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BS

FILE:



Office: VERMONT SERVICE CENTER

Date: **AUG 09 2004**

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:



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

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Vermont 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 Research Program Coordinator in the Imaging Sciences Laboratory of Mount Sinai School of Medicine. 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 director found that the petitioner 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 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. Zahi Fayad, Associate Professor of Medicine (Cardiology) and Radiology, and Director of Cardiovascular Imaging Research, Mount Sinai School of Medicine, states:

[The petitioner] is one of my leading collaborators in investigating the role of non-invasive high-resolution magnetic resonance imaging on atherosclerosis. He has been instrumental in the development and validation of a new MRI [Magnetic Resonance Imaging] technique called "black-blood MRI" that can detect coronary artery disease long before people develop symptoms of atherosclerosis. This high-resolution non-invasive technology can detect potential rupture of arterial plaques, thus preventing a heart attack.

In standard MRI, blood flow creates a bright signal on MRI, which obscures the detection of the arterial wall. Our new method, allows us to "black-out" the blood flow, thus seeing the space it occupies and the surrounding tissues. The method has been implemented commercially by the major industry

vendors (General Electric, Siemens, Phillips). This technique is needed to identify non-invasively "vulnerable plaque" which can potentially cause acute heart attack and help doctors identify individuals who are likely to suffer a heart attack or stroke. Recently, [the petitioner], together with other scientists in my laboratory has developed a modified version of the black-blood MRI, which allows for faster acquisition (U.S. patent pending).

The record contains evidence showing that an article co-authored by the petitioner and published in *Circulation*, entitled "Noninvasive in vivo human coronary artery lumen and wall imaging using black-blood magnetic resonance imaging," was widely cited throughout the scientific community and received significant attention in the mainstream news media. The record contains articles appearing in major media publications, such as *Fortune* magazine, *The Los Angeles Times*, and *The Washington Post*, that discuss the "black-blood MRI" technique developed by [redacted] the petitioner, and their colleagues at Mount Sinai. For example, an August 8, 2000 article appearing in *The Washington Post* entitled "Secrets of the Heart" states: "Now, researchers at [redacted] Medical Center in New York report that they can 'black out' blood flow in coronary arteries well enough to accurately visualize blockages and the coronary wall itself." It is noted that the major media coverage about the black-blood MRI findings referred to "researchers" rather than just [redacted] alone. While we agree with the director's observation that [redacted] rather than the petitioner, was clearly the "lead investigator" behind the development of the black-blood MRI technique, we also acknowledge the inherently collaborative nature of modern scientific inquiry, in which researchers rarely labor in isolation. The sciences, in general, have reached such a level of narrow specialization that one scientist rarely possesses the full breadth of expertise (not to mention resources) necessary to execute a research project. The fact that the petitioner was a co-author (rather than the first author) of the heavily cited article appearing in *Circulation* does not substantially diminish his contribution to that ground-breaking work.

[redacted] Professor and Chairman, Department of Radiology, University of Miami School of Medicine, and Editor-in-Chief, *American Journal of Neuroradiology* [AJNR], states:

[The petitioner's] paper, "Cytoarchitecture of the Human Cerebral Cortex: MR Microscopy of Excised Specimens at 9.4 Tesla" (published in the AJNR in September 2002), makes a strong contribution to the body of literature that advances our specialty. Indeed, his paper was judged to be so exceptional that it was selected to be the Cover Article for the September issue.

The record includes a copy of the September issue of AJNR showing that the petitioner's work was featured on the cover of that journal.

[redacted] of Radiology Science and Biophysics, and Director of the Laboratory for [redacted] of Radiology, University of Pennsylvania, states:

The focus of [the petitioner's] research has been the study of atherosclerosis (hardening of the arteries) in mouse models using high magnetic field for high-resolution imaging with the goal of detecting plaque components. These studies are vital in understanding the evolving biologic processes that will aid in the diagnosis of the disease and help in its treatment. Genetically altered mice have been the

preeminent models in the study of cardiovascular disease. Its use has led to the important advances in understanding plaque biology.

His contributions in atherosclerosis imaging using transgenic mouse models have benefited other institutions in terms of optimized MR sequences, cardiac and respiratory triggering-factors that were important in visualizing mouse heart in-vivo. Motion artifacts from the rapid beating of the heart and breathing in the mouse was technically challenging, but with the development of cardiac and respiratory triggering devices as well as new sequences he has implemented, it made imaging a useful tool for small animal research. The study was able to identify, quantify and characterize the different components of atherosclerotic plaques. MR microscopy has the ability to characterize plaque composition, microanatomy and to identify lesions vulnerable to rupture or erosion. Characterizing plaque composition will identify high-risk plaque and will be of potential use not only for diagnosis but also for monitoring response to treatment.

[The petitioner] and his colleagues...at Mount Sinai continue to develop new sequences and techniques for high-resolution in vivo imaging. These developments for high-resolution noninvasive MR microscopy will provide detailed anatomic information about the vessel wall and will aid in early intervention in the primary and secondary treatment of vascular diseases.

[Redacted] of Neurology, Pathology and Psychiatry [Redacted] states: "The work that [the petitioner] has been doing demonstrates the ability of MRI to visualize characteristic plaques, which may prove useful in early diagnosis and treatment of Alzheimer's disease.... [H]is expertise on mouse imaging and atherosclerosis...are attested by the numerous papers that he co-authored."

[Redacted] Professor of Pathology and Medicine, [Redacted] describes some of the petitioner's more recent work [Redacted] states:

[The petitioner's] project focuses on a novel prototype blood clot MR contrast agent. Thrombosis, or blood clot, is usually triggered by a break in the vessel wall integrity. The main components of thrombus are red blood cells and fibrin. The ability of the new contrast agent to bind to fibrin is crucial in identifying the blood clots. Thrombosis is almost always associated with life threatening events such as a heart attacks and stroke. This agent will allow earlier detection of cardiovascular disease in people and will enable direct therapeutic intervention in comparison with current techniques. [The petitioner's] contributions in this project have been designing the research protocols on the clinical MR system. The MR sequences that he developed enabled us to visualize the blood clots more clearly and reliably. Based on the data analysis that he performed, it was demonstrated that the agent enhanced the atherosclerotic plaque-rich areas of the vascular wall. The project is ongoing, and continuing efforts are focused on developing studies on discrimination of blood clots based on their age. [The petitioner] is vital to these studies and their accomplishments and success are dependent on his involvement.

The record contains a certificate from the American Society of Neurobiology indicating that the petitioner was one of several recipients of [Redacted] award at the 40th Annual Meeting of the Society in

Vancouver, British Columbia, Canada. The award certificate, listing the names of the petitioner and his colleagues, was conferred "[i]n recognition of the excellence of the scientific exhibit" that they presented at the 40th Annual Meeting. Such an award is further evidence that the greater field views the petitioner's work as particularly 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, the petitioner submits another letter from [REDACTED] He states:

Over the last five years, [the petitioner] has been conducting cutting-edge cardiovascular imaging research, which is funded by the National Institutes of Health and a consortium of other grantees. Currently, our laboratory at Mount Sinai has more than six million dollars in grants. Any interruption caused by [the petitioner's] absence from our laboratory will substantially disrupt Mount Sinai's scientific advancements in arteriosclerosis, the number one killer in the United States...

* * *

Over the past several years, [the petitioner] has made novel discoveries of major significance by using state-of-the-art instrumentation at my laboratory. Specifically, [the petitioner] has ventured into new frontiers of medical science in noninvasive arteriosclerotic plaque imaging using magnetic resonance and experimental contrast agents.

Although [the petitioner] is not listed as a principle investigator on the NIH grant applications for technical reasons, [the petitioner] is one of the key contributors.

* * *

[The petitioner] has conducted original research at [REDACTED] During that time, [the petitioner] has developed an extremely novel area of research. [REDACTED] is breaking new ground in medical science...and [the petitioner] continues to play a critical role in these breakthroughs.

The petitioner's appellate submission includes additional evidence showing frequent citation of his published articles. 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 shows that other researchers in the United States and from around the world have acknowledged the petitioner's influence and found his work to be significant.

In this matter, we find that the strength of the evidence presented on appeal (most notably the citation history of the petitioner's work) constitutes sufficient grounds for approving the petition. The evidence presented by the petitioner is adequate to meet the three-prong test established by *Matter of New York State Dept. of Transportation*. The 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 his 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 scientific community view his discoveries as particularly important. The witness letters presented reflect a consensus among scientific experts from throughout the United States that the petitioner's research 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.