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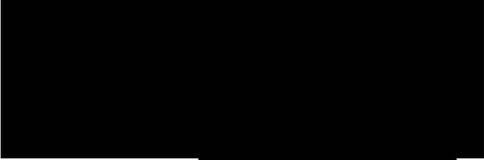
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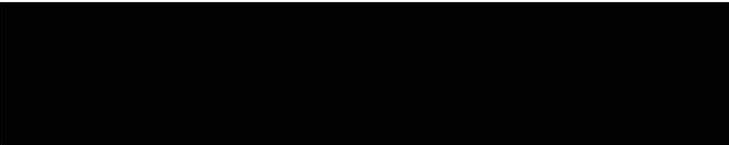
FILE: [REDACTED]
SRC 07 800 22540

Office: TEXAS SERVICE CENTER Date: NOV 06 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, Texas 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 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 postdoctoral research fellow at 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 has 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 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’s waiver claim rests largely on witness letters. We shall consider examples of these letters here. [REDACTED] supervised the petitioner’s doctoral studies at the Chinese Academy of Medical Sciences. [REDACTED] stated:

During his PhD study period, [the petitioner] had contributed significantly and originally to Anti-AIDS study. [The petitioner’s] innovative research, using molecular docking-growing method to design new ligands, was an idea with a great potential. He worked on the development and application of this method in HIV-1 protease inhibitor to enhance the activity and bioavailability of potential molecules acting against AIDS. [The petitioner’s] unique expertise in numerous complex techniques including structure based drug design and molecular modeling and understanding of chemistry aspects of the designed molecules permitted him to develop new agents for the treatment of AIDS. [The petitioner’s] cutting-edge research may have broader implications in other drug design and discovery tasks which have target structures.

did not specify the extent, if any, to which the “new agents for the treatment of AIDS” are now in use.

, Associate Professor at Harvard Medical School, discovered that a compound called daidzin, “a constituent of an ancient Chinese herbal medicine,” inhibits alcohol craving and consumption. Dr. stated:

[The petitioner] has already contributed significantly and critically to the substantial and long standing efforts of my laboratory to understand the molecular basis for the use and abuse of alcohol, identify and develop pharmaceutical agent(s) for the treatment of alcohol abuse/dependence, and reveal the site and mechanism of action of such agent(s). . . .

[The petitioner] joined my laboratory in October, 2002 and has since been a key collaborator on our daidzin project. At first his research goal was to identify the site and mechanism of action of daidzin. Using daidzin as a probe, we identified ALDH-2 (an enzyme involved in dopamine & serotonin metabolism) as its site of action. . . .

[The petitioner] started to design analogs of daidzin with improved binding affinities based on the crystal structure of daidzin-ALDH2 complex. He skillfully introduced beneficial modifications that provided favorable interactions with and removed unfavorable contacts in the binding pockets of daidzin. . . . Thus far, he has designed more than 80 new structures and synthesized 16 of them. Among them, 10 inhibit ALDH-2 more potently than daidzin.

An exhibit list submitted with the initial filing labeled two of the letters “independent advisory opinion(s),” but the record shows that the author of each of those letters has collaborated with the petitioner and/or Dr. . Dr. of the Consiglio Nazionale delle Ricerche in Cagliari, Italy, stated “I have never met [the petitioner] personally,” but he added that “’s lab and mine have also collaborated on daidzin . . . for some time.” Regarding the petitioner’s work, stated: “The major contribution [the petitioner] has made to the very important problem of alcohol abuse and alcoholism has been his involvement in designing and developing new and more valid agents capable of curing this disease. . . . These discoveries led to the design and development of the first water soluble compound more active than daidzin *in vivo*.”

Director of Chitose-Karasuyama Medical Center for Traditional Chinese/Japanese Medicine, Tokyo, Japan, stated “I am not personally familiar with” the petitioner, but collaborated (albeit apparently over a distance) with the petitioner and on a 2005 article in the record.

The petitioner submitted copies of four published articles, as well as abstracts from conference presentations, but the initial submission did not establish the impact that these publications and presentations have had on the petitioner’s field. The exhibit list mentions “Requests for the [petitioner’s] Professional Advice,” but these amount to two electronic mail messages from other researchers at Harvard, both concerning , who had questions “regarding using some computational chemistry software.”

On February 27, 2008, the director issued a request for evidence, instructing the petitioner to “submit additional *independent* testimonials of experts throughout the scientific community,” evidence of heavy citation by other researchers, and other evidence of the petitioner’s impact in the field (emphasis in original). In response, the petitioner submitted four new letters, and counsel claimed “two independent letters of recommendations were submitted with [the petitioner’s] original petition letters.” As we have shown, both of the purportedly independent witnesses have collaborated with the petitioner’s supervisor, [REDACTED] and one of them is a credited co-author of one of the petitioner’s articles. Counsel claimed that the four new letters are also from independent witnesses, although the witnesses have past or present ties to universities where the petitioner has worked or studied.

Harvard Professor Emeritus [REDACTED] appears to possess expertise more directly related to the petitioner’s current work. [REDACTED] stated that his work “has centered on studies of zinc metalloenzyme action, including those involved in alcohol metabolism.” [REDACTED] praised the petitioner’s work as “a breakthrough” and stated that the petitioner’s “study of selective inhibiting ALDH-2 is very significant for the development of new treatment for alcoholism and alcohol addiction.”

[REDACTED] stated: “Although I do not know [the petitioner] personally, I am aware of his research through his publications.” While [REDACTED] is now an associate professor at the University of Texas Medical Branch, [REDACTED] was an assistant professor at Harvard Medical School when the petitioner began his postdoctoral training there. [REDACTED] asserts that the products of the petitioner’s research “have the potential for developing efficacious drugs for the treatment of alcohol abuse.”

[REDACTED], Research Investigator at Novartis Institute for Biomedical Research, stated that the petitioner’s “study on the discovery and development of selective inhibitors of ALDH-2 was a breakthrough in the research of medication for alcoholism.”

[REDACTED] of Harvard Medical School offered similar praise for the petitioner’s work, and added that, given the recent publication of the petitioner’s work, “[i]t will take time for the scientific community to verify and then cite it.” Counsel seemingly contradicted this statement, asserting that “frequent citation by independent researchers . . . demonstrates widespread interest in and reliance on petitioner’s work.” As evidence of this claimed “frequent citation,” the petitioner submitted copies of three articles that contain citations to his work, and a printout from a citation index identified a fourth citing article. Counsel did not explain how these four citations demonstrate “frequent citation.”

The director denied the petition on May 8, 2008, stating that “the petitioner’s work is attracting attention on its own merits,” but that the petitioner has not shown a history of significant impact in his field, or that he stands out from others in his field.

On appeal, the petitioner correctly observes: “While indications of heavy citation would serve as evidence in the petitioner’s favor, such is not mandatory to obtain a National Interest Waiver.” The petitioner is also correct in stating that independent witness letters also carry weight in gauging an alien’s impact on a particular field. It does not follow, however, that a petition that includes independent witness letters must be

approved. Furthermore, as we have already noted, the independence of many of the witnesses is debatable, given their ties to Harvard University and Peking University. Counsel had termed one of the beneficiary's co-authors an independent witness.

The evidence, including letters, does not establish a track record of influential research or innovation. At best, it shows that the petitioner played a significant role in [REDACTED] ongoing daidzin project, which appears to have been underway for several years prior to the petitioner's involvement in the project. The record does not portray the petitioner as an innovator, but as a skilled researcher who performed assigned duties first with HIV as a doctoral student, and then with daidzin as a postdoctoral researcher. The wider impact of the petitioner's earlier work has not been shown, and one of the petitioner's own witnesses asserted that it is simply too early to tell how much influence his later work will have. While the recentness of the petitioner's latest efforts may explain the lack of citations, it does not relieve the petitioner of the burden of establishing that impact. Rather, it suggests that the filing of the petition may have been premature.

Regarding the petitioner's asserted importance to [REDACTED]'s daidzin project (as stated in a new letter from [REDACTED]), the petitioner already works on that project as a postdoctoral researcher with a nonimmigrant visa. There is no indication that the petitioner's position would be a permanent one, even if immigration concerns were not an issue. Given the intrinsically temporary nature of postdoctoral training, the importance of an alien to one particular project (on which the alien is already authorized to work) is not a compelling argument for permanent immigration benefits that will long outlast the alien's involvement in that project. Even then, the petitioner's impact in his current position appears to be largely preliminary; his supervisor asserts that many of the petitioner's findings will not be published until "rights to the intellectual properties are properly protected," and it is difficult to conclude that the petitioner's work has had a significant impact before it is even disclosed to the field.

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.