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U.S. Citizenship
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FILE:

EAC 04 223 51565

Office: VERMONT SERVICE CENTER

Date: AUG 04 2006

IN RE:



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:

SELF-REPRESENTED

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, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office 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 an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a visiting scientist/research associate. 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.

On appeal, the petitioner submits a statement and additional evidence. The petitioner also requests oral argument “to answer some questions on my case which have been overlooked or misinterpreted.” The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner identified no unique factors or issues of law to be resolved. The written record of proceeding fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied. The petitioner’s remaining assertions on appeal will be discussed below.

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.

(i) . . . the Attorney General may, when the Attorney General 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 petitioner holds a Ph.D. in Chemistry from the Dresden University of Technology. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue 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 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 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 Dep't. of Transp., 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 concur with the director that the petitioner works in an area of intrinsic merit, nanobiotechnology. Noting that the evidence relates to past projects, the director concluded that the petitioner had not established that his individual work would be national in scope. On appeal, the petitioner asserts that he is working on National Nanotechnology Initiatives (NNI) that are national

in scope. At issue is whether the *proposed* benefits of his work, nanomedicine to treat various diseases and allergies, would be national in scope. We find that they are.

It remains to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The director concluded that the petitioner's accomplishments were not uncommon for advanced degree researchers and that not all researchers warrant a waiver of the job offer requirement in the national interest. The director further concluded that the record did not establish that the petitioner has a history of influence in his field.

On appeal, the petitioner asserts that his accomplishments, such as receiving an "international award" and "national fellowships," being published in "Who's Who" and working at an Ivy League school place him in the top one percent of his field. The "international award" referenced by the petitioner is actually a scholarship. Appearing as one of thousands of other successful individuals, 45,000 in the case of "Who's Who in the World," in a frequently published directory is not evidence of one's influence in the field. The exhibits offered as evidence of his "national fellowships" constitute his self-serving curriculum vitae, a letter from the White House acknowledging receipt of a letter from the petitioner and a job offer from Virginia Polytechnic Institute. Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 219, n.6. As such, scholarships alone cannot support a waiver request. The petitioner has not explained how writing the White House and receiving a boilerplate response thanking him for the letter demonstrates his influence in the field. Finally, we are not persuaded that every researcher able to secure employment with an Ivy League university warrants a waiver of the job offer requirement in the national interest.

On page three of his appellate statement, the petitioner asserts that he is the "sole authority in the specific area of nanotechnology." The petitioner then compares himself to Albert Einstein, "who

before the impact of his discovery was being under rated [sic] and was driven from Germany.”¹ Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner’s claims appear highly exaggerated. The petitioner does not identify any evidence in support of this assertion other than, much later in his personal statement, referencing correspondence from an Armenian research group. Specifically, the petitioner asserts that “they searched everywhere in the U.S. and found no one except me in this specific vital area of nanotechnology.” The e-mail in question does confirm that the Armenian group decided to contact the petitioner after becoming “acquainted with [his] articles,” but does not suggest that they determined he was the *sole authority* in his area. None of the reference letters in the record make such a bold statement. As such, the record does not support the petitioner’s assertion that he is the sole authority in his area.

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive independent letters.

The petitioner was a visiting scientist in the laboratory of _____ at the Nanobiotechnology Center (NBTC) at Cornell University. _____ explains that the NBTC is “a leading center of the National Nanotechnology Initiative.” Her sole discussion of the petitioner’s work on this project is as follows:

[The petitioner] made substantial contributions to this NBTC project. He has both the necessary theoretical and experimental skills. He worked with other members of the team including undergraduate and graduate students. He was enthusiastic about his work and good progress was made.

¹ Albert Einstein was far from underrated when he left Germany for political reasons, having received the Nobel Prize in 1921 but not leaving Germany until December 1932. *See* “50 Years After Einstein’s Death, His Discoveries Still Matter,” reprinted on Radio Free Europe’s website, www.rferl.org.

This discussion does not specifically explain the nature of the project or the petitioner's specific contributions or how the petitioner's contributions have influenced the field. Rather, the letter merely confirms that the petitioner was qualified to perform the duties assigned to him. The petitioner provided a similar letter from [REDACTED] a postdoctoral fellow, asserting that the petitioner "played an important role" in NBTC's project, that the project itself has contributed to several areas of importance and that the petitioner "possesses unique theoretical and experimental skills." This letter provides no more details than the letter from [REDACTED]

Although the petitioner worked for a year at Virginia Tech, the record lacks letters from any of the petitioner's colleagues at that institution.

[REDACTED], the petitioner's Ph.D. advisor, asserts that the petitioner worked on "various research projects" that "have significant impact on improving the competence of the nation's businesses." The petitioner "generated not only original and scientific contributions but also practical and technical data and information useful for industry." [REDACTED] notes that the petitioner published his work in journals and presented it at conferences. Once again, [REDACTED] does not explain what projects the petitioner worked on, how they have impacted and improved "businesses" or even identify which "businesses." [REDACTED] also fails to explain what data and information the petitioner revealed or how it is being used in "industry." The record does not contain a single letter from industry officials explaining how their industry has been impacted by the petitioner's results.

On appeal, the petitioner repeatedly emphasizes that he initially submitted a reference from someone at Harvard University. The exhibit referenced is an e-mail message purportedly from [REDACTED]

Associate Dean of the Faculty of Arts and Sciences at Harvard, with the subject "Re: Post-doc Position." While the electronic "signature" is that of [REDACTED] the e-mail was actually sent by [REDACTED]

The message thanks the petitioner for his interest in [REDACTED]'s research group and advises that she has no space for an individual with his background. While she states that the petitioner's "work to date is quite impressive," the e-mail message, sent by someone other than [REDACTED] is essentially a polite boilerplate rejection response to the petitioner's job inquiry.

In response to the director's request for additional evidence, the petitioner submitted a letter from [REDACTED] [REDACTED], an associate professor at Binghamton University. [REDACTED] asserts that the

petitioner joined his Biosensors Research Group in the fall of 2004. The petition was filed in July 2004. Thus, any work the petitioner may have subsequently done at Binghamton University is not evidence of his eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). As with the other letters, [REDACTED]'s discussion of the petitioner's past projects is extremely vague, asserting only that it is in the national interest and that the petitioner has "developed unique methods in these projects, which are very crucial in the nation's interest." [REDACTED] does not identify the methods, explain how they are significant or state whether or not the petitioner's methods are being applied beyond his immediate circle of collaborators.

On appeal, the petitioner submits a new reference letter from _____ a professor at Savannah State University. _____ asserts that he knows of the petitioner “though his research.” _____ discusses the importance of projects at NBTC, which we do not contest, and asserts that these projects “cannot continue without him.” As stated above, however, _____ asserts in her initial letter that the petitioner only worked at NBTC until April 2004 and in response to the director’s request for additional evidence, _____ asserts that the petitioner joined a biosensors group at Binghamton University in the fall of 2004. Thus, any assertion that a waiver should be approved to allow the petitioner to continue at NBTC, where he no longer works, is without basis. Moreover, _____ does not confirm that the petitioner is irreplaceable at NBTC. Finally, _____ asserts that the petitioner has “written a proposal in nanomedicine for prevention and cures of cancer, tumor and other related brain diseases.” The record contains no evidence that this proposal has survived a grant committee peer-review.

The petitioner has submitted evidence of seven published articles, all reporting the results of work funded in Germany or Nigeria. The petitioner claims a single citation of his published work. A single citation is not significant. The petitioner is also the author of a book entitled “Polymers with Low Dielectric Constants” Synthesis and Fabrication of Their Ultrathin Films,” which is part of the Fine Hall Library’s collection at Princeton University. On appeal, the petitioner asserts that the concept in this book is a “revolution to nanoelectronics in an emerging nanotechnology.” It can be expected that a “revolution” in any field would result in applications in many research groups beyond the collaboration reporting the “revolution” and would be frequently and widely cited or widely adopted in industry. The record contains no evidence that this book is widely cited, that it sold well or that it is commonly assigned as reading in nanotechnology courses. As stated above, the petitioner did not submit any letters from industry executives confirming their application of his work.

We acknowledge that the record contains evidence that the petitioner has been approached for possible future collaborations with an Armenian group, to submit an article to *Polymer News* and to write a book chapter for a book based on a 2003 symposium. The inquiry from the Armenian group postdates the filing of the petition and is not evidence of his influence prior to that date. The book chapter offer appears to be addressed to all participants in the symposium on which the book will be based. While the invitation from *Polymer News* demonstrates an emerging interest in the petitioner’s work, it is not clear how many scientists in the field received similar invitations from what appears to be a new journal attempting to attract prospective authors.

The record shows that the petitioner is respected by some of his colleagues and has made useful contributions in his field of endeavor. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant or on a project created by government initiative inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

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.