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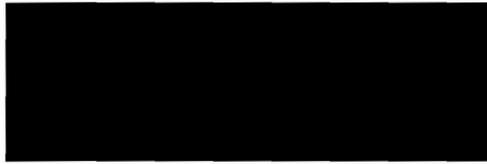
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship and Immigration Services

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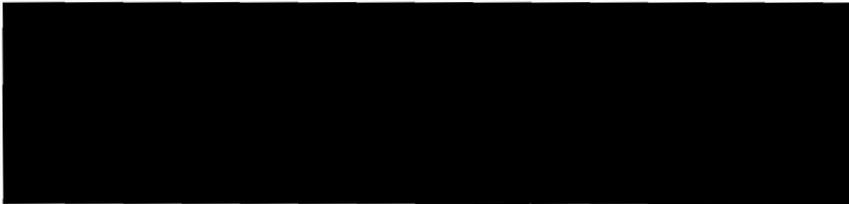


FILE: LIN 06 102 52454 Office: NEBRASKA SERVICE CENTER Date: **APR 03 2008**

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) 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 Ohio State University (OSU). 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:

(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 (Commr. 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 also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

In an introductory statement, counsel stated that the petitioner “has extensive research experience in the nationally crucial field of organic synthesis and medicinal chemistry research” and that the petitioner’s “papers **have been frequently cited (more than 27 times)** by other leading scientists in top-quality international journals” (counsel’s emphasis). The documentation accompanying the petitioner’s initial filing identifies one article by the petitioner with eight independent citations, and others with between one and five independent citations. This appears to be a moderate citation rate.

Several witness letters accompanied the petitioner’s initial submission. We will consider examples of these letters here. Professor [REDACTED], who supervised the petitioner’s graduate studies at West Virginia University, stated:

Over the past two decades, the enediyne and enyne-allene chemistry has received extensive attentions due to the discovery of several classes of very potent antitumor antibiotics having the enediyne moiety. . . .

[The petitioner] has made significant contributions to this field by developing several practical synthetic methodologies for the preparation of benzannulated or pyridannulated enyne-carbodiimides, and enyne-ketenimines.

██████████ stated that the petitioner's findings are "helpful to medicinal chemists in designing new types of enediyne, enyne-allene, and structural analogies as antitumor antibiotics." ██████████ also asserted that "samples of our new heteroaromatic analogues were submitted to the National Cancer Institute for screening against human tumor cell lines, and several of them were found to exhibit activities against the three-cell line panel in the preliminary anticancer assay."

WVU Professor ██████████ states, more concisely, that the petitioner's "research accomplishments to date are significant because they are fundamental to the development of new classes of antifungal and antitumor agents."

Professor ██████████, the petitioner's supervisor at OSU, stated:

My research group is involved in two areas of investigation: (1) total synthesis of biologically active natural products; (2) mechanistic studies of naturally occurring antitumor agents. . . . The major focus of the research program is aimed at the *total synthesis of natural products that exhibit anticancer activity*.

. . . [The petitioner] is working on a project of developing hetero-*bis*-metallated lynchpin reagent systems for the rapid and convergent assembly of biologically active polyene natural products. . . . [The petitioner] has successfully developed a hetero-*bis*-metallated pentadiene lynchpin system and extended the system to the total synthesis of Strobilurin B. Strobilurins are a widely occurring family of natural products isolated from higher fungi that exhibit potent antifungal activity. She has made a breakthrough for the application of the hetero-*bis*-metallated lynchpin reagent systems. Because of this breakthrough, the new methodology becomes more attractive and universal. And we expect that more applications in polyene synthesis will result from these novel lynchpin systems.

(Emphasis in original.) Two initial witnesses appear not to have collaborated with the petitioner. Professor ██████████ of the Scripps Research Institute, La Jolla, California, stated that the petitioner's "contributions are of such an exceptional nature that they substantially exceed those of other scientists in the field of organic synthesis and medicinal chemistry." ██████████ asserted that the petitioner's "new breakthrough made the lynchpin system much more attractive and influential in the context of synthesis of polyenes."

██████████, Associate Professor at the University of Michigan, praised the petitioner's "pioneering work on the generation and cyclization of enallene-isonitriles" and stated that the petitioner's "recent research work on natural polyene synthesis is extraordinary." ██████████ asserted that an earlier research group had synthesized Strobilurin B "with 2% overall yield," whereas the petitioner "reported an efficient stereocontrolled six-step synthesis with 9% overall yield," roughly quadrupling the efficiency of the process.

On March 31, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit evidence of “a past record of specific prior achievement which justifies projections of future benefit to the national interest” and the petitioner’s “ability to serve the national interest to a substantially greater extent than the majority of [the petitioner’s] colleagues.”

In response, the petitioner submitted additional letters, which counsel described as “evaluations from . . . internationally renowned experts in [the petitioner’s] field, **all of whom have never previously worked with her**, as further evidence of the significant impact of her accomplishments and the international respect she has received for her work” (counsel’s emphasis). [REDACTED], Associate Professor at the University of Texas at Austin, has been influenced by the petitioner’s doctoral work:

[O]ne of [the petitioner’s] papers published in *Journal of Organic Chemistry* provided us important information on the mechanisms of diradical cyclization of hetero-enzyme-allenes. Her work, together with our on-going studies, strongly support the hypothesis that heteroatom substitution has a profound impact on facility of the cyclization and the nature and reactivity of the intermediates involved. . . .

[The petitioner] has made original contributions in this field that have profoundly influenced fundamental understandings of diradical formation and cyclization and would help the design of cancer cell-selective DNA cleavage agents and as an approach to the construction of polycyclic molecules through free-radical cascade cyclizations. . . . I have no doubt that her research has [had] significant influence in this field and will have profound impact on the research efforts fighting against cancer. . . .

The papers she has published show research results that are of markedly greater significance and quality than other researchers at her stage of career.

[REDACTED] of Washington University in St. Louis, Missouri, stated that the petitioner’s **doctoral research has “opened** up new avenues for the design of new and better chemotherapeutic agents based on electrocyclization methods.” With respect to the petitioner’s postdoctoral work, [REDACTED] stated: “The linchpin strategy that she has developed has wide application to the synthesis of a diverse number of natural products of agricultural and medicinal importance, and can immediately be applied to the discovery of new and better anti-fungal agents.”

The last independent witness represented in the RFE response is [REDACTED], Principal Research Scientist at Eli Lilly and Company. [REDACTED] stated: “I believe that superior proven abilities put [the petitioner] in a position to make substantially great contributions than the majority of her peers. The knowledge, the talents, and the skills that she possesses are far beyond others at her same stage of the career” (*sic*).

The director denied the petition on April 13, 2007, stating that the “witness letters . . . fall short of demonstrating the petitioner’s impact on the field beyond educational institutions. . . . The petitioner offers insufficient evidence that the findings have attracted significant attention from independent researchers in the biology field.” The director also stated that, while witnesses have discussed the potential applications of the

petitioner's findings, "there is no indication that these applications have yet been realized." The director also noted the petitioner's citation history but concluded that "the evidence does not establish that the petitioner's research has been widely cited by other scientists" or that the petitioner's "work has resulted in an appreciable improvement in the field of specialty."

On appeal, counsel argues that the "Petitioner/Appellant in the present case does have evidence of such past achievements . . . [which] have had a marked influence on her field and exceed those of others with comparable minimum qualifications" and "have received considerable attention and recognition in Petitioner/Appellant's field **beyond her circle of acquaintances.**"

After careful consideration of the issue, the AAO finds that the petitioner has met her burden of proof by preponderance of the evidence. The citation rate of her work appears to be moderate, with only one article cited more than three times and no article cited a large number of times. At the same time, however, we cannot ignore the unimpeached testimony of independent witnesses who have specified the manner in which the petitioner's work has influenced their own efforts. The often arcane and technical nature of the letters can at times mask the extent of the petitioner's contributions, but does not obscure it outright.

We find that the petitioner has assembled a mosaic of evidence which, although no one component individually establishes eligibility, nevertheless suffices in the aggregate to meet the petitioner's burden of proof. The various lines of evidence converge on a point beyond the threshold of eligibility, albeit not by a dazzlingly obvious margin.

The AAO finds much of merit in the director's denial decision, even as we overturn the outcome thereof. The issue is one of weighing evidence rather than any gross error of logic in the director's decision. If there existed a simple calculus by which an alien's eligibility could infallibly and swiftly be determined, the AAO would lose no time in making that information available. In the absence of clear statutory and regulatory guidelines, however, there can be no easily-articulated standard or "one size fits all" template for petitions involving waiver requests.

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 evidence 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.