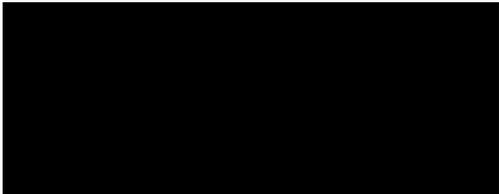


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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

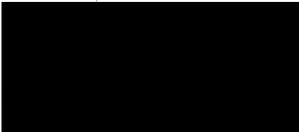


U.S. Citizenship
and Immigration
Services



FILE: LIN-02-236-50605 Office: NEBRASKA SERVICE CENTER Date:

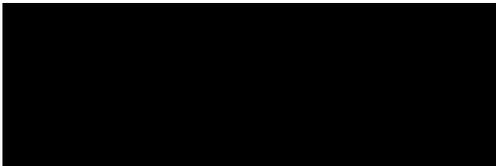
IN RE: Petitioner:
Beneficiary:



FEB 26 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:



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

PUBLIC COPY

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 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 Organic Chemistry from the Shanghai Institute of Organic Chemistry. 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, organic chemistry, and that the proposed benefits of his work, new strategies for drug development, 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 record focuses on the petitioner's work for [REDACTED], although the petitioner's current colleagues also note that in China the petitioner helped make the first total synthesis of Martinellie acid. This work was published in *Organic Letters* and has been cited by independent researchers. The petitioner began working for [REDACTED] at the Sloan Kettering Cancer Center and subsequently they both moved to the University of Wisconsin. According to [REDACTED] the most significant project on which the petitioner worked was the development of glycorandomization, a process that “takes a key sugar-activating enzyme and engineers it to recognize nonnatural sugars as substrates.” [REDACTED] continues: “In this ongoing effort, [the petitioner] has been primarily responsible for the synthesis of a library of hexopyranosyl phosphates, and the construction of a library of nucleotide-sugars using this process.” Other professors at the University of Wisconsin provide similar information.

[REDACTED] Director of the Laboratory for Bioorganic Chemistry at the Sloan Kettering Cancer Center and member of the National Academy of Sciences, states that the petitioner “was instrumental in applying the nucleotide-sugar library to produce nonnatural “natural” products via combinatorial biology and glycorandomization technology.”

Dr. Dimitar Nikolov, Head of the Laboratory of Structural Biology and Neuroscience at the Sloan Kettering Cancer Center, states:

As [the petitioner] and [redacted] developed [glycorandomization] which begins with selection of a key sugar-activating enzyme, [the petitioner] worked directly with researchers from my laboratory to determine the enzyme's crystal structure. With [the petitioner] and his colleagues providing the synthesized substrates for the enzyme and its reaction property (enzyme assay and kinetic data), researchers from my laboratory designed mutant enzymes (structure-modified enzymes) allowing the enzyme to accept new substrates. The resulting 'engineered' enzymes provide the platform for the further creation of libraries of glycorandomized compounds containing nonnatural sugars. [The petitioner] was later able to complete the synthesis of a series of analogues (DDP-Mannose) along with substrates used to explore calicheamicin biosynthesis.

[redacted] concludes that "glycorandomization is a significant advance in efforts toward new drug discovery, and [the petitioner] has proven himself critical to the field of biomedical cancer research."

In response to the director's request for additional evidence, the petitioner submitted letters from his colleagues at the Genomics Institute of the Novartis Research Foundation. While we cannot consider the petitioner's work at that institute since it occurred after the date of filing [redacted] Director of the institute and member of the National Academy of Sciences, asserts that the petitioner's work in [redacted] laboratory "is considered to have provided significant and influential advances in the fields of organic synthesis and medicinal chemistry."

The petitioner also submitted an independent letter and objective evidence to support the assertions discussed above. Specifically, [redacted] a professor at the Scripps Research Institute and member of the National Academy of Sciences, asserts that he was aware of the petitioner's papers from his own review of literature in the petitioner's field. [redacted] notes that the technique of glycorandomization was developed in Dr. Thorson's laboratory and asserts that the petitioner "improved these methods so that they could facilitate the synthesis of these natural products." [redacted] concludes: "The technique he developed was a brilliant extension of the glycorandomization method."

In addition, *Chemical and Engineering News*, an online news publication affiliated with the American Chemical Society, featured the work of [redacted] published in *Nature Structural Biology* as "News of the Week." The same online publication featured the story again under "Chemistry Highlights 2001." The director expressed concern that the petitioner was not mentioned in either story and was not first-author on the article published in *Nature Structural Biology*. Considering the classification sought and the record as a whole, we do not find this concern warranted in this particular case. First, the petitioner need not demonstrate acclaim. Thus, the mere fact that *Chemical and Engineering News* does not use the petitioner's name is not disqualifying. Second, while the petitioner is not the first author listed on the *Nature Structural Biology* article, both [redacted] and [redacted] attest to the importance of the petitioner's work on the project. Finally, the record contains evidence that the petitioner has been listed as the first author of other articles that show a consistent pattern of recognition in the research community through moderate citation.

It remains, the record is supported by letters from three members of the National Academy of Sciences, one of whom does not know the petitioner personally. While we must still evaluate the content of such letters and not

simply the caliber of the authors, all of the letters are highly favorable and identify specific contributions made by the petitioner. The petitioner's work, while a collaborative effort, has been singled out by an online chemistry news publication and the petitioner's publication history demonstrates a pattern of influence as his articles are consistently cited.

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 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.