

**PUBLIC COPY**



U.S. Citizenship  
and Immigration  
Services

**B5**

Identifying data deleted to  
prevent disclosure of information  
of personal privacy

[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: **JAN 21 2004**

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

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*  
for 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 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. The petitioner seeks employment as a medicinal chemist. At the time he filed the petition, the petitioner worked as a postdoctoral fellow at Abbott Laboratories. 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] 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 "is considered to be an expert in the organic synthesis and isolation of biologically active natural products. . . . He has done important research on melanin,<sup>1</sup> an important natural product that is biologically active in the brain and is able to prevent insomnia. At Abbott Laboratories, [the petitioner] has made some important advances in the organic synthesis of antibiotic compounds."

Several witness letters accompany the petition. All of the letters are from individuals with close ties to the petitioner as supervisors, collaborators and classmates. Dr. Jacob J. Plattner, vice president of drug discovery at Chiron Corporation, previously supervised the petitioner at Abbott Laboratories. Dr. Plattner states:

While I supervised [the petitioner] at Abbott Laboratories in Illinois, I found him to be an immensely talented scientist in the field of the synthesis of natural products for biological use. In the Anti-Infective Division of Abbott Laboratories, [the petitioner] was able to develop and test novel naturally derived compounds which were biologically active against a variety of life threatening ailments. . . . He has made a number of significant contributions to the research projects and has become a key role [sic] in the projects.

[The petitioner's] talent and extensive experience in organic chemistry impressed everybody when the project team encountered extreme difficulty in synthesizing some of the critical compounds. [The petitioner] took over the work from other chemists and independently developed new approaches which improved the yield of the key chemical reactions. He also studied the relationship between the compounds' modified chemical structures and their biological activities, and provided very important information for the entire group on how to optimize the drug's structure. . . .

[The petitioner's] work will aid in the treatment of bacteria induced disease, as bacteria become more and more resistant to currently used drugs.

---

<sup>1</sup> From other materials in the record, it is clear that counsel means to refer to melatonin, which is a hormone found in the brain, rather than melanin, which is a pigment.

Other witnesses offer similar assessments of the petitioner's work, and assert that the petitioner is an internationally recognized expert in his field. These letters, however, are not first-hand evidence that the petitioner's work has gained significant recognition outside of his circle of supervisors, classmates, and collaborators.

The director instructed the petitioner to submit evidence to establish "influence on [the] field . . . as a whole." In response, the petitioner has submitted three additional letters. Professor Alan R. Katritzky of the University of Florida states that the petitioner "is presently a group leader and Research Associate in my laboratory." Prof. Katritzky describes the petitioner's work at the University of Florida. The petitioner did not begin working there until several months after he filed the petition. His work there cannot retroactively show that he was already eligible for a national interest waiver when he filed the petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Several witnesses assert that the petitioner has written a number of scientific papers in his field. In this context, it is worth noting that Prof. Katritzky claims to have written "some 1600 publications." The petitioner's publication record consists of some 22 papers. The record is devoid of evidence to show the frequency with which other researchers have cited the petitioner's work.

Dr. Zhenkun Ma from Abbott Laboratories credits the petitioner with a "major discovery" that "will have a tremendous impact on the future treatment of resistant bacterial infections." Richard Clark, also from Abbott Laboratories, asserts that the petitioner is "very well known" and "considered a leading expert" in his field.

The director, in denying the petition, observed the lack of objective, third party evidence to show that the petitioner has in fact earned the reputation that his close colleagues believe him to have earned. If no such evidence exists, then it is reasonable to ask how these witnesses know of that reputation.

On appeal, counsel asserts that the petitioner's "letters are from top scientific experts of established reputation whose statements should be considered to be reliable and credible." Counsel adds that the witnesses "are among the most renowned chemists in the world." We note that several of the witnesses are mid-level supervisors, postdoctoral researchers, and similar individuals who are not generally considered top experts in the field.

Counsel asserts that the director must provide "a foundation of objective fact" in order "[t]o prove bias" on the part of the witnesses. The director, however, had not alleged willful bias on the part of the witnesses. In terms of the descriptions of the nature of the petitioner's work, the reliability of the letters is unquestioned. When it comes, however, to the claim that the petitioner is widely recognized as an expert in his field, such a claim must be either substantiated or rejected. No matter what the reputation of the petitioner's supervisor, no uncorroborated statement from that supervisor can establish, first-hand, that one need not be the petitioner's supervisor to have heard of him and seen the impact of his work.

That the petitioner's work is known at Abbott Laboratories, the University of Florida, and among graduates of Lanzhou Institute of Chemical Physics is not evidence of such a reputation. It shows only that the petitioner's former classmates and superiors remember the petitioner and respect his skills, knowledge and accomplishments. As noted above, the record contains no evidence that anyone except the petitioner's own supervisors and collaborators consider him to be a well-known leader in the field. If the petitioner's reputation is limited to those with whom he has personally worked, then it is virtually axiomatic that he is not well known. The petitioner's documented impact in the field is limited to a number of published articles, and there is no indication that the existence of published material by the petitioner distinguishes him in any way from countless other researchers in

the same field. The record is entirely devoid of evidence that, as of the petition's filing date, any researcher who had not worked directly with the petitioner considered the petitioner's work to be of substantially greater significance than that of others in the field.

Counsel states that the petitioner's "work at Abbott Laboratories has resulted in the discovery of a number of drug candidates, a highly unusual and distinguished record for a medicinal chemist." The petitioner has the burden of demonstrating that few chemists employed by drug development companies develop new drugs. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Another round of letters accompanies the appeal. As with the previous letters, these letters are from witnesses with demonstrable ties to the petitioner and the institutions where the petitioner has worked and studied. Additional testimony does not address the director's finding that the record lacks non-testimonial evidence to establish the extent of the petitioner's impact and track record.

We note that, subsequent to the filing of this appeal, a U.S. employer filed an immigrant visa petition on the alien's behalf, seeking a different classification. The petition was approved. The alien then applied for adjustment of status. That application is still pending. The petitioner has, therefore, obtained the benefit that he sought in this proceeding, i.e. an approved immigrant visa petition and the right to apply for adjustment of status.

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.