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**U.S. Citizenship
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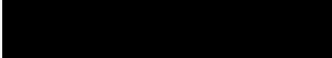


BS

FILE: 
EAC 04 254 50285

Office: VERMONT SERVICE CENTER

Date: NOV 02 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter 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. The petitioner seeks employment as a senior research technician and laboratory coordinator at Johns Hopkins University (JHU). 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 had not shown that he qualifies for classification as a member of the professions holding an advanced degree, or 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 first issue under consideration is whether the petitioner qualifies for the immigrant visa classification sought. 8 C.F.R. § 204.5(k)(3)(i) states that, to show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The beneficiary of an immigrant visa petition must be eligible at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R.

§ 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Citizenship and Immigration Services (CIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm. 1998).

At the time he filed the petition in September 2004, the petitioner did not claim to hold an advanced degree. The petitioner indicated that he earned a Certificate of Medicine from Yangzhou Medical College in 1982 and a Bachelor of Science degree in health management from Shanghai Medical University in 1989. According to a credential evaluation in the record, the 1982 certificate is equivalent to a U.S. associate degree in Medical Sciences; the 1989 diploma is equivalent to a U.S. baccalaureate degree in Health System Administration.

At the time of filing, the petitioner was studying for his master's degree at JHU's "Information System & Technology part-time engineering program." On appeal, the petitioner submits a copy of his diploma from JHU, showing that he received a Master of Science degree in Information Systems and Technology from JHU's Whiting School of Engineering in May 2005. Thus, the record amply confirms that the beneficiary did not hold an actual advanced degree to satisfy 8 C.F.R. § 204.5(k)(3)(i)(A) as of the 2004 filing date.

The petitioner claims the following employment experience:

10/1982 – 5/1994	Attending physician, Suzhou Health Bureau, Suzhou, China
6/1994 – 2/1995	Volunteer, Royal University Hospital, Saskatoon, Canada
2/1995 – 6/1999	Research technician, University of Saskatchewan, Canada
9/1999 – present	Research technician/laboratory coordinator, JHU

The petitioner lists his "Scientific Skills" as follows:

PCR amplification (R-T PCR, Quantitative PCR)
DNA/RNA isolation RFLP, SSCP, Manual sequencing
Micro array, Southern blot, Northern blot, Western blot
Gene sub-cloning, In-situ hybridization
Cell culture, Cell harvest, Density gradient centrifugation, ELISA
Various types of electrophoresis
Immunization of animals, Antibody separation, Immunohistochemistry
Radioisotope techniques, Database, Data analysis, Information search

Bibliographic materials in the record show that the beneficiary co-authored several articles about geriatric medicine; the credits of the articles state that he is affiliated with JHU's Department of Geriatric Medicine and Gerontology. The petitioner does not explain how his studies (and subsequent degree) in Information Systems and Technology are relevant to the above work. It appears that the petitioner has been working in biology and medicine, while at the same time pursuing, part-time, a degree in Information Systems that is, at best, tangentially related to that work.

The petitioner's initial submission includes letters from JHU faculty members, indicating that the petitioner has worked with them since September 1999, five years prior to the petition's September 2004 filing date. The petitioner has also submitted a letter verifying his employment at the University of Saskatchewan from February 1995 to August 1999. The record thus documents that the petitioner has accumulated five years of post-baccalaureate experience in medical research.

The director, in denying the petition, did not dispute that the petitioner's work meets the regulatory definition of "professional" set forth at 8 C.F.R. § 204.5(k)(2), but the director concluded that the petitioner has not shown that his post-baccalaureate professional experience is "progressive," as 8 C.F.R. § 204.5(k)(3)(i)(B) requires. The director did not elaborate or explain this conclusion. The record indicates that the petitioner was "a research technician" at the University of Saskatchewan, and a "senior research technician/lab coordinator" at JHU. [REDACTED] of JHU specifies that the petitioner "supervises all our staffs," indicating that the petitioner has risen to a supervisory role (as shown by the "senior" in his job title). This information supports a finding that the beneficiary's post-baccalaureate laboratory experience has been progressive rather than static in nature.

We therefore find that the petitioner qualifies for classification as a member of the professions with post-baccalaureate experience equivalent to an advanced degree, and we withdraw the director's finding to the contrary.

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 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 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.

As discussed above, the petitioner participates in research at JHU's Department of Geriatric Medicine and Gerontology, and is a credited co-author of several published journal articles and conference presentations. The petitioner offers several letters, all from witnesses who work, or used to work, at Johns Hopkins University.

[REDACTED] an associate professor at JHU, states:

[The petitioner] has worked in my laboratory for the past several years and has made significant and substantial contributions in the area of the biology of frailty research and is in part responsible for our national and international success. . . .

As the population of very old Americans increases over the next few decades it has become imperative to identify major etiologic causes for functional decline and the development of frailty in older adults. . . . [The petitioner's] combined expertise has played a significant role in the development of this field of research, and his remarkable skills have had an ongoing impact on this research. . . .

Over the past several years, [the petitioner] has acquired a substantial knowledge base and technical experience that is unsurpassed and a vital necessity to continuing our research program. . . .

[The petitioner's] research abilities cross several disciplines. . . . [The petitioner's] integrative abilities in molecular biology, cellular biology, immunology and information system technology make his contributions truly invaluable and make him an indispensable researcher in my laboratory.

[REDACTED], a physician scientist at JHU, states:

It has been described to me that one alternative route to keep [the petitioner] is for him to seek a Labor Certificate rather than a national interest waiver. . . . I should say that that I have interviewed many Americans with Master's Degrees, and have hired two from JHU programs. They simply do not compare. . . . The unsuccessful attempts of myself and very

many colleagues to hire similar individuals confirms [sic] my suspicions that they are truly rare.

██████████ an assistant professor at JHU, states that the petitioner “has . . . established a record of career achievement far exceeding those normally expected of qualified member [sic] in our profession, which justifies projections of future benefit to our national interest.”

The above witnesses, and others who have worked with the petitioner at JHU, offer the general assertion that the petitioner is an “indispensable” member of the research team, but they offer no specific information beyond listing some of the laboratory techniques that the petitioner has mastered. These letters, by themselves, establish only that the petitioner is a valued employee of Johns Hopkins University. One witness, ██████████ an assistant professor, asserts that the petitioner’s “publications have been highly cited and regarded,” but the record contains no documentation of these citations. Therefore, we cannot determine the extent to which the petitioner’s work has been “highly cited.” ██████████ also states that the petitioner “has uncovered important practical and fundamental principles in the field of genetic and diabetes & obesity,” but once again this assertion lacks both detail and corroboration, leaving us with no idea of what those “important principles” are, and no evidence that anyone outside of JHU has acknowledged these principles.

The director denied the petition, in part because the petitioner has not shown that he “has been anything other than a contributor” offering technical support on projects conceived and executed by JHU’s researchers.

The petitioner submits a personal statement on appeal, but this statement is limited to the issue of eligibility for the underlying immigrant visa classification. As discussed above, we have reversed the director’s decision on that point; further discussion of the petitioner’s new statement would serve no purpose here.

The petitioner submits another letter from ██████████ who states that the petitioner “has outstanding research abilities . . . and continues to contribute significantly to the research programs that we are developing on frailty in older adults.” This letter essentially repeats prior claims, and therefore adds little of substance to the record. The petitioner has not rebutted the director’s findings with respect to the national interest waiver. There is no indication that the petitioner has affected the direction of research into the areas under study, or that he has had a measurable impact on the field beyond providing support functions for JHU researchers.

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 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 profession, 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. This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.