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U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC-03-047-54427 Office: CALIFORNIA SERVICE CENTER Date: APR 27 2004

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)

PUBLIC COPY

ON BEHALF OF PETITIONER:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

Elizabeth O'Brien

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 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. The petitioner seeks employment as a research scientist. 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.

On appeal, counsel argues that the director applied the criteria for a more exclusive classification. We find that while the director's decision makes reference to "regulatory criteria" and two specific criteria for aliens of extraordinary ability, the ultimate basis of the director's decision, that the petitioner has not demonstrated his influence in the field, is sound. Counsel further argues that the director erred in finding that the research discussed in the record was conducted while the petitioner was a Ph.D. candidate. While the record contains evidence relating to the petitioner's postdoctoral work in addition to his doctoral thesis work, we find that this conclusion is not reversible error. Counsel then summarizes the statements made by the petitioner and his references, asserting that the director mischaracterized this evidence. We will analyze the evidence of record below.

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 requirement 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 Chemistry from the University of Illinois at Chicago (UIC). The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue 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 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 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 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, biochemistry research, and that the proposed benefits of his work, improved treatment for prostate cancer and sleep disorders, would be national in scope. 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.

As stated above, the petitioner obtained his Ph.D. from UIC in 2000. Upon graduation, he went to work for the University of Illinois at Urbana-Champaign (UIUC) as a research scientist. At the time of filing, the petitioner was working as a research scientist at the Scripps Research Institute (TSRI). In support of the petition, the petitioner submitted letters from collaborators, his immediate circle of colleagues, and former classmates.

Dr. David Crich, a professor at UIC, explains that the petitioner gained experience synthesizing hydroxamate inhibitors at UIC, where he confirmed the concept of reverse protonation inhibition and found that zinc-bound water of carboxypeptidase A has a pK_a of 6.8. Dr. Dale L. Boger, a professor at TSRI, explains that this classification had previously been a mystery for 20 years.

Dr. William Mock, the petitioner's Ph.D. supervisor at UIC, provides additional details regarding his dissertation. Dr. Mock explains that the zinc protease investigated by the petitioner was *thermolysin*, collagen-cleaving agents "implicated in invasive cancer and in the joint-degeneration of arthritis, and they are also involved [in] hormonal blood pressure regulation." Dr. Mock continues that understanding *thermolysin* aids scientists in designing pharmaceutical agents to treat these diseases. Dr. Mock concludes that the petitioner's "research on enzyme mechanisms should provide direction as to how to deal with many of these afflictions" and that his investigations "could be pivotal in treating these diseases."

While the record does not contain any letters from colleagues at UIUC, Dr. Boger asserts that while at UIUC, the petitioner performed "mechanistic studies on L-carnitinyl CoA dehydratase/epimerase involving cloning, expression," purified "four proteins and two site-directed mutants," and created a "gene disruption *E. coli* mutant."

Dr. Benjamin Cravatt, Director of the Helen L. Doris Institute for the Study of Neurological and Psychiatric Disorders of Children and Adolescents and a professor at TSRI, discusses the importance of prostate cancer and sleep disorder research. The intrinsic merit of the petitioner's area of research has already been acknowledged. Dr. Cravatt indicates that the petitioner's innovative discoveries relating to the synthesis and discovery of new inhibitors of prostate cancer will allow the medical community to create new drugs to treat this cancer. More specifically, Dr. Boger explains that the petitioner "synthesizes the inhibitors, substrates, and products for GAR transformylase and AICAR transformylase," potential treatments for prostate cancer, for the laboratories of Dr. Stephen Benkovic at Pennsylvania State and Dr. G. Peter Beardsly at Yale University. Dr. Boger indicates: "Some of the inhibitor analogs are currently in the clinical trials as the anticancer agents."

The record includes a letter from Dr. Benkovic, a professor at Pennsylvania State University and member of the National Academy of Sciences. Dr. Benkovic asserts that the petitioner's work will provide inhibitors to treat prostate cancer, confirms that some of the inhibitor analogs are in clinical trials and concludes that the petitioner's further "work in this area is paramount for the completed work of his collaborators in creating the new drug." The record also includes a letter from Dr. Beardsly, a professor at Yale University, who merely asserts that the petitioner is "a key member of the chemical synthesis team" collaborating to develop potential targets for anti-cancer and anti-inflammatory drugs.

A former collaborator asserts that the clinical trials are being performed at Novartis and Johnson and Johnson. Dr. Wei Wang, a principal investigator at the Genomics Research Institute of the Novartis Research Foundation and former fellow classmate of the petitioner's at the Shanghai Institute of Materia Medica, asserts that the petitioner "was largely responsible for a medical patent Scripps obtained in 2002, and many of the compounds he has developed have been sent here to Novartis and to Johnson and Johnson for in vivo tests." The record, however, does not support other assertions by Dr. Wang. For example, Dr. Wang asserts that the petitioner's work has been "published numerous times" and "published frequently in *Biochemistry*." At the time of filing, however, the petitioner had authored only two published articles (only one of which was published in *Biochemistry*), an as of yet unpublished article, and his unpublished thesis.

Regardless, the patent referenced by Dr. Wang is not in the record. Nor does the record contain any information from high-level officials at relevant government agencies singling out the petitioner's work as more significant than the numerous prostate cancer projects discussed in the NIH Prostate Cancer Research Plan submitted, which does not appear to discuss the petitioner's particular project. Nor does the record contain any press coverage of the clinical trials.

Dr. Cravatt further asserts that the petitioner "is working to assay the inhibitors as the potential therapeutic agents for the fatty acid enzyme amide hydrolase for the treatment of sleep disorders or pain." Dr. Benkovic provides similar information, adding that acid amide hydrolase is "a strong candidate for the treatment of sleep disorders." The petitioner submitted what appears to be electronic media coverage of the sleep disorder research being conducted by Dr. Cravatt and Dr. Benkovic. The article copyrighted by Nature News Service, however, references only one published article relating to this work. The record contains no evidence that the article, published in the *Proceedings of the National Academy of Sciences*, is co-authored by the petitioner.

The petitioner also provided similar letters from Dr. Lisheng Cai, a staff scientist at the National Institutes of Health and former professor at UIC during the petitioner's studies there; Dr. Hongjian Janga, project leader at Metabasis Therapeutics, Inc. and former postdoctoral researcher at TSRI; Dr. Jianhua Gao, a senior research scientist at Incyte and former classmate of the petitioner's at the Shanghai Institute of Materia Medica; and Dr. Daniel Stanford, a professor at William Rainey Harper College and former collaborator with the petitioner.

All of the above witnesses have a direct connection to the petitioner. While letters from collaborators are important in explaining the nature of the petitioner's role in various projects, they cannot demonstrate by themselves the petitioner's influence beyond his immediate circle of colleagues. Moreover, as stated by the director, none of these references provide specific examples of how independent researchers have been influenced by the petitioner's work.

We further note that many of the references discuss the petitioner's multidisciplinary expertise and experience. It cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor.

Finally, we concur with the director that the petitioner's publication history is not persuasive that a waiver of the job offer is warranted in the national interest. As stated above, the record contains only two articles published as of the date of filing. We concur with the director that publication is evidence of originality, but not the influence of the particular article. While we do not doubt the prestige of *Biochemistry*, we cannot conclude that every article published in that journal is necessarily equally influential. Rather, we must look at the impact of the individual article. While some of the references indicate that the petitioner has been widely cited, the record does not support that assertion. At the time of filing, the petitioner's article in *Physica Status Solidi* had been cited three times, two of which were in articles written by one of the petitioner's co-authors. Subsequently, two additional research teams cited the petitioner's work, one of which included one of the petitioner's co-authors. Two independent citations is not evidence that the petitioner's article has been influential in the field.

The record shows that the petitioner is respected by his colleagues and has made useful contributions in his field of endeavor. It can be argued, however, that most research, in order to receive funding and be accepted for publication, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant or who has been published inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

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.