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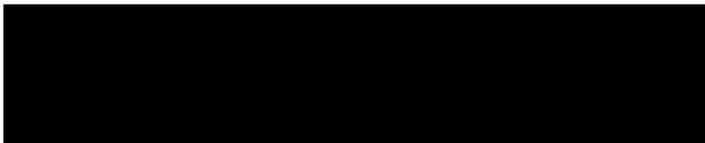
FILE: [REDACTED]
SRC 07 108 53217

Office: TEXAS SERVICE CENTER Date: SEP 10 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 fellow at the University of Washington. 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 a brief from counsel and numerous exhibits, most of them duplicating previous submissions.

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.

In a statement accompanying her initial submission, the petitioner described her work:

I have been working in human health related research area for the past 18 years using my knowledge and expertise in Medicine, Public health, Toxicology, Biochemistry, Cell biology and Molecular biology. . . .

During my Ph.D. dissertation project at the University of Washington, I have worked to identify genetic modifiers for a debilitating genetic disease, cystic fibrosis (CF). . . .

This is of clinical interest in terms of predicting which patients with CF will develop more severe lung disease. . . .

My post-doctoral project at the Department of Pathology, University of Washington, entitled “National long term care survey (NLTC) population genetics,” was a cross-sectional and longitudinal population-based study using samples from US Medicare recipients ≥ 65 . The ultimate goal was to identify the critical genes that manipulate human aging process. . . .

My current research focus in [REDACTED] laboratory has been the mechanistic study underlying the etiology of childhood leukemias using human fetal liver hematopoietic stem cells (HSC) which are potential targets of *in utero* exposure to environmental contaminants during pregnancy. . . . Of interest is the role of genetic injury to human fetal liver HSC in the etiology of the infant acute leukemias. . . . Ultimately, such injury may have ramifications with regards to transplacental exposures to environmental chemicals linked to the etiology of pediatric leukemias. . . .

My further pioneered study was to characterize the fundamental xenobiotic-biotransformation ability that determines the sensitivity of human fetal liver HSC to the chemicals in relevance of exposure during pregnancy. . . . My continuing studies for this project are directed towards a better understanding the role of xenobiotic metabolizing and conjugating enzymes in the susceptibility of HSC to chemicals of relevance *in utero*.

(*Sic.*) The petitioner asserted that her broad past experience makes her a better researcher than other scientists pursuing similar studies.

The petitioner submitted eight witness letters. We shall consider examples of these letters here. Three of the eight letters are from University of Washington faculty members. Associate Professor [REDACTED] who supervises the petitioner’s current research, lists the basic requirements for the position that the petitioner currently holds and asserts that it has been difficult to locate candidates as well-qualified as the petitioner. This is not a particularly persuasive argument in favor of granting the national interest waiver. The petitioner’s position appears to be an inherently temporary post-doctoral position, and her existing nonimmigrant status permits her to work in that position through September 15, 2009. When a waiver request is closely tied to a specific position, it is quite relevant to inquire as to how long the alien seeking the waiver can expect to hold that position.

[REDACTED] stated that the petitioner’s position “requires expertise that is actually very hard to come by,” including “tissue culture, *in vitro* toxicology, molecular biology, and human genetic epidemiology.” It cannot suffice to state that the alien possesses useful skills, or a “unique background.” Regardless of the alien’s particular experience or skills, even assuming they are unique, the benefit the alien’s skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *Matter of New York State Dept. of Transportation* at 221. Simple exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an application for a labor certification. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221.

Of the five witnesses from outside the University of Washington, one stated that he had collaborated with the petitioner. The remaining witnesses relied on the petitioner's *curriculum vitae* and published articles to form their opinions of the petitioner and her work. [REDACTED], Associate Professor at the University of Florida, stated that the petitioner's work "would greatly enhance our understanding of the causal mechanisms of childhood leukemia."

[REDACTED] of the University of Montreal called the petitioner "a pioneer in investigations of childhood leukemia emphasizing *in utero* exposure during pregnancy to environmental contaminants and toxicological consequences. . . . [The petitioner's] contributions to the field of environmental science are original and of high significance, and far exceed her peers that are employed in the same field."

On August 29, 2007, the director issued a request for evidence, instructing the petitioner to demonstrate that her accomplishments and impact exceed those of others in the same field. In response, the petitioner submitted three additional witness letters which are essentially similar to those submitted previously.

A gauge of the petitioner's influence in the field is the reception of her published research. The petitioner submitted information showing the impact factors of the various journals that have published her work. The impact factor is calculated from the average citation rate of the articles in a given journal. Therefore, the impact factor of a journal is not, by itself, evidence of the high impact of any one particular article from that journal. An article may be more likely to attract notice by appearing in a higher profile journal, but ultimately the article must stand on its own merits rather than claim reflected prestige from the journal's title.

Regarding the citation of the petitioner's own work, counsel stated that the petitioner's "work has been cited 32 times by leading scientists in the field." The petitioner submitted citation index printouts for three of her articles, showing (respectively) four, four and 24 citations. The article cited 24 times appeared in 1997, about a decade before the petitioner filed the present petition in February 2007, and many of those 24 citations were self-citations by the petitioner's collaborators. The record therefore establishes minimal citation of the petitioner's recent work, including the specific projects to which she is said to be indispensable. Furthermore, while self-citation is a common and accepted practice, counsel has inflated the appearance of the petitioner's impact by including self-citations among the instances attributed to "leading scientists in the field."

The director denied the petition on December 7, 2007, acknowledging the intrinsic merit and national scope of the petitioner's field, but finding that the petitioner had not distinguished herself from others in her field to an extent that would warrant a waiver.

On appeal, counsel argues that the director did not give sufficient weight to the citation of the petitioner's articles. The AAO acknowledges the citation evidence, but the petitioner has not established that these citations set the petitioner apart from others in her field. Updated citation index printouts show two more citations (one of them a self-citation) in addition to those documented previously. The petitioner's recent work relating to leukemia shows minimal citation. We are not persuaded by counsel's argument, on appeal, that the petitioner's citations should carry extra weight because her work was cited by "world-renowned experts."

The remainder of the appeal brief consists of further attempts to illustrate the importance of prior claims and submissions. For example, regarding the petitioner's participation at conferences, counsel states: "It is undeniable that only elite or recognized reputed scientists would be invited to be a speaker." The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner must establish the prestige of this activity. The director is not required to refute unsupported claims regarding the significance of the petitioner's activities.

The record shows that the petitioner is engaged in an important area of research, and her work may well hold promise for future advances in the prevention and treatment of childhood leukemia and other dangerous illnesses. At this stage, however, the record as a whole does not persuasively or consistently distinguish the petitioner from other postdoctoral researchers also performing valuable research at numerous institutions throughout the United States.

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.