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U.S. Citizenship  
and Immigration  
Services

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**B5**

FEB 20 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: SELF-REPRESENTED

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, 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 seeks employment as a research associate at the Ohio State University (OSU). 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 has 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 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 did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention 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 the 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 regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] 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.

The petitioner describes his work:

I have been engaged in original scientific research for the past 10 years in the field of peptide design and vaccine development against viral infections, cancer and autoimmune diseases including multiple sclerosis and transplantation. . . .

[A]t Wayne State university School of Medicine . . . I established the method of pro-drug synthesis and developed the method for enzyme activated site-specific delivery of immunoactive peptide in tumor cells. In my present appointment as a manager of the peptide and protein engineering laboratory, I am providing therapeutic peptides for pre-clinical and clinical trials for vaccine development against viral infections, cancer, autoimmune diseases including multiple sclerosis and transplantation.

In addition to various documents pertaining to his work, the petitioner submits several witness letters. The petitioner identifies three of the witnesses as his collaborators. These individuals offer high praise for the petitioner's skill in the laboratory, and state that he is an important member of the research team at OSU, but they do not demonstrate that the petitioner stands apart from others in his field to an extent that would warrant the special benefit of a national interest waiver. The individuals assert that the petitioner's continued involvement is required until the completion of various projects, but the petitioner already possesses a nonimmigrant visa that allows him to participate in these short-term projects.

The witnesses who are not identified as the petitioner's collaborators have, in fact, worked with the petitioner previously. They are distinguished from the other witnesses only insofar as they are not the beneficiary's *current* collaborators at OSU. In general, these witnesses, like the other witnesses, praise the petitioner's technical skill and stress the importance of the petitioner's area of research, but there is not much discussion pertaining to the petitioner's specific achievements, and why those accomplishments differ from what is expected of other scientists at a similar career stage.

The director instructed the petitioner to submit further evidence to meet the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner states "I am involved in several vaccine development projects aimed against different types of cancer, transplantation, multiple sclerosis and Hepatitis C Virus infection."

The petitioner submits a copy of a letter from OSU Professor [REDACTED] indicating that the petitioner is “perfectly suited for” this project. This letter is dated nearly a year prior to the petition’s filing date; it appears to have been written in support of an earlier nonimmigrant visa petition. The letter does not address the question of why the petitioner’s work is so important that the petitioner merits not only a nonimmigrant visa, which already covers his work on the aforementioned OSU project, but also permanent immigration benefits.

The director denied the petition, stating “[t]here is no evidence that [the petitioner] has yet made any impact on his field.” On appeal, the petitioner repeats his assertion that he is “involved in several vaccine development projects,” and the petitioner submits a list of his publications and presentations.

The petitioner does not establish that his published and presented work sets him apart from the many other researchers in his specialty who also publish their findings. The petitioner does not establish, for instance via heavy citations, that his work stands out from others in the field. The very existence of such published material cannot suffice. As reflected in the adage “publish or perish,” publication of one’s work is the rule rather than the exception in the world of academic research.

Regarding the projects in which the petitioner has been involved, the director did not dispute the overall importance of such work. The national interest waiver, however, is a special benefit determined not by a particular project, or the general nature of the work to be done, but rather by the specific merits of the individual alien seeking the waiver. The director has not questioned the competence or credentials of the petitioner. Rather, the director found that the petitioner has not submitted sufficient evidence to persuasively set himself apart from other researchers in the same specialty, to an extent that would warrant an exemption from the job offer/labor certification requirement that usually attaches to the classification that the petitioner chose to seek. The petitioner’s repetition of the nature of his employment does not address, rebut, or overcome the director’s findings.

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.