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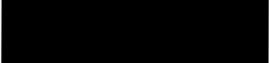
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: **MAY 12 2008**

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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:



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.

2 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 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 neuroscientist. 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 submitted with the petition, counsel describes the petitioner’s work:

[The petitioner] is currently employed at the University of Minnesota and performs important research on behalf of this institution as well as for the Howard Hughes Medical Institute which is a hosted entity within the university. During his career, [the petitioner] has performed significant research in the study of neurological disorders such as Alzheimer’s and Parkinson’s disease and has also ma[d]e breakthrough discoveries on the long term effects of iron deficiency on brain development and learning in children. . . .

[The petitioner] meets the third prong of the *NYS DOT* test, in that his contributions to the national interest have been substantially more significant than the majority of his peers.

Counsel listed 24 articles and poster presentations by the petitioner, and stated that the petitioner’s “published papers have been extensively cited by other scientists in their own published papers,” with one paper “cited 17 times by others,” a second paper cited seven times, and a third cited five times. The record shows that at

least seven of these 29 citations are self-citations by the petitioner and/or his collaborators, despite counsel's assertion that the citation counts refer to citations "by others."

Counsel stated: "International experts have provided advisory opinions in which they describe the significance and value of [the petitioner's] original scientific breakthroughs." We will discuss examples of the witness letters here. Professor [REDACTED], who supervises the petitioner's postdoctoral work at the University of Minnesota, stated:

[The petitioner's] research is centered about understanding the role of TGF- $\beta$ -type factors in governing synapse function in the central nervous system. These factors have been previously shown to play indispensable roles in numerous developmental processes . . . , but prior to [the petitioner's] ground breaking research, their importance in vertebrate synapse development was not known.

Assistant Professor [REDACTED] of Yale University stated:

I find [one of the petitioner's papers] of particular interest for [the petitioner's] original development of a direct causal link between the CHL1 molecule and synaptic plasticity in the hippocampus, which is an important region in the brain that is involved in learning and memory. In this work, he first identified that the loss of this molecule disrupts the balance between overall excitation and inhibition and results in impairment of neural plasticity. His elegant reasoning, whereby he proposed the combination of the nano-level structure of neuronal contacts makes this paper a classic in its field of neuroscience research. Before [the petitioner's] discovery, researchers in this field had only known that the CHL1 molecule is important for human mental retardation and schizophrenia, but no researcher yet understood the precise reason. . . .

[The petitioner's] work has resolved a problem of long standing . . . placing him on a unique level of having made a lasting achievement that has truly advanced research in our field.

Recently, [the petitioner] successfully confirmed the existence of an important signaling pathway during learning and memory, named the BMP family. His presentation . . . greatly attracted my attention, along with other top neuroscientists. . . . [The petitioner's discovery] sheds new light on future treatment for neurodegenerative diseases, such as Alzheimer's disease and Parkinson's.

Assistant Professor [REDACTED] of Yeshiva University stated:

While I do not personally know [the petitioner], his research has important implications for my studies as well as for a number of other disciplines in neuroscience.

I have become familiar with [the petitioner] because of his recent work on bone morphogenic proteins (BMPs) in regulating synaptic function. . . . While BMPs are known to be important

regulators of neurodevelopment, his results suggest that they also may have a role in shaping synaptic function in the adult hippocampus. These surprising and novel results have important implications for understanding the regulation of the factors that influence how we are able to learn. . . . Secondly, [the petitioner] has . . . looked at the effect of postnatal deficiencies in iron on synaptic plasticity. Results from his study provide a basis for understanding why fetal and postnatal iron deficiencies in humans may lead to later deficits in learning. A third area of [the petitioner's] research of particular interest to me and the wider community of neuroscientists involves what are known as neural adhesion molecules. These poorly understood proteins are thought by many to provide an essential role in modulating communication between neurons of the brain. [The petitioner's] work has contributed significantly to our understanding of their importance.

Assistant Professor Alan El-Husseini of the University of British Columbia stated:

I have never had the pleasure of meeting [the petitioner] face-to-face. His work is known to me primarily through his publications and reputation. In approximately 3 years, [the petitioner] has tackled several important problems in my field concerning the function of cell adhesion molecules and extracellular matrix molecules during learning and memory.

. . . [The petitioner's] most important research, in my opinion, has focused on the relationship between neural cell adhesion molecules and synaptic plasticity and how to improve learning and memory for patients and healthy humans. He invented an original system with which he performed multiple electrophysiological recordings with minimal amounts of testing of substances applied inside brain tissue. . . . His process has dramatically reduced costs and has saved the dosage of protein and avoided slow penetration.

University of Minnesota Professor Scott Selleck discussed the petitioner's most recent work:

[The petitioner] has started work on a detailed understanding of the molecules required for normal memory and learning in the mouse. This work has implications for many human conditions, including autism. One pathway he is investigating is known to contribute to autism in some children. . . . Recently a gene called PTEN was found to be deficient in a number of families with severe autism and the absence of this gene might explain the disease. [The petitioner] is working on understanding the role of this gene in learning and memory in the mouse, using a variety of powerful genetic strategies. [The petitioner's] method can directly detect the morphological change of mutant individual neurons, such as the number of synapses and the branch feature of dendrites, which decide the encoding of information and retrieval of memory. . . . He is the major player in this ongoing project.

Prof. [redacted] asserted: "I knew of [the petitioner's] work before he joined [redacted] laboratory at the Howard Hughes Medical Institute in 2003. . . . I was greatly interested in [the petitioner's] papers in which he described new functions of glycoproteins in affecting synaptic plasticity."

In a request for evidence dated February 8, 2007, the director stated that “reference letters . . . and references to citations of the petitioner’s work are not sufficient to show that the petitioner has a past history of demonstrable achievement with ‘some degree of influence on the field.’” The director instructed the petitioner to corroborate the witnesses’ assertions that the petitioner’s “research has had influence in his field.” The director also asked the petitioner to clarify the extent of the petitioner’s contributions to the articles for which the petitioner was not the first author.

In response to the director’s notice, counsel argued that the director did not give sufficient weight to the letters and materials submitted with the initial filing of the petition. The petitioner submitted additional letters and documentation. A number of these letters are from the petitioner’s co-authors, who attested to the significance of the petitioner’s contributions to the research that resulted in the published articles.

Among other witnesses is Professor ██████████ of the Massachusetts Institute of Technology, whose list of honors and credentials includes memberships in the prestigious National Academy of Sciences and the Institute of Medicine. Prof. ██████████ stated that the petitioner “obtained many accolades for his new findings,” and predicted that the petitioner’s methods of behavioral observation of laboratory mice “will revolutionize the field of behavioral neuroscience, as it will improve the screening of abnormal behavior more precisely under a less perturbed laboratory environment.” She asserted that she submitted one of her own manuscripts to the petitioner, who responded with suggestions that greatly improved the quality of the data.

Yeshiva University Associate Professor ██████████ called the petitioner “a leader in both molecular and system neuroscience” whose “published papers have widely influenced the field of neuroplasticity and established his outstanding reputation in the field of neuroscience.” Regarding this influence, updated citation information shows 55 citations of the petitioner’s work, of which 16 were self-citations. Several witnesses pointed to this growing citation record as evidence of the petitioner’s influence in the field.

The director denied the petition on July 7, 2007, acknowledging the intrinsic merit and national scope of the petitioner’s work but finding the evidence insufficient to meet the final prong of the national interest test articulated in *Matter of New York State Dept. of Transportation*. The director stated:

The letters indicate that the alien petitioner is a qualified and able researcher but it has not been shown why a labor certification would be inappropriate in this case. It is noted that the attestations in support of the alien petitioner are not from department heads, chairmen, or chief executive officers of institutions in the U.S. and overseas. In addition, where experts specify the bases for their attestations, the alien petitioner must submit copies of documentation to corroborate those bases. . . .

[T]he documents submitted do not identify the petitioner as program director, principal investigator, co-investigator or an equivalent designation. . . .

The record lacks evidence that the alien petitioner’s published research has been extensively cited or otherwise recognized.

The petitioner, on appeal, states that his witnesses did, in fact, include department heads, chairmen, and chief executive officers. Prof. [REDACTED] for instance, is a former director of the Whitehead Institute of Biomedical Research at the Massachusetts Institute of Technology, and Dr. [REDACTED] (another of the petitioner's initial witnesses) is "the founder and CEO of Clever Sys., which is a biomedical and bioinformatics company" involved with "video behavior recognition technologies." Professor [REDACTED] the petitioner's current superior, is the Ordway Chair of Developmental Biology at the University of Minnesota Medical School. Even if this were not the case, the director did not explain the apparently arbitrary finding that the petitioner's witnesses must be "department heads, chairmen, or chief executive officers of institutions in the U.S. and overseas." Certainly, the statements of important figures can carry greater weight than those of lesser experts, but this does not mean that individuals at lower levels are not competent to discuss the petitioner's work and its significance.

The petitioner argues that he has "already presented a national benefit so great as to outweigh the national interest inherent in the labor certification process," as shown by letters and documentary evidence submitted previously. The director's insufficient consideration of this evidence is clear from factually incorrect conclusions in the decision, such as the alleged lack of letters from department heads discussed above. With regard to the citation of his work, the petitioner submits updated citation information showing 64 citations. Given that the petitioner had amply documented his citation record prior to the denial, the director's finding that the record lacks such evidence is without basis.

Not all of the claims set forth by the petitioner and counsel are persuasive. For instance, the petitioner and counsel have asserted that the petitioner's membership in the Society for Neuroscience is "outstanding." The Society's own materials, however, describe the Society as "the world's largest organization" of its kind, with "more than 37,500" members. An organization does not grow to be "the world's largest" by being highly selective in admitting new members. These weak arguments, however, do not undermine the credibility of independent testimony and documentary evidence in the record.

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.