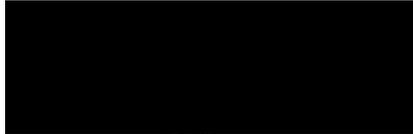




U.S. Citizenship
and Immigration
Services

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invasion of personal privacy**

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BS

FILE: [REDACTED]
EAC 04 257 51968

Office: VERMONT SERVICE CENTER

Date: NOV 02 2005

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:

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.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter 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 a member of the professions holding an advanced degree. The petitioner seeks employment as a postdoctoral research scientist at the New York State Psychiatric Institute (NYSPI) at Columbia University. 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 has 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 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.

The petitioner discusses his work:

I have been focusing on the research on new radiotracers or novel drugs for mental illnesses. The main research specialties include development of novel brain imaging agents and, in particular, imaging agents for subtypes glutamate receptors, nicotinic receptors and sigma receptors. . . . Since my work is to develop novel specific agents for probing the function of the glutamate receptor and the norepinephrine transporter will have great utility for research on the diagnosis and treatment of neurological diseases. . . .

[At] Rutgers University as [a] postdoctoral associate, I had been focusing on the project on “Folate Receptor-Mediated Delivery of Anticancer Drugs to Ovarian Cancer Cells.” . . . Our research project seeks to develop a new strategy for the improvement of therapeutic effectiveness of anticancer agents and at the same time reduce systemic toxicity. Since cancer cells are genetically unstable, they often quickly evolve under sub-optimal doses and acquire resistance to the anticancer drugs used. One approach to increase the selectivity and decrease systemic side effects is to design prodrugs that can be site-specifically delivered to and activated inside tumor cells. . . .

My contributions to and significant role in research on medicinal chemistry, anticancer prodrugs and nuclear medicine have been highly recognized by the experts in the world.

As evidence of this claimed recognition, the petitioner submits several witness letters, mostly from the faculties of Rutgers and Columbia University, the two universities where the petitioner has received postdoctoral training. [REDACTED], assistant professor and director of the Radioligand Development and Radiopharmacology Laboratory at Columbia University states:

I have known [the petitioner] for over one year now, and serve as his current supervisor, mentor, and colleague. . .

[The petitioner's] research is to develop novel radiotracers for targets important to the study of cancer or mental illnesses: areas of crucial importance for national interest. . . . On a day to day basis, [the petitioner] is carrying out organic and radiochemical syntheses, and designing the biomedical imaging agents of the future. [The petitioner's] primary project . . . is to develop PET radioligands for imaging group II metabotropic glutamate receptors. . . . He has recently designed an improved synthetic route for the target candidate compounds that has significantly facilitated the project aims. In addition to this, [the petitioner] is contributing to the development of novel radiotracers for other glutamate receptors, including the phencyclidine site of the NMDA ion channel.

In addition, [the petitioner] is making strong intellectual contributions toward the synthesis of novel dopamine D3 receptor tracers, sigma-1 receptor radioligands, and norepinephrine transporter imaging agents. . . . All of this research is extremely important to advance biomedical imaging research leading to new insights in Parkinson's Disease, Schizophrenia, major depression, bipolar disorder, and many other psychiatric illnesses. . . .

In summary, I believe that [the petitioner's] contributions . . . will be of tremendous potential benefit to our country.

Other Columbia/New York State Psychiatric Institute (NYSPI) faculty members offer similarly favorable letters on the petitioner's behalf.

Professor [REDACTED], director of the Susan Lehman Cullman Laboratory for Cancer Research at Rutgers and a member of the National Academy of Sciences, lists the petitioner's past projects but offers little evaluation of the petitioner's contributions thereto. [REDACTED] states that the petitioner "is an excellent medicinal chemist who has made important contributions" in his various areas of endeavor.

[REDACTED], an associate professor at Rutgers, states:

[The petitioner] worked as [a] postdoctoral associate in my laboratory for almost 3 years. One of the projects he worked on was "Folate Receptor-Mediated Delivery of Anticancer Drugs to Ovarian Cancer Cells." . . . [The petitioner] prepared prodrugs which included dendrimers . . . with folate and multiple copies of anticancer drug platinum complex attached on the peripheral surface. We seek to develop a new strategy for the improvement of therapeutic effectiveness of anticancer agents and at the same time reduce systemic toxicity.

. . . [The petitioner also] developed a new efficient method . . . for the synthesis of two novel peptide analogues . . . designed as inhibitors to protein kinases A. . . . [These] inhibitors can be used as pharmacological probes for the elucidation of protein kinase function and as potential therapeutic agents for the treatment of cancer.

[REDACTED], also of Rutgers, offers a similar description of the petitioner's work there.

The only initial witness who is not on the faculty of Rutgers or Columbia University is [REDACTED] [REDACTED] associate professor at Harvard Medical School,¹ who states:

I came across [the petitioner's] work as imaging technology has become increasingly popular in the field of alcoholism research. I am particularly impressed by the work he presented at a recent International Conference of Neuroscience. . . .

[The petitioner] has already made significant contributions to the field of medicinal chemistry, radiochemistry and biochemistry. . . .

[The petitioner] has established himself as a world known scientist with extraordinary abilities in the field of medicinal chemistry and nuclear medicine.

To conclude that the petitioner is "world known," we must rely on more than statements from witnesses in three contiguous northeastern states, most of whom are or were the petitioner's co-workers. The petitioner submits copies of several of his articles that have appeared in various published journals since 1998, as well as manuscripts of articles not yet published at the time of filing. The existence of the articles demonstrates that the petitioner has been a prolific researcher, but cannot by itself establish the impact of the petitioner's work. Similarly, documentation showing that the petitioner has received two research grants and applied for three more shows that funding entities find the project goals to be worthwhile, but absent evidence that grant funding is rare in the petitioner's specialty, the mere fact that the petitioner's work is grant-supported carries minimal weight.

The director denied the petition, noting the witness letters and other evidence, but concluding that the evidence submitted does not set the petitioner apart from others in his field to a degree that would warrant the special benefit of a national interest waiver.

On appeal, the petitioner again summarizes his career and states that his "current research is on the frontline of medicinal chemistry, nuclear medicine, and radiotracer for mental illnesses." The petitioner maintains that his background and expertise make him "an outstanding scientist in this field" and "an accomplished professional whose expertise is a definite asset" to the field. The issue is not the intrinsic merit of cancer and mental health research, nor is it the petitioner's professional competence in those areas of research.

¹ In the body of the letter, [REDACTED] states "I am an Associate Professor of Biochemistry," but the signature block and printed letterhead both read "Department of Pathology."

The petitioner demonstrates that his recent National Institutes of Health (NIH) grant application “got a very good Priority Score (167) and Excellent Summary Statement.” This new documentation does not even show that the grant application has even been approved, let alone that such grant funding is a hallmark of unusually significant research, rather than a primary source of funding for university-based scientific research.² In a similar vein, new manuscripts and presentations show that the petitioner continues to be productive in his field, but they are not *prima facie* evidence of eligibility for a waiver. The petitioner provides minimal evidence that his published work has attracted attention outside of the universities where he has worked. For instance, a document submitted on appeal shows only three citations of one of the petitioner’s articles.

The petitioner asserts that he has been invited to present a seminar, but this invitation came from the [REDACTED] for Cancer Research at Rutgers, the very laboratory where he used to work. Therefore, this invitation shows little more than the confidence of the Rutgers faculty in the petitioner’s abilities, and it is not strong support for the petitioner’s previous claims of worldwide recognition.

The petitioner states that the labor certification process would be “unfair” because an alien of his talents should not have to compete with “other relatively less qualified” workers in the field. He argues that his “efforts have impacted the nation to a more significant degree than others who are similarly employed,” but he offers little new support for these arguments apart from his personal assessment of his own training and accomplishments.

Two new letters accompany the appeal. [REDACTED] formerly the petitioner’s Ph.D. advisor at the Chinese Academy of Medical Sciences, calls the petitioner “an excellent medicinal chemist who has currently made important contributions” in the areas already described. [REDACTED], an assistant professor at Columbia University/NYSPI, states that the petitioner “is making several important original contributions to the fields of chemistry and nuclear medicine.” These letters do not undermine the director’s basic findings. Rather, they are consistent with the conclusion that the petitioner’s reputation is largely confined to universities where the petitioner has worked and/or studied.

The record contains no objective evidence by which we could confidently conclude that the petitioner stands out from his peers to a degree sufficient to warrant a waiver of the job offer requirement that, by law, normally applies to the immigrant visa classification that the petitioner has chosen to seek.

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.

² According to the NIH web site at <http://www.grants.nih.gov/grants/award/trends/fund9404.htm> (accessed August 18, 2005), NIH awarded 47,464 research grants in fiscal year 2004, worth over \$19.6 billion. According to <http://www.grants.nih.gov/grants/award/awardtr.htm#c>, NIH provided funding to 3,182 different entities in fiscal year 2004. Over a hundred institutions received over 100 awards each. Johns Hopkins University alone received 1,304 awards, totaling almost \$600 million. 1,132 of these awards were research grants, worth nearly \$541 million.

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.