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U.S. Citizenship
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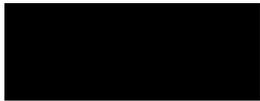
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APR 08 2004



FILE: WAC 93 082 52616 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:

SELF-REPRESENTED

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, 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 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 he filed the petition, the petitioner was a postdoctoral scientist at Genentech, Inc. 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 Citizenship and Immigration Services] 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.

The petitioner describes his doctoral work at Michigan State University:

I have made very significant contribution[s] in DNA repair and mutagenesis, a field studying the cause of cancer. . . . I, together with my collaborators, cloned a novel gene hREV1. By using an antisense RNA technology, I found that inhibition of hREV1 function results [in] significant reduction of mutations of human cells induced by ultraviolet light. In this study, I am exclusively responsible for testing the function of hREV1 in human cells, which is the most important part of the whole study. This important study was published in 2000 [i]n the **Proceedings of the National Academy of Sciences USA**. . . . **In 2 years since its publication, this paper has been cited as many as 40 times by scientists around the world. . . .**

(Emphasis in original.) The petitioner documents 43 citations of the article mentioned above. More recently, the petitioner asserts that he has **"initiated two important projects [at Genentech] aiming to elucidate the mechanism of prostate cancer development and to develop effective innovative therapeutics for metastatic prostate cancers."** The petitioner asserts that his research contributions warrant a national interest waiver.

Several witness letters accompany the petition. Most of the witnesses are closely tied to the petitioner, as they work at Genentech or at universities where the petitioner has studied. The exception is Dr. Chun Wu, president and CEO of Abgent, Inc., who met the petitioner at a conference in 2000. Dr. Wu states:

Tumor suppressors keep cells from dividing indefinitely, but when they mutate, they can no longer fulfill their guardian function. The p53 gene is the most important tumor suppressor, as more than 50% of human cancers contain a mutated p53 gene. Restoring function to p53 gene has been the pursuit of gene therapy in both the scientific community and the pharmaceutical industry. [The petitioner] provided compelling evidence that p53 protects cells and their DNA by using a mechanism that had never been observed before.

In addition to his research on p53 guardian functions, he focused on DNA repair and discovered a novel human gene hREV1 involved in response to DNA damage caused by UV light.

Dr. Wei-Qiang Gao, senior scientist and group leader at Genentech, describes the petitioner's work at that company:

[The petitioner] is currently working on a novel "Notch signaling pathway" that is shown to be involved in prostate tumorigenesis. He has recently obtained very exciting cell culture and animal model data indicating this pathway makes a very important contribution to prostate tumor progression. . . . In addition, [the petitioner] is also making heavy efforts to find specific genes that may control death machinery in the prostate epithelial cells using microarray technology. His work may provide us a new way to trigger cell death in prostate cancer cells. His unique expertise in tumor suppression, carcinogenesis, cell cycle, mutagenesis, cell culture and apoptosis studies are critical for us to do in vitro drug screening and to identify novel therapeutic drugs for the management of prostate cancer.

The director instructed the petitioner to submit additional evidence to meet the guidelines published in *Matter of New York State Dept. of Transportation*. The director specifically requested letters from individuals outside of institutions where the petitioner has worked or studied. In response, the petitioner has submitted letters from scientists at the National Institutes of Health (NIH), the Naval Research Laboratory, and several prestigious universities. NIH researcher Dr. Robert H. Heflich asserts that the petitioner "has actually reversed the carcinogenic process by restoring *p53* function in human cells grown in culture, a first step towards proving [his] hypothesis." Dr. Zhigang Wang, an associate professor at the University of Kentucky, states "[t]he impact of [the petitioner's] work is simply profound."

The director denied the petition on July 8, 2003. Much of the director's decision is devoted to a discussion of evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3). These evidentiary standards pertain to a different immigrant classification, that of an alien of extraordinary ability, established by section 203(b)(1)(A) of the Act. Therefore, these standards have no proper place in any decision regarding a request for a national interest waiver.

The director also stated that the petitioner's witnesses have failed to specify how the petitioner's work has influenced others in the field. A number of witnesses, however, have pointed to the heavy citation of the petitioner's most significant article, which is an objective measurement of the degree to which others have relied on the petitioner's work. On appeal, the petitioner demonstrates that the number of citations of that article has increased to 57, demonstrating its continued influence. The citation rate of this article considerably exceeds the overall citation rate of articles in the *Proceedings of the National Academies of Science*, already an influential and high-impact journal. Additional data provided on appeal supports the petitioner's assertion that his work has had a measurable impact on the field.

The petitioner notes on appeal that he has, as requested, provided several letters from independent witnesses. These witnesses do not merely discuss the general importance of the petitioner's field of endeavor, or speak only in terms of the promise that the petitioner's work holds. Independent witnesses have credited the petitioner with highly significant, influential, and concrete advances in 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 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.