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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **JAN 22 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.

for *Mari Johnson*
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.

We note that, prior to the filing of the appeal, the petitioner was represented by Atesa Chehrazi of Maggio & Kattar, henceforth “prior counsel.” The term “counsel” in this decision shall apply only to the petitioner’s current attorney of record.

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 an alien of exceptional ability and a member of the professions holding an advanced degree. The petitioner is a chemist. At the time she filed the petition, the petitioner worked as a postdoctoral fellow at Pacific Northwest National Laboratory (PNNL). 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. Prior counsel has asserted that the petitioner also qualifies for classification as an alien of exceptional ability, but because the petitioner readily qualifies as a member of the professions holding an advanced degree, an additional finding of exceptional ability would have no effect on the outcome of the petition. 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 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.

Prior counsel, in an introductory letter accompanying the initial filing, states that the petitioner "is considered by experts in the field of biomedical research in chemistry to be a young leader at the forefront of the field. . . . [The petitioner's] academic, publication, presentation and employment record, together with her original research contributions of major significance, underscore her ability to serve the national interest to a substantially greater extent than her American colleagues."

Several witness letters accompany the petition. Dr. Richard D. Smith, chief scientist and group leader in Macromolecular Structure and Dynamics at PNNL, states:

At PNNL, [the petitioner] will serve in a critical capacity in continuing her focus on biomedical research on the analysis of protein biomolecules in small environmental samples to isolate and identify proteins that are pathogens, or sources of disease. By identifying new pathogens, [the petitioner] is achieving the essential first step in fighting disease as pathogens must be identified before a disease can be fought.

The identification is a painstaking task requiring the high level of analytical ability and extensive skills in biomedical separation that [the petitioner] possesses. . . . [The petitioner's] highly technical skills facilitate the identification of pathogens such as viruses. . . .

[The petitioner] has already distinguished herself as an outstanding chemist through her excellent research performance and the significant results that her research has yielded.

Dr. Smith attests to "the importance to us of having [the petitioner] continue to serve as a vital member of our team of researchers at PNNL. The loss of [the petitioner] would be a considerable setback in our research

efforts.” The record shows that the petitioner’s postdoctoral fellowship at PNNL, sponsored by the Association of Western Universities (AWU), was “for one year with renewal possible for an additional two years.” CIS records indicate that the petitioner has since accepted a job offer in Connecticut, and no longer works at PNNL (which is in the state of Washington). Thus, any arguments to the effect that the petitioner must remain at PNNL have been superseded and nullified by the petitioner’s departure from that laboratory, under circumstances apparently unrelated to her immigration status. We must judge the significance of the petitioner’s work, rather than the now-inapplicable argument that PNNL requires her presence.

Dr. Neal D. Byington, national petroleum chemist for the United States Customs Service, states that the petitioner’s work “involves the development of analytical methodology for the separation and characterization of extremely small amounts of chemicals a very low concentrations from a surrounding mass of material of incredible complexity.” Dr. Byington asserts that this skill is relevant to a number of areas touched by the field of chemistry. Professor William R. Heineman of the University of Cincinnati (UC), where the petitioner earned her doctorate, states that the petitioner “led original research projects and made significant findings which were published in prestigious, internationally-circulated scientific journals” during her studies at UC. Prof. Heineman states that the petitioner’s work at UC “is extremely meaningful to the U.S. pharmaceutical industry and health care system” and “hold[s] wide potential for agricultural and biomedical applications.”

Other witnesses in various industries offer similar endorsements of the petitioner’s skills and contributions, supporting the assertion that the petitioner’s past work has valuable applications across a variety of specialties from the petroleum industry to bioterrorism detection.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner’s work, but finding that the petitioner has not explained why it would serve the national interest to waive the job offer requirement which, by law, attaches to the classification that the petitioner has chosen to seek. The director concluded that the petitioner has not established that she “is the primary motivator” in her work at PNNL.

On appeal, the petitioner submits a brief from counsel, copies of previously submitted documents, and three new letters. For reasons not entirely clear, the appeal includes several copies of each new letter and several of the previously submitted letters.

In a new letter, Dr. Smith at PNNL states:

[The petitioner] has conducted significant original research . . . [and] has also innovated new techniques and methodologies that further distinguish her work as being in the national interest. . . .

[The petitioner] has described her original methodology for detecting minute amounts of biomolecules in large samples of material. . . . [The petitioner] has also . . . shown that the use of a microdevice, such as silica capillary, can be used to analyze a very small amount of sample with high sensitivity in a complicated sample. Employing the methods she has developed, she can make the relevant detection and identification of samples within one hour of observation, compared to conventional methods, which require going through many procedures for sample extraction and take at least one to two days to achieve a result.

Dr. Smith also observes that the petitioner was the lead author of several published articles, which indicates her central role in the research reported in those articles.

The second new letter is from Dr. Jean H. Futrell, director of the W.R. Wiley Environmental Molecular Sciences Laboratory at PNNL. Dr. Futrell states “[i]t is unquestionable that [the petitioner] . . . greatly exceeds the achievements and contributions of others within her field.” Dr. Futrell then discusses the same projects already described by Dr. Smith. Dale L. Doering, program manager for AWU, describes the same research projects, and discusses the reputation of PNNL and the exclusive nature of AWU’s postdoctoral program there. The witnesses offer lucid and persuasive descriptions of the petitioner’s work and its significance.

Counsel’s brief begins with a “Summary of Facts,” which includes the assertion that the petitioner “distinguished herself not only from highly competent chemists, but also from exceptional chemists.” This is not a “fact” but rather a claim very much in dispute in this proceeding. Notwithstanding this and other instances in which points of contention are mislabeled as “facts,” counsel argues that the petitioner has met her burden of proof by establishing through credible testimony that she has played an essential role in ongoing research. While several of the witnesses have demonstrable ties to the petitioner, the record also offers independent support for the petition, and the record as a whole supports the contention that the petitioner has, through important findings and innovations, set herself apart from other research chemists to a degree sufficient to warrant a national interest waiver.

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 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.