

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

B5

FEB 12 2004



FILE:



Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

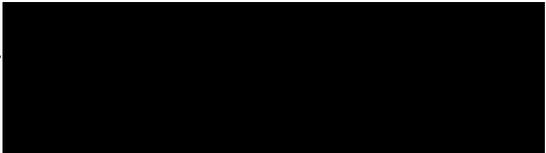
Petitioner:



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

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. 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 requests oral argument. Oral argument is limited to cases in which cause is shown. A petitioner or his counsel must show that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, counsel requests oral argument based on the technical nature of the scientific issues discussed in the record. Counsel is not persuasive. As will be discussed below, the record does not lack sufficient explanation of the petitioner's work or the significance of the area in which the petitioner works, but, rather, evidence that the petitioner's accomplishments have been influential. Therefore, the petitioner's request for oral argument is denied.

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 Cleveland State University. 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, biomedical research, and that the proposed benefits of her work, treatments for cocaine addiction, central nervous system (CNS) diseases, and cancer, 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 she 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 received her Ph.D. in Chemistry from Cleveland State University (CSU). She then worked as a postdoctoral researcher for [REDACTED] at Georgetown University. When Dr. Wang accepted a tenure position at the University of Michigan (UM), the petitioner went with him and was still there at the time of filing.

According to [REDACTED] the petitioner's advisor at CSU, the petitioner participated in a joint program between CSU and the Cleveland Clinic Foundation. While this work resulted in a published article on beta-

hairpin folding, the record contains little evidence of the significance of this research other than a brief discussion by [REDACTED] Chair of the Department of Medicine at UM. While [REDACTED] asserts that the results of this work are unique and “benefit the design of new applications of cyclodextrins, especially in the pharmaceutical industry,” the record contains no letters from high level officials in the pharmaceutical industry attesting to their reliance on this work. The remainder of the record focuses on the petitioner’s postdoctoral work.

According to [REDACTED] while at Georgetown the petitioner’s research focused on dopamine 3 receptor ligands, promising targets for treatments of cocaine addiction and neuropsychiatric disorders. The petitioner developed the 3D-database pharmacophore and structure-based searching method to discover and develop “novel, potent and selective D3 ligands (partial agonists) for the treatment of cocaine abuse.” Using this method, the petitioner “discovered several classes of highly potent D3 partial agonists.” Dr. Wang’s laboratory has since shown these agonists to be potentially effective for treating cocaine abuse. At the time of filing, the petitioner had presented this research at an American Chemical Society (ACS) Conference and submitted a manuscript describing this research to the *Journal of Medicinal Chemistry*. Dr. Wang asserts that Georgetown University had applied for a patent of the promising ligands; however, the record contains a patent application and an assignment of patent rights to UM.

The above research resulted in a collaboration with [REDACTED] laboratory at the University of Kansas. [REDACTED] asserts that as a result of this collaboration, “ligand optimization efforts in this project have been much more efficient and successful than what ordinarily may be expected based on computational predictions.” [REDACTED] a professor at the University of the District of Columbia (UDC) who met the petitioner while conducting her own research at Georgetown, describes the results of the D3 research as follows:

The new therapies are expected to effectively break the cycle of drug taking, craving and relapse by greatly reducing cocaine craving in periods of abstinence. This would help more cocaine abuse victims remain in rehabilitation programs and achieve a permanent return to a productive, healthy lifestyle. In my opinion, this contribution is a major breakthrough in scientific research with the aim of finding new therapies to reduce the craving associated with cocaine abuse.

[REDACTED] an assistant professor at the University of Memphis who issued the invitation to the petitioner to present her D3 work at an ACS conference, asserts that she invited the petitioner to present this work because the petitioner is one of the few scientists who considers not only the receptor and signaling molecule, but also the influence of the surrounding membrane.

The director concluded:

The petitioner’s participation in a patent application process corroborates that she is a successful researcher but, given the large number of patent applications received yearly at the U.S. Patent Office, this achievement does not meaningfully differentiate her from other successful research scientists, including the five co-inventors listed on this particular application. Moreover, the impact of the scientific contribution for which a patent is being sought on the field of chemistry has not been established.

On appeal, counsel presumes that the director's main concern with the patented innovation was that the patent had not yet been approved at the time of filing. Counsel notes that the work had been completed and the patent application filed prior to the date of filing the petition. The petitioner, through counsel, submits evidence that the patent has now been granted. Counsel misconstrues the director's concern. An alien cannot secure a national interest waiver simply by demonstrating that he or she holds a patent. Whether the specific innovation serves the national interest must be decided on a case by case basis. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm. 1998).

Even accepting counsel's argument that an addiction treatment has the potential to be more beneficial than non-medical innovations that might also be patented, the record lacks evidence that the patented ligands have already influenced the field of addiction research. The record does not demonstrate that any pharmaceutical company or major drug treatment facility has expressed any interest in licensing the petitioner's ligands from UM. ACS published the petitioner's abstract on this subject. Yet, the record contains no evidence that independent laboratories have incorporated the petitioner's results into their own projects. While counsel urges Citizenship and Immigration Services (CIS) not to exclude work completed but not published prior to the date of filing, the record contains no evidence that the two manuscripts reporting the petitioner's dopamine research submitted for publication have even been accepted for publication. Regardless, we cannot conclude that work that has not been published as of the date of filing can be considered to have already influenced the field as of that date without other objective evidence of that influence.

In addition to her work with dopamine, [REDACTED] asserts that the petitioner also worked on a project funded by the National Multiple Sclerosis Society aimed at discovering and designing small molecules to block the interactions between multiple sclerosis (MS) specific HLA molecules and T-cell receptors. According to Dr. Wang, the petitioner discovered several classes of inhibitors that have great potential to be developed as effective therapy for MS.

[REDACTED] Chair of the Department of Microbiology and Immunology at Georgetown, asserts that the petitioner's accomplishments in this area are exceptional and significantly contribute to the development of new therapies for MS. He further indicates that the petitioner has continued to collaborate with his laboratory after moving to UM and that her absence from the project "would be a major loss."

[REDACTED] Chair of the Chemistry Department at the University of the District of Columbia (UDC), indicates that she also conducted research at Georgetown. She explains that since T-cell recognition of a fragment of myelin basic protein, MBP152-165, is thought to contribute to the development of MS, "it would be highly desirable to inhibit the binding of these T-cells to MBP152-165." According to Dr. Posey, using computational means, the petitioner predicted the structural characteristics that do and do not recognize MBP152-165. Several references assert that Georgetown is applying this research. It is inherent in the field of science to progress by building on the results previously obtained in the laboratory. The petitioner has not demonstrated the significance of other Georgetown researchers continuing to build upon the petitioner's work performed at that university.

[REDACTED] one of the petitioner's collaborators at Georgetown now working as a research scientist at Bayer, asserts that this work "is extremely valuable for the development of new, selective drugs for the treatment of multiple sclerosis." [REDACTED] does not indicate that Bayer is applying the petitioner's results or that his opinion is the official opinion of Bayer.

Finally, the petitioner has also participated in cancer research. Specifically, several references discuss the petitioner's work on the P53 molecule. [REDACTED] explains that P53 plays a crucial role in the cell cycle and that it is mutated in 50 percent of all human cancers. [REDACTED] states: "Small molecule ligands that can bind to P53 and restore the function of P53 mutants will have a great therapeutic potential for the treatment of many forms of cancers." While [REDACTED] asserts that the petitioner has made significant progress in this area, he does not identify any specific contributions or breakthroughs.

[REDACTED] an assistant professor at the UM Comprehensive Cancer Center, asserts that the petitioner has discovered "several promising lead compounds that could potentially restore p53 mutant to wild-type p53." [REDACTED] continues: "Importantly, she has shown that these compounds indeed potently cause death of cancer cells while having little effect to [sic] normal cells."

[REDACTED] Lead Scientific Software Engineer I at Pfizer who spent six months working at Georgetown, asserts that other researchers have reported compounds that bind to P53 but with limited potency. He continues that the petitioner "has carried out the preliminary work predicting how the compounds published by other scientists bind to the p53 protein using flexible docking and preliminary virtual screening." [REDACTED] notes that the petitioner "is implementing a new approach she has applied successfully before for the discover of D₃ receptor ligands."

Also in the cancer field, the petitioner has provided computational support for a National Institutes of Health (NIH) study on reducing the side effects of chemotherapy by targeting the 5-HT₃ receptor. [REDACTED] a medical officer and member of the senior staff at the Laboratory of Molecular and Cellular Neurobiology at NIH, asserts that while NIH has been collaborating with Georgetown, they continued relying on the petitioner's computational analyses after she moved to UM because they found the petitioner "to be a key and irreplaceable member" of the project.

In general, [REDACTED] concludes that the petitioner has developed a new methodology for drug design and that many scientists at UM are collaborating with her. 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 published researcher with a patented innovation or who is working with a government grant inherently serves the national interest to an extent which justifies a waiver of the job offer requirement.

It is clear that the petitioner is very respected by her collaborators and supervisors. The record is not, however, persuasive that the petitioner has been influential in the field. Despite the director's observation in his final decision that the record lacked references from independent experts, the petitioner does not submit letter from more independent references on appeal. Rather, [REDACTED] asserts in a new letter that the petitioner is not personally acquainted with [REDACTED] or [REDACTED]. This assertion is not persuasive. The petitioner has collaborated with [REDACTED] and [REDACTED] and [REDACTED] both work at UM. These letters cannot demonstrate the petitioner's influence on the field beyond UM and a laboratory that collaborates with the petitioner's laboratory.

In addition, the petitioner's publication history is not indicative of a track record of success with a degree of influence in the field. We reach this conclusion not because the petitioner is not first author on the articles

published prior to the date of filing, but because the record contains no evidence that the petitioner has been widely cited by independent researchers. A single request for a reprint is not evidence of the petitioner's influence in the field. At best, the petition was filed prematurely, before the petitioner's results were available for peer review by independent researchers in the field.

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.