” and recommends the petitioner for permanent residence because the petitioner’s “abilities include the potential to positively impact the economic competitiveness of the United States in the area of software design....”

All of the witnesses have worked closely with the petitioner. They describe the value of the petitioner’s work and make general statements as to the petitioner’s present and potential future contributions to catalytic research and the pharmaceutical, chemical and biotechnology fields. While individuals who are most familiar with the petitioner’s work are in the best position to describe the details and judge the impact of the petitioner’s work, it is not unreasonable to expect that such opinions would be shared outside the immediate group working with the petitioner in order to substantiate a claim that the

petitioner's work has impacted the field. If an alien is participating in work that he and his immediate group consider to be of great significance, but which is not viewed by other researchers or others in the field as particularly important, the extent of the alien's contribution to the national interest is far more tenuous.

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 submitted an updated curriculum vitae and a personal statement detailing his significant contribution to the economy and natural resources. In addition, the petitioner submitted a discussion on how computational chemists serve the national interest of the U.S. It is not clear who the author of this discussion is or where it came from. As such, the assertions made in the discussion carry no weight in these proceedings. Further, the importance of a given project or line of work is not determinative; it is measuring the impact of this particular alien's work on a given field of endeavor that indicates the extent to which the alien will serve the national interest.

The petitioner also submitted a "Scientific Report 2001" published by TSRI press as a general discussion of the type of work that is being done by the petitioner and his colleagues. As neither the director nor we dispute that the petitioner is involved in research at TSRI, it is not clear why the petitioner submitted the paper. Therefore, while we will accept the scientific report as evidence of the type of work performed by the petitioner at TSRI, the report does not assist the petitioner in establishing that he qualifies for a waiver of the labor certification.

The petitioner also submitted a proposal from Novartis Pharmaceuticals discussing a five-year project to develop new fluorescent dyes. The proposal mentions the use of the program developed by the petitioner. However, the petitioner has not offered evidence to substantiate that the proposal was ever accepted as viable. Further, while there are several names mentioned throughout the paper, including Associate Professor [REDACTED] as well as two "key individuals," [REDACTED] and [REDACTED] the petitioner's name is not mentioned as being crucial to the project.

The remaining evidence submitted by the petitioner establishes that some of his earlier writings have now been published. However, as discussed previously, because the articles were published after the filing date of the petition they cannot be retroactively applied to establish the petitioner's eligibility as of September 2001.

While recognizing that the petitioner has begun an impressive career, the director denied the petition, stating that the petitioner has not established a track record of significant impact in the area in which the petitioner intends to work. On appeal, the petitioner submits evidence to show that one of his papers has been cited five times. We note that two of the five citations are self-cites. Further, the fact that the petitioner's work has been cited three times is not persuasive evidence that members of the scientific community are relying on or even recognizing the impact of the petitioner's work. The fact that an article is published does not ensure that its contents have been or will be accepted or embraced by the larger scientific community. Independent citations are objective proof of the petitioner's influence, and the more citations, the greater the impact.

In sum, while the petitioner sincerely believes that his contributions have assisted the economy, welfare, environment, and healthcare in the United States, he has not demonstrated that his past experience has stood out or otherwise made so notable an impact that he qualifies for the special benefit of a waiver of a requirement which, by law, attaches to the immigrant classification he seeks. The petitioner has not submitted any evidence that the improvement of the SCRF2000 computer program or development of the code has had any impact on the scientific community beyond those in his immediate research groups. The petitioner's future goals cannot form the foundation of a successful national interest waiver claim if his existing progress toward those goals has been minimal at best. We must give greater weight to what the petitioner has accomplished than what he hopes to accomplish at some future time.

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.