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20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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

[Redacted]

FILE: [Redacted]

Office: NEBRASKA SERVICE CENTER

Date: **FEB 20 2004**

IN RE: Petitioner: [Redacted]
 Beneficiary: [Redacted]

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:

[Redacted]

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
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. At the time of filing, the petitioner was a research associate at the University of Iowa. 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 (CIS)] 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.

Counsel describes the petitioner's work:

[The petitioner] is conducting invaluable NIH-funded research relative to diabetes. . . .

[The petitioner] has made vital inroads. For example, prior to her cutting-edge research, it had been assumed that reduction of the number of insulin receptors . . . and the mutation of the insulin receptor resulted in insulin resistance and impairment of glucose transport and uptake. However, this defect was found in a relatively small fraction of diabetic patients. The primary dysfunction occurs at a step further downstream and [the petitioner's] research has focused on unraveling what this downstream effect could be. . . . [S]he has demonstrated that a primary defect is the activation of another target enzyme known as phosphatidylinositol 3-kinase. Her key finding was that the protein itself was not altered by its distribution within the cell such that it would no longer generate its substrate product as had previously been believed. Her discovery is significant in that the novel mechanism of insulin resistance together with the research data supporting this study provided a key new paradigm for the field's understanding of insulin resistance and has provoked new thought regarding the treatment of insulin resistance.

The petitioner submits witness letters from, in counsel's words, "[l]eading fellow experts in the field." Most of these witnesses have collaborated with the petitioner. For instance, Professor [REDACTED] now of the University of Pennsylvania, identifies himself as the president of the American Society for Clinical Investigation. Prof. [REDACTED] states that the petitioner's work "is inspiring new thinking on the treatment of" diabetes, and "may allow us to develop novel screening strategies for insulin mimicking drugs." Prof. [REDACTED] indicates that he used to be on the faculty of the University of Iowa, where he collaborated with the petitioner's supervisor, Professor [REDACTED]. Prof. [REDACTED] adds that the petitioner "took part in a research project in my laboratory in 1997," which "has greatly enhanced our understanding of apoptotic cell death in T lymphocyte which is crucial for normal progression of immune responses." Other witnesses who have worked with the petitioner offer similar assessments of the petitioner's work, stating that the petitioner's work has increased our understanding of some of the processes underlying diabetes.

Dr. [REDACTED] investigator at the National Heart, Lung, and Blood Institute, is the only witness who does not claim to have collaborated with the petitioner. Instead, he states he has "come to know [the petitioner] through professional scientific interactions at national meetings." Dr. [REDACTED] credits the petitioner

with “fundamental studies that are helping to elucidate the molecular mechanisms by which insulin stimulates glucose transport in cells. These studies are key to generating important insights into the molecular abnormalities underlying diabetes and may lead to the development of novel therapeutic approaches for the treatment of diabetes.”

The above letters, and others like them in the record, show that the petitioner has earned the respect of her mentors and collaborators, as well as some others whom she has encountered in professional settings. The letters, however, appear to rely largely on speculation as to what might one day arise from the petitioner’s research, rather than on concrete findings that have already significantly shaped the direction of diabetes research.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner’s work, but finding that “the record does not establish that the petitioner has yet established a history or pattern of significant contributions to his [sic] field.” Regarding the importance of the petitioner’s past work, the director found that the record lacks “corroboration from disinterested parties.”

On appeal, the petitioner submits manuscripts, articles, and other documentation showing that the petitioner has remained active in the field. Because the director had not questioned that the petitioner is an active, productive researcher, these documents do not address the grounds for denial. Nothing intrinsic to these documents shows that the petitioner is entitled to a special waiver of a requirement that, by law, normally attaches to the immigrant classification that the petitioner chose to seek.

Counsel, on appeal, asserts that the petitioner’s witnesses “have nothing to gain, but everything to lose in offering perjured information” in conjunction with the petition. We note that the petitioner has submitted letters, rather than sworn affidavits, from these witnesses. The only individual who affirmed to the truth of the petition under penalty of perjury is the petitioner herself. More importantly, the director did not allege perjury by any of the petitioner’s witnesses. The petitioner’s witnesses offer statements for our consideration, but those witnesses are not the ones with the authority to decide whether or not the petitioner qualifies for the waiver that she seeks. The denial of the petition is, therefore, not an allegation of perjury by the petitioner’s witnesses.

The remainder of counsel’s brief consists, primarily, of a review of the petitioner’s work, and lengthy quotations from previously submitted witness letters. This repetitious discussion adds nothing to the record. Counsel asserts that the petitioner’s work has appeared in heavily cited journals, but counsel offers no evidence that the petitioner’s own articles have been heavily cited. The impact factor of a given journal is only an average, a statistical abstract, and does not prove that any one article has ever been cited at all. This omission is significant, given that counsel is clearly aware that citation is a reliable measure of a publication’s impact. The lack of citations, coupled with the fact that most of the petitioner’s witnesses are her collaborators, supports the director’s finding that the petitioner does not appear to have had a significant impact in her field as of the petition’s filing date.

Computerized CIS records indicate that another immigrant visa petition was filed on the alien’s behalf in 2001, and approved in 2002. The petitioner’s adjustment application is currently pending. These records indicate that the petitioner had moved to Texas no later than the late summer of 2001. Clearly, any argument to the effect that it is in the national interest for the petitioner to remain at the University of Iowa is now moot. The petitioner has, thus, already obtained the one benefit (an approved immigrant petition) that could have resulted directly from a favorable decision in this appeal.

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.