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U.S. Citizenship
and Immigration
Services

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FILE:

Office: TEXAS SERVICE CENTER

Date: SEP 11 2008

WAC 06 035 53933

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.

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 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 postdoctoral researcher at the University of California, Irvine. 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 (Comm. 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 personal statement accompanying the petition, the petitioner described his work:

I have been conducting pioneering researches in the field of biomedical sciences, specializing in cholesterol and lipid metabolism, transcriptional gene regulation, nervous system development and neural stem cell. . . .

A major cause of cardio-vascular diseases is the failed regulation of cholesterol and fatty acid homeostasis. . . .

The Sterol Regulatory Element Binding Proteins (SREBPs) are key transcriptional regulatory proteins involved in cholesterol and fatty acid homeostasis regulation. Understanding how SREBPs exert [their] important regulatory function will define the central scientific hunt in lipid biology and allow us to develop new agents to prevent and treat pathologies result[ing] from failure in regulation of lipid homeostasis.

. . . My findings provided a long-awaited explanation for the expression pattern of SREBP1a and the modest insulin regulation of SREBP1a observed in animal experiments. . . .

I am now working with a group of talented researchers to study the physiological function of Prokineticin 2, a novel small molecular [sic] discovered in the brain. I am interested in deciphering the role the Prokineticin 2 plays during the development of [the] nervous system, especially in the adult brain, and if Prokineticin 2 would instruct the adult stem cell to produce neurons. One of the most promising goals of my research is finding out whether Prokineticin 2 could be used in cell-based therapy to reverse the damage to the brain caused by neurodegenerative diseases. . . .

For the first time, I showed that [P]rokineticin 2 could instruct adult neural stem cell to produce more neurons and help them survive in test tube. This finding placed Prokineticin 2 among the few protein factors which have been found to hold the neurogenic capability so far. My finding brought up the hope that Prokineticin 2 can also be used to induce neurogenesis in living animals and would become a potential lead for cell-based therapies for neurodegenerative diseases. . . .

In the coming stage, my research on the function of Prokineticin 2 will focus on investigating its role on the differentiation and survival of newly generated neurons.

Several witness letters accompanied the petition. We shall consider examples of these letters here. A number of the witnesses work at institutions where the petitioner has worked or studied, such as the University of California, Irvine, and the Shanghai Institute of Biochemistry, but other witnesses appear to be independent of the petitioner. [REDACTED], a Senior Investigator and Section Chief at the National Institute on Aging, stated:

[The petitioner's] work aims at discovering novel therapies for neurodegenerative diseases. To that end, his research is exploring the molecular mechanisms by which cell proliferation, differentiation, and migration are controlled in mouse neural progenitor cells. . . . Loss of neurons due to aging or injury is the underlying cause for many neurodegenerative diseases, including Alzheimer's disease, Parkinson's disease and Huntington's disease. One of the most promising avenues in the search for a cure for these diseases involves the use of stem cell-based therapies. . . .

[The petitioner's] work is likely to facilitate the generation of neurons from adult neural stem cells, thereby providing an excellent source for cell-based therapies for degenerative diseases while sidestepping the controversial use of embryonic stem cells.

[REDACTED] of the Université Louis Pasteur, Strasbourg, France, stated that the petitioner's "current research contributions have national and international impact on leading-edge research in the field of neural stem cell and central nervous system development." [REDACTED] echoed [REDACTED]'s assertion that

the petitioner's work is valuable in the search for ways to regenerate neurons in the adult brain. He concluded: "[The petitioner's] unprecedented achievements and extensive research experience . . . make him an unparalleled candidate to make future contributions [to] those projects to which he has devoted himself."

The witnesses praised the petitioner's published work. Because of the subjective nature of such comments, it is important to gauge how the field as a whole has reacted to the beneficiary's published articles. Printouts from citation indices show that four of the petitioner's articles had been cited an aggregate total of 62 times as of the petition's November 2005 filing date, increasing to 75 times as of September 2006; one 2000 article from the *Proceedings of the National Academy of Sciences of the United States of America* had been cited 37 times as of the filing date. The great majority of these citations were independent, rather than self-citations by the petitioner or other authors of the cited articles.

On May 24, 2006, the director issued a request for evidence, instructing the petitioner to submit additional evidence regarding his achievements and their significance in the field. The notice included no discussion of the petitioner's initial submission. In response, the petitioner submitted updated evidence regarding the citation of his published work, as well as additional letters from witnesses in Ohio, Florida and Australia who concurred with earlier witnesses' assessment of the petitioner's work.

The director denied the petition on August 24, 2006. On appeal, counsel argues that the evidence submitted by the petitioner was sufficient to establish the petitioner's eligibility, by showing "international recognition of [the petitioner's] outstanding research contributions and the national and international impact of his works." The AAO notes that the director's four-page decision contains only one specific reference to the petitioner's work, a single sentence alluding to the petitioner's "unique background in prokineticin 2 [*sic*]." The director did not discuss the petitioner's voluminous evidentiary submissions or explain why the director found that evidence to be deficient.

While we do not agree with all of counsel's arguments (such as counsel's claim that publication itself is a mark of distinction, rather than the expected end result of a project), we concur that the record shows that the petitioner's work has had a discernible impact and earned recognition well beyond the bounds of the institutions where the petitioner has worked and studied.

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.