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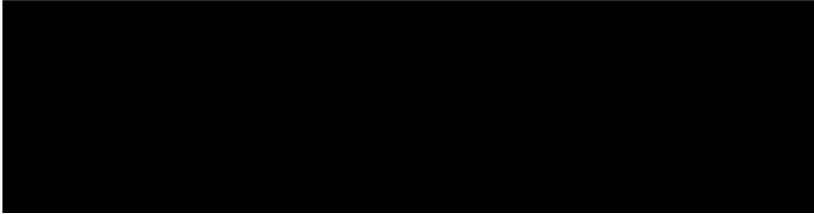
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U.S. Citizenship
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FILE: WAC-03-042-54861 Office: CALIFORNIA SERVICE CENTER Date:

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

FEB 24 2004

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.


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 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. 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.

The petitioner holds a Ph.D. in Entomology from the University of Agricultural Sciences in Bangalore, India. 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.

While the petitioner does not raise this concern on appeal, the director's decision contains several references to "widespread recognition." This phrase does not appear in the regulations or the precedent decision relating to the classification sought. The director also references "regulatory criteria." The discussion of these regulatory criteria appears to mirror the regulatory criteria for aliens of extraordinary ability pursuant to Section 203(b)(1)(A) of the Act, a higher classification than that sought by the petitioner. There are no regulatory criteria for the national interest waiver requested. On page five the director notes that the accomplishments of the petitioner's references "far outweigh" his own. On page seven, the director states that the petitioner's references "compare the petitioner's research work to the work of his coworkers and other advanced students, rather than to the most experienced and accomplished researchers in the field." For the national interest waiver sought, however, the petitioner need not demonstrate that he is one of the very few at the top of his field, as suggested by

the director's language. That requirement is only for aliens of extraordinary ability pursuant to Section 203(b)(1)(A) of the Act.

Finally, we note that some of the language used by the director does not appear to fit the evidence of record. For example, the director states: "From its name and timing the petitioner's research work praised in letters of attestation appears to recognize student work rather than excellence in the field of endeavor." Even if whether the research was in furtherance of a degree was a relevant consideration for the benefit sought, the record satisfactorily establishes that the petitioner received his Ph.D. degree in 1991, eleven years prior to filing the instant petition. The petitioner has been working as a researcher since 1991 and that professional research is the focus of all of the reference letters.

Nevertheless, we cannot sustain an appeal based solely on the director's inclusion of some problematic language. The record must establish the petitioner's eligibility for the classification sought.

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, entomology, and that the proposed benefits of his work, improved and environmental methods of controlling insects, including invasive

species, 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.

The petitioner is currently a research associate at the University of Guam. [REDACTED] and Director of the College of Agriculture and Life Sciences at the University of Guam, discusses the importance of the petitioner's field and his academic history. [REDACTED] a professor emeritus at the University of Guam, provides more specifics. [REDACTED] states that the petitioner is using pheromones, including those integrated with insect pathogenic fungi, to trap the New Guinea Sugarcane Weevil. [REDACTED] indicates that this technique can be used to reduce weevil populations in Hawaii, Florida, Louisiana, Puerto Rico and Texas. [REDACTED] also indicates that the petitioner is also working on management of invasive weeds.

Prior to starting at the University of Guam, the petitioner was a scientist at the Institute of Zoology at the University of Vienna. [REDACTED] the petitioner's mentor at this institute, discusses the petitioner's work with bumblebees used to pollinate greenhouse crops in Belgium and The Netherlands.

Previous to that project, the petitioner worked as a visiting scientist at the University of Kuopio in Finland. [REDACTED] an academy research fellow at the university, asserts that the petitioner's research there "focused on the evaluation of the alterations of tritrophic signaling between cruciferous crop plants, insect herbivores . . . and their natural enemies" due to increased carbon dioxide levels in the atmosphere. Dr. [REDACTED] asserts that this work was presented at the International Workshop on the Management of [REDACTED] and Other Crucifer Pests in Melbourne and is being considered for publication. Dr. [REDACTED] research entomologist with the USDA in Delaware asserts that he collaborated with the petitioner's diamondback moth research.

Prior to that work, the petitioner worked as a visiting scientist at the Institute of Chemical and Environmental Research in Barcelona, Spain. [REDACTED] the petitioner's supervisor during that period, asserts that they "worked on the inhibition of pheromone responses in an economically important corn borer." Dr. [REDACTED] asserts that the petitioner gained valuable experience while working on this project, the results of which were published in international journals.

In 1998 and 1999, the petitioner had a prestigious fellowship at the University of Bayreuth in Germany. The petitioner worked with [REDACTED] who provides details regarding the petitioner's research during this time. Specifically, the petitioner made contributions towards identifying volatile compounds from pine trees that enhance the trapping efficiency of pheromone traps. This work "has [the] potential for broad practical application on the use of sex pheromone and monoterpenes for the control of [the] long horn beetle." Dr. [REDACTED] of the USDA indicates that this experience allowed the petitioner to contribute to [REDACTED] own research on Asian long horn beetles by providing background materials.

The director noted that “most” of the references have collaborated with the petitioner. The letters discussed above are from the petitioner’s collaborators. While such letters cannot by themselves establish the petitioner’s influence on the field beyond his collaborators, they are useful and even necessary evidence as they explain the details of his work and the roles he played in his projects. The record contains a total of 15 reference letters, nearly all from different institutions. The large number of letters from collaborators is due to the fact that the petitioner has worked in Guam, Vienna, Finland, Spain, Germany, Ethiopia, Great Britain, and India. Regardless, we do not find it useful to compare the number of letters from collaborators with the number of independent letters. Rather, what is significant is who the independent experts are, how they learned of the petitioner’s work, and what they say. As noted by the petitioner on appeal, he did submit independent evaluations of his work. While some of these letters simply discuss the importance of the petitioner’s area of research and his qualifications to work in the field, other letters are more significant.

[REDACTED] a professor at Cornell University and member of the National Academy of Sciences, asserts that the petitioner “has made a breakthrough observation that employing synthetic pheromones and plant-based chemicals can result in the efficient mass trapping without using pesticides.” [REDACTED] explains that this technique that can be used with numerous pests. [REDACTED] specifically adds that the petitioner “has made significant advances where others have failed.”

The record also includes a letter from entomology professor [REDACTED] Director of the Coastal Research and Education Center at Clemson University and Team Leader of their Integrated Pest Management (IPM) project in Indonesia. [REDACTED] asserts:

Thus far IPM programs on cruciferous crops developed by [the petitioner] have greatly helped the farmers from [these] states[:] South Carolina, California, New York, Michigan and Florida. Similarly, [an] IPM program on cotton has helped the farming community in controlling the bolls worms in Mississippi, Florida, California, Arizona and Tennessee. [The petitioner] has developed an IPM program recently on eggplant [that] will be very valuable in the coming days to the regions where the eggplant and other vegetables are grown in the U.S.

These comments suggest that the proposed future benefits of the petitioner’s work are not merely hypothetical. Rather, the petitioner has already impacted the agricultural industry.

Finally, the petitioner has submitted evidence of several published articles prior to the date of filing. The petitioner submitted evidence that these articles were not merely published, but recognized in the field. Such evidence included, but was not limited to, reprint requests from government agencies and those in the agriculture industry. This objective evidence supports the assertions made by the petitioner’s references.

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 testimony in the record, establishes that the entomology 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.