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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 09 2007
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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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which 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 research scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment 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, counsel submits a brief and reference letters. The letters are from authors who have already written letters in the petitioner's behalf and either reiterate their previous statements or discuss the petitioner's work after the date of filing. For the reasons discussed below, we concur with the director's ultimate conclusion that the petitioner has not demonstrated the type of influence in the field that would warrant a waiver of the alien employment certification in the national interest.

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 Chemistry from Mumbai University. 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 an alien employment 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, bioorganic chemistry, and that the proposed benefits of his work, improved cancer diagnosis and drug development, would be national in scope. 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.

On appeal, counsel asserts that the director erred in comparing the petitioner to his more experienced references instead of those with the same minimum qualifications. We withdraw any implication that the petitioner must compare with the most experienced members of his field. Nevertheless, 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. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

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 he 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. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

As stated above, the petitioner received his Ph.D. from Mumbai University in 1999. The petitioner then accepted a postdoctoral research associate appointment at Stanford University. From June 2001 through April 2003, the petitioner worked as a postdoctoral research scientist at Geron Corporation. From April 2003 through the date of filing, the petitioner worked as a research and development scientist at Transgenomic, Inc. while also serving as an unpaid visiting scientist at the State University of New Jersey, Rutgers. After the date of filing, the petitioner joined Firebird Biomelecular, Inc., but we cannot consider any accomplishments at that institution as they do not relate to his eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Throughout the proceedings, the petitioner has relied on reference letters from colleagues. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing vague assertions of talent and potential are less persuasive than letters that provide specific examples of how the petitioner has already influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive.

Dr. [REDACTED] Director of the Institute of Science at Mumbai University, discusses the petitioner's Ph.D. work at that institution. Specifically, the petitioner's project involved the synthesis of fluorescein-labeled alternating anionic and cationic DNA probes that "could *potentially* develop into [a] technique by which we could detect disease-causing mutations in patients or early detection of cancer and other diseases." (Emphasis added.) Dr. [REDACTED] does not assert that these probes are being implemented or even investigated in a clinical setting.

The record also includes the first page of a letter purportedly from Dr. [REDACTED] a scientist at the National Chemical Laboratory in Pune, India. In response to the director's request for additional evidence, the petitioner resubmitted the first page only. The first page does not discuss the petitioner's work and, without a signature, has little evidentiary value.

At Stanford, the petitioner worked in the laboratory of Dr. [REDACTED] Dr. [REDACTED] characterizes the petitioner as hardworking, diligent and a talented experimentalist. As an example of the petitioner's recognition in the field, Dr. [REDACTED] notes that the petitioner has published an article in *Nature Biotechnology*. We will not, however, infer the influence of a given article from the journal in which it appeared. Rather, we look for evidence that the individual article has been influential, such as a history of wide and frequent citation. We will examine the petitioner's citation record below. Finally, Dr. [REDACTED] discusses the importance of the petitioner's area of research and concludes he has gained "valuable experience" in the field. Dr. [REDACTED] does not explain how the petitioner's work at Stanford has influenced the field as a whole. Dr. [REDACTED] a former group leader at [REDACTED] who supervised the petitioner at that company, asserts that the petitioner's work at Stanford "led to the development of new tools in probing the chemical biology of DNA base pairing and protein-DNA recognition." None of the references provide examples of independent laboratories utilizing these new tools.

Dr. [REDACTED] a former employee at [REDACTED] Corporation, discusses the petitioner's work at that company as follows:

He accomplished, in timely fashion, multi-step synthesis of novel DNA and RNA strands as telomerase inhibitors that entered into the clinical trials. He also devised new building blocks of RNA nucleosides by altering the chemical functionalities to improve the synthetic efficiency in the nucleotide synthesis.

Dr. [REDACTED] asserts that this work resulted in published articles, patent applications and has "the potential to impact the medical industry worldwide because they can suppress the growth of the majority of cancers and improve the quality of life in cancer patients." The petitioner's "achievements also pose as critical improvements for the study of cancer treatment in identifying unprecedented drug leads."

Dr. [REDACTED]'s letter includes identical language. Dr. [REDACTED] and Dr. [REDACTED] both signed their letters, affirming the content of the letters. The use of identical language, however, suggest that the verbiage is not their own.

Dr. [REDACTED] Director of Nucleic Acids Chemistry and Senior Research Fellow at [REDACTED] asserts generally that the petitioner's work "has helped to significantly advance our drug-discovery program." Dr. [REDACTED] provides no specifics or examples of how the petitioner's work advanced the program and does not mention any patents or patent applications. Primary evidence of filing a patent application is the patent application itself, with official confirmation that it has been filed. The petitioner has not demonstrated that such evidence does not exist or is unavailable. Thus, we need not accept affirmations as to the petitioner's contributions to patent-pending innovations. 8 C.F.R. § 103.2(b)(2). The record lacks evidence that the clinical trials advanced by the petitioner's work have garnered attention in the general or trade media.

Dr. [REDACTED] Dean and Director of the Division of Life Sciences at the State University of New Jersey, Rutgers, discusses the petitioner's skills and concludes that he is "positioned to make unique contributions to important areas with immediate biomedical applications." Dr. [REDACTED] does not imply that the petitioner has already influenced the field.

Dr. [REDACTED] Chair of the Graduate Program in Chemistry at the State University of New Jersey, Rutgers, asserts generally that the petitioner is an expert with rare capabilities but identifies no specific accomplishments.

Finally, [REDACTED] Vice President of the Advanced Technology Project at Transgenomic, **praises the petitioner's ability to work independently.** Dr. [REDACTED] asserts that the petitioner is working on new methods/approaches for the capture of molecules that "will be used for the purification of proteins, biological targets and has important biomedical application for drug discovery." Dr. [REDACTED] opines that the petitioner "is almost certainly headed for a distinguished career as a scientist" and that his work "holds promise in enhancing the effectiveness of novel Protein-based technological development in order to facilitate basic research." This letter does not establish the petitioner's influence in the field.

In addition to the letters, the petitioner submitted his professional memberships, with no evidence that such memberships are recognition of his influence in the field, and his publications. Membership in professional associations is one of the regulatory criteria for aliens of exceptional ability, a classification that normally requires an alien employment certification. We cannot conclude that meeting one criterion, or even the requisite three criteria for that classification warrants a waiver of that requirement. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 222.

The petitioner submitted four articles and evidence of citations. The citation materials indicate that one of the petitioner's articles had been moderately cited by independent research laboratories as of

the date of filing and other articles by the petitioner had been cited once each. The petitioner has not demonstrated that this citation record is notable in the petitioner's field.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

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 alien employment 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 not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.