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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
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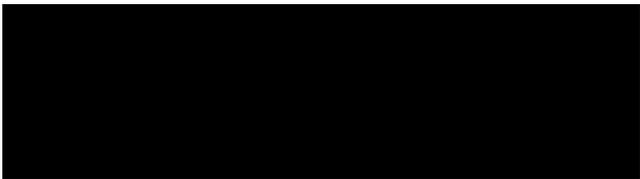


FILE: EAC 99 186 51374 Office: VERMONT SERVICE CENTER Date: **MAR 15 2004**

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 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.

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 working as a research fellow in the Molecular Pathology Unit at Harvard Medical School. 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) Subject to clause (ii), 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 petitioner was awarded a Ph.D. in Biochemistry and Molecular Biology from the University of Miami in May 1999. The director found 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 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 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.

Eligibility for the waiver must rest with the alien’s own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner’s contributions in the field are of such unusual significance that he merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at note 6.

The petition in this case was filed on June 2, 1999. Along with a few conference abstracts and a published paper, the petitioner initially submitted five witness letters dated July, August, and October of 1998. These letters discuss the petitioner’s graduate research at the University of Miami, but there is no evidence addressing the petitioner’s work in the Molecular Pathology Unit at Harvard Medical School.

Dr. J. Frederick Woessner, Jr., Professor of Biochemistry, University of Miami, served as the petitioner’s Ph.D. mentor. Dr. Woessner states:

[The petitioner] is investigating an aspect of matrix metalloproteases (MMPs) which has been largely ignored by other researchers in the field. There is tremendous interest in MMPs because of their role in disease processes. In order for a cancer cell to spread into surrounding tissue, it must first break down the surrounding matrix with MMPs. In order for a cancer cell to then spread to a different part of the body (metastasis), it must use MMPs to penetrate the blood vessels and the host tissue. MMPs are responsible for the breakdown of cartilage in arthritis, exposing the underlying bone. Other diseases in which MMPs are directly implicated include plaque formation in atherosclerosis, liver cirrhosis, corneal damage, and ulcers. The advancement of our knowledge of MMPs and how they work is a giant step towards controlling these diseases.

A great deal of attention is being paid to MMPs because of this great potential benefit to human health that will come from understanding them. Most of the work in the field centers on such factors as hormones, growth factors, carcinogenic factors, heredity, smoking, etc. [The petitioner] has brought to the research a

different approach. He has noticed that when MMPs are released by the cell, they do not immediately diffuse and vanish. On the contrary, they appear to bind to nearby molecules on the cell surface or in the matrix immediately around the cell. Virtually nothing is known about where and why the MMPs are sticking. [The petitioner] is probably the only researcher in the United States presently studying the identification of these attachment or “docking” molecules.

Dr. Woessner’s statements about the overall importance of the petitioner’s MMP research may establish the intrinsic merit and national scope of his work, but such general arguments cannot suffice to show that an individual worker in that field qualifies for a waiver of the job offer requirement. Pursuant to *Matter of New York State Dept. of Transportation, supra*, the petitioner must show that his past individual accomplishments are of such an unusual significance that he merits a waiver of the labor certification process. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule. Beyond establishing his eligibility for the underlying visa classification, the petitioner must also demonstrate that his work has already had a significant impact on the biochemistry field as a whole.

Dr. Woessner further states:

[The petitioner] has postulated that the MMPs bind by having a large number of positively charged groups which interact with the negative charges on the sulfate groups.... His findings suggest that by binding to the cell surface, the enzyme can be positioned by invasive cancer cells to permit the cell to move in the desired direction through the surrounding tissues. This means that the cell can continue to govern the behavior of the enzyme even after it is released from the cell. If this control could be broken, through the use of drugs that could...dislodge the enzyme, the enzymes would diffuse from the tissue and be harmlessly disposed of by the liver.

This line of research is in its early stages, but it is clearly promising. The next step will be to learn how the cell can determine the amount and status (latent or active) of the MMPs.

We note Dr. Woessner’s statement that the petitioner’s research “is its early stages, but it is clearly promising.” As was observed in *Matter of New York State Dept. of Transportation, supra*, statements regarding the petitioner’s potential to make future contributions are not sufficient to demonstrate his eligibility for a national interest waiver. Instead, the petitioner must submit evidence to demonstrate that his work has already significantly influenced his field to a substantially greater degree than that of other qualified researchers in his field. While heavy citation of the petitioner’s published research findings would carry considerable weight, the petitioner has not presented such citations here.

Also provided was a letter of support from Dr. Taro Hayakawa, Professor and Head, Department of Biochemistry, School of Dentistry, Aichi-Gakuin University, Japan. Dr. Hayakawa’s letter is virtually identical in content to the letter from Dr. Woessner. For example, their letters contain six identical paragraphs. It is highly improbable that Dr. Hayakawa independently formulated the exact same wording as Dr. Woessner. While it is acknowledged that Dr. Hayakawa has lent his support to this petition, it is apparent that he did not independently choose the wording of his letter.

Dr. Ernest Lee, Professor and Chairman, Department of Biochemistry and Molecular Biology, New York Medical College, states he has been familiar with the petitioner's research "as a member of his thesis committee at the University of Miami." Dr. Lee states:

[The petitioner's] research is directed toward the study of matrix metalloproteinases (MMPs) and their role in cancer metastasis.... This research clearly has great potential health benefits. [The petitioner] is on the cutting edge of this area, and in the course of studying these proteins, he has made an important discovery that when these MMPs are released by cancer cells they have the ability to bind to normal cells or to the adjacent matrix. Thus, his work has opened up a new concept that can be pursued – the identification of the molecular basis for this binding. The knowledge of how the MMPs attach clearly would open up avenues for therapeutic approaches that are directed toward disturbing this action.

The fact that the petitioner was among the first to make a particular discovery carries little weight. Of far greater relevance in this proceeding is the importance to the overall field of the petitioner's discovery. In this case, the petitioner has not provided sufficient evidence that his findings have consistently attracted significant attention from independent biomedical researchers. The petitioner must show not only that his discoveries are important to his immediate colleagues and Ph.D. mentors, but throughout the greater research community.

In the same manner as Dr. Woessner, Dr. Lee concludes his letter by stating that "[t]he work [the petitioner] and his associates is doing lies in an important area of research whose continued pursuit...will contribute to the national interest." As stated previously, the overall importance of a particular research project or area of research is not sufficient to demonstrate eligibility for a national interest waiver. CIS (Citizenship and Immigration Services) does not dispute that advancing MMP research may result in future health benefits to our nation. The issue to be determined here, however, is whether the petitioner's prior research findings have already significantly influenced the biochemistry field.

Dr. Ming-Lon Young, Professor of Pediatrics, University of Miami, states:

[The petitioner] is truly an excellent scholar in his research field.... [The petitioner's] works have been recognized throughout the United States by abstract presentation in scholarly programs, journals and symposiums. He has co-authored [an] article which has been published in the leading medical review on the subject. He authored another one that [was] sent to the most prestigious cell biology journal. His recent important findings will be included in 3 articles that [the petitioner]...first-authored, and they will be sent to medical journals in the coming months.

Publication, by itself, is not a strong indication of impact, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the petitioner's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work. Their citation of the petitioner's work demonstrates their familiarity with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community,

then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and national benefit — a researcher's work would have, if that research does not influence the direction of future research. In this case, the petitioner has offered no evidence demonstrating heavy independent citation of his published articles and abstracts.

Dr. Ming-Lon Young states that the petitioner's approach to understanding MMPs "may lead to a breakthrough of several life-threatening and high-cost diseases." In the same manner as Dr. Young, many of the petitioner's witnesses discuss what may, might, or could one day result from the petitioner's work, rather than how the petitioner's past efforts have already had a discernable impact beyond the original contributions normally expected of a capable doctoral student.

Dr. David Howell, Professor of Medicine, Emeritus, Department of Medicine, University of Miami School of Medicine, and Medical Research Investigator, Veterans Administration Medical Center, attests to the petitioner's "proficiency as a biochemist and molecular biologist" and "top level" theoretical and laboratory research skills. Objective qualifications, such as research skills and one's educational background, are amenable to the labor certification process. Pursuant to *Matter of New York State Dept. of Transportation, supra*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education that could be articulated on an application for a labor certification.

The director requested further evidence that the petitioner had met the guidelines published in *Matter of New York State Department of Transportation*. In response, the petitioner submitted additional witness letters and evidence of three scientific articles that were published subsequent to the petition's filing date. See *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (legacy INS) held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date.

Dr. Vincent Hascall, Director, Connective Tissue Section, Department of Biomedical Engineering, Cleveland Clinic Foundation, states that he served as an "external referee for [the petitioner's] Ph.D. thesis work." He further states:

Dr. Woessner is recognized worldwide for his contributions to understanding a new class of enzymes that degrade proteins in connective tissue matrices, the metalloproteinases. [The petitioner] made the highly original observation that these enzymes are present in such matrices bound to high negatively charged polymers of sugar chains. He then identified the polymers as members of the heparan sulfate family (closely related to heparin).

Dr. Roy Black, Senior Investigator, Immunex Corporation, states:

I met [the petitioner] during a poster presentation of his work at the 1999 annual meeting of the American Society for Biochemistry and Molecular Biology in San Francisco. The work involved the binding of an enzyme call matrilysin to heparan sulfate proteoglycans.... [T]he work has since been accepted for publication in the prestigious *Journal of Biochemistry*. The findings presented have helped my lab understand how matrilysin could be involved in the release of an important mediator of inflammation, tumor necrosis factor. More generally, understanding how such enzymes are localized should help us to design inhibitors of potential therapeutic utility.

Dr. Constance Brinckerhoff, Professor of Medicine and Biochemistry, Dartmouth Medical School, states that she is “well-acquainted” with the petitioner’s Ph.D. mentor, Dr. Woessner. Dr. Brinckerhoff further states: “The fact that [the petitioner’s] work has been published by...high quality journals is testimony to its acceptance.” The record, however, contains no evidence that the publication of one’s work is unusual in the biochemistry field, nor does the record sufficiently demonstrate that independent researchers have heavily cited or relied upon the petitioner’s findings in their research. Dr. Brinckerhoff concludes her letter stating: “[The petitioner’s] work has begun to explore new and novel functions for MMPs. This is an important step in our understanding of how these enzymes affect the extracellular matrix.”

Dr. Richard Stevens, Associate Professor, Department of Medicine, Harvard Medical School, states that the petitioner is helping his laboratory “determine whether or not...transgenic mice...have problems producing certain enzymatically active metalloproteinases.” Dr. Stevens does not specifically credit the petitioner with any significant research findings related to this project. Dr. Stevens concludes his letter by stating that the petitioner’s expertise “will be extremely important to the success of this research,” therefore it is “absolutely critical that [the petitioner] be allowed to remain in the United States.” Here, we refer to Dr. Hascall’s comment that the petitioner “accepted a postdoctoral position...at the Harvard School of Medicine.” Dr. Hascall further noted that the petitioner’s appointment into this program reflects high regard for his research abilities and that the petitioner “has outstanding potential for developing a productive and independent research career.”

Nothing in the legislative history suggests that the national interest waiver was conceived as a means to facilitate the ongoing training of alien researchers. If Harvard Medical School intends to offer the petitioner a permanent position, then labor certification would be a viable option. If, on the other hand, the university has no such intention, then it is far from clear why the petitioner would need to be a permanent resident to continue working in a temporary position, for which the petitioner already holds a nonimmigrant visa. This issue is not a trivial one; it makes little sense to argue that the petitioner must be allowed to remain permanently in the United States for the sake of pursuing another year or two of temporary research. The temporary nature of the petitioner’s postdoctoral employment does not prevent the approval of a waiver, but neither is it a strong factor in favor of such approval.

We note here that the above witnesses consist almost entirely of individuals with direct ties to the petitioner or Dr. Woessner. Beyond demonstrating that the petitioner has contributed to research projects at the University of Miami and Harvard Medical School, there is no evidence, such as heavy independent citation, to show that the greater biomedical research community views the petitioner’s research findings as unusually significant.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director acknowledged the intrinsic merit and national scope of the petitioner’s work, but found that the petitioner’s own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek.

On appeal, the petitioner submits further evidence of his published work and a letter from Dr. Henning Birkedal-Hansen, Scientific Director, National Institute of Dental and Craniofacial Research, National Institutes of Health. Dr. Birkedal-Hansen states:

[The petitioner's] recent accomplishments are highly significant to the advancement of this research as exemplified by two recent articles in the *Journal of Biological Chemistry*, the leading international research journal in the field of chemistry. These two articles provide a long sought resolution to one of the most perplexing problems that has faced the field over many years, namely how do matrix metalloproteinases (MMPs) and their inhibitors (TIMPs) that are secreted by cells remain localized in the tissue so that they can perform their functions at discrete and distinct sites.... [The petitioner's] work shows that binding to cell surface heparin is a very promising candidate for immobilization of both MMPs and their inhibitors (TIMP-3).

The two articles described by Dr. Birkedal-Hansen were published subsequent to the petitioner's filing date. *See Matter of Katigbak, supra*. Furthermore, as we have previously stated, when judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. Frequent citation by independent researchers would demonstrate more widespread interest in, and reliance on, the petitioner's work. The petitioner, in his capacity as a Ph.D. student and postdoctoral researcher, has clearly authored some published articles and abstracts during his advanced scientific training, but the weight of this evidence is diminished by the lack of a citation history showing that these articles have influenced his field.

Several months after filing the appeal, the petitioner has since submitted further documents in March 2001 and May 2001. There is, however, no regulation that allows the petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed. The regulation at 8 C.F.R. § 103.3(a)(2)(vii) states "[t]he affected party may make a written request to the AAU for additional time to submit a brief. The AAU may, for good cause shown, allow the affected party additional time to submit one." Counsel for the petitioner indicated only that further information would be forthcoming within thirty days; he had not requested (let alone been granted) additional time to submit the later submissions, nor had he shown good cause to warrant repeated extensions. The regulations do not state or imply that the petitioner may freely supplement the record up until the date of appellate adjudication. In this matter, we have considered only those submissions that were received within the thirty-day period requested by the petitioner. The petitioner's subsequent submissions from March and May of 2001, apart from being untimely, deal with the petitioner's activities subsequent to the filing of the petition. *See Matter of Katigbak, supra*. Subsequent developments in the alien's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date.

For the reasons set forth above, the petitioner has not established that his past accomplishments set him significantly above his peers such that a national interest waiver would be warranted. While the petitioner has plainly earned the respect and admiration of his witnesses, it appears premature to conclude that the petitioner's work has had and will continue to have a nationally significant impact. In this case, the petitioner's findings do not appear to have yet had a measurable influence in the larger field. While numerous witnesses discuss the potential applications of these findings, there is no indication that these applications have yet been realized. The petitioner's work has added to the overall body of knowledge in his field, but this is the goal of all such research; the assertion that the petitioner's findings may eventually have practical applications does not persuasively distinguish the petitioner from other competent researchers.

In sum, the available evidence does not establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner.

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 the 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 project or area of research, 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.

ORDER: The appeal is dismissed.