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U.S. Citizenship
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Services

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JAN 18 2005



FILE: LIN 02 218 51584 Office: NEBRASKA SERVICE CENTER Date:

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)

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.

[Signature]

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted. The decision of the AAO will be withdrawn, and the petition will be approved.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 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, dated July 15, 2003, counsel requested an additional 90 days in which to file an additional brief. On March 26, 2004, the AAO summarily dismissed the appeal, concluding that the record did not contain a supplemental brief. On motion, counsel submits a copy of a brief and evidence that it was received by the AAO in October 2003. The original brief is also currently in the file, indicating that it was received by the AAO in October 2003. As such, we will reopen the matter to consider the appeal on its merits.

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 Microbiology from the University of Minnesota. 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, molecular biology, and that the proposed benefits of her work, safer poultry, would be national in scope. While the petitioner's work focuses on the Minnesota turkey industry, the record adequately establishes that Minnesota is the largest turkey producer and processor in the nation; thus, any benefits to this industry accrue nationally. 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 she 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.

██████████ a member of the petitioner's Ph.D. thesis defense committee at the University of Minnesota, details the petitioner's accomplishments there, both as a doctoral candidate and as a postdoctoral researcher. ██████████ explains that the petitioner successfully completed "a project designed to develop and test a broad-spectrum recombinant avian influenza vaccine. ██████████ elaborates that the task was complicated by the virus' unique biology and replication pattern. ██████████ then asserts that the

petitioner's current research focuses on the avian pneumovirus (APV) that appeared in the United States in 1996 and has caused great loss to U.S. turkey farmers. According to [REDACTED] the petitioner has already contributed to controlling this disease through her development of RNA and protein based molecular diagnostic tests. [REDACTED] notes that the petitioner is a co-investigator on a project jointly funded by the turkey farming industry and the State of Minnesota to develop a recombinant fowlpox virus vaccine to protect turkey flocks from [REDACTED] infection. Finally [REDACTED] further notes that the petitioner is also a co-investigator on a Department of Agriculture project "to discover and characterize genetic and molecular responses of turkeys to APV infection."

[REDACTED], the petitioner's Ph.D. advisor, provides similar information, adding that the petitioner's diagnostic tests for [REDACTED] have a pending patent. Dr. Kapur further asserts that the petitioner was "involved in the development of an improved and highly sensitive diagnostic test for the detection of *Salmonella enteritidis*." According to [REDACTED], the petitioner "also contributed significantly in the investigations on the biologic basis of virulence" of *Salmonella*.

[REDACTED] Executive Director of the Minnesota Turkey Research and Promotion Council and the [REDACTED] Association (MTGA), praises the petitioner's work and asserts that the Minnesota Veterinary Diagnostic Laboratory (MVDL) is using the petitioner's diagnostic tests for APV. Dr. [REDACTED] the Department of [REDACTED] and the supervisor of the virology and serology sections at the MVDL, confirms that [REDACTED]'s collaboration with the petitioner resulted in MVDL's use of some of the petitioner's diagnostic tests.

[REDACTED] Manager of the Animal Productivity and Genomics Initiative at Cargill, Inc., confirms that Cargill, one of the largest beef, pork and turkey producers and processors, awarded the petitioner a three-year competitive research excellence fellowship to conduct research in the area of animal genomics.

As noted by counsel, the director did not specifically address a letter from Dr. Andrew Potter, Associate Director of Research of the Canadian Veterinary Infections Disease Organization (VIDO). Dr. Potter states:

As mentioned above, our organization [REDACTED] has launched the animal genomics research program and is in the process of acquiring genomics technology and training of our research scientists. Another proof of [the petitioner's] unique expertise in this area of research and her being a reputed resource for poultry genomics is that [REDACTED] sent our poultry genomics Research Scientist to the University of Minnesota for acquiring genomics tools and technology under [the petitioner's] guidance and expertise.

[REDACTED] testimony suggests that the petitioner has impacted the field beyond the typical original research expected of doctoral candidates.

The petitioner also submitted the fellowship agreement between [REDACTED] of Minnesota listing the petitioner as the recipient of the fellowship and the individual who would conduct the research under the direction [REDACTED]. While the director is technically correct that this fellowship is contingent on [REDACTED] involvement, the petitioner also submitted a 2001 grant from the Minnesota Turkey Research and Promotion Council and a 2002 grant from the U.S. Department of Agriculture, both listing the petitioner as one of three principal investigators.

Finally, the petitioner submitted her publication history. The director questioned the significance of this history due to an alleged lack of evidence that other researchers had cited the petitioner's work. While counsel does not raise this factual error, we note that the record does contain citation evidence beginning with exhibit 39. The evidence that the petitioner has been moderately cited is consistent with the assertions in the letters discussed above.

Finally, as noted by counsel, on the final page of the decision the director appears to require evidence of exceptional ability. As stated above, the petitioner is an advanced degree professional. While *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 218, states that an alien seeking a national interest waiver must present a benefit that greatly exceeds the "achievements and significant contributions" contemplated for aliens of exceptional ability, an advanced degree professional need not establish that she also meets the regulatory criteria for classification as an alien of exceptional ability.

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 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 AAO's summary dismissal of the appeal and the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The AAO's decision of March 26, 2004, is withdrawn. The petition is approved.