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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

File:  Office: NEBRASKA 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. Wieman, 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 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 research scientist in organic chemistry at the University of Wisconsin, Madison. 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 describes the petitioner’s work:

The specific basic organic chemistry [the petitioner] is researching at this time is in the area of the interaction solid-state photochemistry, using sun light to fuel the chemical processes used in the chemical industry to produce bulk amounts of synthetic chemical products to be used by a large diverse sector of the economy, such as pharmaceuticals and plastics. Using sunlight as a reagent to cause chemical transformations, instead of expensive harmful wet chemicals that are toxic to both the workers in the chemical plants and to the environment, increases worker safety and health, and benefits the environment. The use of sun light to cause the chemical transformations in the crystal lattice of chemicals creates a high yield, energy efficient process, with minimal side-products and waste. However, these processes are still in the developmental stages and need a fair amount of continued research before the processes can be developed to the stage of industrial usefulness. But this is coming.

Counsel asserts that the petitioner’s “name comes up frequently as the person who has made **the most significant breakthrough** in the knowledge needed to proceed to the next step in the use of photo-reactive chemistry.”

Addressing the issue of the waiver of the job offer requirement, counsel offers several general observations about employment in the sciences, and indicates that the labor certification process is not appropriate for scientific researchers. The plain wording of the statute indicates that aliens of exceptional ability in the sciences, as well as advanced degree professionals (including scientists), are generally subject to the job offer requirement. A blanket waiver for scientists would necessarily contradict the plainly-stated intent of Congress. General arguments or complaints about the labor certification process cannot establish a particular alien's eligibility for a national interest waiver. Greater weight must attach to the individual alien's contributions.

The petitioner submits several witness letters. Most of the witnesses have worked closely with the petitioner, but others assert that they know of the petitioner primarily through his published work. Dr. Milan Hajek, deputy head of the Department of Biotechnology and Environmental Processes, Institute of Chemical Process Fundamentals, Academy of Sciences of the Czech Republic, states that the petitioner's "work in [the] area of solid-state photochemistry makes a noticeable contribution both to theoretical and practical organic photochemistry." Dr. Hajek discusses the implications of the petitioner's work:

Generally, the photoreactions in solid state have many advantages over solution reactions. . . .

The only disadvantage which until now prevented the solid-state photoreactions from wide practical application is that they were considered to keep high selectivity only up to very small conversion. All attempts to run these reactions up to higher conversion lead to crystal destruction, loss of selectivity and, consequently, to ill-defined results. But now, with the new results of [the petitioner's] study this problem seems to be much closer to its solution. The basic idea of [the petitioner's] discovery is that in many cases solid-state photoreactions occur in stages with its own selectivity characteristic for each consequent stage. This means that one is able to run the solid-state photoreactions up to very high conversion without loss of selectivity. Some stages may result in the products, which are not accessible by any other ways. This discovery definitely allows creating of new industrial processes based on solid-state photochemistry.

Professor Dietrich Döpp of Gerhard Mercator Universität, Duisberg, Germany, states that the petitioner has "made a number of very important contributions into this field." Professor Döpp discusses an example:

[The petitioner's] first noticeable photochemical paper was about energy transfer through long rigid rod-like molecules. . . . While being very important, the energy transfer is a very complex process, and a theoretical understanding of it is still far from completeness. The rigid rod-like molecules [the petitioner] has used in his research play a role of "light pipes" allowing light to pass from one end to the other. They present one of the best models for understanding the basic principles of the energy transfer. [The petitioner] was the first who proposed in his paper a

very elegant and clear theoretical approach allowing analysis and dissection of the mechanism of the energy transfer based on experimental data.

Regarding the petitioner's work with photochemistry, Prof. Döpp states:

The remarkable discovery by [the petitioner] that of stage occurrence of solid-state photoreactions dramatically enlarges the area of possible practical applications of photochemistry. His finding of the solid-state photoreactions occurring in stages with sometimes increased selectivity at later stages came against the traditional opinion widely accepted by scientists in the field. The opinion was that at higher conversion the initially high solid-state selectivity decreases due to crystal disintegration and loss of originally ordered structure. But with [the petitioner's] discovery it is clear now that in many cases higher conversions are characterized by even higher selectivity. Moreover, otherwise inaccessible synthetic products can be simply obtained at a later stage. [The petitioner] has already demonstrated the usefulness of his discovery by finding some enone reactions which result in obtaining valuable products on the second stage.

The above letters support the assertion of another witness, Dr. Alexander V. Gontcharov of Lexicon Pharmaceuticals, that the petitioner's "ground-breaking research in the area of solid-state photochemistry has earned him a well-deserved international reputation."

Professor Howard E. Zimmerman, a member of the highly prestigious and exclusive National Academy of Sciences, supervises the petitioner's work at the University of [redacted]. Prof. Zimmerman states that the petitioner possesses abilities not found in his colleagues, and that the petitioner "has already made several important contributions to the field." Prof. Zimmerman acknowledges that, at this point, the petitioner's contributions are theoretical rather than practical, but "[t]he practical applications for U.S. industry [are] enormous." Numerous witnesses stress both the cost savings and environmental benefits to be gained by building on the petitioner's fundamental work.

The director issued a request for evidence, stating "special or unusual knowledge or training, while perhaps attractive to the U.S. employer, does not inherently meet the national interest threshold." The director also observed that a shortage of qualified workers is an argument for obtaining, rather than waiving, a labor certification.

In response to this notice, Prof. Zimmerman asserts that his federal grant funding is insufficient to promote the petitioner to the position of "Scientist," which is the lowest-ranking position for which the University of Wisconsin will sponsor an immigrant visa petition. Prof. Zimmerman asserts that the petitioner's departure from the research group will have a "severe" impact on the research group's progress.

The director denied the petition, acknowledging “the petitioner is an expert in the field of chemistry,” but finding that the evidence and letters do not establish “that the petitioner’s work has led to a remarkable breakthrough in the field of solid-state photochemistry.” Counsel, on appeal, notes that one of the petitioner’s witnesses had, indeed, used the exact phrase “remarkable breakthrough” to describe the significance of the petitioner’s work. The petitioner submits new witness letters, including a third letter from Prof. Zimmerman, who asserts that the petitioner “is one of perhaps four scientists with his unique capabilities both nationally [and] internationally. . . . I have searched thoroughly and cannot find individuals, either in the U.S. or abroad, who can handle the research of which he is an expert.” Prof. Zimmerman and other witnesses emphasize that the petitioner has, in fact, made “groundbreaking finding[s]” and “major discover[ies].”

Upon consideration of the record, we find that the petitioner has earned a significant reputation outside of his immediate circle of mentors and collaborators, and that established experts in the field consider his work to be highly significant in establishing a theoretical framework upon which to build.

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 scientific 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.