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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

MAY 07 2003



File: WAC 01 245 60162 Office: CALIFORNIA SERVICE CENTER Date:

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:



**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 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 an alien of exceptional ability and a member of the professions holding an advanced degree. The petitioner is a postgraduate researcher at the University of California, Irvine (UCI). 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. Counsel maintains that the petitioner also qualifies for classification as an alien of exceptional ability. Because she 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 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 states:

[The petitioner] has received wide international recognition. [The petitioner's] publications have been cited [in] more than 38 instances by top researchers throughout the international medical research community. . . .

[The petitioner] has been in the forefront of human organ transplantation research. . . . [The petitioner] is a leading expert in the molecular and cellular mechanisms of transplant rejection and her research can significantly reduce health disabilities and deaths associated with transplant rejection.

Along with copies of her published articles and conference presentations, the petitioner submits letters from faculty members of the universities where she has worked and studied, specifically UCI and the Catholic University of Leuven, Belgium. Professor [REDACTED] chairman of the Department of Surgery at UCI Medical Center, describes the petitioner's current work:

[The petitioner] has been engaged as a leading investigator in mouse and rat solid organ transplantation, data processing, and experimental immunology, cell biology, and molecular biology work. . . . The major obstacle to maintaining functioning of

transplanted organs is chronic rejection by hosts that result in the failure of transplanted organs and death. Transplant rejection is still not completely understood. Understanding the mechanisms of rejection and thus finding effective means to suppress the response is important.

[The petitioner] is a unique component in our mission to study the pathogenesis of graft rejection and seek effective measures to induce graft tolerance to prevent chronic rejection. [The petitioner] is responsible for data analysis, research proposal, and remodeling of all the projects. . . . Before she came to the United States, [the petitioner] had already made pioneering and significant achievements in the transplantation medicine. . . . [The petitioner] discovered that the reductase inhibitors have a role in preventing chronic rejection in rodents. This new knowledge is significantly contributes [sic] to our understanding of mechanisms of transplant rejection.

Dr. [REDACTED] then an associate professor and chief of the Division of Transplantation at UCI, identifies himself as “a world authority in the field of transplantation” whose “work in the [sic] transplantation immunology has generated several significant advances.” He calls the petitioner “a leading expert in this area” and asserts that the petitioner’s “significant findings on HMB-CoA reductase inhibitors may greatly improve the survival of transplant patients and greatly improve the quality of life for these individuals. [The petitioner] did pioneering research on the subject of organ transplantation in rodents, specifically aimed to prevent chronic rejection.”

Dr. [REDACTED] head of the Abdominal Transplant Surgery Department at the Catholic University of Leuven, states that the petitioner’s “research, focused on understanding the mechanisms and prevention of organ transplantation rejection and finding new strategies for prevention of organ transplantation, is groundbreaking.” Dr. [REDACTED] continues:

I have closely followed [the petitioner’s] research work . . . and consider her one of the top scientists among the numerous transplantation researchers in the world. [The petitioner] is engaged in extremely important research in prevention of organ transplantation rejection and has made a pioneering research [sic] on the subject of . . . induction of T cell independent tolerance. Her significant findings . . . can significantly increase successful rate of organ transplantation by prevention of early phase of rejection. Her findings also greatly improve the survival chances of transplanted organs and greatly improve the efficiency of early detection and life quality of victims. . . .

[The petitioner’s] discoveries improve the understanding and development [of] novel strategies to prevent transplant reduction. Specifically, [the petitioner] is the first one who discovered T cell independent tolerance in a semidiscordant heart [t] transplant model. . . . And her discoveries have been widely accepted as fundamental for the development of a new strategy of prevention of transplant rejection. . . .

[A]nother research area [in] which she made a significant contribution is in characterization of B cell and natural killer cell tolerance in concordant transplantation models. The application of this strategy will lead to an innovation in prevention of transplant rejection.

Professor [REDACTED] director of the Laboratory of Experimental Transplantation at the Catholic University of Leuven, states that the petitioner “is the first who discovered that xenotransplant rejection is mediated by NK cell and T cell independent B cell activation,” and that the petitioner “has made other significant contributions to the successful induction of long-term survival of heart xenotransplant in a discordant animal model by induction of both B cell and NK cell tolerance.”

Documents submitted with the petition show that one of the petitioner’s articles has been cited 28 times, indicating that the article is particularly influential 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*. In response, the petitioner has submitted copies of additional articles, and new letters from sources outside of the universities where the petitioner has worked and studied. Counsel argues that the petitioner’s “numerous past successes elevated organ transplantation research to a new level and has [sic] already had practical and immediate impact on cancer patients worldwide.”

Dr. [REDACTED] assistant professor at the Mayo Clinic, states that the petitioner’s “accomplishments have brought her recognition as a promising young scientist,” whose findings “have drawn critical acclaim” and “laid the groundwork for the development of more effective strategies in battling chronic transplant rejection. Dr. [REDACTED] assistant professor and chief of the Section on Gene-based Therapy at the House Ear Institute, asserts that the petitioner “is one of the most outstanding researchers in the field of transplantation.” Dr. [REDACTED] claims no particular expertise in the field of transplantation studies. Dr. [REDACTED] assistant professor at the University of California at Los Angeles, states that she met the petitioner as a result of Dr. [REDACTED] cooperation with the petitioner’s research group at UCI. These witnesses also note the repeated citation of the petitioner’s published work.

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 found the petitioner’s work to be “notable and commendable,” but that the petitioner’s evidence falls short of the required standards. Several of the standards specified in the decision, however, apply to a different, more restrictive immigrant classification, specifically that of alien of extraordinary ability, established by section 203(b)(1)(A) of the Act. For instance, counsel refers to “awards . . . for excellence in the field” and “the alien’s participation on a panel, or individually, as the judge of the work of others.” Counsel, on appeal, correctly observes that the director “used substantial paper and ink to discuss the petitioner’s failure to qualify for EB-1 Extraordinary Ability standards.” These standards, deriving from 8 C.F.R. § 204.5(h)(3), have no place in a decision

pertaining to a national interest waiver request. Counsel maintains that the petitioner meets the lower evidentiary standard appropriate for seekers of the national interest waiver.

The director found that many of the witnesses' statements were speculative, based on expectations of what may arise from the petitioner's work. While the record does contain much discussion of what could eventually result from the petitioner's current and future work, the record also contains evidence (in the form of frequent citations of at least one of the petitioner's articles) showing that other researchers already find the petitioner's work to be of value. Many articles are never cited at all, and a small number of citations appears to be routine, but dozens of citations of a single article is generally a sign that the findings in that article are especially significant. Each case, of course, contains its own unique factors that must be considered, but in this instance the citation history tends to support witness statements regarding the importance of the petitioner's work.

Counsel has also noted that some of the petitioner's witnesses rank highly in the field, and their statements should not be dismissed outright simply because they have supervised or collaborated with the petitioner. Certainly, there is some cause for concern in instances where an alien appears to have no reputation at all except among his or her collaborators and superiors, but this is not the case here. Also, as counsel observes, a witness' expertise does not diminish as a result of acquaintance with the petitioner. One must consider the content of the statement, the credentials of the person making the statement, and other materials in the record that would tend to corroborate the details of the statement. Thus, a claim that a given researcher is "world-renowned" has little weight if the only people making that claim have worked closely with the researcher in question; if an internationally-recognized specialist attests to an alien's achievements in that specialty, and those achievements are independently corroborated, the endorsement merits studied attention.

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 in the record, establishes 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.