

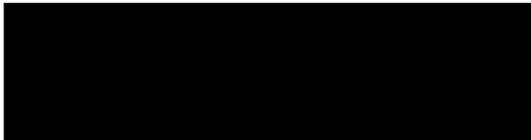
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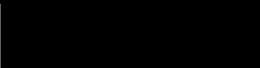
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

MAY 24 2006

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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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 seeks employment as a senior research associate at Oregon Health & Science 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 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 his work:

I am currently employed by the Department of Medical and Molecular Genetics, Oregon Health & Science University (OHSU). . . . Meanwhile, I also worked as [a] postdoctoral research associate at Portland Research Center of Shriners Hospitals for Children, which is actually affiliated with OHSU. I have been working with Dr. Scott Sadler since 2002 on his NIH-funded research programs . . . to study molecular mechanisms of congenital malformations and birth defects of *Hand-Foot-Genital syndrome* and *Guttmacher Syndrome*. In addition [*sic*], I have been granted a research fellowship ([$\$$]50,000/year) sponsored by Shriners Hospitals from 2003 to 2005 for the study of molecular and genetic mechanisms of *Hand-Foot-Genitourinary Syndrome* using microarray technique and mouse model. . . . I am the only scientist in our group [to] have exceptional skills and experience using microarray technique. Therefore, I play a unique role in these NIH-funded projects. . . . I also teach some molecular and microarray techniques and methods to the students working in our lab. . . . [Staff members also] provide free medical and surgical care services and research services for orthopaedically challenged American children and treat children with limb malformations caused by birth defects. . . . Consequently, my research work and activities will benefit the economy of USA [and] benefit the education and health of American children and citizen[s]. . . .

I not only have a strong background in molecular biology but also have a mastery of computer software necessary for analyzing microarray data to discover gene expression

characters and interpret the data into significant biological function features according to genome-wide gene expression patterns. Therefore, I have a big advantage over most other molecular biologists using microarray techniques. . . .

It is not suitable for my I-140 petition [to] go through the prolonged and slowing procedures of the requirement for labor certificat[ion]. . . . If I could not continue working on [the] present NIH-funded projects, my research achievements and the progress of NIH programs which I am working on could be delayed or completely suspended.

The petitioner lists several "major research experiences and activities," including WebQTL, which "is a unique World Wide Web services for neurogeneticists to rapidly identify and map genes and quantitative trait loci (QTL), particularly those related to brain structure and behavior." The petitioner states that he "worked on setting up [the] brain expression database of BXD strains using Affymetrix U74Av2 Genechip."

The petitioner submits documentation relating to his research fellowship at Shriners Hospital for Children. Fellowship application documents indicate that the petitioner requested \$50,000 per year, including \$37,000 in salary, \$3,000 in fringe benefits, and \$10,000 to cover various expenses related to the research.

The petitioner's initial submission includes letters from five witnesses. Three of the witnesses are, or were, on the faculty of the University of Tennessee (UT), where the petitioner trained as a postdoctoral researcher from 1999 to 2002. A fourth witness collaborated with the petitioner's UT research group. The fifth witness is on the OHSU faculty.

Professor Robert W. Williams, chair of Developmental Genetics at UT, states:

[The petitioner] was a postdoctoral fellow in my [laboratory] at University of Tennessee Health Science Center. He was a valued colleague who rapidly became critical to our microarray studies. [The petitioner] demonstrated exceptional research ability and skills in molecular biology, microarray experimental technique, and the critical downstream data analysis. . . .

He began to work in my lab on the WebQTL project in 2000 and was crucial in helping us set up a mouse brain gene expression database that is now very widely used by the scientific community.

UT Professor Kenneth F. Manly states that the petitioner's "work has contributed directly to the success of WebQTL. He obtained data on gene expression in mouse brain without which WebQTL would not exist." Prof. Manly also asserts that the petitioner's "research and development work . . . has made WebQTL unique among bioinformatic tools available to scientists in neurogenetics and neuroinformatics."

Dr. H. Scott Stadler, an assistant professor at OHSU, states:

[The petitioner] came to my laboratory already an accomplished investigator. . . . Prior to coming to my laboratory, [the petitioner] established himself as an outstanding investigator in the field of high-throughput genomics. . . . His expertise in the field of gene microarrays and their analysis is top-notch and is needed to maintain our progress on our hypospadias work . . . as well as our newly funded examination of bladder/ureter integration defects. . . .

After joining my lab, [the petitioner] demonstrated his exceptional ability to examine the birth defects in a high throughput manner, using gene microarrays and complex statistics to examine over 46,000 genes to identify the factors affected in hypospadias and Hand-Foot-Genital Syndrome (HFGS). His experience and research acumen has allowed [the petitioner] to make insightful predictions regarding the effects specific teratogens may have on the HFGS defects. . . . Following this initial work, [the petitioner] has focused on the role of retinoic acid in triggering the HFGS phenotypes, identifying an important mechanism in the pathology of the hypospadias defect that was unknown prior to his investigations. . . . I am confident [the petitioner's] findings will have a great impact on the field of genitourinary birth defects as evidenced by [the] level of enthusiasm and collaborative inquir[ies] following the presentation of [the petitioner's] data at the American Society of Human Genetics meeting . . . as well as the Teratology Society International Congress this summer in Vancouver, B.C.

Other witnesses who have worked with the petitioner offer similar praise for the petitioner's research abilities.

On June 2, 2005, the director issued a request for evidence, instructing the petitioner to submit "additional documentary evidence" to show that the petitioner has "had some degree of influence on the field as a whole." As an example, the director requested evidence that other researchers have cited the petitioner's published work.

In response, the petitioner observes that the journal *Nature Genetics*, which ranks "first out of 120 journals in the field of genetics and heredity," published one of his articles in 2005. The petitioner states: "the 2003 impact factor for *Nature Genetics* is 26.49. . . . Therefore, the papers published in *Nature Genetics* have a great impact on the field of genetics and genetic related disease." No article has an automatic impact simply based on where it appears. Rather, the impact factor of a given journal is an average, based on the citation rates of individual articles that appear in that journal. The 2003 impact factor of *Nature Genetics* has no effect whatsoever on the impact of the petitioner's 2005 article; it does not guarantee that anyone will ever cite the petitioner's article. Rather, citation of the petitioner's article will, in the future, influence the calculation of *Nature Genetics'* 2005 impact factor. For this reason, we must look not at the impact factor of the journal in general, but rather at the citation rate of the petitioner's article in particular.

The petitioner documents 40 citations of English-language articles that he co-authored. Materials in the record show that 24 of these citations pertain to a 2003 article attributed to 80 "Members of the Complex Trait Consortium." The second most frequently cited article, with 8 citations, was attributed to 113 members of the same consortium. Given these extremely large numbers of co-authors, and the absence of anything to single out the petitioner as having made especially important contributions to the articles, the weight of these

citations is diminished somewhat. There remain two cited papers, each with far fewer co-authors. One article was cited twice, the other six times. In each instance, only one citation is not a self-citation by the petitioner or a co-author.

The petitioner also documents seven citations of his earlier work in China. Both the cited sources and the citing articles are in Chinese with no translations provided.

Other evidence shows that a number of researchers use WebQTL as a resource. We shall discuss some of this evidence in the context of the appeal.

The director denied the petition on July 30, 2005, observing that most of the citations of the petitioner's work, and indeed the cited articles themselves, did not exist until after the filing date. The director also noted the large number of co-authors of the most heavily cited material. The director concluded that the petitioner has not persuasively shown significant influence on the field as a whole.

On appeal, the petitioner states that the director "did not recognize my achievements in [the] WebQTL project," which, the petitioner claims, is "one of the most widely used websites" in academic research. Materials submitted previously identify the petitioner as one of more than 25 contributors to the WebQTL site. The site is divided into several sections; the petitioner is one of six named contributors to the "BXD Brain Gene Expression Data" section. The petitioner asserts: "An Editorial and a News and Views article [in *Nature Genetics*] made special comment about WebQTL and my paper on *Nature Genetics*."

The record shows that *Nature Genetics* devoted part of an issue (specifically volume 37, number 3, March 2005) to several articles on QTLs and related subjects. An article co-authored by the petitioner appears on page 233 of that issue. The editorial and "News and Views" piece are prefatory pieces in this same issue of *Nature Genetics*, commenting on the contents of the current issue.

The editorial, "Old mice, new tricks," mentions WebQTL in one sentence: "Although the computational challenge is obvious, the WebQTL online tool developed by Chesler *et al.* [REDACTED] shows how decades of phenotypic data can be seamlessly integrated with expression data to allow *in silico* mapping of QTLs." It is not clear how this sentence constitutes "special comment." The "News and Views" article, "Mapping expression in randomized rodent genomes" [REDACTED] discusses the findings in three articles that appear in the same issue of *Nature Genetics*. This passage appears toward the end of the article: "A more important problem is the development of tools for making sense of these complex data, including their visualization. WebQTL, developed by Chesler and colleagues, is a step in this direction." The discussion of WebQTL in this issue of *Nature Genetics* is not, by itself, highly persuasive.

On appeal, the petitioner submits additional letters and documentation to establish the importance of WebQTL and the petitioner's own contribution thereto. The petitioner correctly observes that, while several of his articles were published after the filing date, the research work described in those articles had been completed prior to the filing date. Indeed, the petitioner's 2005 article in *Nature Genetics* was submitted, in manuscript form, with the petitioner's initial filing. These articles relate to the petitioner's work at the University of Tennessee, an institution that the petitioner had already left by the petition's date of filing.

In a newly submitted letter, Professor [REDACTED] of the University of Groningen, the Netherlands, states:

We recognized [the petitioner's] research work and his accomplishments in the WebQTL project. For several years we have been actively collaborating with the Genomics Institute of the Novartis Research Foundation, based in La Jolla, CA, to determine gene expression patterns in hematopoietic stem cells. All our data were deposited in [the petitioner's] gene expression databases since 2003. His research results were also cited in our seminal paper published in Nature Genetics earlier this year. . . .

The WebQTL interface is an essential component of our work, and is queried by many of my colleagues around the world. It allows us in [a] very user-friendly way to identify gene networks operating in hematopoietic stem cells. There is no doubt that [the petitioner's] accomplishments will serve as an example for many other research groups.

To support the assertion that the WebQTL resource is widely used internationally, the petitioner submits printouts showing that the site receives thousands of requests per day, including visits from dozens of other countries. Additional letters from the petitioner's collaborators affirm the petitioner's major role in the WebQTL project, and in more recent research that the petitioner has undertaken since leaving UT and the WebQTL project. The materials submitted on appeal demonstrate, to an extent not accomplished by the petitioner's prior submissions, the international scope and importance of the petitioner's past work and the scientific community's continued reliance on the petitioner's expertise.

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 the significance of this petitioner's work rather than simply the general specialty. 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.