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U.S. Citizenship  
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[Redacted]

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date: **JAN 21 2004**

IN RE:

Petitioner:

[Redacted]

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:

[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.

*Mari Johnson*

to 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 (AAO) 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 doctoral student at the University of Wisconsin-Milwaukee (UWM). 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.

In a personal statement submitted with the petition, the petitioner discusses his work, attempting to develop drugs that address two current problems in medical research. Specifically, the petitioner seeks to reverse drug resistance in cancer cells, and to develop safer, more effective agents to reduce cardiac arrhythmia (irregular heartbeat). Accompanying the petition is a 12-page introductory letter on UWM letterhead. Beneath the signature at the end of the letter appears the following legend:

Name: [REDACTED]  
Title: Professor and Chair  
Department of Chemistry  
University of Wisconsin at  
Milwaukee

Prof. Cook's name and title are in a different type font from the words "Name:" and "Title:," and, on the actual letter, they are out of alignment with those words as well. These discrepancies are consistent with the name and title having been added after the fact. Also, the body of the letter includes the assertion that "[l]eading scientists have highly evaluated" the petitioner, followed by several names and discussions of those witnesses' letters. One paragraph in this introductory letter relates to "Professor James M. Cook," and repeatedly refers to Prof. Cook in the third person. Nowhere in this discussion does the author of the introductory letter acknowledge that he, himself, is Prof. Cook. Therefore, based on the evidence described above, the most probable conclusion is that the letter was written by an unidentified third party and attributed after the fact to Prof. Cook, who then signed the letter.

In a second letter with much less ambiguity as to authorship, Prof. Cook states:

The first aspect of [the petitioner's] research was to investigate a method to diastereospecifically synthesize the pure diastereomers of the biologically active metabolites of quinine. Among these quinine 10, 11-epoxide is known to inhibit the multidrug resistant pump which is a potential therapeutic approach for the treatment of cancer patients. His second and principal project was to develop a general approach for the synthesis of . . . [certain] indole alkaloids [which] are used in the treatment of cardiac arrhythmias and some are employed to treat *dysentery*, and *Plasmodium falciparum* malaria. . . . His third project was to develop a very convenient and practical preparation of 3-methyl, 6-methoxyindole, the

key intermediate for the synthesis of substituted natural alkaloids such as tryprostatin A. This alkaloid inhibits cell cycle progression in the G2 phase (antitumor). In addition . . . [t]his entails the search for more selective therapeutic agents to treat different diseases originating in the central nervous system including epilepsy, alcoholism, anxiety disorders and other neuropsychiatric diseases.

Prof. Cook then describes the petitioner's work at length and in technical detail. Prof. Cook concludes that the petitioner's "research has already yielded important discoveries that have and will provide significant impact on our healthcare system now and in the future."

The petitioner submits letters from several other researchers at UWM, some of whom attest to the petitioner's talent and promise in general terms, while others use details similar to those offered by Prof. Cook. A number of witnesses focus on the overall importance of the petitioner's specialty rather than the petitioner's own work within that specialty. Professor Dennis W. Bennett, states that the petitioner "is intellectually very capable and hard working," and that "there [is] a tremendous deficiency of synthetic organic medicinal chemists."

Of the three remaining witnesses, two have worked closely with the petitioner. Dr. Qingwei Yao, a postdoctoral research associate at Columbia University, formerly "worked with [the petitioner] side by side for three years" at Shanxi University. Dr. Yao states that the petitioner "has made important contributions in the syntheses of several biologically active alkaloids." Dr. Puwen Zhang, a research scientist at Wyeth-Ayerst Research, previously worked in Prof. Cook's laboratory at UWM during the petitioner's time there. Dr. Zhang states that the petitioner's "synthesis of a number of natural indole alkaloids, no doubt, put him among the best synthetic scientists who can make the novel chemical entities potentially used as the advanced medicine for human" [sic].

Dr. Shi-Jiang Li, associate professor at the Medical College of Wisconsin, located in Milwaukee, met the petitioner at a conference at the Medical College of Wisconsin. Dr. Li states that the petitioner's "research will not only have a significant impact on the clinical outcome and understanding of pharmacology of these important drugs, but will also open up a new direction for development of new and better drugs for MDR [multi-drug resistant] cancer cells. . . . [The petitioner] is a truly innovative researcher and his work is important to medical science." Dr. Li states that the petitioner "is truly the leader in this field," whereas numerous witnesses at UWM have stated only that the petitioner will likely become a leader at some future point.

The director instructed the petitioner to submit evidence to meet the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner has submitted two new witness letters, job offer letters, copies of the petitioner's scholarly writings, and background materials. Prof. Cook states:

[The petitioner's] research in the design and development of efficient synthetic routes for the preparation of natural Alkaloids and their derivatives as drug candidates is of great significance in producing new RR [resistance reversal] agents with higher efficiency and fewer side effects in cancer treatment. [The petitioner's] research established a more efficient method that will be employed to prepare new RR agents and more anticancer candidates. . . .

[The petitioner's] research provided a new route in the synthesis of ajmaline related indole alkaloid natural products and their derivatives as potential drug candidates in the treatment of cardiac arrhythmia. . . .

[The petitioner] has made significant discoveries which will lead to new synthesis and new therapies.

Prof. Cook devotes considerable passages to what he asserts the petitioner will achieve, and applications that the petitioner's work will have, but there is no indication of the extent to which these findings have been implemented at the practical level. The assertion that the petitioner's techniques will be used in the manufacture of drugs, for instance, is not supported by statements from pharmaceutical companies, indicating that they do, in fact, intend to utilize those methods.

Dr. Amy Hauck Newman, chief of Medicinal Chemistry at the National Institute on Drug Abuse, Intramural Research Program, Psychobiology Section, states that the petitioner "has made a significant contribution in the area of cancer research related to multidrug resistance," as well as to the control of cardiac arrhythmia. Dr. Newman, like many previous witnesses, observes that the petitioner has written a number of published articles. The record is silent as to the citation record of those articles, which would illustrate the extent to which other researchers have relied and built upon the petitioner's findings. The two job offer letters in the record are not strong evidence that the statutory job offer requirement should not apply in this instance.

The director denied the petition, stating that the record does not demonstrate significant acknowledgment of the petitioner's work outside of his circle of mentors and collaborators. The director concluded that the record lacked independent evidence to establish that the petitioner stands apart from his peers to a degree sufficient to warrant the special benefit of a national interest waiver.

On appeal, the petitioner submits a brief from counsel and copies of prior submissions, but no new evidence. Counsel argues that Prof. Cook, "an internationally recognized expert" in his field, has credited the petitioner with "significantly greater contributions than others" and "tremendous accomplishments." Clearly, Prof. Cook and other witnesses hold high opinions of the petitioner's abilities and achievements; this is not in dispute. As Prof. Cook supervised the petitioner's doctoral studies, this does not overcome the director's finding that acknowledgment of the petitioner's work is largely limited to his instructors and collaborators.

Counsel notes that some witnesses are from outside UWM. Obviously we should not dismiss these witness letters offhand, but we also cannot ignore that such letters are from witnesses selected by the petitioner himself, and the petitioner could hardly be expected to submit unfavorable letters. Assertions that the petitioner was the first individual to achieve certain results are not surprising, because most research is arguably geared toward producing new results and useful knowledge. It remains that the record as a whole does not demonstrate that the petitioner's work as of the time of filing has had a significant national impact beyond what could typically be expected of others in the field. Considering the emphasis on the development of drugs, it is significant that there is no mention of any actual drugs, even at the prototype stage, that have arisen from the petitioner's work and represented a substantial improvement beyond drugs that were already available. Evidence from drug companies consisted primarily of job offer letters, which, as stated above, are not powerful evidence to exempt the petitioner from meeting the job offer requirement.

Regarding these job offers, CIS records show that the beneficiary has accepted a job offer from a U.S. employer. Records further show that the employer obtained a labor certification and filed an immigrant visa petition seeking to classify the alien as a member of the professions holding an advanced degree (the same classification sought in this present proceeding). The employer's petition was approved, and the alien has applied to adjust status. That application is currently pending. The alien was, thus, demonstrably able to secure a job offer and a labor certification. Given these developments, it is relevant to inquire as to why it is in the national interest to waive requirements that the petitioner has already met. Even if the petitioner had

presented compelling evidence of eligibility, the resultant approval of the petition would, at best, only have allowed the petitioner to apply for adjustment of status, which he has already done. Approval of a national interest waiver would in no way expedite the processing of an adjustment application, nor would it intrinsically enhance the chances of its approval.

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.