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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: EAC 99 271 52883 Office: Vermont Service Center Date: 30 JUL 2007

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)

Public Copy

IN BEHALF OF PETITIONER:  
[Redacted]

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations 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. At the time of filing, the petitioner was a research associate at Kuwait University. 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 that:

(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. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement 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 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 Service 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 Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service 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, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 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.

Counsel describes the petitioner’s work:

[The petitioner] has internationally renowned academic qualifications and has been extensively published in his area of expertise, agricultural biochemistry and nutrition. . . .

[The petitioner’s] research has proven and will continue to prove invaluable in drastically reducing the environmental concerns inseparably arising from livestock management. . . .

[The petitioner] has skyrocketed into international prominence and respect in his field of expertise. . . . Now widely recognized by leading scholars and experts, [the petitioner] continues an aggressive path of critical discoveries as a researcher, lecturer and innovator.

Counsel, in the introductory brief accompanying the petition, argues that Matter of New York State Dept. of Transportation disregards Congressional intent and overturns “the leading decision outlining NIW standards [that] has been the basis for NIW approvals in its 6 years standing precedent.” The decision to which counsel refers is an appellate decision from 1992. The 1992 decision, contrary to counsel’s assertions, was never designated or published as a precedent decision and it has no force as precedent. Matter of New York State Dept. of Transportation is

the first and, to date, only published precedent decision directly addressing the issue of the national interest waiver. Counsel cites no statute or case law to show that Matter of New York State Dept. of Transportation has been found by any competent authority to be in violation of any statute or regulation, or contrary to Congressional intent.

Along with copies of his published and presented research articles, the petitioner submits several witness letters. Dr. William E. Huff, research physiologist at the U.S. Department of Agriculture's Agricultural Research Service, states that the petitioner has made "substantial and significant contributions to the scientific literature." He continues:

His current research interest on the use of fungi to ferment waste products is important and has many applications to a number of processes that can make a real difference in the pursuit of taking wastes and turning them into products with economic value. It is not so much the specific research that is of importance to this country, although it does have value, but what is more important is the skills and insight that [the petitioner] has developed on this approach to the utilization of waste products, fermentation technology, and enzymology.

Professor Carl M. Parsons of the University of Illinois at Urbana-Champaign states that the petitioner's "work with keratinase enzymes is particular[ly] notable and is excellent work. His recognition for the latter work is particularly evidenced by his excellent review article on potential use of microorganisms for processing of poultry feathers in Biosource Technology." Prof. Parsons also asserts that the petitioner's "papers on nutritional evaluation of many different feed ingredients are known throughout the world and have had considerable impact on the commercial nutrition of poultry and other animals in the U.S. and many other countries."

With regard to the assertion that the petitioner's research has already "had considerable impact on the commercial nutrition of poultry and other animals in the U.S.," the record contains no corroboration from commercial farmers or producers of animal feed. If the petitioner's work has not been implemented outside of the laboratory, then it has not had any impact on the nutrition of poultry. Other witnesses assert only that the petitioner's work "has the potential" to have such an impact, the implication being that the impact is still in the future.

Dr. Adelekan O. Oyejide, now an associate professor at Tuskegee University, was previously a professor at the University of Ibadan, where the petitioner earned his bachelor's and master's degrees. Dr. Oyejide states:

[The petitioner's] publications have made significant contributions to the exploding field of animal feed science and technology. Specifically, he and his collaborators at Ibadan developed a battery of innovative feed formulations for optimal broiler and rabbit performance. These new feed formulations promise to help the local farmer produce animal feeds at greatly improved rates of return, and thus have the potential to revolutionize the animal industry in Africa. In Kuwait, [the petitioner] and his collaborators have isolated a number of keratin-degrading

fungi, and have purified and characterized the keratinase enzymes utilized by these fungi. [The petitioner's] current research thrust appears to be in the direction of developing the potentials for biotechnical applications of keratin-degrading fungi and their enzymes for the commercial conversion of poultry feather and other keratins into animal feed ingredients.

Dr. Wilson G. Pond, visiting professor at Cornell University, has known the petitioner "for more than 5 years" through contact with the petitioner's professor in Nigeria. Dr. Pond states that the petitioner "has made significant contributions to science in animal agriculture which have broad application in food production," but does not specify what those contributions are or why they are significant. Other letters are similar in that they focus on the petitioner's educational background, technical skill and prolific writing rather than the actual content of the petitioner's research work. Some witnesses assert that the petitioner's field of research is an important one, without specifying how the petitioner's work has been especially significant within that field.

Most of the witnesses either know the petitioner personally, or indicate that their letters are based on credential information sent to them for the purpose of supporting this petition. The latter witnesses do not indicate that they were familiar with the petitioner's work before the petitioner contacted them to solicit the witness letters. For these reasons, the letters do not show that the petitioner's work has earned him a significant international reputation as counsel claims.

As an example of a letter from an individual with little evident familiarity with the petitioner's work, Professor E.T. Kornegay of Virginia Polytechnic Institute and State University states that the petitioner "appears to be well trained and has made significant contributions in the area of simple stomach nutrition. . . . His record since 1996 has been extremely good." Prof. Kornegay appears to base his comments not on familiarity with the petitioner's work, but rather review of the petitioner's credentials and "productivity record."

Professor Peter R. Cheeke of Oregon State University states that the petitioner's publications "are relevant to the international community" and that the petitioner's "work with by-product feedstuffs will be useful to colleagues in other tropical countries. His work on processing feathers and other poultry by-products into feeds could be very useful in the US, because of the magnitude of poultry by-products produced and the environmental concerns regarding their disposal."

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted arguments from counsel and supplementary documentation. Counsel persuasively argues that the petitioner's work is national in scope because it can be applied throughout the poultry industry. The petitioner's work has also been disseminated via scholarly journals.

In arguing that the labor certification requirement should be waived in this instance, counsel offers general assertions about the growth of the poultry industry and related issues of waste disposal, food safety, and other matters. Counsel states that, given these concerns, "it is evident that the U.S.

agricultural industry needs to attract the ‘best and the brightest’ experts.” The overall importance of the field of endeavor establishes intrinsic merit but does not qualify individual workers in that field for the waiver. Regarding the petitioner’s general abilities as a researcher, a plain reading of the statute and regulations shows that aliens of exceptional ability are generally required to present a job offer with a labor certification at the time the petition is filed, and only for due cause is the job offer requirement to be waived. Clearly, exceptional ability in one’s field of endeavor is not *prima facie* evidence of eligibility for a national interest waiver of the job offer requirement.

Counsel appraises pieces of evidence in the record, asserting that this evidence establishes the petitioner’s distinction in his field. Many of these assertions are partially or wholly uncorroborated. For instance, counsel states that the petitioner’s “publications have been chronicled in International Citation Indexes [and] Proceedings of the Annual Research Conference of Pfizer Inc., because they are considered to be significant contributions to poultry science.” The record contains nothing from any official source to indicate that only significant contributions are chronicled in the indexes. The index appears to list every instance in which one scientific paper is cited in another paper. The petitioner has submitted only four pages of the publication from Pfizer, and we cannot determine the significance of what appears to be a bibliography. An article by the petitioner is listed as number 151 on a page with entries numbered from 129 to 155.

The indices show one citation of the petitioner’s work in 1996, one in 1997, and three in 1998, not counting several self-citations. Other authors listed in the index show dozens of citations by other authors. This evidence does not support the assertion that the petitioner is an especially influential researcher, nor does it indicate that a significant proportion of the researchers who had previously requested copies of the petitioner’s articles then went on to cite those articles.

Counsel states that the director “trivializes” the petitioner’s work by categorizing his research findings as “useful ideas.” There is no indication that, had the director used some other term, the petition would have been approved without hesitation. Counsel asserts that “the relevance of [the petitioner’s] research” is evident from requests for reprints of the petitioner’s articles. These requests show that others share the petitioner’s area of interest, but they do not establish the industry’s reaction to that research. Presumably, the persons making the requests have not yet read the petitioner’s findings; if they had, or were otherwise in possession of the petitioner’s work, then it would be unnecessary to request copies thereof.

Counsel asserts that “it is always difficult to measure” the impact of one’s research, and that results are not always apparent until many years later. Counsel illustrates this argument with examples from outside of the petitioner’s field of endeavor. In this particular case, the petitioner’s contribution is in the area of processing poultry by-products into chicken feed and other products. An objective, readily verified means of measuring the petitioner’s impact in this area would be to determine how widely the petitioner’s methods have been implemented by poultry farmers and by manufacturers of chicken feed. Also missing from the record is evidence that these industries have even expressed serious interest in the petitioner’s work with a view toward future implementation. Indeed, it is difficult to conceive of any other way by which the petitioner’s work could have any real impact on the poultry industry.

Counsel states “[w]e wish to respectfully remind the Service that only **ONE of the seven . . .** factors [from the aforementioned 1992 appellate decision] needs to be satisfied” (emphasis in original). Counsel’s argument relies on the false assumption that the 1992 decision has ever had legal force as a precedent, rather than serving as an informal list of examples and guidelines.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner’s work but finding that the petitioner’s own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. The director stated that the petitioner had not established that his particular contributions to his field were in fact particularly significant.

Counsel argues on appeal that the labor certification process is not appropriate in this instance because the petitioner “possesses something that cannot be articulated on a labor certification – the ability to invent new ideas.” While creativity is important, the burden is on the petitioner to show that his ideas are not only original but important. Also, counsel’s assertion relies on the presumption that originality is rare in the petitioner’s field, implying that most of the research emerging from the petitioner’s field is unoriginal and therefore redundant.

Counsel asserts that the petitioner has submitted letters from witnesses around the world, thus demonstrating “how far-reaching the impacts of his work have already been.” As we have already observed, many of the letters are from individuals with long-standing associations with the petitioner, and thus their familiarity with the petitioner’s work is not a sign of its impact. Other witnesses have stated only that they reviewed the petitioner’s work at the petitioner’s request, with no indication that they were at all acquainted with that work prior to that request. The nature of their comments suggests that their knowledge of the petitioner’s work derives entirely, or in great part, from materials the petitioner has sent to them. Most of the letters do not even discuss details of the petitioner’s work, much less evaluate their significance, saying instead that the petitioner appears to be highly skilled and to work well with others, which would be valuable assets to a U.S. employer.

Counsel discusses the overall significance of various issues relating to agriculture and the poultry industry, the implication being that the petitioner’s work will serve to remedy these problems. All of the evidence submitted on appeal deals with general issues, such as water quality and diet, rather than the petitioner’s specific work in those areas. The record does not show that the petitioner’s years of work (he has been publishing since 1993) have thus far had any measurable impact on the manufacture of animal feed, the disposal of animal wastes, environmental issues arising therefrom, etc. The petitioner has, no doubt, been a prolific author of published scholarly articles, but the citation information submitted by the petitioner does not indicate that anyone other than the petitioner himself has relied on the petitioner’s past published work. The petitioner works in a field where any potential impact is only meaningful on a practical level – e.g., proposed solutions to animal waste product disposal are of little benefit unless actually implemented to reduce such waste – but the record focuses exclusively on academic discussion of the petitioner’s work. Without evidence that the petitioner’s findings have been implemented

(or are well on the way to being implemented), and without evidence that the producers of animal feed have taken an interest in the petitioner's ideas regarding the production of animal feed, we cannot conclude that the petitioner has had a substantial impact on his field, beyond what would be expected of a dedicated and competent researcher in that field. The evidence of record does not offer sufficient support for many of the arguments on which the waiver request rests.

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, 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.