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U.S. Department of Homeland Security

Citizenship and Immigration Services

BS

ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536



File: WAC 03 005 54932 Office: CALIFORNIA SERVICE CENTER

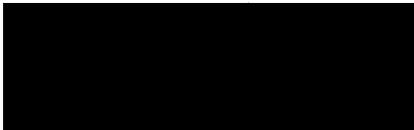
Date: JAN 09 2004

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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

for 
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 to classify the beneficiary 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 scientific researcher, focusing on HIV/AIDS . 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 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 the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now 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 states that the petitioner “has made many strides as a Scientific Researcher, particularly with respect to HIV and AIDS. . . . [H]is stellar achievements justify the projected future benefit of his skills in the U.S. medical community.” Counsel describes the petitioner’s research:

[The petitioner] has identified three problem areas: (i) prevention of HIV infection; (ii) management of HIV infected patients; and (iii) detection of asymptomatic carriers. . . . These are the so-called “silent carriers.” . . . Two methods may be used in detecting this group of patients, which are Polymerase Chain Reaction (PCR) and Polyclonal B Cell Activation Test (P-BAT).

Along with copies of his articles and presentation abstracts, the petitioner submits several witness letters, many of which focus on general overviews of the petitioner’s credentials. Professor Geoffrey R. Weiss, chief of the Division of Medical Oncology at the University of Texas Health Science Center and chairman of the board of directors of the Fund for International Aids Research and Education, states “[t]he extent of [the petitioner’s] qualifications is clearly a rare discovery among colleagues in his professional discipline.” Professor Raiinder Kumar of the University of Papua New Guinea states that the petitioner “is a seasoned academician, accomplished researcher and a very experienced administrator. . . . I cannot remember in recent times any one who has achieved so much in so short a time from so little resources.”

Many of the witnesses have worked closely with the petitioner. Others have few ties to the petitioner, but offer few details to explain the significance of his work. For example, Professor Aikichi Iwamoto of the Institute of Medical Science, University of Tokyo, met the petitioner only briefly at a conference. Prof. Iwamoto says nothing about the petitioner's work except "I was impressed by his keen interest in microbiology and immunology. Considering the resource poor settings [where] he has spent his career, his accomplishment is outstanding." Those witnesses who have known the petitioner for many years offer more details. Professor Gabriel C. Ezeilo of the University of Malawi, who has known the petitioner "for over 12 years," states that the petitioner "is well known beyond Nigeria" owing to his published monographs, clinical trials, "and his report on natural honey as a healing agent for wounds." Prof. Ezeilo adds that the petitioner "was the president of the Federation of African Immunological Societies." Professor A.O. Osoba of King Khalid National Guard Hospital, Jeddah, Saudi Arabia, has known the petitioner "for upwards of twenty years." Prof. Osoba states that one of the petitioner's monographs, "Class II Human Leucocyte Antigen (HLA) on peripheral blood CD4 and CD8 cells of healthy subjects and HIV infected patients," "is widely quoted in Medical literature as an authoritative document on the subject."

Other materials in the record support the contention that the petitioner is well known in Africa and Papua New Guinea as a highly regarded expert in his field. Some documents indicate a degree of recognition elsewhere as well. The petitioner has documented the national distribution of two educational pamphlets, "HIV/AIDS: Issues of concern for employers" and "HIV/AIDS: QUESTIONS & ANSWERS."

The director instructed the petitioner to submit further evidence to show that he meets the guidelines discussed in *Matter of New York State Dept. of Transportation*. In response, the petitioner submits additional letters and documents. Professor Geoffrey Weiss, in his second letter, states that the petitioner's "experience in the research and control of epidemic and endemic illnesses in Southeast Asia is unparalleled among investigators in the United States." Other witnesses offer comparable praise.

The petitioner submits several letters from the American Biographical Institute (ABI), the United Cultural Convention (which has the same street address as ABI), and the International Biographical Centre (which names ABI in some of its communications), indicating that the petitioner has been selected or nominated for numerous honors including the "Noble [sic] Prize." There is no evidence that prizes or awards from these entities are considered significant except by the honorees themselves. ABI has no connection with the Nobel Prize. These entities appear to exist primarily for the purpose of selling books, plaques, and other materials (often costing hundreds of dollars each) to the purported honorees. We cannot attach significant weight to these materials, although their submission does not diminish the weight of the petitioner's other evidence.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work but finding that the petitioner had not established that the national interest would be served by a waiver of the job offer requirement that, by law, attaches to the

classification that the petitioner chose to seek. The director's discussion of the evidence is limited to the observation that many of the "supporting letters appear to be from former or current academic colleagues including a former student and lower-level official with the U.S. Department of Health and Human Services. . . . [T]hese letters are more akin to 'reference letters' than testimonials of his individual potential to benefit the country on a 'national impact' level." The director listed some documentary submissions without comment.

Some of counsel's arguments on appeal are not at all persuasive. For example, counsel claims that a "surge in the INS' denial rate is having a detrimental effect on the economy of the U.S. . . . The fact that our borders are closing may well lead to a protracted and irreversible economic downturn." Even if counsel had offered evidence in support of this claim, rather than simply observing that denial rates had increased during 2002, a year in which the economy was weak, this would amount to nothing more than a general observation that does nothing to distinguish the petitioner from any other beneficiary of a denied immigrant visa petition.

Counsel argues that the record shows that the petitioner "has established himself as a preeminent authority within the international medical community." While the petitioner's recognition is greater in some geographic areas than in others, counsel is correct in the basic assertion that the petitioner appears to have elevated himself above many others in his field through his prolific research, leadership roles in national and international organizations, and other activities. The director does not appear to have considered these materials in rendering the decision.

While the record does contain several letters from the petitioner's close associates, as well as evidence of negligible value such as the numerous letters from ABI and related entities, there remains considerable evidence of the petitioner's international impact as a researcher and educator. This evidence establishes the petitioner as an international expert with decades of experience, rather than a recent graduate whose work is known only to his mentors and collaborators.

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 recognition of 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.