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U.S. Citizenship
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Services

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FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date:

APR 08 2004

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:

[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 dismissed.

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 he filed the petition, the petitioner was a doctoral student and research assistant at Michigan State University (MSU). 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 has 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 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.

Several witnesses discuss the petitioner's work and its significance. Dr. Jianguo Liu, an associate professor at MSU, states:

[The petitioner] is conducting cutting-edge research in the systems modeling field. Specifically, he is creating a ground-breaking model that uniquely combines computer sciences, social sciences, and physical sciences, into an integrated spatially explicit model which can be used to comprehensively assess natural resources issues and allow individuals to make better informed decisions and to enact better policies for the management and protection of our precious natural resources. . . .

[The petitioner's] exciting model successfully integrates computer sciences, social sciences, and physical sciences in a manner which allows a user to approach environmental issues by integrating the principles of these different disciplines with the concerns of the different stakeholders (e.g., landowners, government officials, non-government organizations, local community) to reach a comprehensive solution. . . . [N]o other researcher has been able to develop such an all-inclusive, inter-disciplinary model.

Dr. Robert Eric Miller, director of animal health and conservation at the Saint Louis Zoo, states:

I first met [the petitioner] in October 2000 at an international conference entitled "Panda 2000: Conservation Priorities for the New Millennium." I attended [the petitioner's] presentation . . . I was very impressed with [the petitioner's] findings and innovative research on the efficient conservation of wildlife. . . . I invited [the petitioner's] team to submit a proposal to the Saint Louis Zoo's Field Research for Conservation (FRC) Program. . . .

In essence, [the petitioner] has developed a model which allows us to put all of the pieces of the puzzle together to further the protection of wildlife and natural resources.

Other collaborators and MSU faculty members offer similar praise for the petitioner's work. Several witnesses observe that the petitioner was a co-author of a paper published in the prestigious journal *Science*, although the initial submission does not reveal the extent of that article's impact or influence.

The director requested additional evidence to show that the petitioner meets the guidelines set forth in *Matter of New York State Dept. of Transportation*. In response, the petitioner submits further letters, mostly from prior witnesses. Dr. Liu asserts that “many media organizations (such as the Washington Post and New York Times) have reported [the petitioner’s] outstanding work.” The petitioner submits a copy of a *New York Times* article, “Human Competition Edging Out Those Lovable Icons of Wildlife,” which reports the findings in the *Science* article that the petitioner co-authored. This article does not mention the petitioner, nor does it refer to the computer model which was the petitioner’s chief contribution to the project. The record does not contain copies of any of the other articles that are said to exist regarding the petitioner’s work.

Dr. Liu stresses the importance of the petitioner’s interdisciplinary model (called SEMNRM), and states that the petitioner has begun work on a second, related model, called IMSHED. The initial filing contained no mention of IMSHED and therefore there is no reason to believe that this new model existed when the petition was first filed. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date based on a new set of facts. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The only new witness, Professor Timothy Gregoire of Yale University, states that he became aware of the petitioner’s work through a proposal related to IMSHED.

Witnesses describe the benefits that they expect to result from widespread use of the petitioner’s models, but they provide no evidence that these models are, in fact, in widespread use, or that national entities have taken a serious interest in implementing them.

The director denied the petition, asserting that doctoral students are expected to make original contributions and the petitioner does not establish his eligibility for a waiver simply by identifying his contribution. The director found that the petitioner has not shown that his published work as of the filing date significantly set him apart from others in the field. The director also noted that there is no direct evidence that the petitioner’s published work “has been widely cited by or has otherwise influenced other researchers.”

On appeal, counsel asserts that the director has misinterpreted both *Matter of New York State Dept. of Transportation* and the evidence of record, and asserts that the director erred in “attribut[ing] very little significance to [the petitioner’s] environmental-impact model.” Counsel notes that the AAO has, in the past, sustained appeals on behalf of aliens who have developed useful models. This does not, in any way, suggest that every alien who develops a useful model is automatically entitled to a waiver. We must consider the specific facts of each individual record of proceeding.

Counsel stresses some of the adjectives applied to the petitioner’s SEMNRM model, such as “revolutionary” and “ground-breaking.” The record does not show that independent researchers, whose knowledge of the petitioner’s work is independent of any contact with the petitioner, share these assessments.

Counsel protests the “inappropriate exclusion of evidence,” stating that the director improperly cited *Matter of Katigbak* when discussing the petitioner’s IMSHED model. Counsel cites an unpublished appellate decision, in which the AAO found that new developments “can . . . demonstrate the continuation of a pattern already established by the initial evidence.” In that instance, the AAO clearly indicated that the petition was approvable even without consideration of the new evidence covered by *Katigbak*. The AAO did not indicate that new evidence of this kind could establish eligibility and thereby justify the reversal of a properly denied petition. Rather, the AAO stated that the “latest assertions could not render the petition approvable if it was not already so.”

The petitioner submits a list of claimed citations of his papers. The list indicates 14 citations of the *Science* article, and four of another article co-authored by the petitioner. No source is given for this list, and therefore the list amounts merely to an uncorroborated claim. Also, judging from the *New York Times* article, which never mentions the petitioner or his model, the *Science* article gained wide attention not because of the possible applications of the petitioner's model, but because of its finding that continued deforestation in the Wolong Nature Reserve was endangering the local giant panda population. The introductory paragraph of the *Science* article reports that credits "remote sensing data," rather than the petitioner's model, for the finding that the "loss of high-quality habitat" has increased since the establishment of the reserve in 1975.

Clearly, the petitioner's research shows promise, and his collaborators have been impressed by his progress. Nevertheless, at this very early stage of the petitioner's career (where he has not yet even begun working as a researcher in his own right, as opposed to conducting student research under a professor's guidance), there is, as yet, no objective evidence to establish that the petitioner himself has had a significant impact on his field. His co-authorship of a paper which attracted notice for other reasons is not persuasive evidence of such impact.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, 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 profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not 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 not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

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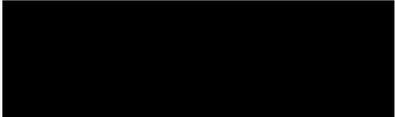


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The petitioner seeks to classify the beneficiary classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research associate at the National Jewish Medical and Research Center (NJMRC). 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.

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Along with copies of his published articles and other documentation, the petitioner submits several witness letters to describe his work and its importance. Dr. Hong-Bing Shu, an assistant professor at NJMRC, has supervised the petitioner's work there. Dr. Shu states:

Prior to joining my laboratory, [the petitioner] has more than 10 years of experience in cancer research. . . . [A]t Cancer Research Institute of Hunan Medical University . . . , [the petitioner's] important discovery on "Regulatory functions of calmodulin on cell cycle progression in tumor cells" and [an]other 2 articles were published. . . .

[At] Zhongshan University . . . [the petitioner's] research was focused on cancer biology, and he made multiple impressive progresses in the project. Nasopharyngeal carcinoma (NPC) is a type of cancer quite common in South China, and this type of cancer is related to Epstein-Barr virus (EBV). [The petitioner] was the first to discover that hybridization with EBER-1 probe was the most sensitive method to detect EBV in NPC tissues. He also designed a new method and found that EBV couldn't infect normal NPC epithelial cells in vivo, but EBV could enter in certain stage[s] during the development of the NPC. . . .

One of the projects [the petitioner] currently is conducting is to identify downstream gene transcription ally induced by the tumor necrosis factor member TALL-1. . . . [T]he identification of TALL-1 induced downstream genes may help . . . to provide molecular targets for drug development against autoimmune diseases. . . .

Another very important finding [the petitioner] has made on another project concerns the cloning of a novel AIF homologous gene designated as AMID. . . . [The petitioner] was the first one to discover that the over-expression of AMID induces cell apoptosis.

Other witnesses, many of them the petitioner's collaborators, provide similar overviews of the petitioner's past work. The only witness with no apparent connection to the petitioner or his employer is Dr. Wen-Ming Chu, assistant professor at Brown University. Dr. Chu offers further assertions regarding the petitioner's current work at NJMRC:

[The petitioner's] major research pursuit involves clarification of a tumor necrosis factor, TALL-1, which plays a crucial role in autoimmune diseases such as lupus. [The petitioner] has identified several downstream genes by the means of cDNA microarray, and proved these genes are essential for TALL-1 triggered biological effects. This is an exciting finding in that these genes are potential molecular targets for drug development against autoimmune diseases. . . .

[The petitioner's] second major contribution is the identification of AMID, a gene involved in cell death and tumorigenesis. Normally [the] human body constantly renews its old cells with new ones, and the old cells die through apoptosis, also known as programmed cell death. If apoptosis is disregulated, it can cause severe diseases, such as cancer, immunological disorder[s], et al. [The petitioner] discovered that the cellular localization of AMID is mitochondria, a cellular organelle that is critically involved in apoptosis; more interesting, he proved that AMID can induce apoptosis directly via *in vivo* assays. [The petitioner] is also the first one to establish the relationship between AMID and p53, a well known tumor suppressor gene. He found that p53 can induce AMID's biosynthesis, thus AMID may function downstream of p53 and serve as a potential tumor suppressor gene too. These are all breakthroughs in the field, they not only greatly advanced our understanding of apoptosis . . . but also linked it with tumorigenesis.

The director requested additional evidence to show, among other things, that the petitioner's work is heavily cited and has been recognized by researchers outside of the petitioner's own circle of mentors and collaborators. In response, the petitioner has submitted new letters and other documents. In a sample letter, Dr. Wei Yang, a senior investigator and section head of the Laboratory of Molecular Biology at the National Institute of Diabetes and Digestive and Kidney Diseases, states "I do not know [the petitioner] personally." Regarding the petitioner's work, Dr. Yang states:

I have no doubt that [the petitioner] has made original, significant contributions to the understanding of the molecular mechanisms of autoimmune diseases such as lupus. . . .

[The petitioner's] provided a completely new concept [of the] tumor necrosis factor family signaling pathway model. Without question, this is an important contribution of major significance to the field of signaling of TNF family.

The petitioner has submitted documentation showing how frequently three of his articles have been cited. One was cited once, which was a self-citation; a second article was cited three times; and a third has 11 citations, including two self-citations, for an aggregate total of 12 independent citations.

The director denied the petition, stating that the record lacks independent confirmation that the petitioner's research has been especially important or influential within his field. The director asserted that the petitioner's citation record is minimal, suggesting that the petitioner's many published articles have had minimal impact on other researchers. The director also questioned whether the petitioner had been a key researcher on his various projects.

On appeal, the petitioner submits a brief and new citation records. The other documents submitted on appeal are copies of materials already in the record. Counsel argues that the petitioner has adequately distinguished himself from other researchers in the field, and cites grant documentation identifying the petitioner as a key researcher.

The new citation materials submitted on appeal show 34 citations of the petitioner's work, five of which are self-citations. This total includes the 15 citations previously documented. This evidence, pertaining to work that the petitioner had done before the petition was filed, indicates that the petitioner's research has had significant and growing influence. The director had observed that the petitioner was the second-named author, rather than the first-named author, for most of the cited articles. The petitioner's collaborators have explained the nature and extent of the petitioner's contributions to these articles and the projects that gave rise to them. The full scope of witness letters extends beyond these collaborators, and further confirms that one need not have worked with the petitioner to recognize the importance of his past contributions.

Upon careful consideration of the available evidence, on balance the materials in the record are favorable toward the petitioner's claim of eligibility for a national interest waiver. The record offers independent evidence of the significance of the petitioner's work, in the form of witness letters and increasing citation of the petitioner's published work. The record supports the claim that the petitioner's efforts have yielded important new information regarding a genetic basis of cancer.

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.