

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

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] - 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]

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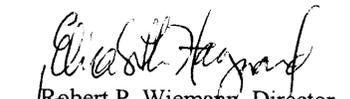
INSTRUCTIONS:

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.

We note that the director identified the University of Illinois School of Public Health as the petitioner. The I-140 petition form, however, was signed not by any university representative, but by the alien herself. There is no evidence that the University of Illinois was involved in any way with the preparation or filing of this petition. Therefore, the alien shall be considered to be the petitioner.

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 an alien of exceptional ability. The petitioner seeks employment as a researcher at the University of Illinois School of Public Health. 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 immigrant classification sought, 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 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 she readily qualifies as an advanced-degree professional, however, an additional finding of exceptional ability would be of no further benefit to the petitioner. 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.

Counsel describes the petitioner’s work:

The document establishes the alien as one with significant expertise and experience in the area of malaria research. She has received international recognition for her work and has received nomination and funding by the World Health Organization to pursue additional research in her chosen area. . . .

Her continued participation in this and many other waiver based activit[ies] like improving education for minorities, as a volunteer would significantly impact the entire U.S. positively.

Counsel asserts that labor certification is not appropriate in this instance because the petitioner “needs the flexibility to work anywhere and under any funding arrangements and in any

laboratory for the purpose of achieving this goal.” Counsel acknowledges that few if any people contract malaria while in the United States, but counsel states that the petitioner’s expertise is useful nevertheless because American travelers can be exposed to the pathogen while abroad.

While malaria is the only illness mentioned in counsel’s introductory statement, the petitioner states that her current research interests also include leukemia. The petitioner states that her “line of research would be concentrated on the clinical relevance of multi-resonance protein (MRP) mediated multi-drug resistance in leukemia, which has been poorly understood. . . . If the sensitivity to anti-cancer drugs of each cancer sample can be predicted by determining the expression of MRP, then a more effective therapy would likely be available for the individual subject.” Regarding malaria, the petitioner states that she “would set up a plan that would convey research information directly to the pharmaceutical laboratories and direct involvement of the malaria infected individuals by way of survey and treatments.” The petitioner describes her work at the University of Illinois School of Public Health:

My current involvement . . . has been in the development of multi-disciplinary approaches to address disease prevention and health needs of the communities through seminars and lectures.

We train our students to evaluate the effects of disease prevention on the health status of specific population[s] and acquire skills to improve health services through prevention programs development, health education and health promotion.

The petitioner expresses a strong “desire to train, mentor and impact” minority graduate students, and states “as a black woman and a minority in the Biological Sciences, I will represent a good role model for the students.” While minorities such as African-Americans may be underrepresented in the biological sciences, there is no indication that this is due to a lack of role models, or that the petitioner’s presence in the United States would, at a national level, increase the number of African-Americans and other minorities pursuing graduate-level education in the sciences.

Along with copies of her scholarly writings, the petitioner submits letters from several witnesses. These individuals indicate that they have known the petitioner for years. Some of the witnesses offer only very general assertions, stating that the petitioner has specialized expertise which is likely to be very useful to researchers, and that the petitioner is highly motivated in her work. One of the more detailed letters is from Professor [REDACTED] now at Tuskegee University, who supervised the petitioner’s work at facilities in Nigeria, Denmark, and the United States. Prof. [REDACTED] states:

Having chosen the difficult area of Parasitology for her Master’s degree, [the petitioner] continued with a focus on *Plasmodium falciparum*, the parasite that transmits malaria from man to man for her PhD work. She researched into the molecular aspect of the proteins and amino acids in the parasite that could be

responsible for the development of resistance to drugs used in the treatment of malaria. She was able to characterize the unique protein that was responsible for this problem.

Regarding the petitioner's work at the University of Illinois, Prof. Ayanwale describes the petitioner as a "volunteer."

The director denied the petition, acknowledging the intrinsic merit of the petitioner's work but finding that the petitioner has failed to establish the national scope of her work, or that her own contribution warrants a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. The director stated that the petitioner has failed to "demonstrate that her contributions have influenced the field to a substantially greater extent than those of other qualified researchers, also making contributions to that field."

On appeal, counsel asserts that the director "wrongly decided that the prospective national benefit of the [petitioner's] research was not national in scope." We concur that, by its nature, biological/medical research such as the petitioner's work in parasitology is not subject to narrow geographical constraints. Furthermore, through publication, the results of such research can be disseminated internationally. We therefore withdraw the director's finding that the petitioner's work is not national in scope.

The petitioner's volunteer educational efforts, however, are considerably more limited in their scope, and the direct impact of the petitioner's work in this area is limited to the students with whom she has contact. Also, the petitioner's volunteer teaching work does not appear to be "employment" *per se*, and in any case is subordinate to her primary career as a researcher. The petitioner has not shown that her volunteering work to date has had such an impact that one could reliably foresee significant national benefit as a result of the petitioner's continued efforts in that area.

Regarding the petitioner's research work, counsel states that the director did not accord sufficient weight to the evidence and letters presented. Counsel acknowledges that the witnesses all have ties to the petitioner, but maintains that this is to be expected because those individuals have the best understanding of the petitioner's work. Counsel is correct that "other researchers" will have a better idea of the importance of the petitioner's work than "a non-expert in that field" (although not all of the witnesses claim expertise in the petitioner's field). The issue is not that the witnesses are, by and large, researchers in the petitioner's field. Rather, by relying on statements from long-standing acquaintances, collaborators, and mentors, the petitioner has not shown that independent experts consider the petitioner's research findings to be more important than the findings of other capable researchers in the same area of expertise. Speculation about benefits that may one day result from the petitioner's work has negligible evidentiary weight, and the petitioner's choice of career is not, itself, an argument in favor of a national interest waiver. Because workers in the petitioner's field are, by statute, subject to the job offer requirement, the petitioner must do more than simply demonstrate that she is successful in a useful field of endeavor. The waiver is a special, additional benefit, for which the petitioner must adduce additional evidence. The petitioner has

explained her research, and future research activities that she intends to pursue, but she has not objectively shown that this research is of greater importance or significance than similar work underway at other laboratories.

At the end of the appeal statement, counsel refers to an "other brief to be submitted." Counsel does not indicate when this brief will be submitted. On the I-290B Notice of Appeal, the petitioner was offered the opportunity to indicate that she would be "sending a brief and/or evidence . . . within 30 days," or to state that a specified number of additional days would be necessary. The appeal form indicates that, if the petitioner desires more than 30 days, the petitioner must provide "good cause" for the extension. These requirements are in keeping with regulations at 8 C.F.R. § 103.3(a)(2)(vii), which requires a petitioner to request, in writing, additional time to submit a brief, and to provide good cause. The late submission of supplements to the appeal is a privilege rather than a right. The petitioner, on the form, did not indicate that further evidence would be submitted within 30 days, or that more time was necessary. The record contains no explanation as to why good cause exists for an extension of time. Instead, the annotations on the appeal form indicate only that a brief is attached to the form itself. There is no regulation which allows the petitioner an open-ended or indefinite period in which to supplement the appeal. Therefore, counsel's vague assertion (contradicted by notations on the appeal form) that further materials are forthcoming at some unspecified future time, with no explanation as to why the materials were not submitted with the appeal, is not grounds for suspending the adjudication of the appeal. To date the record contains no supplementary submission and we consider the record to be complete.

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.