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



U.S. Citizenship and Immigration Services

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: MAR 20 2008

EAC 06 007 50389

IN RE:

Petitioner:

[Redacted]

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:

[Redacted]

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 fellow at Brigham and Women's Hospital, Harvard Medical School. 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 a statement accompanying the petitioner’s initial submission, counsel stated:

[The petitioner is] studying the roles of TIM-1 and TIM-2 molecules in the immune responses and in the development of autoimmune diseases, such as multiple sclerosis, type I diabetes, and rheumatoid arthritis, using animal models. . . . [The petitioner] is also studying the molecular basis for autoimmune congenital heart block using Ro52 autoantibodies. . . .

[The petitioner] has to date authored and co-authored as many as seventeen (17) research papers published or to be published in prestigious peer-reviewed international journals. . . . [The petitioner’s] research results are so important and influential that they have been cited one hundred and five times (105) times [*sic*] by other researchers.

Supporting counsel's assertion about heavy citation of the petitioner's work, the petitioner's initial submission included printouts from a citation index, listing the 105 citations, most of them independent; the two most-cited articles were cited 20 or more times each.

On August 15, 2006, the director issued a request for evidence, instructing the petitioner to submit evidence to establish the national scope of the petitioner's work and the degree of influence the petitioner has had on his field. In response, counsel indicated that the petitioner's total citation count had risen to 134; the petitioner submitted partial copies of almost all of these articles. While a number of these are self-citations by the petitioner and/or his collaborators, the great majority are independent citations, originating from around the world.

The petitioner also submitted seven witness letters. Counsel described the witnesses as "top leaders, authorities and first-class experts with nationally and internationally recognized research achievements." All of these witnesses are current or former faculty members at the universities in Boston where the petitioner has studied and worked, and many have worked closely with the petitioner. The letters, therefore, are not themselves strong objective evidence that the petitioner's work has had significant impact outside of the Boston area, but the petitioner has not relied solely or primarily on these letters. The AAO views the letters as fulfilling an explanatory role rather than primary evidence in their own right. We shall briefly discuss examples of these letters here.

██████████ has supervised the petitioner's postdoctoral work at Harvard Medical School/Brigham and Woman's Hospital since 2004. ██████████ provided technical details regarding the potential applications of the petitioner's research against cancer and autoimmune disorders, and offers high praise for the petitioner's skills as an "irreplaceable" researcher who stands among "the top 1% of scientists I have met."

██████████, Director of the Multiple Sclerosis Center at Harvard Medical School/Brigham and Women's Hospital, explained the national scope and significance of the petitioner's work:

Multiple Sclerosis is a lifelong and slowly progressive disease of the central nervous system, which affects more than 350,000 people in the US. . . . MS is characterized by an inflammation and degeneration of the nerve fibers in the brain and spinal cord, which are the target of immune attack. The immune cells responsible for the attack involved in MS are called T Cells. T cells usually only target virus and bacteria that have invaded the body, but in MS, T cells mistakenly attack the body's own tissue in the central nervous system. . . .

[The petitioner] is the first scientist to demonstrate that IL-2 plays an important role in regulating FasL gene, which established the dual functions of IL-2 in both T cell activation and T cell death. . . . [The petitioner] successfully demonstrated that IL-2 involves in pathogenesis of lupus whereas Fas/FasL is the cause of colon damage and failure during colitis and also play[s] a critical role in the generation of red blood cells. This study has opened up the door for potential immunotherapies for lupus and colitis using IL-2 and Fas/FasL as targets.

The director denied the petition on February 21, 2007, stating: "little evidence has been submitted which would allow the Director to conclude that the rate of citation of the petitioner's articles is significantly higher than that which one would expect of the articles of an exceptional researcher in the petitioner's field." The director also noted witnesses' remarks that the petitioner possesses rare talent, but found that the letters did not establish that a waiver of the labor certification process would serve the national interest.

On appeal, the petitioner submits letters from two additional witnesses, both of whom have been elected to the prestigious National Academy of Sciences. While these witnesses, like most of the previous ones, serve on the Harvard faculty, their demonstrated expertise gives them standing to attest to general points such as citation rates. Furthermore, these witnesses assert that they do not personally know the petitioner; their professional affiliations are with other parts of the large Harvard University system. [REDACTED] attests that the petitioner's citation rate is high and that the petitioner "is among the best scientists in his field of endeavor." [REDACTED] states that the petitioner's "extraordinary work has been recognized nationally and internationally, and his work clearly stands out among his peers in this country."

While the witnesses have been concentrated in the Boston area, the petitioner's 100+ citations are distributed across numerous countries and continents, establishing consistent and growing international influence in the field. Witnesses in a position to know have attested that the petitioner is heavily cited in his field, and the record contains nothing that would undermine these witnesses' credibility (such as, for instance, an exaggerated assessment of a fairly routine membership in a professional association).

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.