



U.S. Citizenship
and Immigration
Services

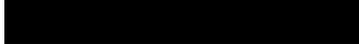
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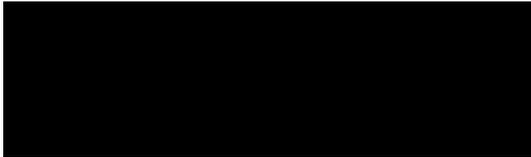


FILE: EAC 03 017 51179 Office: VERMONT SERVICE CENTER Date: **JUN 30 2006**

IN RE: Petitioner: 
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:



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, 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 a member of the professions holding an advanced degree. The petitioner is a postdoctoral fellow at the University of Pennsylvania School of Medicine. 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 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 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 (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.

Counsel describes the petitioner's work:

[The petitioner] is a leading expert in the use of truly innovative techniques in the field of brain tumor research. . . .

[The petitioner] has developed a method of treatment using biologic therapy, which alters the environment in which cells reproduce and grow. [The petitioner] genetically manipulates brain tumor cells, disrupting their communication method, called signal transduction. . . . [I]t halts their reproduction, thus effectively disabling the tumor's growth. . . .

[The petitioner's] contributions have received widespread international recognition. . . .

[The petitioner] has had a number of impressive citations to his work. This is a clear indication that [the petitioner's] work is relied on quite heavily by scientists and students the world over.

Counsel lists 21 journals in which, counsel states, citations to the petitioner's work have appeared. The initial submission did not, however, include actual evidence of these citations.

The petitioner's initial submission includes letters from five witnesses. From their wording, it is evident that these letters were written to support another petition to classify the petitioner as an alien of extraordinary ability under section 203(b)(1)(A)(i) of the Act. (That petition, receipt number EAC 03 017 51062, was denied and there is no record of a subsequent appeal.) Each of these witnesses has supervised, worked, or studied with the petitioner. Several witnesses do not discuss the petitioner's work in any detail, instead focusing on the recognition this work has received.

The only letter that describes the petitioner's work in any significant detail is from [REDACTED] research scientist at the American Health Foundation. [REDACTED] and the petitioner were both doctoral candidates at the Postgraduate Institute of Medical Education and Research (PGIMER) in 1991. [REDACTED] states:

Brain tumors are generally categorized into three types: retinoblastoma, glioblastoma or glioma tumors and medullablastoma. While all three have potentially deadly effects, it is only glioblastoma that has thus far proven impossible to treat. . . .

[F]or glioblastomas, the only method that may result in positive treatments is biologic therapy.

[The petitioner] is credited with significant contributions towards the development of treatments against glioblastoma cells through the use of biological response modifiers (BRM). Biologic therapy involves making it difficult for tumors to grow by changing their biological environment or by changing their behavior. . . .

[The petitioner] is pioneering a mechanism to inhibit the development of glioblastomas. Signal transduction, at the cellular levels, refers to the movement of signals from outside the cell to inside. . . .

[The petitioner] is making critical inroads towards disrupting this communication inside the cells, thereby effectively disabling the method through which cells are signaled to reproduce. . . . Due to the incurable nature of glioblastomas by conventional therapy and operative means, this approach has the greatest chance to forge a breakthrough in the treatment of these fatal tumors. . . .

[The petitioner's] method could be used as a therapeutic approach to reduce tumor growth, a phenomenal breakthrough in cancer treatment.

Other witnesses state that glioblastomas are "difficult" to treat, but none indicate that treatment is "impossible" or that such tumors are, at present, "incurable" as [REDACTED] has contended.

The director denied the petition, stating that "all of the letters . . . appear to be from individuals who have worked with the beneficiary or knew him from the various academic settings where he pursued his education or conducted research." These letters, therefore, are not first-hand evidence that the petitioner's reputation extends beyond the institutions where he has worked and studied.

On appeal, counsel states that the director should have issued a request for evidence pursuant to 8 C.F.R. § 103.2(b)(8). That regulation requires the issuance of such a request when "the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility." The most expedient remedy, at this stage, is full consideration of the material that the petitioner would have submitted in response to such a notice.

Among the evidence submitted on appeal is a Web of Science citation listing, showing 122 citations of the petitioner's work from 1996 to 2004. This newly submitted evidence certainly supports the previous claim that the petitioner's work has been heavily cited. Counsel states that the director "overlooked the **over 120 citations**," but this evidence was not available to the director at the time of the decision. The total number of citations at the time the petitioner filed the petition was considerably lower, but we consider the more recent citations as evidence of the continuation of a trend already established as of the filing date

Further establishing the petitioner's influence and reputation are two new letters from independent witnesses. [REDACTED] assistant professor at Stanford University School of Medicine, attended the University of Pennsylvania Medical College, but left that institution several years before the petitioner's arrival. [REDACTED] states:

I do not know [the petitioner] personally, nor have I ever collaborated with him or worked with him in any manner. My only familiarity with [the petitioner] is through his groundbreaking advances in brain tumor research, which came to my attention through his publications and presentations. . . .

[The petitioner] is a nationally recognized expert whose discoveries in the fight against brain cancer have had a major impact on the field.

[REDACTED] assistant professor at Cornell University, states:

While I do not know [the petitioner] personally, nor have I ever met him, I am well aware of his numerous discoveries and pioneering breakthroughs. . . . [The petitioner] has had a substantial impact on the development of improved treatments for brain tumors. . . .

For example, [the petitioner] is largely responsible for some of the most significant recent discoveries related to the diagnosis and treatment of glioblastomas, the most common of all central nervous system tumors.

The above letters, like the petitioner's many independent citations, serve to demonstrate that the petitioner has had a significant impact in his field.

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 available evidence establishes that the medical 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 denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.