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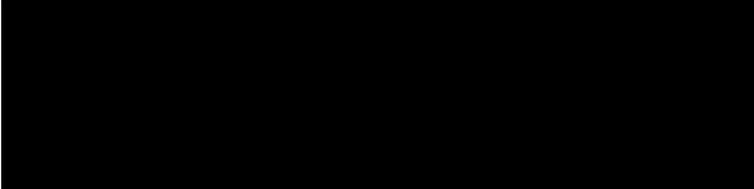


U.S. Citizenship
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FILE: WAC 03 024 54099 Office: CALIFORNIA SERVICE CENTER Date:

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

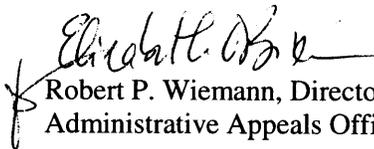
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

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 postdoctoral researcher at the University of California, Berkeley (UCB). 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. 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] 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.

Since 1996, the petitioner has worked with Professor [REDACTED] first at Johns Hopkins University and then at UCB. Prof. [REDACTED] describes the petitioner's work:

[The petitioner] has led several projects in my lab which involve attempts to understand the genetics behind how the immune system generates receptors which recognize foreign substances. He has pioneered the use in my lab of powerful but technically demanding "gene-targeting" methods which allow one to generate specific mutations and other genetic alterations in mice. [The petitioner's] research is aimed at understanding the regulation of a process known as V(D)J recombination. . . . Defects in this process lead to leukemia or immunodeficiency diseases. . . . This research involved the generation of the first function mutant in the RAG2 locus in vivo and is likely to serve as a paradigm for future studies of this type. A second project of [the petitioner's] has led to the discovery of a surprising direct relationship between the genes which encode the heavy and light chains of the antibody molecule in which a mutation in one gene effects the regulation of the other gene on a separate chromosome. His third project, nearing completion, is aimed at understanding how antibody genes are "turned on" during lymphocyte development.

UCB Professor [REDACTED] states:

[The petitioner] is an absolutely first-rate scientist and is likely to make many contributions to biomedical research. . . .

I have been very impressed by the way in which [the petitioner] has used gene targeting methods in order to understand regulation of a fundamental process in immunology, V(D)J recombination. . . . Perhaps the most impressive aspect of [the petitioner's] work is the regeneration of a mutant in the RAG2 locus in order to enter its application to the unrecognized mode of regulation of the process. He has also recently made considerable advances in understanding how the process of V(D)J recombination is "turned on" during the development of B cells.

Other UCB faculty members offer similar praise for the petitioner's work. The initial submission offers no indication of how the petitioner's work has been received outside of UCB, and several UCB witnesses couch their praise in terms of what the petitioner is likely to accomplish in the future, rather than the effect that the petitioner has already had on his field.

The director requested additional evidence to meet the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner has submitted copies of his published articles, technical details about his recent work, and two additional letters. The articles show that the petitioner has been a productive researcher, but the record does not show that the articles stand out from others in the field (for example, through heavy independent citation).

One of the new letters is from Prof. [REDACTED] who essentially describes UCB's job offer to the petitioner and states that the petitioner "is highly qualified for this work. . . . His previous experience and background has [sic] proven to be valuable assets to the need of our present research projects." The other letter is from Professor [REDACTED] of Johns Hopkins University School of Medicine. Like the prior witnesses at UCB, Prof. [REDACTED] has direct ties to the petitioner, having personally recruited the petitioner into the graduate program at Johns Hopkins. Prof. [REDACTED] states:

[The petitioner] made a major discovery concerning the function of the most important enzyme in the immune system. This enzyme, called RAG, is involved in gene rearrangements that produce the receptors that allow cells of the immune system to recognize foreign bacteria and viruses. [The petitioner] showed that a particular region of this enzyme was critical for linking up these receptor genes correctly. This work was published in *Immunity*, the premier journal in the field of immunology, and received international attention.

The petitioner's response to the director's notice contains no direct evidence that the petitioner's work has received substantial attention outside of the universities where the petitioner has worked or studied. The director denied the petition, stating that attestations of the petitioner's "superior ability" cannot suffice to establish that the petitioner qualifies for the special benefit of the national interest waiver.

On appeal, the petitioner submits additional letters from two witnesses, along with supplemental evidence showing that five of his articles have been cited an aggregate total of 58 times, with one article from 1997 showing a particularly high 33 citations. The director, in the request for evidence, did not specifically request citation evidence, and therefore the petitioner's failure to submit such evidence at that time does not represent negligence on the petitioner's part. This citation record is objective evidence of the petitioner's impact on the field.

The latest letter from Prof. [REDACTED] focuses mainly on the impressive citation rate of the petitioner's published work, and assertions to the effect that these articles are so widely cited because of their importance within the field. The other letter is from Professor [REDACTED] of Yale University School of Medicine. Prof. [REDACTED] states that he has "come to know [the petitioner] from his groundbreaking work," and that the petitioner "has . . . contributed important insights" regarding the cellular processes described in earlier letters. Prof. [REDACTED] asserts "[t]his work is of fundamental importance." Prof. [REDACTED] letter represents the first evaluation of the petitioner's work from outside facilities where the petitioner himself has worked, and the citation information discussed above lends support to Prof. [REDACTED] claims regarding the importance and impact of the petitioner's work.

Upon consideration, the petitioner's submission on appeal appears to be sufficient to address the director's concerns regarding the limited scope of the petitioner's impact. Therefore, this evidence warrants the reversal of the director's decision and approval of the petition.

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 that the scientific community recognizes 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.