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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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File: WAC 01 295 53815 Office: CALIFORNIA SERVICE CENTER

Date: MAY 07 2003

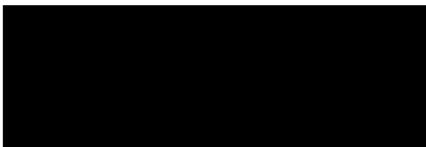
IN RE: Petitioner:
Beneficiary:



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)

ON BEHALF OF PETITIONER:

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

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 sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary 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 postdoctoral fellow at Novozymes Biotech, Inc. The petitioner indicates on the petition form that the position sought is temporary. 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 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) . . . 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.

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 the 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:

Petitioner's work has and will continue to lead to significant advances in the use of biofuels, such as bioethanol, which have important ramifications for the economic and environmental welfare of the United States. . . . [The petitioner's] research in bioethanol results in two-fold benefits, one is a substitute for petroleum, the other is the alleviation of the biomass waste disposal problem. . . .

Currently, Petitioner is one of the principal researchers in a bioenergy project at Novozymes funded by the Department of Energy (DOE). . . . [The petitioner's] unique contributions are important to the success of this project at the company.

The intrinsic merit and national scope of the above research are readily evident. At issue is whether the benefit to the national interest from retaining this alien's services outweighs the benefit inherent in protecting qualified U.S. workers through the labor certification process.

Along with background documentation pertaining to the petitioner's field of research and the petitioner's academic and professional credentials, the petitioner submits several witness letters. Dr. [REDACTED] senior scientist and project leader at Novozymes Biotech, Inc., states:

Biological carbon is a potentially renewable energy source that is replenished daily by photosynthetic activity. If we can fully utilize the potential of the bio-fuels

converted from the biological carbon, thereby enhancing our energy independence, the benefits to the U.S. economy are quite obvious. Moreover, the benefit to the environment, by reducing CO pollution and greenhouse gas emission, problems caused mostly by petroleum consumption, would be manifest in the bio-fuel system.

However, bio-based fuels such as bio-ethanol currently . . . are still more expensive than fossil fuels. The cost of the enzymes needed to convert biomass to fermentable sugars remains one of the most significant technical barriers to the commercialization of the biomass to ethanol technique. Cost-effective enzymes will be a major breakthrough for making it possible to economically release the carbon in renewable biomass to produce bio-fuels and other bio-based projects.

[The petitioner] is well known in this research field. . . .

[The petitioner] studied the bioconversion process thoroughly in an effort to optimize the process to improve the efficiency of biomass-to-ethanol conversion. Simultaneous saccharification and fermentation (SSF) and separate hydrolysis and fermentation (SHF) are two of the most popular conversion processes in bio-energy research, each with advantages and disadvantages. . . . [The petitioner's] studies aimed to modify each process to magnify the advantages and avoid the disadvantages. She designed and tested a membrane reactor for SHF process, where end products (soluble sugars) are continually removed through the membrane, while cellulases and biomass were retained in the reactor. . . . She also selected thermal-stable yeast strains from a wide collection for the SSF process, so that hydrolysis and fermentation can be performed simultaneously at a temperature optimal for both steps. These research results have had very positive impacts on the realization of industrial bio-ethanol production. [The petitioner] also contributed significantly to the methods and development in cellulase binding studies, which lead to a better understanding of the mechanism of cellulase hydrolysis, as well as the synergistic effects of cellulase components.

Dr. [REDACTED] executive director of the California Institute of Food and Agricultural Research (CIFAR) at the University of California [REDACTED] where the petitioner obtained her doctorate, states that the petitioner was a "major contributor" to the projects described above. Other individuals, who have collaborated with the petitioner to various degrees, similarly assert that the petitioner's work has resulted in progress toward the goal of large-scale bioenergy production. The only independent witness among the initial witnesses is Dr. [REDACTED] senior scientist and technology manager of Biomass Projects at the California Energy Commission. Dr. [REDACTED] states:

Although I do not know [the petitioner] personally, I do know of [the petitioner's] research efforts on the renewable energy project by reading some of her publications . . . , and by listening to her presentations and talking to her in person

at poster sessions at various scientific conferences. There is no doubt that [the petitioner] is an active young scientist in the bioenergy project, her research results lead to a better understanding of the mechanism of cellulase catalyzed hydrolysis, and therefore increase the possibility of an economical large-scale bioenergy production.

Dr. [REDACTED] explains why bioenergy research, in general, is in the national interest, and states "I believe in her potential to make greater contributions to this project." Dr. [REDACTED] does not, however, indicate that the petitioner's contributions to date are especially significant in comparison to the contributions of other competent researchers in the field.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. The director acknowledged the petitioner's "experience and expertise" but noted that the most detailed letters in the initial submission are from the petitioner's supervisors and close collaborators. In response, the petitioner has submitted additional background documentation, writings, and letters. Counsel asserts that one of the petitioner's articles "has been widely cited by other researchers," but the record, at this stage, did not include evidence of such citations.

The petitioner's response includes four new letters. Dr. [REDACTED] president of Novozymes Biotech, Inc., explains why the company requires experts specializing in cellulase research, and states:

What sets [the petitioner] apart from other highly skilled and well-qualified researchers is that as a young scientist, [the petitioner] has been active and outstanding in the cellulase research area. . . .

[The petitioner's] research experience and achievements are invaluable to the success of this federal project. . . . Our company and the DOE project rely on [the petitioner], an expert on cellulase research, for knowledge on the complicated cellulose hydrolysis system, as well as for the latest advances and new research ideas in this area. The first-year milestones of the bioenergy project were accomplished mostly based on the research results from biochemical characterization, where [the petitioner] is a principal researcher. Her contributions to the bioenergy project are significant. With her extensive research experience, her role on the bioenergy project is definitely unique and irreplaceable.

Arguments regarding the extent to which Novozymes relies on the petitioner's skill set carry little weight in this proceeding. If the position truly requires expertise in the study of cellulase, then simply arguing that the petitioner possesses the minimum qualifications (i.e. expertise in cellulase) do not qualify the petitioner for a waiver unless we presume that this particular job skill is, inherently, a qualifying factor for a waiver. Also, as noted above, the petitioner has described her position at Novozymes as a temporary postdoctoral appointment rather than a permanent position. Even if the petitioner's work is indispensable to Novozymes' project, the petitioner can perform the same duties as a nonimmigrant as she would as an immigrant, and either way her

temporary postdoctoral position would end in the relatively near future. Greater weight rests on the petitioner's overall contributions – and thus her likelihood of future contributions – than on the observation that Novozymes considers the petitioner to be the best qualified applicant for a short-term position. The approval of the petition rests on the finding that the petitioner's past accomplishments justify predictions of future contributions, rather than on any finding that it is in the national interest to convey permanent immigration benefits in order to facilitate a temporary assignment.

Dr. [REDACTED] a scientist at the National Renewable Energy Laboratory, states "I do not know [the petitioner] personally, but I do know of her efforts and achievements in the biofuels research area because of her gradually accumulated reputation in this field." Dr. [REDACTED] asserts that the petitioner plays a "unique and important role" in the Department of Energy-funded project underway at Novozymes.

Dr. [REDACTED] of the Laboratory of Renewable Resources Engineering at Purdue University states "[a]lthough I do not have any professional or personal association with [the petitioner], I do know of her research efforts and accomplishments in the bioenergy research arena based on her accumulated reputation as an active and productive young scientist." Dr. [REDACTED] asserts that the petitioner's "past achievements led to direct benefits and considerable advances in the bioenergy research that justify predictions of the high level of her future contributions."

Dr. [REDACTED] director of the Institute for Microbial and Biochemical Technology of the U.S. Forest Service, states "[a]lthough I do not know [the petitioner] personally, I am aware that [the petitioner] is working on lignocellulose degradation for biofuel production and has attained recognition in this field." Dr. [REDACTED] states that the petitioner's findings, presented at a professional conference, "were very impressive since they shed light on the mechanism of enzymatic hydrolysis and the synergistic effect amongst cellulases."

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work but finding that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek.

The director's decision contains numerous references to standards that apply to another immigrant classification, specifically the classification of alien of extraordinary ability, codified at section 203(b)(1)(A) of the Act, with implementing regulations at 8 C.F.R. § 204.5(h). The director erred by holding the petitioner to the stringent extraordinary ability standards set forth at 8 C.F.R. § 204.5(h)(3), whereas the petitioner does not seek classification as an alien of extraordinary ability. On appeal, counsel correctly observes that the director "erred in applying an extraordinary ability standard" to a petition involving a lesser classification. Because the faulty reliance on the wrong classification pervades most of the decision, this is a serious flaw.

Counsel further argues that the petitioner has established a track record of significant contributions. The director had made the apparently contradictory observations that several of the petitioner's witnesses are independent, but that the witnesses' "knowledge of the petitioner's

work appears to derive from" collaboration with the petitioner. The record shows that several of the witnesses specifically state that they have had only minimal contact with the petitioner, limited to discussions at professional conferences. Among these witnesses are the leaders of what appear to be major research laboratories at various locations throughout the United States, indicating that the petitioner's reputation is not restricted to [REDACTED] California, where she earned her degree and where she now works. The petitioner's initial submission relied predominantly on the assertions of supervisors and collaborators, and the director was justified in requesting additional documentation, but the director does not appear to have given sufficient consideration or weight to the materials that the petitioner submitted in response to that request.

The petitioner also submits a printout from a citation index, showing 14 citations of the petitioner's article in *Bioresource Technology*. This newly submitted evidence corroborates the earlier claim that a number of researchers have cited the petitioner's work. While a total of 14 citations is not an overwhelming number, neither is it so low a number that it may be dismissed offhand. When viewed in conjunction with the other evidence of record, it is part of an overall pattern of growing recognition of the petitioner's work in the field, outside of the petitioner's immediate circle of collaborators. Indeed, it appears that the petitioner's article has been cited more frequently with the passage of time, consistent with increasing awareness of research work that remains relevant throughout the field.

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 field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony and documentation in the record, establishes that the scientific community recognizes the significance of this petitioner's 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.