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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAY 13 2008

SRC 07 068 51466

IN RE: Petitioner:
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:

[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.

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 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 is a postdoctoral researcher at the Ohio State University (OSU). 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 (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 an introductory statement, counsel stated that the petitioner "has extensive research experience in the nationally crucial field of chemistry, specifically concerning the impact of free radicals on human health."

Seven letters accompanied the petitioner's initial submission. We will consider examples of these letters here. Professor [redacted], Director of the Davis Heart and Lung Institute at OSU, stated:

> [The petitioner] has many past accomplishments. During his Ph.D. program from Oct. 1999 to July 2002, [the petitioner] conducted advanced research on the molecular design and synthesis of novel phosphorylated spin traps. He was the first researcher to confirm experimentally the key factors for stability of spin adducts. This discovery opened up new ideas for spin trap design and synthesis. . . . [The petitioner subsequently] came to the United States and began another two-year postdoctoral research [appointment] at the Medical College of Wisconsin in the field of probes design for reactive free radicals, and nitration studies of tyrosine-containing peptide. During this period, he designed and synthesized a

> mitochondria-targeted spin trap, which is a remarkable achievement because scientists around the world had been striving for the synthesis of such compounds for over a decade.
>
> Since he joined our project, he has generated several very substantial results in just several months. Among other things, [the petitioner] designed and established a novel efficient method for the synthesis of mitochondria-targeted spin traps. These probes will greatly assist doctors and scientists to better understand the difference between normal metabolic processes and the pathological processes in cells and tissues, and to discover effective treatments of CVD [cardiovascular disease].

Five of the initial seven letters are from witnesses who have worked with the petitioner at the universities where the petitioner has studied or worked. One of the remaining two letters, from [redacted] of the University of Cincinnati, devotes only one paragraph to the petitioner's work. That paragraph derives almost verbatim from [redacted]s letter:

> Since he joined [redacted]s research projects, [the petitioner] has generated several very substantial results, e.g. he designed and established a novel efficient method for the synthesis of mitochondria-targeted spin traps. These probes will greatly assist doctors and scientists to better understand the difference between normal metabolic processes and the pathological processed in cells and tissues.

The other apparently independent witness is [redacted] Chief of the Biophysical Spectroscopy Section at the National Cancer Institute. [redacted] stated:

> [The petitioner] has made significant contributions in EPR-spin trapping technique through his work on the development and application of spin traps. Those projects aimed to: (1) increase the sensitivity and specificity of probes for reactive free radicals; and (2) advance the detection of the generating sites of reactive free radicals in pathological process. . . . [The petitioner's] contributions in these projects include: design and development of spin traps and mitochondria-targeted spin traps for EPR [electron paramagnetic resonance] detecting of reactive free radicals, and also nitration studies of tyrosine contained peptides. . . .
>
> [The petitioner's] current work contributes intensively to the development of site-directed probes for EPR spectroscopy and EPR imaging of reactive free radicals in pathological process, especially the study of CVD. . . . The newly developed technique of EPR imaging with the help of site-directed probes will benefit the study of reactive free radicals in heart diseases. Now [the petitioner] has developed an efficient method for Mitochondria-targeted spin traps, which has shown the specific trapping ability for trapping of oxygen-centered free radicals.

OSU Assistant Professor [redacted] stated that the petitioner's "synthesis of mitochondria-targeted spin trap was a major breakthrough and is a milestone in the field of EPR-spin trapping."

Counsel stated that the petitioner's published work "has already been cited by other researchers at least seventy (70) times." The petitioner submitted printouts from a citation database, identifying 16 cited articles by the petitioner and indicating that the petitioner's two most-cited articles show 13 and 24 citations, respectively. These initial printouts did not indicate how many of the citations were, in fact, independent citations "by other researchers" rather than self-citations by the petitioner and/or his coauthors.

On August 17, 2007, the director instructed the petitioner to submit further evidence to establish that the petitioner meets the guidelines set forth in *Matter of New York State Dept. of Transportation*. In response, counsel stated that the petitioner has been "cited in at least 98 peer reviewed scientific publications." The citation count on the two most-cited papers had risen to 18 and 25, respectively. The documentation submitted in support of this claim included information on the citing articles, information that was omitted from the initial submission. This newly-available information indicates that, of the 25 citations of the petitioner's most-cited article, as many as 17 are self-citations by the petitioner or his co-authors. All told, about 40 of the petitioner's documented citations are self-citations, which leaves a respectable total of over 50 apparently independent citations. (We note that this updated total is still well below counsel's prior claim of 70 citations "by other researchers.")

The petitioner also submitted new witness letters, including three witnesses outside of OSU. Professor [redacted] of the University of New Mexico pointed to the citations of the petitioner's papers as "strong evidence that [the petitioner] is a truly impressive researcher. Assistant Professor [redacted] of North Dakota State University deemed the petitioner to be "a terrific researcher who has produced influential peer-reviewed publications and conference abstracts."

The third witness outside of OSU, Professor [redacted] of Budapest University of Technology and Economics, "briefly" worked with the petitioner "while he [the petitioner] was a Ph.D. student in China" and has remained in contact with him since that time. Prof. [redacted] asserted that the petitioner's "work . . . generated real progress in the use of the EPRI technique for mapping free radical distribution within pathological process [*sic*]."

The director denied the petition on November 8, 2007, stating that, while the petitioner "is well educated and has conducted important research in chemistry," the petitioner had not demonstrated "a national benefit so great as to outweigh the national interest inherent in the labor certification process." The director also stated that, to establish eligibility, "[a] petitioner should not only demonstrate a past history of achievement, but also some degree of influence on the field as a whole."

On appeal, the petitioner argues that the numerous independent citations of his work are evidence of the required influence on his field, and that "[t]he discussions in the denial notice were just 'boilerplate' and not specific to my case at all." These assertions have considerable merit. The director referred to the petitioner as "a chemist" but otherwise offered no specific discussion of the merits or weaknesses of the petitioner's evidence.

In this instance, the petitioner has submitted independent testimonial evidence attesting to the significance not only of the petitioner's field, but of the petitioner's specific work within that field. The petitioner's citation

record constitutes documentary evidence that establishes the influence of the petitioner's findings on the work of others in the field. While letters and citations can be, and often are, valuable measures of a given alien's influence on a particular field, there exists no rigid formula by which a certain number of citations and/or witness letters draws a sharp line between eligible and ineligible aliens. Rather, the specific merits of each individual petition (including, many times, factors apart from letters and citations) warrant careful consideration.

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.