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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: WAC 03 084 54938 Office: CALIFORNIA SERVICE CENTER Date: **NOV 05 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

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

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 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 requirement 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 Microbiology from Umeå University in Sweden. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue 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 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 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 Dep't. of Transp., 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.

We concur with the director that the petitioner works in an area of intrinsic merit, microbiology, and that the proposed benefits of his work, improved cancer treatment through inhibiting angiogenesis, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

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 the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. 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 219, n. 6.

During his studies at the Umeå University, the petitioner worked as a research assistant in the laboratory of Dr. Kerstin Stråby. Dr. Stråby's impressive credentials include membership on Sweden's National Science Research Council and Vice President for the Council for the European Molecular Biology Laboratory in Heidelberg. Dr. Stråby explains that the petitioner worked with tRNA, the transporters of amino acids during protein synthesis, and asserts that during this period, the petitioner was "able to make quite unexpected contributions to this field of research." Dr. Stråby explains that tRNA requires an enzyme, TRM1, to mature and that the petitioner was the first to isolate this enzyme despite previous efforts by "several laboratories in the world." The petitioner then became the first to clone the enzyme gene "from the worm *Caenorhabditis*." These results were published in *Nucleic Acids Research* and *Gene*.

Dr. Henri Grosjean, Dr. Stråby's collaborator and one of nine directors of research at the Laboratory of Structural Enzymology and Biochemistry at the Centre National de la Recherche Scientifique (CNRS) in Paris; Dr. Glenn Björk, another professor at Umeå University and a member of the Royal Swedish National Academy of Sciences (responsible for awarding the Nobel Prizes in Physics and Chemistry); and Dr. Anita

Hopper, a professor at Penn State University and President-elect of the RNA Society who visited Umeå University and tried to recruit the petitioner, provide similar information. Dr. Ya-Ming Hou, a professor at Thomas Jefferson University, explains that this work could lead to "the development of more sensitive methods for early diagnosis of cancers, enabling early treatment."

The record also contains a letter from Dr. Paul Schimmel, a member of the U.S. National Academy of Sciences, who recruited the petitioner to work with him at the Scripps Research Institute upon completion of his Ph.D. While the submission of a letter from a member of the Academy is not determinative and we acknowledge that Dr. Schimmel is one of the petitioner's collaborators, the opinions of members carry significant weight. Dr. Schimmel explains that the petitioner is currently focusing on angiogenesis, the process by which the body grows blood vessels to feed tumors. Dr. Schimmel continues:

Tyrosyl-tRNA synthetase (TyrRS) and tryptophanyl-tRNA synthetase (TrpRS) from human cells are enzymes involved in decoding genetic information and in angiogenesis. In particular, a fragment of TyrRS (mini-TyrRS) stimulates angiogenesis while fragments of TrpRS (mini-TrpRS and T2-TrpRS) inhibit angiogenesis. [The petitioner's] current research has focused on investigating the mechanism by which fragments of TyrRS and TrpRS control angiogenesis. The goal is to learn how to intervene with one or both of these fragments so as to shut down angiogenesis at the site of tumor growth.

Dr. Schimmel then goes beyond the importance of the area of research and discusses the petitioner's personal achievements in this area.

[The petitioner] made significant contributions to this project since he joined my laboratory. Using state-of-the-art molecular biology and biochemistry, he successfully cloned, expressed and purified several recombinant proteins, and demonstrated that a 3-amino-acid motif was critical for activity. This finding could be used to study how to prevent cancerous tumor growth.

[The petitioner] also investigated how a regulator known as interferon-gamma (IFN- γ) induces production of mini-TrpRS, an inhibitor of angiogenesis. This work could lead to uses for IFN- γ and miniTrpRS to prevent the blood vessel growth around tumors.

Dr. Schimmel asserts that they are collaborating with a pharmaceutical company and other scientists at the institute.

Dr. Hou provides similar information, asserting that he organized a significant conference in the petitioner's field at which the petitioner's poster on mini-TyrRS was deemed so significant he was invited to give an oral presentation. Dr. Paul Plotz, Chief of the Arthritis and Rheumatism Branch, National Institutes of Health (NIH), and a Master of the American College of Physicians, asserts that the petitioner's work at the Scripps Research Institute not only has the potential to lead to new cancer treatments, but also to treat "certain eye diseases that are caused by abnormal blood vessel growth."

At the time of filing, the petitioner had authored five published articles in peer-reviewed journals. The petitioner also attended and participated at several conferences. The petitioner submitted evidence of the prestige of these journals. We do not, however, evaluate the impact of a particular article based solely on the

journal in which it appeared. Rather, evidence specific to that article, such as the number of independent citations, is more probative. As stated by the director, the petitioner failed to submit evidence that his work is widely cited.

The director concluded that the letters “by and large describe rather than evaluate the self-petitioner’s work.” On appeal, counsel quotes the most favorable portions of the letters discussed above and others contained in the record. We concur with counsel that the director’s characterization of the letters is not accurate. As discussed and quoted above, the letters do evaluate the petitioner’s work and do so favorably. The director further asserts that the letters recognize “student work rather than excellence in the field.” Once again, this observation is not true. The petitioner had already obtained his Ph.D. prior to working for Dr. Schimmel, and that work is discussed in the letters in addition to his Ph.D. work. Moreover, while original work is required of all Ph.D. candidates in the sciences and, thus, is insufficient grounds for a waiver without more evidence of its impact, nothing in the law, regulations, or precedent decision precludes CIS from considering research simply because it was performed while the researcher was working towards his Ph.D.

Acknowledging that the letters are “highly complimentary,” the director concludes that “none of them describes how the petitioner’s findings have specifically influenced other independent researchers in the field or persuasively distinguish his accomplishments from others.” Noting the lack of citation evidence, the director then states:

None of the authors specifically describes how the petitioner’s research achievements have already been relied upon or have already impacted the scientific community as a whole to any significant degree. It should be noted that [CIS] is not questioning the credibility of the petitioner’s witnesses, but looking for evidence that the petitioner’s research efforts have impacted the field beyond his acquaintances.

The director’s factual observations are essentially correct, none of the independent references claim to have been influenced by the petitioner’s work. It is not well taken that counsel fails to respond to this concern other than to list the credentials of the references on appeal. Clearly, letters from independent cancer researchers who have been impacted by the petitioner’s work, evidence of citations of the petitioner’s articles or clear evidence that the petitioner’s work has led to clinical trials of cancer treatments would have significantly bolstered the petitioner’s case.

Nevertheless, we cannot ignore that the letters submitted come from the absolute highest authorities in the field in three different countries: Sweden, France, and the United States. As discussed, the petitioner’s references include members of the U.S. National Academy of Sciences, a Master of the American College of Physicians, Vice President of the RNA Society, a member of the Royal Swedish Academy of Sciences, and one of the nine directors of research at a laboratory of the CNRS, France’s equivalent of NIH. While the references could have been more specific in explaining the impact the petitioner’s work has already had, they provide far more support for their conclusions than the generalized prediction that the petitioner’s work may benefit the national interest based on his past ability to publish original work. Given the particularly impressive credentials of several of the petitioner’s references and the record as a whole (not all of which is discussed in this decision), we will defer to their detailed and reasonable evaluations of the significance of the petitioner’s past accomplishments.

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 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.