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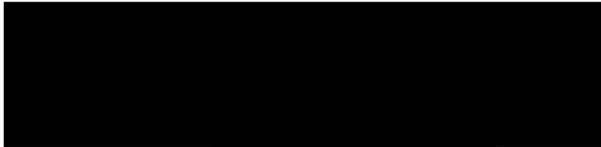
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Office: VERMONT SERVICE CENTER

Date: **MAR 17 2008**

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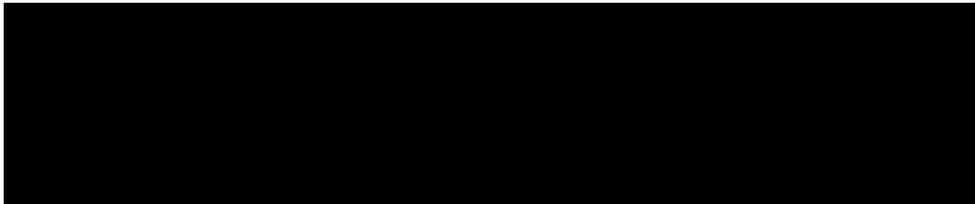
Petitioner:

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, Chief
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 (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 research associate at the University of Virginia. 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 has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits various exhibits and requests oral argument. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner identifies no unique factors or issues of law to be resolved. In fact, counsel set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

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 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.

The petitioner initially submitted four reference letters in support of the petition. Counsel stated: “The letters submitted are from experts living and working throughout the U.S.” Counsel’s description is inaccurate and misleading. All four of the letters are from individuals who have supervised or otherwise worked closely with the petitioner; the witnesses are all on the faculties of the State University of New York (SUNY) at Albany, where the petitioner earned her doctorate, or the University of Virginia. A letter attributed to Professor

[REDACTED] of the University of Virginia contains an autobiographical paragraph that concludes with this sentence: "I have authored over xx articles and am on the editorial board of..., member of..." The presence of this unfinished passage strongly indicates that the letter was written not by [REDACTED], but rather for him to sign after inserting details known to [REDACTED] but not to the letter's actual, anonymous author.

The AAO will consider the general assertions in the letters, but the exact wording of the letters (including subjective assessments of the relative value of the petitioner's work) will carry substantially less weight, as we cannot be certain of the ultimate origin of that wording. The letter signed by [REDACTED] reads, in part:

[The petitioner] has discovered a novel gene responsible for changing Rapamycin sensitivity in yeast. Rapamycin blocks cell growth in yeast/mammals by inhibiting the TOR kinases and its dysregulation causes Cancer. . . . The ramifications of [the petitioner's] new method extend beyond clinical interest to developmental biology (the organization, growth and development of human cells). In addition, [the petitioner's] method will lead to use in a number of important clinical applications, from alleviating drug resistance in fungal diseases, Cancer, autoimmune diseases and organ transplant recipients.

[REDACTED] Associate Professor at SUNY Albany, stated:

[The petitioner] independently developed an independent approach to studying a new class of enzymes called Parvulin-class prolyl isomerases in *Candida albicans*, a pathogenic (disease-causing) fungus. *C. albicans* causes candidiasis, which can be life threatening in humans. . . . [The petitioner] demonstrated for the first time that a Parvulin-class prolyl isomerase is essential for survival of *C. albicans*, and is required for its disease-causing ability in an experimental model. Her work suggested a new route for antifungal drug development that targets Parvulin-class prolyl isomerases.

[REDACTED] of the University of Virginia stated:

In my laboratory, yeast is used as a model system to provide novel targets for combination treatments to sensitize cancer cells to chemotherapeutic agents. We are developing new approaches to large scale methodologies to identify new genes that respond to an important class of anti-cancer drugs called anti-tubulin drugs. In the collaborative effort at identifying novel genes which could serve as drug targets, [the petitioner's] expertise has been the molecular biological approach using yeast/fungi to develop novel antifungal drug targets. Rapamycin is one such important drug, primarily because of its novel mechanism of action on the cell, i.e. via the TOR pathway and is currently in clinical trials as an anti-cancer drug. [The petitioner] has identified a new and exciting route of diminishing rapamycin drug resistance. . . . Her research has garnered international attention as evidenced by collaborative efforts by groups in University of Stuttgart, Germany and University of Basel, Switzerland.

SUNY Albany Assistant [REDACTED] stated that the petitioner's "groundbreaking studies . . . pave the way for further research on the function of prolyl isomerase and other enzymes in human disease."

The petitioner submitted copies of her published articles and conference presentations. The petitioner also documented substantial citation of some of her published works, including one article cited over 30 times. This citation history is more persuasive than letters from the petitioner's colleagues in terms of establishing the impact of the petitioner's work on the greater scientific community.

On August 12, 2006, the director issued a request for evidence (RFE), instructing the petitioner to "submit additional documentary evidence which will indicate that the petitioner had, as of the priority date [*i.e.*, filing date] of this petition, a degree of influence on her field which distinguishes her from other scientists with comparable academic or professional qualifications."

In response, the petitioner submitted a copy of an article accepted for publication in the *Proceedings of the National Academy of Sciences (PNAS)* on September 25, 2006, more than six weeks after the director issued the RFE and nearly a year after the petitioner filed the petition on September 28, 2005. The article was not submitted for publication until May 30, 2006, and some of the cited sources were published in 2006. This article, therefore, could not have existed in anything much resembling its final form as of the September 28, 2005 filing date. The article does, however, demonstrate that the work the petitioner was performing as of the filing date has continued to yield results published in top journals. The petitioner also documented further citation of her work.

The director denied the petition on February 5, 2007. The director acknowledged the intrinsic merit and national scope of the petitioner's work, but found that the petitioner had not sufficiently distinguished herself from others performing similar work in the specialty.

On appeal, referring to herself in the third person, the petitioner states that her response to the RFE included "innumerable citations of the petitioner's research articles." This is something of an exaggeration, but the petitioner is correct in asserting that the director should have placed greater weight on the petitioner's substantial and growing citation history. This is among the petitioner's stronger arguments.

Other assertions by the petitioner are less persuasive, such as her contention that "many [postdoctoral researchers] perform routine research with little innovation," and therefore the petitioner stands apart from them because her "research is innovative, exceptional and creative." This blanket assertion about the low innovation level of other postdoctoral researchers is vague and unsubstantiated.

A 2007 preview article from *Cell Metabolism* focuses on the petitioner's aforementioned *PNAS* article, research for which was underway as of the filing date, and [REDACTED] of the University of Basel, Switzerland, states:

My opinion is that [the petitioner's] *PNAS* paper demonstrates that her contribution to the TOR field has been significantly more than exceptional. She has discovered a novel function of the gene *PMR1* . . . in cell growth control by regulating TOR function. My laboratory discovered TOR, 17 years ago, and I have rarely seen such a refreshing idea that extends the mode of TOR control on cell growth. This finding of hers is significant.

(Emphasis in original.) 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. Upon careful consideration of the record, the AAO concludes that the petitioner has established a substantial level of influence in her field, and that this influence and her ongoing work serves the national interest to an extent that justifies a waiver of the job offer/labor certification requirement. 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.