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U.S. Citizenship
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FILE:



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Office: NEBRASKA SERVICE CENTER

Date:

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:

SELF-REPRESENTED

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

R 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. 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 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 letters of support.

██████████ Professor of Chemistry, Purdue University, states:

In just one year, [the petitioner] developed two series of self-encoded polymer beads – hydrophobic DRED beads and hydrophilic DRED-PEG beads. DRED beads and DRED-PEG beads combine both deconvolution and encoding techniques for identification of active compounds in combinatorial libraries, and thus can greatly speed up compound library screening efforts to accelerate the discovery of new drugs. This work was of such great impact that it was highlighted twice in “*Chemical & Engineering News*,” the trade journal for the American Chemical Society (the world's largest scientific society) Since [the petitioner] was the only polymer chemist in Prof. Fenniri's group, he played a crucial role in the successful synthesis of DRED beads and DRED-PEG beads.

In addition to the two reports in *Chemical & Engineering News*, the record includes articles about this discovery as reported in *Scientific American* and the *Journal and Courier* of Lafayette, Indiana. Although the petitioner's former research supervisor, ██████████ rather than the petitioner, is named in these articles, we find ample support in the record for the conclusion that the petitioner played a primary role in the research. For example, ██████████ both credit the petitioner with developing a new generation of self-encoded polymer beads.

Dr. [REDACTED] now Senior Research Officer and Professor, National Institute for Nanotechnology and Department of Chemistry, University of Alberta, states:

During his tenure in my group, [the petitioner] worked on the synthesis of a new generation of self-encoded polymer beads for combinatorial chemistry. Combinatorial chemistry currently is the most effective tool for drug screening and discovery. With his outstanding polymer synthesis skills and deep understanding of polymer chemistry, [the petitioner] successfully synthesized two series of polymer beads including hydrophobic (DRED) and hydrophilic (DRED-PEG) beads in less than a year. This work was reported in the *Journal of the American Chemical Society* and has attracted the attention of the specialized public media, twice in *Chemical & Engineering News*, *Drug Discovery Today*, *Scientific American*, the *New Scientist*, and many others.

* * *

The polymer microspheres prepared by [the petitioner] feature readable spectroscopic barcodes that greatly simplify the screening process, and consequently, dramatically speed up drug discovery.

* * *

[The petitioner] was the first scientist to work on this project, which has become one of two major research areas in my group at the National Institute for Nanotechnology in Edmonton, Canada.

D [REDACTED] Director of Analytical Sciences, Discovery Partners International, states:

Synthesis of encoded polymer resins (beads) has been a hot topic since the emergence of combinatorial chemistry in 1988. However, no promising encoded polymer resins have been developed till [sic] [the petitioner's] DRED beads were invented. By carefully choosing styrene and its analogies as the monomers for synthesis of chemically stable DRED beads, he used the beads themselves as codes other than put a label on the beads. Thus, every kind of beads has its own unique spectral feature, allowing them to be easily identified using standard spectroscopic techniques

Dr. Robert Heimann, Professor and Director, Department of Mineralogy, Freiberg University, Germany states:

[The petitioner] developed a new class of electrolyte-insensitive hydrogels based on oligo (ethylene glycol) vinyl ethers that are quite different from most other hydrogels or high water-absorbent resins that all significantly shrink in aqueous solutions of electrolytes, and also lose their water absorbing capacity to a high degree. Hence the novel materials can be considered a breakthrough in that they are more useful than the conventional additives in various application such as sanitary products, water-retaining agents for agriculture, cosmetics, food, high-tech concrete and a large variety of other potential applications.

[REDACTED]

[The petitioner's] work on the synthesis of electrolyte-insensitive hydrogels (German patent: 1,3-Dioxol-2-one-copolymer) at the famous BASF Polymer Laboratory, is an extraordinary invention in the field of polymer chemistry. Hydrogels are hydrophilic polymers that can absorb hundreds to even thousands times of water (by weight), and have been widely used in areas such as sanitary materials, cosmetics, food industry, water retaining agents in agriculture business, sealing or packing materials, as well as drug delivery. However, swelling capacity of most hydrogels is known to be highly sensitive to the presence of electrolytes - a very small amount of salts in external solution may cause a swollen hydrogel to collapse dramatically. Using monomers specially designed by himself, [the petitioner] synthesized a number of novel salt-stable hydrogels. The novel hydrogels has unfolded a totally new area in hydrogel/water-absorbent agent synthesis. [The petitioner's] innovation will benefit the society's demand in the area of industrial hydrogel synthesis, as well as the related areas such as sanitary products, cosmetics, food, agriculture and drug delivery.

Another important patent of [the petitioner] is "A method to synthesize polymer supports containing cyclic carbonate groups for enzyme immobilization." He developed a new way to prepare bead-like supports containing cyclic carbonate groups for enzyme immobilization by direct copolymerization of vinylene carbonate with other monomers. The synthesis of enzyme immobilization support using this novel approach was a significant breakthrough. Although supports containing cyclic carbonate groups are commercially available. However, most of them are prepared through polymer reactions of hydroxyl groups on the polymers with cyanogen bromide a compound that can inevitably cause cyanide pollution. [The petitioner's] new approach not only solved the problem of cyanide pollution occurred in the traditional procedure, but also offered a much simpler route because the supports can be made directly by polymerization.

[The petitioner] also holds a patent in the area of tablet film coating. Tablet film coating is to coat polymer thin film on the surface of tablets, to protect medicine from oxygen and moisture. [The petitioner's] new formulations for tablet film coating is more economical and thus is more feasible for medicine tablet production, and will benefit both drug manufactures and consumers.

The record includes evidence of approved patents from Germany and China that name the petitioner as the inventor.

Professor [redacted] Head of the Synthesis of Heterocyclic Polymers Group, Nesmeyanov Institute of Organoelement Compounds, Russian Academy of Sciences, Moscow, states:

[The petitioner's] recent studies show that some special hydrocarbon polymers can be incorporated into fluoropolymers and the yielded copolymers are even more effective dispersants for polymerization in carbon dioxide. The content of fluoropolymers in [the petitioner's] new dispersants can be reduced to less than 50% (by weight). . . . This outstanding work by [the petitioner] undoubtedly is a significant contribution to application of carbon dioxide in polymer synthesis that will benefit . . . [the] polymer industry and environmental protection.

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 argues that the letters of support adequately demonstrate his eligibility for a national interest waiver. The petitioner notes that he provided "eighteen recommendation letters from fifteen world-renowned experts, who are from seven countries . . . and twelve leading research institutions." The petitioner's appellate submission includes copies of numerous articles that cite his published work. 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 cites to the petitioner's articles demonstrates widespread interest in, and reliance on, his work. These cites show that other researchers in the United States and from around the world have acknowledged the petitioner's influence and found his work to be significant.

In this matter, we find that the evidence presented by the petitioner is adequate to meet the three-prong test established by *Matter of New York State Dept. of Transportation*. The number of cites to the petitioner's published work, along with the statements of witnesses from outside of the petitioner's immediate circle of colleagues, shows that the 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 findings as significant breakthroughs in polymer chemistry. The record of proceeding in this matter does not put forward the strongest possible national interest waiver claim, but nevertheless its strengths outweigh its weaknesses and, on balance, the claim is strong enough to merit 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 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.