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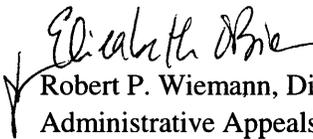
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.


Robert P. Wiemann, Director
Administrative Appeals Office

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 Dep't. of Transp., 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.

We concur with the director that the petitioner works in an area of intrinsic merit, ichthyology, and that the proposed benefits of his work, increased knowledge of fish evolution and improved ability to identify fish species, would be national in scope. Dr. [REDACTED] Curator of Fishes at the Smithsonian National Museum of Natural History, explains that the petitioner's area of research is important for monitoring and sustaining populations of commercial fish. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

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 the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. 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 219, n. 6.

The record is supported by evidence of the petitioner's scholarships, published articles, conference presentations, and the opinions of other members of the field. After obtaining his baccalaureate degree from the University of Concepcion in Chile, the petitioner became a junior faculty member at the University of Talcahuano. In 1991 he obtained a study award to attend USC from the Fulbright Commission for Educational Interchange Between the United States and Chile and stipends from the Institute of International Education and Encyclopaedia Britannica. In August 1999, the petitioner obtained his Ph.D. from USC. In November 1999, the petitioner received a three-year honorary research associate in ichthyology appointment from the National History Museum of Los Angeles County (LACM). The materials provided by the petitioner indicate that candidates for this category of appointment “should be recognized authorities in their sphere of expertise who are actively publishing in reputable outlets, and actively participate in the Museum's research and academic programs.” This appointment allowed the petitioner to study fish collections dating back to the 1930's.

Dr. [REDACTED] a former assistant professor at USC, asserts that identifying larval fish is difficult because “the larvae are always strikingly different from the adults.” Dr. [REDACTED] does not indicate, however, that she has any expertise in ichthyology. According to the petitioner’s references, his dissertation at USC coupled traditional methods relying on morphological differences with current molecular techniques such as DNA analysis to study the evolution and life histories of sandbasses, a coastal marine fish from both coasts of North and South America. Dr. [REDACTED] asserts that the petitioner was one of the first to combine such techniques. According to Dr. [REDACTED] a research associate at the National Oceanic and Atmospheric Administration (NOAA), the petitioner demonstrated “how major geological events in the eastern Pacific Ocean affected the evolution of these species.” [REDACTED] Assistant Director General of the United Nations Educational Scientific and Cultural Organization (UNESCO) and Executive Secretary of its Intergovernmental Oceanographic Commission (IOC), explains that the petitioner’s work demonstrated that the sandbasses evolved fairly recently and the course of their evolution was determined by the formation of the Gulf of California, Central America, and the Galapagos Islands.

Subsequently, at LACM, the petitioner worked with collections from [REDACTED] expeditions in the 1930’s to the Eastern Pacific and with a rare species collected in 1965 known from only five individuals. According to [REDACTED] Collection Manager for Vertebrates and Fishes at LACM, the best collections of larvae from the Galapagos Islands were collected 70 years ago and are stored at LACM. Dr. [REDACTED] asserts that the petitioner’s use of classical and modern techniques “has demonstrated how to put to best use this unique historical record of evolution and biodiversity, contained in the jars of collections in museums.”

Also at LACM, the petitioner studied the larval stages of blennies, an ecologically important fish with cryptic habits that live around the Galapagos Islands. Mr. [REDACTED] explains that LACM “has thousands of specimens from the Hawaiian Islands and the Central Pacific that need to be identified and worked on.” [REDACTED] Professor Emeritus at USC, asserts that unstudied materials remain at LACM and the petitioner is “probably the only person with the interest and the specific knowledge necessary to complete these important studies.” Dr. [REDACTED] a research associate at LACM, asserts “no other scientist has had the expertise to study these fishes” but does not explain what that expertise is.

In addition to his scientific abilities, several references also note the petitioner’s skill at scientific illustration. Dr. [REDACTED] an associate professor at the University of California, San Diego, and Curator of Marine Vertebrates at the Scripps Institution of Oceanography, asserts that the petitioner’s “published drawings are top quality and will continue to be helpful to future generations of marine biologists in the United States and other countries.”

The petitioner submitted 14 published articles and evidence that he presented his work at four conferences. Dr. [REDACTED] asserts that the petitioner’s work has gotten “very good reviews,” while Dr. [REDACTED] an assistant professor at Ashland University in Ohio, asserts that the petitioner’s presentations have been “well received” and that “his work has also led to numerous publications.”

The director expressed concern that none of the petitioner’s references “describes how the petitioner’s findings have specifically influenced other independent researchers in the field.” The director further noted:

Frequent citation by independent researchers, on the other hand, would demonstrate more widespread interest, and reliance on, the petitioner’s work, and that the petitioner’s work has attracted attention on its own merits, as might be expected with research findings that are especially significant.

On appeal, counsel notes that the U.S. has recognized the importance of ocean ecology as evidenced by the Oceans Act of 2000. Counsel argues that the labor certification process is too lengthy and that the petitioner’s

continued involvement in research of larval fish “is critical to the pace of progress of this field.” Finally, counsel compares this case to non-precedent decisions issued by this office.

The petitioner submits two new letters. [REDACTED] a supervisory fishery biologist with NOAA in La Jolla, California, asserts that the petitioner’s article on larval ribbontail fishes has been “cited by my colleagues in *CalCOFI Atlas 33* (a 1505-page descriptive atlas of marine fish eggs and larvae of the California current region, used by researchers world-wide, and especially by those working along the Pacific [R]im.)” In addition, Mr. [REDACTED] asserts that he “recently used [the petitioner’s] excellent paper on larval labrisomid blennies for an identification course on fish eggs and larvae . . . at the University of California, Santa Cruz.”

In a new letter, Dr. [REDACTED] Senior Lecturer at the Australian Maritime College, asserts that he cites the petitioner’s valuable and beneficial research results in his own work.

The petitioner has not overcome the director’s concerns. While the petitioner has submitted letters from distinguished independent members of the field, they fail to explain how the petitioner’s work with fish larva is significant other than the fact that he is working with previously unanalyzed collections. The record lacks letters from high-level officials at LACM explaining why they allowed the petitioner access to their collections. The record suggests that while the petitioner clearly has the education and experience to identify the larvae in these collections, the lack of interest by other equally educated and experienced ichthyologists has been a factor in his ability to access the collections. Thus, the petition appears based on a shortage argument. Specifically, a shortage exists because members of the petitioner’s field are not interested in pursuing the research he has been pursuing. If true, the labor certification process is applicable. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process.

While the reference letters, including those submitted on appeal, imply that the petitioner’s work is being cited and utilized in the field, their assertions are not supported. For example, the petitioner did not submit copies of the pages in *CalCOFI Atlas 33* on which the petitioner’s work appears and those pages that credit the petitioner. The petitioner also failed to submit a citation index or copies of research papers authored by independent researchers citing his work.

While the petitioner’s research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any research, in order to be accepted for publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who publishes his findings or is working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. The record does not establish that the petitioner’s work represented a groundbreaking advance in ichthyology.

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.