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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

SRC 04 209 51091

Office: TEXAS SERVICE CENTER

Date: MAR 30

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 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 University of Texas (UT) [REDACTED] at Dallas. 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.

The petitioner describes her work at UT:

My project in the Wilkie Laboratory ([REDACTED] Ph.D. . . .) is to study: 1) the physiological role of the RGS16 (Regulator of G Protein Signaling) protein in the liver during fasting and refeeding, and 2) the molecular mechanism of the liver RGS16 mRNA and protein regulation.

G protein pathways are fundamentally important during mammalian development and almost all life processes in adults, including sight, smell and taste, regulation of heart rate and blood pressure, control of glucose metabolism, etc. G protein signaling is activated by hormone-binding to receptors and can be inhibited by RGS proteins. Disturbances in the function of G-proteins – too much or too little of them – can lead to disease, such as cardiovascular, renal, mental health and neurodegenerative (e.g. Alzheimer's) diseases, as well as, stroke, cancer, asthma, diabetes, and immune disorders. . . .

Our lab is primarily interested in RGS proteins in liver function of nutrient metabolism and storage. . . . RGS16 mRNA has a fluctuation pattern throughout the day, coincident with the daily cycle of feeding. These observations are novel findings and have never been published by others before. The primary interest of my research project is to identify the function of increased RGS16 in the liver during fasting.

[REDACTED] an assistant professor at UT, states that the petitioner's "work has already resulted in important breakthroughs in bringing together the two most important signaling systems in pharmacology, G proteins and nuclear hormone receptors." [REDACTED] asserts that the petitioner's research has implications for "a broad range of eating disorders, from anorexia to obesity, and obesity-related diseases, such as type II diabetes, high blood cholesterol, and cardiovascular disease."

[REDACTED] an associate professor at Emory University, states:

While I have met [the petitioner] casually at scientific meetings, I know of her by reputation and the scientific merit of her research in [REDACTED] laboratory. . . .

[The petitioner's] work is indispensable to the current and future success of Dr. [REDACTED] sponsored research. . . .

Her work has been the cornerstone of important discoveries in Dr. [REDACTED] laboratory that will be published in peer-reviewed journals. Her work has broad applications for the possible development of therapeutic agents that will combat serious global diseases, including certain cancers, hypertension and stroke, and liver diseases.

Researchers from other prestigious institutions such as Yale University and the University of North Carolina at Chapel Hill similarly endorse the petitioner's skills and the importance of her findings. These independent letters demonstrate a reputation that extends beyond the petitioner's own employers and mentors.

The director issued a request for evidence, instructing the petitioner to submit documentation to "establish that self-petitioner's accomplishments are substantially greater than other researchers working in his or her field of expertise." The director's request was generic, with no reference to the initial evidence or any specific indication as to what sort of evidence would remedy the perceived deficiency. In response, the petitioner has submitted documentation of 18 independent citations of her published work. While this quantity of citations is not trivial in the petitioner's field, it is not by itself sufficient to set the petitioner apart from other researchers to an extent that would justify a waiver.

More persuasive in this regard are several independent witness letters, such as the following examples. Dr. [REDACTED] director of the Laboratory of Clinical Genetics, Mental Health Research Center, Russian Academy of Medical Sciences, states:

I have been following [the petitioner's] research since her significant publication of *Methods in Enzymology*, in which she used the state of the art genetic approach, so called QPCR (Quantitative Polymerase Chain Reaction), to study alternative RGS gene expression in physiological and disease states. . . .

[The petitioner's] research achievements have opened a novel domain in understanding liver carbohydrate and fat metabolic regulation in physiological as well as disease states, which is

an absolute pre-requisite to the development of effective therapeutic/preventive modalities for obesity and diabetes. . . .

Without question, she is a leader in this field.

Dr. [REDACTED] emeritus professor at the Charité Campus Benjamin Franklin Institute of Pharmacology, Free University of Berlin, and "a member of the prestigious German Academy of Natural Scientists Leopoldina," states:

I have known [the petitioner] through the publications and presentations of her work. . . .

I have known of [the petitioner's] groundbreaking research since her work was presented on the VIII International Dahlem Symposium for Cellular Signal Identification and Transduction. . . . I was impressed by [the petitioner and her collaborators'] important pioneering findings and have followed their research ever since. [The petitioner] has made many important findings and her original contributions have been of tremendous benefit to the field of G protein signaling and liver metabolism. . . .

[The petitioner's] recorded accomplishments clearly demonstrate that she is a leader at the forefront of her particular area of expertise.

Professor [REDACTED] of the California Institute of Technology, a member of the prestigious National Academy of Sciences, states:

I do not know [the petitioner] personally and have not worked with her. I have, however, come to know [the petitioner] well through her outstanding research accomplishments. . . . I am fully aware of the challenging research projects conducted in Dr. [REDACTED] laboratory. . . . [The petitioner's] original scientific findings have significant implications for understanding human health and nutrition. . . .

It is completely appropriate to recognize her as an extraordinary researcher.

These and other letters support the finding that the petitioner's work has had an impact beyond her own circle of collaborators and mentors, and attracted the attention of ranking international experts.

The director denied the petition, stating that the petitioner's achievements do not set her apart from others in her field. On appeal, counsel argues that the director did not give sufficient consideration to independent witness letters. The director's failure to discuss the merits of the petition in the notice of decision supports counsel's contention.

The director's denial notice consists entirely of general statements about regulations and case law, with no specific discussion of the specific merits or deficits of this petitioner's claim of eligibility. The director's decision contains no information about the petitioner's claims except for the statement that the petitioner is a "postdoctoral

researcher in biomedicine.” The stated grounds for denial are so generic that the petitioner has not had a meaningful opportunity to offer a substantive appeal. The wording of the decision offers no obvious indication that its author of the decision has examined the record in any detail.

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.