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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 03 161 52283 Office: VERMONT SERVICE CENTER Date: AUG 22 2005

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

Marc Johnson

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 Administrative Appeals Office 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 an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a research scientist. 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, counsel asserts that the director erred in not issuing a request for additional evidence. Even if we were to concur with that assertion, the most appropriate remedy is to consider evidence that might have been submitted in response to such a request on appeal. On appeal, the petitioner submits new reference letters, additional articles by the petitioner and his expanded citation record. This evidence will be considered 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. from Peking Union Medical College. 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, cancer research. The director then concluded, without explanation, that the petitioner had not demonstrated that the "impact" of the petitioner's "proposed activities" would be national in scope. Counsel challenges this determination on appeal. The proper consider is whether the proposed benefits of the petitioner's work would be national in scope. In this matter, the proposed benefits of the petitioner's work are improved understanding of cancer and improved therapeutic technologies. We find that these proposed benefits would be national in scope.

It remains, then, 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 determined that the petitioner had not demonstrated his role in various projects or that his work was considered to be "breakthrough." The director discounted the petitioner's reference letters as being only from his academic mentors and discounted the petitioner's citation history for unspecified reasons.

On appeal, counsel asserts that the director should not have required evidence that the petitioner's work is considered "breakthrough," that the director's brief quotes from the reference letters were partial and incomplete. Counsel notes the petitioner's citation record. The petitioner submits new reference letters, additional articles and an expanded citation history.

As stated above, the petitioner obtained his Ph.D. in 1998 from Peking Union Medical College. During his studies there, the petitioner spent one year as a World Laboratory Fellow at the Laboratory of Molecular Biology, National Institute for Cancer Research in Genoa, Italy. The petitioner then accepted a postdoctoral position with Columbia University. In 1999, the petitioner joined the Mount Sinai School of Medicine where he remains.

Dr. [redacted] the petitioner's supervisor in Genoa, asserts that the petitioner carried out most of the work there, which focused on the responsiveness to retinoic acids in distinct cancer cells, "autonomously." Dr. [redacted] explains that the petitioner established "an efficient RT-PCR method that allowed him to quickly examine the expression status of various members of the retinoids receptor family in different cancer cell types." The petitioner used this method to examine responsiveness in esophageal, stomach and lung cancer cells. Dr. [redacted] Director of the World Laboratory, explains that while the RT-PCR method for the detection of the expression pattern of retinoic acids receptors was developed in the laboratory prior to the petitioner's arrival, the petitioner's improved model "was much more efficient and simple."

Dr. [redacted] further explains the petitioner also determined that a synthetic retinol acid demonstrated even more potent anti-cancer activity. The petitioner identified DPH2L as a tumor suppressor target, suggesting DPH2L has a "potential" clinical application "as a biomarker in the cancer prognosis and treatment." Dr. [redacted] concludes that this work "helped us in understanding the molecular mechanism of the anticancer effects of retinoic acids" and "may also provide a potential biomarker for future clinic applications." Dr. [redacted] Dean of the Institute of Cell Biology at Beijing Normal University, provides similar information.

The director quotes the above references' statements regarding the potential significance of the petitioner's Ph.D. thesis work and Dr. [redacted] statement that he is not familiar with the petitioner's current work. In doing so, the director appears to imply that the witness letters as a whole merely attest to the potential significance of the petitioner's thesis work and do not discuss the petitioner's postdoctoral work. While attestations of potential significance are less persuasive than examples of how the petitioner's work has already impacted the field, the record must be evaluated as a whole. We concur with counsel that the quotes referenced by the director are a poor representation of the witness letters as a whole. The director failed to fully consider the remaining letters, which discuss at length the petitioner's postdoctoral work, and the objective evidence supporting all the letters, the petitioner's citation history.

At the Mount Sinai School of Medicine, the petitioner has been focusing on the Wnt signaling pathway in the laboratory of Dr. [redacted] Dr. [redacted] explains that the petitioner "discovered, for the first time, a novel mechanism for the regulation for this receptor, which has no precedent among other receptors." In addition, the petitioner developed "a novel retroviral expression vector system," a tool for mediating "gene transfer to cells or within the whole animal body when properly modified." Previously, the vectors utilized were mostly "of mouse origin." The petitioner "used molecular techniques and made a series of human-mouse chimeric retroviral vectors that combined the advantages of both human and mouse retroviruses." The petitioner's vector "has significantly improved efficiency for gene delivery and much higher expression intensity

of the target genes in human cells. This system has been promptly used by colleagues within our lab and other labs and is potentially a powerful tool for gene therapy."

In a new letter submitted on appeal, Dr. [redacted] confirms that the petitioner was "critically involved" in "several crucial findings" at Mount Sinai and his "contribution to these studies are unique and of key importance." While Dr [redacted] s one of the petitioner's colleagues and his letter cannot, by itself, establish the petitioner's influence in the field beyond his circle of colleagues, the petitioner's colleagues are in the best position to explain the nature of the petitioner's role for the various projects on which he worked.

Most significantly, Dr. [redacted] a professor at Tel Aviv University and one of the petitioner's coauthors, discusses the petitioner's work with Wnt.

> [The petitioner] has succeeded in constructing a wide range of cDNA expression vectors with different tag sequences and made use of site-directed mutagenesis to analyse [sic] the structure/function relationship of frizzled-1. He found that a conserved motif, localized in the carboxyl terminal of frizzled, interacts with several intracellular proteins in a yeast-two-hybrid screening, and also regulates the receptor protein level and signaling intensity. In addition, he demonstrated the significance of an extracellular domain truncated LRP5/6, a Wnt coreceptor, in revealing the mechanism of receptor activation. This truncated form of LRP5/6 is constitutively active to mediate Wnt signaling and may correspond to the active state of the wild type receptor. By using a series of mutagenesis and protein interaction approaches, he uncovered an unusual mechanism fore the activation of this wild type coreceptor through regulation of the receptor oligomerization status.

Dr. [redacted] concludes that this work has high significance "to the study of other trans-membrane signal transduction and in elucidating the roles of misregulations in the Wnt pathway in human diseases.

Dr. [redacted] an assistant professor at the University of Pennsylvania, explains that disruption of the Wnt is related to colon cancer and asserts that the petitioner's work has significantly increased knowledge concerning this pathway. While the director implied that all of the references were colleagues of the petitioner during his academic pursuits, Dr. [redacted] knows of the petitioner through his publication record and interactions at scientific conferences.

The petitioner submits additional independent reference letters on appeal. Dr. [redacted] Chief of the Laboratory of Tumor Immunology at the National Cancer Institute, asserts that the petitioner's work with the Wnt pathway "provide the basis for exciting and significant progress relevant to fundamental biology with direct application to medicine."

Dr. [redacted] Director of the Fels Institute for Cancer Research and Molecular Biology, asserts that the petitioner's elucidation of mechanisms of Wnt activation of its membrane receptor LRP5/6 and the action of inhibitory proteins is an "essential contribution to this field." Dr. [redacted] further notes that in addition to anticancer implications, the Wnt pathway is also related to the accumulation of bone mass, making the petitioner's work relevant to osteoporosis research.

Dr. [redacted] a division chief at Columbia University, asserts that the petitioner's work on Wnt pathways "greatly contributed to our understanding of the basic cellular signaling regulation in both human organism

development and physiology." Finally, Dr. [redacted], Director of the Netherlands Institute for Developmental Biology, asserts that the petitioner has "answered the fundamental questions at the molecular level about how a group of proteins called Dickkopf inhibit Wnt medicated signaling, and through what mechanism Wnt activates its receptors."

Even prior to appeal, several of the petitioner's references focus on the petitioner's work with the Wnt pathway, work not even acknowledged by the director. Supporting the claims in the reference letters of the significance of this work is the petitioner's citation history. The petitioner's postdoctoral articles in the *Embo Journal* and *Nature Cell Biology* had been cited 14 and 29 times respectively as of the date of filing. Even the petitioner's doctoral work, published in *Progress in Natural Science* and the *International Journal of Cancer* had been cited 13 and 15 times respectively. The vast majority of the citations mentioned in this paragraph are by independent researchers. While the petitioner's citation record after the date of filing is not directly relevant to his eligibility as of that date, we note that on appeal, the petitioner submits evidence that the above articles continue to be cited and that his new articles are also consistently cited. Thus, the petitioner has continued his record of publishing influential results.

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 above testimony, and further testimony in the record, establishes that the biomedical research 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 approving the petition will be affirmed.

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.