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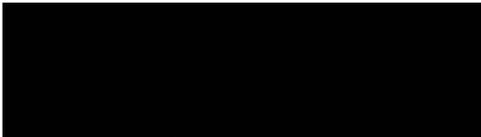
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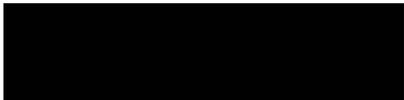
LIN 06 201 52162

Office: NEBRASKA SERVICE CENTER

Date: OCT 22 2008

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, 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 (AAO) on appeal. The appeal will be sustained and the petition will be approved.

In this decision, the term “prior counsel” shall refer to [REDACTED] who represented the petitioner at the time the petitioner filed the petition. The term “counsel” shall refer to the present attorney of record.

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. At the time he filed the petition, the petitioner was a postdoctoral fellow in the Department of Plant Science at the University of Connecticut (UC). 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:

(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 (Commr. 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 also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

Prior counsel described the petitioner’s work:

[The petitioner works] in the field of ion transport protein characterization and regulation of intracellular membrane vesicle trafficking. His work with yeast has increased our understanding of basic mechanisms related to vacuole and prevacuolar vesicle formation. He also made significant contributions to the characterization of plant ion channel function and plant response to salinity stress.

His work has contributed to understanding plant response to abiotic stresses such as salinity and drought. He has also done work in top yeast genetics labs, as well as in the area of plant

genetic engineering for crop improvement, which will ultimately have national and international impact. [The petitioner's] engagement in the possibilities of translating basic information about plant cell biology in terms of identifying targets for genetic manipulation of crop plants for enhanced productivity and/or the production of novel compounds underscores the likelihood that the basic work [the petitioner] is undertaking in cell biology will have positive ramifications for our ability to generate better and more useful crop plants in the future.

The petitioner submitted what prior counsel called "Letters of Recommendation from some of the most distinguished scientists and professors in his respective field." We will discuss selected examples of these letters here. Most of the initial witnesses have worked with the petitioner in some capacity. Professor [redacted] of Johns Hopkins University described the petitioner's postdoctoral work at that university:

[The petitioner] embarked on a new project to find proteins that work with a newly discovered Na^+/H^+ exchanger, named Nhx1, whose activity is critical for salt tolerance and the direction of traffic between components of the cell. [The petitioner] discovered several proteins that interact with Nhx1 and went on to demonstrate their novel properties. . . . [The petitioner's] studies helped explain how cells respond to saline stress and how the control of salt and acidity regulates the movement of proteins within the cell. These are fundamentally important concepts that may be readily applied to other systems as well. Indeed, we now know that proteins such as the ones [the petitioner] discovered play similar roles in humans.

[redacted] described the petitioner's current work:

[The petitioner] has developed yeast mutants as a wonderful protein characterization tool in my program. . . . [The petitioner] has undertaken insightful work on characterizing the function of ion transport proteins in my own lab, and previously at a number of top labs. He has a great breadth of expertise that can be applied to unraveling the mysteries of how a[n] ion channel protein's structure is related to its function. . . . [The petitioner] has strong research expertise in diverse areas . . . he has excellent skills as a protein biochemist as well as a cell biologist. . . . He has developed models of cell biology in terms of signal transduction pathways, and designed insightful experiments to test these models. . . .

[The petitioner] is clearly at the forefront of research in plant ion channel protein characterization. His accomplishments . . . have established the scientist as an outstanding researcher with an international reputation.

[redacted] of Yale University stated:

[The petitioner] is now working . . . to develop detailed knowledge about fuel-cell-like processes taking place in plant-cell surface membranes. This work is beginning to succeed – where previous attempts have failed – at least in part because [the petitioner] has performed the trick of moving the relevant molecular machinery to a membrane system that is much less

complex than typical agricultural plant-cell membranes. He was predisposed in this direction by training in the laboratory of [REDACTED], at Johns Hopkins School of Medicine, where his studies led to new insights into how yeasts deal with the stress of high-sodium environments. His discoveries in that area have great potential application in agricultural practice, particularly in an era when the nation's tillable surface faces declining productivity due to salt pollution. And his work at the University of Connecticut is a powerful followup to the original work on yeast, directed specifically toward plant systems, but making use of yeast to "nurture" the critical proteins.

Other letters, both from the petitioner's collaborators and from others, contain similar assertions. Numerous witnesses assert that the petitioner possesses an unusually broad range of expertise in an age when the trend is toward increasingly narrow specialization. Simple exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an application for a labor certification. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Matter of New York State Dept. of Transportation* at 221.

[REDACTED] Associate Professor at Michigan State University, stated: "I do not know [the petitioner] personally, but I am quite familiar with the scientific contributions he has made to the advancement of our understanding of plant ion channels and membrane transport processes in the model cell yeast as well as plants." Like several other witnesses, [REDACTED] credited the petitioner with research that could improve salt tolerance in crop plants.

Some witnesses assert that the petitioner's research has medical implications. For example, [REDACTED] Research Assistant Professor at Tennessee State University, who has "known [the petitioner] since his early work on yeast environmental-stress response in 1991," states:

[The petitioner's] contributions . . . [have] provided a basis to better understand some aspects of cell compartmentation and organellar trafficking. This discovery has wide ranging implications both in medicine and agriculture. Specific inhibitors of the intracellular exchanger could be used to inhibit vesicle trafficking, which has been shown to give rise to retroviral particles (e.g., such as the HIV virus). Identifying mechanisms related to retroviral particle generation has relevancy to understanding mechanisms to control AIDS.

The petitioner submitted copies of his published articles, as well as six articles by others who cited the petitioner's work. Of those six articles, two were written by the petitioner's collaborators, who cited their own work. The petitioner also submitted a printout from an unnamed citation database, showing that four of his articles have been cited an aggregate total of 32 times.

On May 16, 2007, the director issued a request for evidence, instructing the petitioner to submit further documentary evidence to establish the petitioner's influence in his field. In response, the petitioner indicated that in September 2006, about three months after he filed the petition, he moved from the Department of Plant Science to the Department of Physiology and Neurobiology at UC. The petitioner stated that, in his new

position, he had been “studying the role of gamma subunits in GABAR clustering and learning animal cell culture, transfection and immunocytochemistry under the supervision of Professor [REDACTED]”

A list of the petitioner’s “most cited publications” from the Scopus database shows a total of 59 citations of six of the petitioner’s articles, most of them published between 1997 and 2004. This represents a significant increase over the number documented in the petitioner’s previous submission.

The petitioner submitted a new letter from [REDACTED] of the University of Burgundy, France, who called a 2007 *Plant Cell* article by the petitioner “an important milestone in research.” That article did not appear until after the petition’s filing date, and therefore it cannot establish the petitioner’s impact as of the filing date, although it does demonstrate the petitioner’s intent to continue performing work in the area in which he claims to benefit the national interest.

The director denied the petition on June 13, 2008, stating that the petitioner “is beginning a career in his chosen field of research. At this stage of his career he is participating with senior researchers and beginning to establish himself in his chosen field.” The director concluded that the petitioner “is still known for his potential and not his previous accomplishments.”

On appeal, counsel argues that the director overlooked the heavy citation of the petitioner’s work, and notes that the number of citations of the petitioner’s work has climbed to 88. We concur with counsel that the director should have taken this citation record into consideration. Certainly, the director cannot have considered the new total of 88 citations, as that information did not exist in the record until after the denial, but prior to the denial the record already contained evidence of substantial and growing citation of the petitioner’s articles published prior to the petition’s filing date.

The AAO also agrees with counsel’s argument on appeal that “[t]he fact that [the petitioner] performed his research work under the Supervision of another scientist does not automatically disqualify him from approval of this petition.” Certainly the circumstances under which the petitioner has worked is one factor among many to consider, but the reception the petitioner’s work has received is of greater importance. An independent researcher, with no supervisor, whose work is indifferently received, does not merit a waiver simply by virtue of working without supervision. It is not irrelevant that the petitioner is still a postdoctoral researcher who has yet to establish an independent career; the petitioner must establish impact beyond his relatively early career stage. Nevertheless, the petitioner’s status as a postdoctoral researcher should not and does not foreclose approval of the petition. The petitioner has submitted, in the form of citations and independent witness letters (including several additional letters provided on appeal), evidence that his work has had a noticeable impact on his field and has influenced numerous other researchers.

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.