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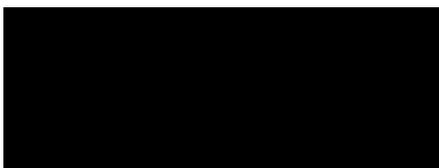
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U.S. Citizenship  
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**FEB 12 2004**

FILE: WAC-03-052-50113 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:

**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*

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 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 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.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Master's degree in plant science from the University of Arizona. 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.

The director's decision includes several troublesome references to the regulatory requirements for aliens of extraordinary ability. We find that such analysis was in error. Nevertheless, on pages seven and nine, the director acknowledges that national or international acclaim is not required for this classification and that the petitioner need not demonstrate that he is one of the very few at the top of his field. The remaining analysis uses the correct standard. Further, the director raised legitimate concerns, which will be discussed below, that the petitioner has not overcome on appeal. Thus, while we withdraw any inference from the director's decision that a petitioner needs to meet the criteria for aliens of extraordinary ability, we find that, in light of the remaining discussion, the director's use of such language is not reversible error.

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, functional genomics, and that the proposed benefits of his work, improved treatment of alcoholism, 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 Master’s degree at the University of Arizona. Dr. David W. Mount, a professor at the university, asserts that the petitioner was involved in establishing a database of plant genes involved in DNA metabolism (DNAMetab) and a project using Green Fluorescent Protein (GFP) to analyze plant vascular tissue. Dr. Mount does not explain the significance of this work other than to assert that it has been cited.

Dr. Hans Bohnert, a former professor at the University of Arizona currently working at the University of Illinois at Urbana-Champaign, provides more detail. According to Dr. Bohnert, the petitioner used a unique experimental approach, employing a nuclear-localized GFP instead of normal GFP as a marker. The use of nuclear-localized GFP is significant because these proteins retain the marker molecule within the cell. Thus, this approach provides higher resolution and labeled nuclei ready for cell sorting work, ensuring the success of complex projects. Dr. Bohnert explains that the petitioner demonstrated that non-halophytes (which include most crops) respond to salt and drought conditions by facilitating water transport, while halophytes respond to similar conditions by shutting down water transport. Dr. Bohnert asserts that such data “contributes highly important new information for the design of salt and drought resistant crops.” While Dr. Bohnert does not acknowledge collaborating with the petitioner, we note that he is listed as one of the petitioner’s co-authors for a poster presentation at the 2000 American Society of Plant Biologists (ASPB) conference. Thus, Dr. Bohnert’s assertion that he has personally cited the petitioner’s work is not evidence of the petitioner’s influence beyond his collaborators. We acknowledge that the petitioner has presented this work at a conference, but his Master’s thesis on this subject was not published and, thus, has not been subjected to peer review.

Upon leaving the University of Arizona, the petitioner began working for BASF. Dr. Rui-Guang Zhen, a senior research scientist at the Genomics and Technology Center at BASF, asserts that the petitioner worked on his team at BASF. Dr. Zhen asserts that the petitioner initiated the company’s genomics program and conducted the first profiling experiments on the salt resistant plant *Dunaliella Salina*. Dr. Zhen states that while confidentiality policies prevent the disclosure of more details of the petitioner’s work, his discovery of more than 70 genes important to a plant’s response to salt and cold stresses has contributed to our understanding of these mechanisms. While Dr. Zhen asserts that “undoubtedly” the petitioner’s research has had a strong impact on the agricultural biotech industry, Dr. Zhen provides no examples of this impact.

Subsequently, the petitioner moved to the University of California at San Francisco (UCSF) where he began working in their Ernest Gallo Clinic and Research Center (EGCRC) under the supervision of Dr. Monica Moore. The petitioner submitted documentation regarding the prestige of EGCRC. As implied by the director, however, a petitioner cannot establish eligibility for a waiver of the job offer requirement in the national interest based solely on his association with a prestigious research center.

According to Dr. Moore, at EGCRC the petitioner has used microarray technology to profile changes in gene expression during the development of alcoholism, thereby increasing the understanding of how alcohol affects the brain. In addition, the petitioner has used functional genomics to study learning and memory as part of an investigation into whether addiction is learned. Specifically, the petitioner used Laser Capture Microdissection (LCM) to profile a fly brain, demonstrating that many of the genes implicated in alcoholism are also expressed in the brain region responsible for learning and memory in a fly. Dr. Ulrike Heberlein, an associate professor at UCSF, asserts that prior to the petitioner’s work profiling the fly, the quality of the microarray chips for flies was poor despite the struggles of other top laboratories over the past two years. Dr. Raymond L. White, Vice Chairman of the Department of Neurology at UCSF and member of the National Academy of Sciences, provides similar information. While we accord significant weight to the opinions of members of the academy, Dr. White’s merely asserts that the petitioner’s work is original without providing specific examples of how the field of functional genomics has been influenced by the petitioner’s work. As will be discussed in more detail below, it is expected that a competent researcher will produce original results.

In discussing the petitioner's novel microarray methods, Dr. Zhen asserts that the petitioner's methods are an improvement over other methods that have not been published and overcome the claims of RNA bias made in recent publications. Dr. David Galbraith, a professor at the University of Arizona makes a similar claim. We note, however, that the petitioner's methods have also not been published in a peer-reviewed journal and, thus, have also not been subjected to the objective analysis of independent peers.

Contrary to the director's implication, the record does contain letters from independent researchers in the field. Specifically, the record contains letters from Dr. Jau-Shyong Hong, Head of the Neuropharmacology Section at the National Institute of Environmental and Health Sciences (NIEHS), National Institutes of Health (NIH); Dr. Michael Deyholos, an assistant professor at the University of Alberta; and Dr. Len Hua, a senior research fellow at the National Cancer Institute (NCI), NIH. While these letters are positive, however, they make general, vague assertions about the petitioner's contributions in the field without providing examples of how the agricultural industry has been altered or of the laboratories allegedly adopting the petitioner's microarray techniques. The petitioner did not submit letters from high level officials at the U.S. Department of Agriculture or from several state agricultural agencies to support the claims of the petitioner's impact on the agricultural industry. None of the independent references assert that they personally use the petitioner's techniques or that the techniques have been adopted at NIEHS, the University of Alberta, or NCI.

The petitioner also relies on his professional memberships as evidence of his ability to benefit the national interest to a greater extent than his peers. The director concluded that the petitioner had not demonstrated that his memberships were notably exclusive. The petitioner challenges this conclusion on appeal.

The director's implication that the petitioner must show that the associations of which he is a member require outstanding achievements of their members suggests an incorrect standard. That requirement appears in the regulations relating to aliens of extraordinary ability. Nevertheless, the evidence submitted is not persuasive that the memberships set the petitioner apart from others in the field. More specifically, the materials for the Society for Neuroscience do not explain what constitutes "meritorious research" or how the research achievements of prospective members are judged. Dr. Zheng-Hui He's assertion that the American Society of Cell Biologists (ASCB) requires a doctoral degree is questionable since the petitioner is a member and does not have such a degree. Regardless, a degree and recommendation from a current member does not notably set the petitioner apart from other qualified scientists who have degrees and presumably work with members of professional associations that might recommend them. Finally, the American Association for the Advancement of Science (AAAS) is open to "all individuals who support the goals and objectives of the association."

Even if the petitioner's professional memberships were notable, such memberships are merely one criterion for aliens of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that meeting one, or even the requisite three criteria for this classification warrants a waiver of the job offer requirement in the national interest.

Finally, while the petitioner has been invited to present his work at conferences, his work remains otherwise unpublished. While his presentations have been published in the proceedings of the conferences, the record contains no evidence that these published presentations have been widely cited, or even cited at all by independent researchers in the field.

While the petitioner's research is no doubt of value, as implied by the director, 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 Master's thesis or postgraduate research, in order to be accepted for graduation, presentation or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains a Master's degree, presents his work at a conference, or is working with a government grant inherently serves the national interest to an extent which justifies a waiver of the job offer requirement. The record does not establish that the petitioner's work represented a groundbreaking advance in functional genomics.

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.