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U.S. Citizenship and Immigration Services

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APR 08 2004

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
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IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson
for 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 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. At the time of filing, the petitioner was working as a postdoctoral research fellow in the Department of Chemistry at Northwestern University. 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) Subject to clause (ii), 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 holds a Ph.D. in Organometallic Chemistry from the University of Sussex in England. The director found 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 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 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 own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that he 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 note 6.

Along with documentation pertaining to his field of research, the petitioner submitted several witness letters.

Dr. Tobin Marks, Professor of Chemistry, Northwestern University, and a member of the U.S. National Academy of Sciences, states:

> During his Ph.D. study in Sussex, [the petitioner] published more than 11 scientific papers in journals of high international repute. His work on the first synthesis and structural characterization of divalent organolanthanide alkyl complexes was a breakthrough in organolanthanide chemistry and received best comments from the world's leading experts in this field. One of his paper[s], "Synthesis, Structures and Reactions of Ytterbium(II) Alkyls" (published in [the] Journal of the *American Chemical Society, Chemical Communications*, 1994, pps. 2691-2692) has been cited 36 times by other scientists in the world.... [The petitioner] has developed an array of new metallocene catalysts for α-olefin polymerization. His excellent work...has made [a] highly valuable contribution to our knowledge of structure-property relationship in metallocene catalysis.

Lydia Villa-Komaroff, Vice President of Research, Northwestern University, states:

> During the past few years, [the petitioner] has made invaluable contributions to this country by addressing key scientific issues[s] in organometallics, catalysis and polymerization. His scientific achievements in organometallic chemistry have generated significant interest in both academic and

> industrial circles. [The petitioner] is currently a key and irreplaceable participant in several research projects supported by the Department of Energy and the National Science Foundation, and in a collaboration project with BP-Amoco Chemicals.

Dr. Steven Cohen, Research Associate, BP-Amoco, states that the petitioner's work has "considerable commercial significance in the manufacture of alpha-olefins and of polymers such as polyethylene and polypropylene." Dr. Cohen adds: "Not surprisingly, efforts are underway to secure patent protection for some of [the petitioner's] discoveries. Like the work already described, the next stage of research is being spearheaded by [the petitioner]."

Dr. Wenbin Lin, Assistant Professor of Chemistry, Brandeis University, states:

> I have known of [the petitioner] mainly through his publications.... [The petitioner] synthesized and structurally characterized the first divalent organolanthanide alkyl compound in the world, which enabled us to better understand the natures of lanthanide-carbon σ-bonds and explore excellent new catalysts and organic synthetic reagents in both catalysis and organic chemistry.... After [the petitioner] join[ed] the research group of Professor Tobin Marks at Northwestern in 1997, he...developed a series of important new Constrained Geometry Organolanthanide catalysts, which are more active and powerful for hydroamination/cyclization of amino-olefins than the known traditional lanthanide catalysts.... The new Constrained Geometry organolanthanide complexes that [the petitioner] has developed are so far the most efficient and the best catalyst system available in the world.
>
> Through years of scientific research, [the petitioner] has demonstrated his versatility as a first rate scientist in [the] organolanthanide chemistry field. His major scientific breakthroughs in research, which have resulted in an impressive number of publications in leading academic journals, have made him stand out far above other qualified members of his profession.

Dr. Jun Okuda, Professor, Institute for Inorganic and Analytical Chemistry, Johannes Gutenberg University, Germany, states that the petitioner's "work on organolanthanide-catalyzed hydroamination-cyclization of amino-olefins provides the most powerful strategy for the synthesis of natural product alkaloids with high stereoselectivity, which will impact the U.S. pharmaceutical industry significantly." Dr. Okuda adds: "[The petitioner's] most recent achievement on the synthesis of constrained geometry organolanthanide complexes can be considered as a breakthrough in the development of a new generation of olefin polymerization catalysts for the 21st century's chemical industry."

A letter from Dr. Michael Lappert, Professor of Chemistry, University of Sussex, repeats the assertions of the previous witnesses. Also provided was a letter from Professor Sir Harold Kroto, 1996 Nobel Laureate and Professor of Chemistry, University of Sussex, who asserts that the petitioner's "continued presence in the United States would be very valuable." Additional letters from research scientists at companies such as BASF and Albemarle Corporation provide further evidence of the petitioner's research contributions.

In support of the witness' statements, the petitioner has presented numerous examples of research articles, authored by independent scientists in the United States and from around the world, citing his published findings. When judging the influence and impact that the petitioner's published 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 researchers have relied upon the petitioner's findings. In this case, the substantial number of citations of the petitioner's published articles demonstrates widespread interest in, and reliance on, the petitioner's work. The citation history of the petitioner's work shows that many other scientists have acknowledged the petitioner's influence and found his work to be significant.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director acknowledged the intrinsic merit and national scope of the petitioner's work, but found 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.

On appeal, counsel argues that the evidence presented in this case is sufficient to meet the three-prong test established by *Matter of New York State Dept. of Transportation.* We concur with counsel. The heavy independent citation of the petitioner's published work, along with the statements of witnesses from outside of the petitioner's immediate circle of colleagues, shows that petitioner's work has advanced his field to a substantially greater degree than that of other similarly qualified researchers. Upon careful consideration of the documentation presented, we find that the petitioner has shown that researchers from throughout his field view his discoveries as significant breakthroughs in organolanthanide chemistry. The witness letters presented reflect a consensus among scientific experts from throughout this country and around the world that the petitioner's achievements are unusually significant.

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 evidence in the record, establishes that the greater 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.