

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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File: [REDACTED] LIN 01 251 55728 Office: NEBRASKA SERVICE CENTER

Date:

MAR 19 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)

ON BEHALF OF PETITIONER:

[REDACTED]

PUBLIC COPY

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, Nebraska 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 post-doctoral researcher in the agricultural field. 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 the classification but concluded that the he 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) Subject to clause (ii), 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.

(ii) Physicians working in shortage areas or veterans facilities.

The petitioner obtained a Ph.D. in agricultural economics from Michigan State University in August 2000. At the time the petition was filed in August 2001, the petitioner was employed as a research associate with Michigan State University's College of Veterinary Medicine. 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 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 pertinent 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.

Eligibility for the waiver must rest with the alien's qualifications rather than with the position sought. It is generally not accepted that a given project is of such importance that any alien qualified to work on it must also qualify for a national interest waiver. The 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 sought. 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, n.6.

We agree with the director that the petitioner's research in the marketability and pricing of the cassava root has intrinsic merit and that the proposed benefits of his research would be national in scope. The remaining determination is whether the petitioner will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

The petitioner submits several witness letters in support of his petition. Professor [REDACTED] a visiting scholar at Michigan State University and identified by the petitioner as a co-author of an article in progress, describes the petitioner's work:

As an expert on cassava, I have become aware of [the petitioner's] work in the field. [The petitioner's] field of research is price analysis and marketability of cassava. . . . To my knowledge, he is the only researcher in the world presently doing work in this extremely beneficial field. His research has the potential to benefit the U.S. on many different levels. First, the use of cassava in the United States serves health concerns which relate to the spread of BSE. Bovine tissue is not only used as cattle feed, but also in some dietary supplements for humans. . . . Because of its nutritional properties, cassava can be substituted for tissue in the supplements. The use of cassava in this manner will decrease the risk of consuming contaminated cow tissue through dietary supplements.

* * *

Using cassava as cattle feed also addresses environmental concerns in the U.S. . . . Cassava will help alleviate this problem because it can be substituted for corn in cattle feed, which reduces the need to grow corn in the United States.

* * *

Finally, importing cassava will also greatly benefit the economy of the United States. . . . It will open a market between the U.S. and West Africa, as well as give the United States the opportunity to become involved in the cassava industry in Africa by opening cassava processing plants there.

* * *

[The petitioner's] accomplishments in this field are unprecedented, because no other researcher has ever done work in this specific field. . . . Because he is the only researcher in the world who has specialized knowledge about the economics of cassava production, if he is not able to continue his work here this research will be completely halted in the United States.

* * *

[The petitioner] is widely recognized by other experts in the cassava field as a top researcher, and his work has achieved much acclaim.

In his first submitted letter, [REDACTED] a professor at Michigan State University and the petitioner's collaborator on several papers relating to veterinary science issues, reiterates the potential usefulness of cassava to the U.S. and states that it would take

"four or more years to find and train someone to continue [the petitioner's] work." [REDACTED] asserts that "allowing [the petitioner] to continue his work in the United States is crucial to the economy, environment, and health."

Professor [REDACTED] second letter emphasizes the need for further investigation in the uses of cassava in order to aid in the prevention of the spread of mad cow disease. He states that "[the petitioner's] research has the potential to protect the economy in the United States, as well as protect the health of individual consumers." He asserts that the labor certification process "would slow, if not entirely stop, research into cassava marketability in the United States."

[REDACTED] a professor at Michigan State University and coauthor with the petitioner on articles in progress, also emphasizes the potential environmental and economic benefits associated with the increased use of the cassava root. Professor [REDACTED] states:

Timeliness is essential. . . . [I]f the University were forced to search for a U.S. worker, as is required by the labor certification process, valuable time would be wasted. Because [the petitioner's] research is unique and specialized, it would be nearly impossible for a worker with minimal qualifications, such as a Ph.D. in Agricultural Economics, to fill his position. It would take several years to train such a person.

Professor [REDACTED] a professor at Michigan State University and a member of the petitioner's doctoral dissertation committee, states:

In order to achieve benefits in health, environmental protection and sustainable agriculture, the United States needs to have a researcher of the highest caliber in this field. [The petitioner] is certainly the top researcher in the field, and his expertise will contribute to a timely realization of the benefits of cassava research. . . . Requiring [the petitioner] to go through the labor certification process would force the University to search for a worker with minimal qualifications, such as a Ph.D. in agricultural economics.

* * *

[The petitioner] has accomplished a great deal in his field already. He has presented his work at international conference proceedings, and has published several papers regarding his research. He has also received prestigious awards, such as the Rockefeller Foundation Fellowship Award, for his research, and his work has been cited in publications by other experts who study cassava. [The petitioner's] accomplishments have contributed to the sustained recognition he has achieved in the field.

Georges Dimithe, an employee of the International Fertilizer Development Center (IFDC) in Muscle Shoals, Alabama and cited as one of the petitioner's co-authors on a 1999 paper, echoes the

importance of cassava research and reiterates the petitioner's qualifications in virtually identical language as the other letters [REDACTED] describes the petitioner's accomplishments as "unique and unprecedented."

[REDACTED] an agricultural economist and a coordinator with the International Livestock Research Institute in Addis Ababa, Ethiopia, also submits a letter of support. [REDACTED] similarly describes the potential importance of cassava research relating to the prevention of mad cow disease, possible increased U.S. trade with West Africa, and prevention of environmental pollution. He emphasizes the petitioner's unique expertise and the potential problems that Michigan State University would face in trying to recruit a U.S. worker.

We note that the petitioner's witnesses consist almost exclusively of his past and present mentors, colleagues or collaborators, who all assert that increased agricultural use of the cassava root could provide significant health, environmental and economic benefits for the U.S. This does not detract from the validity of their opinions, as they may be in the best position to evaluate the petitioner's work and his role in various projects in which he has participated. The record, however, contains little evidence showing how the petitioner's specific contributions have already significantly impacted the field as a whole or have been significantly relied upon or recognized by independent researchers. Assertions that the petitioner's efforts have great promise do little to specifically establish that his past record of achievements have reached such a level that would justify a waiver of the job offer requirement that, by law, normally attaches to the visa classification which the petitioner seeks. Likewise, a shortage of comparably trained U.S. workers, regardless of the nature of the occupation, does not support a national interest waiver, given that the labor certification process was designed to address the issue of worker shortages.

The record contains evidence that the petitioner received a Rockefeller fellowship award accompanied by a small stipend. The regulations provide that "recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations," 8 C.F.R. § 204.5(k)(3)(ii)(F), are one kind of evidence of exceptional ability, a classification normally requiring a labor certification. As set forth in *Matter of New York State Dept. of Transportation*:

Because, by statute, "exceptional ability" is not by itself sufficient cause for a national interest waiver, the benefit which the alien presents to his or her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F). Because the statute and regulations contain no provision allowing a lower national interest threshold for advanced degree professional than for aliens of exceptional ability, this standard must apply whether the alien seeks classification as an alien of exceptional ability or as a member of the professions holding an advanced degree.

Id. at 218-219.

The petitioner submits copies of a Michigan State University "Staff Paper" that incorporates part of his doctoral thesis and a copy of a June 2001 co-authored paper that does not indicate where or if it was published. The record contains no evidence that the preparation and presentation for publication of one's work is rare in the petitioner's field of endeavor. 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 were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of appointment."

Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other agricultural economists have relied upon the petitioner's findings. Frequent citation by independent researchers, on the other hand, would show more widespread attention, and reliance on, the petitioner's work. In this case, the record contains evidence that the petitioner's doctoral thesis has been cited once by one of the petitioner's former colleagues. The evidence also indicates that the petitioner is working on other articles for publication. A petitioner, however, must establish eligibility at the time of filing a petition. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

In order to qualify for the classification sought, it is not enough to assert that a petitioner has useful skills or even a unique background. The significant abilities of a petitioner for a national interest waiver must also substantially outweigh the inherent national interest in protecting U.S. workers through the labor certification process. The issue in this case is not whether further cassava root research would be desirable, but rather whether this particular petitioner's specific contributions have been of such unusual significance so as to justify a waiver of the labor certification process. There is little evidence in the record that researchers outside the petitioner's educational institution consider his work to be of greater significance than that of other agricultural economists.

On appeal, counsel asserts that the director failed to recognize the critical importance of scientific research on the cassava root and disregarded the witness endorsements. The fact remains that the record falls short of specifically demonstrating that the petitioner has had any measurable influence on other independent researchers in the field. Most of the witnesses used similar generalized superlatives in describing the petitioner's expertise, but there was little specificity as to how the petitioner's work had already impacted the field. Simply going on record without supporting documentary evidence is not sufficient to meet the petitioner's burden of proof. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel also contends that the labor certification process is fundamentally inappropriate for an alien like this petitioner. As previously noted, special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. While the labor certification process may be more easily applied to some occupations, a petitioner is free to specify educational and experience criteria on the labor certification application.

It is apparent that the petitioner's witnesses have a high regard for the petitioner's skills. They clearly expect that his research will have a significant impact on agricultural issues relating to the cassava root. The petitioner's contributions, however, do not appear to have yet garnered significant attention from independent researchers throughout the scientific community. While the witnesses' expectations of the petitioner's future impact may come to fruition, we cannot conclude that the present evidence contained in the record indicates that the national interest waiver is justified.

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.

ORDER: The appeal is dismissed.