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FILE:

Office: NEBRASKA SERVICE CENTER

Date: **MAY 25 2004**

IN RE:

Petitioner:

Beneficiary:

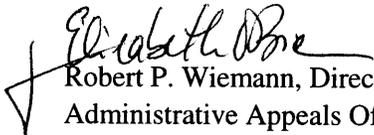
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

RADOVAN STIPANOVIC
15 EASTBURY COURT
ANN ARBOR, MI 48105

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, Nebraska 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. At the time of filing, the petitioner was working as a research associate in the Department of Internal Medicine at Wayne State University. 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 holds a Ph.D. in Molecular Biology from Simon Fraser University in Canada. 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.

Along with documentation pertaining to his field of research, the petitioner submitted several witness letters.

Si-Yi Chen, Associate Professor of Genetics, Department of Molecular and Human Genetics, Baylor College of Medicine, states:

From 1994 to 1998, [the petitioner] was awarded a Visiting Research Fellowship in Molecular Biology at Bradford, England. Applying his unique skills in Molecular Biology, [the petitioner] made a remarkable discovery which could permit skin pigmentation to be changed naturally, bringing relief to thousands of sufferers of a disfiguring skin disease. The research has led to the development of a product that can successfully repigment patients with the previously incurable skin disease.

* * *

Because the effects of asthma and chronic obstructive pulmonary disease are so daunting and widespread, [the petitioner] started working as a Research Associate in Molecular Immunology at the

Respiratory Science Center, College of Medicine of the University of Arizona, Tucson, Arizona (1999-2000). He was involved in extensive research of asthma and chronic obstructive pulmonary disease directed to understanding how the development of these diseases relates to the dysregulation of critical relevant genes.

[The petitioner] used his unique skills in cDNA cloning, PCR-DNA sequencing and production of antibodies to focus on the exploring of the complex molecular mechanisms involved in gene regulation in the immune system and their impact on allergy and asthma. [The petitioner's] research efforts resulted in a significant contribution to understanding how the nature of the allergen and the genetic background of an individual influence the antibody response. It may lead to a new approach to treating and preventing asthma by regulating immune responses to allergens.

From 2000 to 2002, [the petitioner] held a position of a Senior Research Associate in Molecular Biology in the Department of Anesthesiology at the University of Michigan, Ann Arbor, Michigan. In the course of his work with the University of Michigan, [the petitioner] was engaged in extensive research of stem cells.

* * *

[The petitioner] has fostered excellence in molecular biology, molecular medicine, and molecular genetics towards understanding the diagnosis, treatment, and prevention of human diseases. The focal point of his research was the role of physiologic gases in regulating regeneration responses from a variety of stem cell systems. His study is focused on adult stem cells from mouse muscle tissue. Particularly, [the petitioner] studied the role that oxygen plays in the control of proliferation and differentiation of stem cells.

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[The petitioner's] research has shown that incorporating the gaseous context into stem cell cultivation has several important consequences. According to his study, too much oxygen can kill stem cells, slow growth and even trigger an alternate developmental pathway that converts pre-muscle stem cells into fat cells. That gene expression patterns change significantly when stem cells are exposed to varying amounts of oxygen, and these changes alter the basic biologic function of stem cells. In addition to its scientific importance, the study could have important clinical implications for treatment of obesity and diabetes.

Recently, [the petitioner] joined Dr. Whittum-Hudson's research team in the Department of Internal Medicine at Wayne State University. His research interests are in several immunopathogenesis of infectious diseases and anti-chlamydial vaccine development. The research envisions the vaccine conferring protection against multiple sclerosis and other chronic diseases using molecular and genetic aspects of pathogenicity in bacteria; gene cloning by recombinant DNA techniques. It also includes developing a vaccine against the closely related *C. trachomatis* which is the leading cause worldwide of sexually transmitted diseases. In developing countries, it is the leading cause of preventable infectious

blindness. This research may provide tools to study the initiating events in the pathogenesis of reactive arthritis, blinding ocular infections, coronary artery disease, central nervous system disease, etc.

Zhi Wang, Director and Associate Professor, Department of Otolaryngology, Boston University School of Medicine, states:

[The petitioner] earned his B.Sc. and M.Sc. degrees from Peking (Beijing) University and was appointed as an Assistant Professor at Tsinghua University, in Beijing City of China. Both universities were ranked among in the best 10 of the nation's universities in the People's Republic of China. [The petitioner] was a leading authority in the area of Molecular Biology and Molecular Genetics in China. In 1984, he was promoted to Assistant Professor in Tsinghua University. In China, he is one of the very few young scholars to be quickly promoted to such a position in that top university.

[The petitioner] received his Ph.D. degree in the Institute of Molecular Biology and Biochemistry at Simon Fraser University, Burnaby, Canada and started his postdoctoral training with a geneticist and molecular biologist, Prof. A.J.F. Griffiths at the University of British Columbia, Vancouver, Canada. His research findings led to many publications and presentations at prestigious national and international journals and conferences. For example, his findings show that the first linear *eucharistic* plasmid is clearly related at the DNA sequence level to another characterized plasmid. This finding is considered as a possible clue to the mechanism of human aging. From 1994 to 1998, [the petitioner] was involved in a research project in the Department of Biomedical Sciences at the University of Bradford, the United Kingdom. Applying his unique skills in Molecular Biology in cDNA cloning, PCR-DNA sequencing and production of antibodies, [the petitioner] made a remarkable discovery which could permit skin pigmentation to be changed naturally, bringing relief to thousands of sufferers of a disfiguring skin disease. The research has led to the development of a product that can successfully repigment patients with the previously incurable skin disease.

After [the petitioner's] arrival of the United States, he worked as a Research Associate in Molecular Immunology at the Respiratory Science Center, College of Medicine of the University of Arizona, Tucson, Arizona (1999-2000). [The petitioner] was involved in extensive research of asthma and chronic obstructive pulmonary disease directed to understanding how the development of these diseases relates to the dysregulation of critical relevant genes. [The petitioner's] research was focused on the exploring of the complex molecular mechanisms involved in gene regulation in the immune system and their impact on allergy and asthma. His research has shown that in both allergy and asthma the normal process by which cells become specialized to produce antibodies against allergens is altered in such a way that the antibody response itself causes disease. [The petitioner's] research efforts resulted in a significant contribution to understanding how the nature of the allergen and the genetic background of an individual influence the antibody response. It may lead to a new approach to treating and preventing asthma by regulating immune responses to allergens.

From 2000 to 2002, [the petitioner] held a position of a Senior Research Associate in Molecular Biology in the Department of Anesthesiology at the University of Michigan, Ann Arbor, Michigan. [The petitioner] has fostered excellence in molecular biology, molecular medicine, and molecular

genetics towards understanding the diagnosis, treatment, and prevention of human diseases. In the course of his work with the University of Michigan, [the petitioner] was engaged in extensive research of stem cells.

* * *

During his association with the University of Michigan [the petitioner] developed expertise in quantitative message analysis and a reliable method for single cell message quantity which is involved in RNA isolation, message analysis, immunohistochemistry and ELISA assays. He has also made a significant breakthrough in developing a new and more accurately reliable method for a real time PCR (LightCycler).... In addition, [the petitioner] developed an innovative method for DNase treatment of small RNA sample from one single cell.

[The petitioner's] diverse experience makes him an unusually well-rounded molecular biologist. He possesses a unique combination of education skills and experience that allowed him to accomplish related human disease treatment achievements deemed extremely important by the medical community.

Professor of Botany, University of British Columbia, states that the petitioner worked in his laboratory in the early 1990's. Dr. Griffiths further states:

At that time [the petitioner's] work was on basic molecular genetics. His research project was to clone and sequence a novel 8 kb linear plasmid in the fungus Gelasinospora. Plasmids are small "extra" pieces of DNA of unknown origin and role, so there was and is quite a bit of interest in genetics on these cellular elements. The significance of [the petitioner's] plasmid is that it was the first linear eukaryotic plasmid that is clearly related at the DNA sequence level to another characterized plasmid, in this case a senescence-causing plasmid Kalilo of the fungus Neurospora intermedia. (The fact that this plasmid caused death of its host was considered a possible clue to the mechanism of human aging.) This sequencing program was the beginning of an ongoing study in my lab on plasmid phylogeny and evolution. From such information we have learned some of the fundamental evolutionary properties of replicating DNA molecules when unhooked from the main genome. The paper on this work has been published in *Current Genetics*.

In support of the witness' statements, the petitioner presented a scientific citation index showing that three of his published articles have garnered an aggregate total of 98 citations. When judging the influence and impact that the petitioner's published 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. In this case, the substantial number of citations of the petitioner's published articles demonstrates widespread interest in, and reliance on, the petitioner's work. The citation history of the petitioner's work shows that many other scientists in the United States and from around the world have acknowledged the petitioner's influence and found his work to be 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, we find that the evidence presented in this case is sufficient to meet the three-prong test established by *Matter of New York State Dept. of Transportation*. The heavy independent citation of the petitioner's published work, along with the statements of witnesses from outside of the petitioner's immediate circle of colleagues, shows that petitioner's work has advanced his field to a substantially greater degree than that of other similarly qualified researchers. Upon careful consideration of the documentation presented, we find that the petitioner has shown that researchers from throughout his field view his discoveries as significant breakthroughs in molecular biology. The witness letters presented reflect a consensus among scientific experts from throughout the petitioner's field that his research achievements are unusually significant.

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 evidence in the record, establishes that the greater 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.