

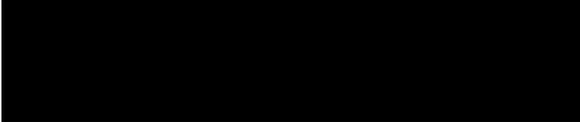


U.S. Citizenship  
and Immigration  
Services

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**JAN 29 2004**

FILE: EAC 00 209 53797 Office: VERMONT SERVICE CENTER Date:

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:



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, Vermont 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. At the time of filing, the petitioner was a doctoral student, studying organic chemistry at the University of Pennsylvania. 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.

Counsel describes the petitioner's work:

[The petitioner] is highly recognized worldwide as a leading expert in the area of natural product chemistry research. . . .

As a Ph.D. Candidate he joined the laboratory of Dr. Madeline Joullie<sup>1</sup>, the most prestigious group in the U.S. to conduct pioneering research into the mechanism(s) of didemmins in cancer treatment. Research of the mechanism(s) of actions of potentially biologically active compounds in the cell environments is a crucial approach to targeting effective anticancer drug candidates. . . . [The petitioner] was instrumental in the research of and completed the first total synthesis of Tamandarin A. His pivotal research greatly improved the synthetic efficiency. . . . [The petitioner's] compounds show substantial potency to various cancer cell lines and are under further biological evaluation. This research is at the forefront of anticancer drug development and could substantially redefine pharmaceutical lead compounds in the anticancer drug industry and research. . . .

[The petitioner] has also developed a novel method for the synthesis of optically pure natural and unnatural  $\alpha$ -amino acids. . . . [The petitioner's] research provides crucial information on the mechanism of action of natural products. . . .

[The petitioner] is currently engaged in the synthesis of a new biologically active complex compound, callipeltin A, a cyclic depsipeptide from a shallow water sponge, which has been found to protect cells infected with Human Immunodeficiency Virus (HIV). He has already designed a route to this molecule and begun synthesis of the unnatural amino acids needed for molecule completion. Successful accomplishment of this project will have a crucial impact on the battle against HIV.

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<sup>1</sup> The actual spelling of the professor's name is Madeleine Joullié. Counsel states that Prof. Joullié is "a member of the National Academy of Sciences," but provides no evidence to support this claim. Prof. Joullié herself, in her letter on the petitioner's behalf, makes no such claim. She identifies herself as a member of the *New York Academy of Sciences*, a much larger organization with no significant restrictions on membership. This observation is not intended to disparage Prof. Joullié (whose credentials include impressive achievements), but simply to note that counsel's unsupported claim appears to be inaccurate.

The petitioner submits letters from witnesses whom counsel calls “internationally known authorities in [the petitioner’s] field of endeavor.” Many of the witnesses are on the faculty of the University of Pennsylvania, such as Professor Madeleine M. Joullié, who states:

[The petitioner’s] research has contributed significantly to the development of chemical technology in the U.S. . . . His work is discussed in internationally recognized chemistry journals. . . .

In comparison with other researchers in the same field, [the petitioner] is clearly in the leading position in his field of endeavor. [The petitioner] has accomplished the first total synthesis of this product even before the isolation paper was published in February 2000. His synthesis has demonstrated great efficiency in 15 steps and high-yielding, comparing to the around 40 steps total synthesis of didemnin B. This achievement is definitely significant news to the entire didemnin research field [not only] in this country but around the world.”

Dr. H.E. Michael Su, vice president of marketing at Synergetica, Inc., who states that he has collaborated with the petitioner, states “I am impressed by [the petitioner’s] ability to execute the research program with great elegance to shorten a lengthy synthesis to a practical and concise one. . . . I have no doubt that [the petitioner] will be a hot candidate for [the] pharmaceutical industry.”

The majority of the petitioner’s witnesses are located in Philadelphia, where the petitioner was studying at the time of filing. Other witnesses worked with the petitioner in other settings, such as Peking University or through various collaborations. The evidence submitted by the petitioner does not show that the petitioner’s work has attracted significant notice outside of this group of mentors and collaborators.

The director instructed the petitioner to submit further evidence to satisfy the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner has submitted an additional letter and further documentation. Counsel states that this letter is from a “highly independent” witness, although this witness, Professor Alan G. MacDiarmid, works in the Chemistry Department at the University of Pennsylvania where the petitioner had been studying. Counsel observes that Prof. MacDiarmid won the Nobel Prize in Chemistry in 2000, thus establishing his expertise in chemistry. Expertise and independence, however, are not interchangeable traits. Indeed, the petitioner’s spouse had been a member of Prof. MacDiarmid’s own research group, and Prof. MacDiarmid himself indicates that this relationship made him “more familiar with [the petitioner’s] brilliant chemical research . . . than I might otherwise have been.” Prof. MacDiarmid also specifically indicates that he is “familiar with [the petitioner’s] . . . personality,” which directly contradicts counsel’s claim that he has “no personal relations with” the petitioner.

More importantly, while Prof. MacDiarmid, as a Nobel laureate, is indisputably a top expert in chemistry, he says nothing about the petitioner’s work except to apply the adjective “brilliant” as quoted above. Beyond that, he merely expresses the opinion that the United States should “encourage creative, hard-working young scientists such as [the petitioner] to remain in the USA. . . . The lack of highly trained scientists such as [the petitioner] in the USA is getting close to disaster proportions.” As the AAO ruled in *Matter of New York State Dept. of Transportation, supra*, a shortage of workers is generally a ground for obtaining, rather than waiving, a labor certification, because the labor certification process exists specifically to identify and address worker shortages.

Counsel identifies other witnesses as “independent,” including Prof. Joullié, who has directly supervised the petitioner’s work for several years.

The director denied the petition, stating that the petitioner had not demonstrated that his “work is significantly more accepted or widely recognized” than that of many other researchers in the same specialty. The director also noted the very general nature of Prof. MacDiarmid’s letter.

On appeal, counsel submits copies of all previous submissions, and argued that the director “misapplied the test” from *Matter of New York State Dept. of Transportation*. Counsel argues that the materials in the record “clearly and convincingly demonstrate that the applicant has established and [sic] outstanding achievements in the alien’s field of endeavor and . . . it is reasonable to expect substantial and significant prospective contributions to the national interest.” Counsel does not elaborate. The director had already demonstrated that the reaction to the petitioner’s work was largely isolated within the petitioner’s group of professors and collaborators.

Counsel asserts that labor certification is inapplicable because “there is no permanent position existing in the current petition.” A permanent job offer was impossible at the time of filing largely because the petitioner was still a student at that time, and permanent employment would be possible only after the petitioner completed his professional training. There is nothing inherent to the profession of chemistry that rules out permanent employment of fully-trained workers; indeed, one of the petitioner’s witnesses indicated that he had been at the University of Pennsylvania for 45 years.

We note that CIS records show that, after this petition was denied, a U.S. employer filed a new petition on the alien’s behalf, seeking a different classification that requires a permanent job offer. This petition was approved, and the alien’s application to adjust status is currently pending. The fact that the petitioner would have preferred to become a permanent resident before he was eligible for permanent employment is not a strong argument for a national interest waiver. Furthermore, the approval of a petition with a permanent job offer raises the question of why it is now necessary to waive a requirement that the petitioner has already met, and thereby provide to the petitioner a benefit he has already received (an approved petition) and a right he has already exercised (to file an adjustment application).

We further note that the substantive witness letters were written in 2000. In an effort to determine the progress of research in the intervening years, on January 2, 2004, the AAO searched for the term “callipeltin A” using <http://www.google.com>. This search located “about 15” web pages containing this term, “about 5” of which also mentioned either HIV or AIDS. Given the massive, global research effort underway to defeat HIV and thereby end the AIDS epidemic that has killed millions of people worldwide, it is difficult to conclude that time has borne out the witnesses’ optimistic assertions regarding callipeltin A. Similarly, while the record contains discussion of the anticancer action of didemnin B, the University of San Diego has reported “didemnin B . . . shows almost zero selectivity in the NCI’s 60 cancer cell line bioassay. Thus . . . this molecule has been concluded as of no future interest for the treatment of cancer.”<sup>2</sup>

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

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<sup>2</sup> <http://invent.uscd.edu/technology/cases/1999/SD1999-086.htm>.

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.