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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[redacted]

File: WAC 03 011 53722 Office: CALIFORNIA SERVICE CENTER Date: NOV 06 2003

IN RE: Petitioner:
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: SELF-REPRESENTED

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 Citizenship and Immigration Services (CIS) 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 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 scholar at the Burnham Institute. 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.
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> (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 CIS] 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.

Along with documentation pertaining to the petitioner's field of research, the petitioner submits several witness letters. Dr. Gen-Sheng Feng, associate professor at the Burnham Institute, describes the petitioner's work:

> [The petitioner's] participation in the role of signal transduction molecules in the brain in my laboratory at the Burnham Institute represents an important and critical contribution to the success of this important project.
>
> [The petitioner] had been employed by Dr. Yamaguchi's laboratory at the Burnham Institute . . . since September of 1995. [The petitioner] had been involved in a number of projects in the Yamaguchi's laboratory that are essential to advancing an understanding of developmental neurobiology. . . . [H]e focused his attentions on understanding how K-glypican is specifically expressed in neural precursor cells in the developing brain, where it is thought to be involved in cerebral cortex neurogenesis. Recent and exciting work completed by [the petitioner and others] . . . supports a causal role for K-glypican in a hereditary human overgrowth syndrome called Simpson-Golabi-Behmel Syndrome. . . . He succeeded in demonstrating biological mechanisms that K-glypican affects the proliferation and differentiation of neurons binding basic FGF, one of growth factors [sic]. . . . Currently, [the petitioner] is characterizing the abnormal phenotype in the central nervous system of a mutant mouse model lacking a signaling adapter protein Gab1. This work is extremely important to the

> development of new therapeutic strategies for neurological diseases, neurotrauma, and strokes.

Other individuals at the Burnham Institute endorse the petition as well. Professor Barbara Ranscht states that the petitioner "has made outstanding contributions to science, and significantly advanced the field of molecular neurobiology." Professor Minoru Fukuda states that the petitioner "has been involved in a number of projects that are important for furthering the understanding of developmental neurobiology," and offers statements that are similar to those contained in Prof. Feng's letter.

A fourth letter submitted with the initial petition is from Dr. Charles V. Mobbs, associate professor at Mount Sinai School of Medicine. Dr. Mobbs states:

> I have known [the petitioner] since he arrived at Rockefeller University in 1990. [The petitioner] is very bright, and often works very long hours. He has had outstanding success in studying the expression of steroid receptors in the brain. His contributions have included developing advanced methods of the polymerase chain reaction for studying brain gene expression, and developing methods to examine DNAse hypersensitive sites of the gene. It is expected that these studies will lead to a better understanding of the mechanisms by which the brain responds to hormones.

Some of the above witnesses assert that a waiver of the labor certification requirement would be in the national interest because, as a nonresident alien, the petitioner has considerable difficulty in securing his own grant funding. This is, in essence, a general argument about the conditions under which nonresident aliens work, rather than an argument in favor of a waiver for this particular alien.

The petitioner submits examples of his 14 published articles, and numerous examples of articles by other researchers who have cited the petitioner's work. The petitioner claims a total of 242 citations. While the petitioner documents only a fraction of that number, the evidence is nevertheless sufficient to establish widespread, heavy citation of his published work.

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 substantial background evidence about his field of research, as well as thirteen new witness letters. Some of the witnesses have demonstrable ties either to the petitioner or to the Burnham Institute. For instance, Professor Robert T. Abraham is director of the National Cancer Institute Cancer Center at the Burnham Institute. Prof. Abraham discusses various projects on which the petitioner has worked, and he states "[i]n Dr. Feng's laboratory, [the petitioner is] . . . an absolutely essential employee, uniquely qualified to insure the success of their current research projects. After he joined the lab, the rapid advances in the analysis of the Shp-2 knockout mice were realized. . . . His observation in mutant mice proves a causal link between loss of Shp-2 function and Noonan Syndrome – associated mental retardation." Despite some connections of this kind, the witnesses in the second group of letters represent a wide variety of institutions across the United States.

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 asserted that the witness letters are primarily from individuals who have worked with the petitioner or have some connection to facilities where the petitioner has worked. The director stated that the opinions expressed in such letters cannot form all, or the bulk, of a successful petition because they do not establish wider recognition. The director also stated "[p]laying an important role in a single research project . . . does not necessarily justify projections of future benefit to the national interest" and that "[n]othing in the record distinguished the self-petitioner's publications from the published work of countless others in the field."

The petitioner's appeal consists primarily of background information regarding the journals that have published his work and the associations to which he belongs. The petitioner also discusses the citation rate of the aforementioned journals. The director, in stating that nothing distinguishes the petitioner's published work from that of others, apparently failed to take into account what appears to be exceptionally heavy citation of the petitioner's published work. As noted above, the petitioner has not documented all 242 claimed citations, but he has documented what appear to be a representative sampling thereof, sufficient to establish significant international attention to his work.

Numerous witnesses have described, in considerable detail and in their own words, a succession of significant contributions made by the petitioner. This petition does not rest primarily on letters from a cross-section of the petitioner's own collaborators and professional acquaintances, or on his role in one single project. The petitioner has also sufficiently demonstrated that several of these witnesses rank highly in the field, and their opinions of the significance of the petitioner's work carry substantial weight. These witnesses, from a variety of prestigious institutions, credit the petitioner with a series of significant achievements, and the documented heavy citation of the petitioner's work is further evidence of the field's reaction to his work.

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 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.