

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

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ADMINISTRATIVE APPEALS OFFICE
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File: EAC 01 118 53283 Office: VERMONT SERVICE CENTER

Date: MAR 18 2003

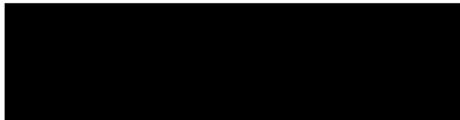
IN RE: Petitioner:
Beneficiary:



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)

PUBLIC COPY

ON BEHALF OF PETITIONER:



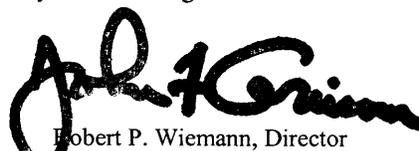
INSTRUCTIONS:

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, Vermont 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. At the time of filing, the petitioner was a doctoral candidate at Rutgers, the State University of New Jersey.¹ Subsequently, the petitioner has begun working at DGI BioTechnologies, Inc., a biopharmaceutical company based in Edison, New Jersey. 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.

¹ A letter from a Rutgers official, dated January 23, 2000, states that the petitioner "is a full time Ph.D. graduate student" who "has completed all requirements for the Ph.D. degree, and is planning to receive his diploma in October 2001." The official did not explain why the petitioner would not receive his diploma until nearly two years after completing "all requirements for the Ph.D. degree," or why the university still considered the petitioner to be "a full time . . . student." Subsequent submissions include references to the petitioner with the prefix "Dr.," indicating that the petitioner has since received the doctorate.

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.

Counsel describes the petitioner’s work, stating that the petitioner “is recognized worldwide as a leading expert in the areas of molecular biology and genetics research.” Counsel states the petitioner’s “current research is focused on the molecular mechanism of meiotic recombination using molecular, cellular and biochemical approaches. . . . [The petitioner’s] research experience in meiosis and genetic disease has tremendous impact on the crucial challenges our nation faces.” Meiotic recombination is a critical step in the creation of gamete cells for sexual reproduction. In earlier research in China, the petitioner’s work “provided key insight into plant utilization of photo energy and gene engineering based on it will potentially increase crop yield enormously.”

Along with copies of his published work and background documentation pertaining to his field of research, the petitioner submits several witness letters. A number of these witnesses state that the petitioner has conducted significant work with the meiosis-regulating genes of *Drosophila melanogaster*, a fruit fly that is widely used in genetic research. The witnesses offer varying

degrees of detail regarding the petitioner's work; many witnesses simply offer a general description of the petitioner's research specialty, with little discussion of the petitioner's work in that specialty. One of the more detailed letters is from [REDACTED] executive vice president of Strategy, Technology and Operations at First Genetic Trust, Inc., who states:

I have known [the petitioner] professionally for 3 years. We began to know each other when [the petitioner] attended one of my seminars on genomics research and we have kept in touch since then. . . . I can see that his research accomplishments have attracted a great deal of national and international attention.

[The petitioner's] research is focused on a group of genes that are responsible for the normal progression of meiosis and genome stability during meiotic cell division. What makes his research unique is that this group of genes is hard to study as they function in a very restricted time and space during an organism's life, and are crucial to the critical steps of sexual reproduction and early embryogenesis. Defects in these genes cause various genetic disease[s] in human newborns, such as Down syndrome, etc. These defects can also be responsible for infertility and most spontaneous abortions in human female[s], especially in women of advanced age. As these genes are also involved in genome stability and DNA repair, his research also provides significant insight into the field of cancer research. . . .

The study of [a] gene's function in *Drosophila melanogaster* can greatly increase our understanding of the cause of disease in humans. . . .

[The petitioner's] research results have had tremendous impact on our understanding of the mechanism of meiosis from classical genetic study to detailed molecular characterization. His research gives us a sharp edge in detecting, preventing and treating genetic diseases that result from meiotic defects. . . .

[The petitioner] is one of the few top young researchers in his field of endeavor.

Some of the witnesses have worked directly with the petitioner, but others appear to have had no closer contact with the petitioner than acquaintance at professional conferences.

The director requested further evidence to show that the petitioner is responsible for significant advances in his chosen field. The director noted that general arguments about the merits of the petitioner's occupation or research interest cannot suffice. In response, the petitioner has submitted additional letters from witnesses whom counsel deems "[r]ecognized independent authorities and highly regarded leaders in the biomedical field." Almost all of these witnesses have demonstrable ties to the petitioner, generally through his work at Rutgers and a collaborative effort at the nearby University of Medicine and Dentistry of New Jersey. The witnesses indicate that the petitioner has added to science's body of knowledge about *Drosophila melanogaster*, and that this work has

resulted in several manuscripts, one of which has already been published as an article. Like the original letters, the new letters refer vaguely to the reception that the petitioner's work has received, but the record contains no independent, objective confirmation of that reception (such as, for example, evidence that the petitioner's published article has been cited more heavily than other articles regarding similar topics).

The petitioner's submission also shows that the petitioner has stopped working on the project described above. [REDACTED] vice president of Research at DGI Biotechnologies, Inc., states:

[The petitioner's] job function in the company is to organize the research teams in molecular biology, protein expression, and proteomics into an integrated force by coordinating research information between different laboratories. It [is] worth noting that only people with [the petitioner's] extensive experience in biological research would be qualified for this type of work. In addition to his research work, [the petitioner] is also developing and maintaining our Bioinformatics program that will greatly facilitate our data collection, analysis and drug target verification process.

Dr. Goldstein's indication that few in the petitioner's field possess the necessary experience and expertise to qualify for the job would seem to indicate that the petitioner is a good candidate for labor certification, given the dearth of qualified competitors for the position.

The director denied the petition, acknowledging the intrinsic merit of the petitioner's work but finding that the petitioner's own contribution does not have national scope or warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. The petitioner's occupation of biological and pharmaceutical research is inherently national in scope because research findings in those fields are universally applicable. We therefore withdraw the director's finding that the petitioner has not shown his work to be national in scope.

The director stated, in the denial decision:

The witnesses do not establish how the beneficiary's research is of inherently greater value than other research currently underway at other institutions, nor do they explain what skills the beneficiary brings to the research which is of substantially greater benefit to the national interest than is normally encountered in researchers with the beneficiary's training and experience.

The director noted that a grant proposal in the record appears to indicate that the petitioner was relegated to a minor role in the research project.

On appeal, the petitioner submits a three-page brief from counsel. Counsel refers to "new and additional evidence," submitted as "Exhibits A – F." Four of these exhibits, however, are not

new or additional. Rather, exhibits A through D are copies of previously submitted materials, constituting the entire record of proceeding as of the issuance of the decision. Exhibit F is a copy of the petitioner's doctoral diploma. The remaining exhibit is a new letter from [REDACTED] who supervised the petitioner's doctoral studies at Rutgers. [REDACTED] had written a letter with the initial filing, which did little more than describe the petitioner's work. In the new letter, [REDACTED] states that the petitioner had "a leadership role" in the project described in the grant application. [REDACTED] also asserts that the petitioner's "most significant work" represents "a major breakthrough" in the investigation of meiotic recombination.

Counsel asserts that the evidence of record "clearly and convincingly established that the [petitioner's] research findings are a major breakthrough in the field of meiosis" and that the petitioner "was a key researcher in his research team and an outstanding researcher in comparison with his peers." Counsel notes that the petitioner was the first author of a published article, indicating a significant role within the project. Counsel acknowledges that a grant proposal in the record appears to show that the petitioner had only minor responsibilities on a project, but counsel contends that because the petitioner was still only a doctoral candidate at the time, "of course [he] could not occupy a shining spot on the grant proposal."

Counsel maintains that the petitioner's "research finding is not only a noteworthy achievement, but also a major groundbreaking advance in the field of meiosis studies. . . . [The petitioner] has made major contributions to the study of meiosis." The record, which seems to indicate that the petitioner no longer studies meiosis, lacks independent evidence to corroborate counsel's assertion. While witnesses have praised the petitioner's work as valuable, counsel has overstated the independence of those witnesses. This is not to impugn the sincerity of those witnesses, but rather to emphasize that their letters are not first-hand evidence that the petitioner's discoveries are so important that they have come to the attention of a significant number of researchers outside of the petitioner's own circle of mentors and collaborators.

If the petitioner's work truly represents a "major breakthrough" as claimed, evidence of such ought to be readily available in some objective form, the existence of which is not contingent on the filing of this petition. For instance, citation of scholarly articles occurs whether or not the author of a given article seeks to immigrate to the U.S., and trade publications within a given specialty report on significant news and developments in the field regardless of the immigration status of the researchers behind those developments. If the petitioner's work does indeed represent a significant breakthrough as the petitioner claims, it remains that the record does not show that anyone has seen fit to mention this breakthrough except in the context of letters in support of the petition.

Drosophila melanogaster is one of the most exhaustively studied organisms in the field of genetics, and one of very few animal species for which the complete genome has been mapped. Therefore, it is far from obvious that the petitioner has set himself apart from others in the field by revealing new findings regarding the genetics of that species. The petitioner works in what is overall an important field, and to that extent every competent worker in the field does important work. To qualify for a special waiver of a requirement that applies to all workers in the field, the

petitioner must offer some special benefit beyond what is inherent in the field. While the record contains claims to the effect that the petitioner offers such a special benefit, the documentary evidence of record does not provide adequate corroboration for such claims.

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.