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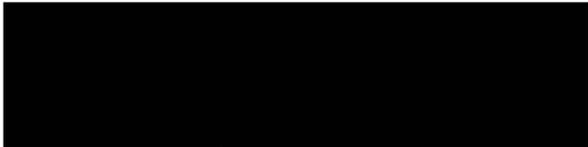
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date:  
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AUG 21 2009

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.

John F. Grissom  
Acting Chief, 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 (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

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 research associate at Texas A&M University (TAMU), Lubbock, Texas. He later began working at Iowa State University (ISU). 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.

On appeal, the petitioner submits a brief from counsel, copies of previous submissions, and new exhibits.

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 U.S. 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.

Counsel, in an introductory statement, asserted that the petitioner “has garnered an international reputation in his field” for his agricultural research. To discuss this research, the petitioner submitted several witness letters. Regarding the petitioner’s work at the time of filing, TAMU Associate [REDACTED] stated:

I direct [a] corn breeding program to develop multiple stress-tolerant corn lines and hybrids. . . .

[The petitioner] joined my research group in September, 2006. I hand-selected him out of 12 high-qualified applicants for his impressive and strong educational and research experience and skills in traditional plant breeding, molecular biology and statistics. . . .

[The petitioner] is a key scientist in my corn breeding and genetics laboratory. He is responsible for discovering drought and heat tolerance genes, identifying new physiological traits contributing to drought tolerance, and developing molecular breeding tools for genetic improvement of stress tolerance. . . . The accomplishment of this project would significantly contribute to the crop production under water stressed environments.

A list of the petitioner's published work did not identify any articles, either published or in preparation, relating to the petitioner's work with corn at TAMU, or his previous work with tomatoes during a five-month stint at the University of North Carolina, Chapel Hill in mid-2006.

Most of the remaining initial letters are from researchers who worked with the petitioner at the University of Missouri-Columbia (UMC), where the petitioner earned two graduate degrees and later undertook eight months of postdoctoral training. [REDACTED] stated:

I was the major advisor of [the petitioner's] PhD degree studies in Genetics and a committee member of [the petitioner's] Master's degree studies in Statistics at the University of Missouri-Columbia during the period of 1999-2005. [The petitioner] also joined my laboratory as a postdoc research associate during 2005-2006. I state without reservation that [the petitioner] is an outstanding researcher in the field of crop science.

. . . [The petitioner] played a critical role in my research projects. During his time in my laboratory, he published a total of four peer-reviewed papers and has already submitted a paper for publication from his post-doctoral research. [The petitioner's] papers attracted international interests [*sic*]. . . . I am sure that these results will become cited worldwide in the next few years. . . . [The petitioner] discovered quantitative trait loci [QTL] for soybean resistance to soybean cyst nematode (SCN), the first major pest in soybean. . . . His discoveries enhanced our understanding in development of SCN-resistant cultivars.

. . . [The petitioner's] other significant achievements include the development of three novel techniques for discovering the genetic basis of complex traits – meta analysis of QTL locations, interval mapping pooled analysis and haplotype block-based interval mapping.

[REDACTED] stated that an associate editor of *Crop Science* referred to the petitioner's work as "pioneer, innovative."

UMC Professor \_\_\_\_\_ a member of the petitioner's Ph.D. program committee, described in technical detail the petitioner's "three novel techniques in gene discovery of economically important traits of crops," and stated that the petitioner produced an unusually high volume of published work during his studies.

UMC Professor \_\_\_\_\_ stated that the petitioner's "research results have had a significant impact on development of SCN resistant cultivars because they enabled scientists around the US to more rapidly develop new soybean varieties resistant to SCN." \_\_\_\_\_ claimed that the petitioner's "discoveries are used by the soybean breeders around the US," but he provided no evidence to support this claim.

\_\_\_\_\_, a Supervisory Research Geneticist at the Agricultural Research Service (ARS), is also a UMC Adjunct Professor who has collaborated with the petitioner. \_\_\_\_\_ stated that the petitioner's findings "play an important role" in "understanding . . . soybean genetic resistance" to SCN. \_\_\_\_\_ also stated that the petitioner's "technique, called interval mapping pooled analysis . . . provides an opportunity to breeders for selecting [the] most desirable alleles in their research."

\_\_\_\_\_ of the University of Guelph, Canada, stated:

I have known [the petitioner] through the annual international meetings of the Crop Science Society of America and his publications. . . . Although I have never collaborated with him, I am aware of the significance of his research as it is very close to my field.

. . . [The petitioner's] papers make a significant contribution to the understanding of soybean resistance to SCN and they represent invaluable contributions to the soybean community and soybean production in the U.S.A. and Canada.

. . . [The petitioner's] accomplishments as a PhD student far exceed those of his peers at the same career stage and have earned him an international reputation as an outstanding researcher.

\_\_\_\_\_ of the University of Illinois at Urbana-Champaign stated: "I do not know [the petitioner] personally and have only met him briefly at meetings, so I can only comment on his published research in the field of SCN resistance. This research is of high quality and has made important contributions to this research field."

The petitioner submitted copies of his published and presented work, and copies of requests for reprints of those works, but no direct evidence of the impact of this work. Reprint requests establish that other scientists were interested in reading his work, but they cannot establish their subsequent reactions.

On September 10, 2008, the director instructed the petitioner to submit evidence that distinguishes him from his peers in the specialty. In response, the petitioner submitted new witness letters and other evidence. Three of the new letters are from researchers at ISU. [REDACTED] stated:

I became aware of [the petitioner] through his publications, and subsequently, invited him to join my research program in January, 2008. He had published as first author his innovative method for identifying the genetic basis for traits of importance in the widely cited journal, *Theoretical and Applied Genetics* (2006). . . . When I [first read the petitioner's] paper, I was very excited because I strongly believe this method could lead to a new generation of DNA-resequencing based methods for identification of genes underlying traits of importance.

[The petitioner's] contributions to statistical genetics will be highly significant in addressing our capacity to increase our crops productivity in an age of emerging market demands. . . .

[The petitioner's] current work on my project is to develop a new generation of methods for identifying the causal nucleotides . . . for traits of agricultural importance through exploiting next generation sequencing technologies. . . .

I strongly believe that [the petitioner] is an exceptionally outstanding scientist and that granting [the petitioner] permanent residency will definitely benefit our national interest.

[REDACTED] focused on the petitioner's "current work in our center," as did [REDACTED]. Because the petitioner had not begun this work before he filed the petition, such work cannot affirmatively establish eligibility. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). Therefore, subsequent events cannot cause a previously ineligible alien to become eligible after the filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). We acknowledge the petitioner's work at ISU insofar as it shows that he continues to work in the same specialty, but the details of that work cannot establish that he was already eligible for the waiver before he began working at ISU.

ARS Research Geneticist [REDACTED] stated:

Until now, a large number of QTL studies have been conducted on various crops, but the results were conflicting and incongruent. [The petitioner's] paper illuminates a practical way to resolve these conflicts, which will improve the efficient development of molecular diagnostics tools for traits of agricultural importance.

[REDACTED] of North Dakota State University corroborates an earlier witness's claim:

I served as an Associate Editor [for] the peer-reviewed journal *Crop Science* for six years. . . .

During 2005 I managed the review of an article [by the petitioner]. . . . Given the unique nature of the article, I requested three rather than the typical two reviews. It was my opinion that the article presented pioneering research that was of the highest quality. The three reviewers all felt the manuscript should be published. . . .

[The petitioner's] manuscript was the first and most important paper in this kind of research in Crop Science and it makes significant contributions to studies of traits of agricultural importance.

A copy of a 2005 electronic mail message from [redacted] to [redacted] reads, in part:

I agree with the reviewer that felt [the] paper needs addition[al] background information regarding the meta-analysis approach in general, and how your analysis here relates to meta-analysis in other field[s]. I make this point because this, in the future, may well be considered a pioneering paper in Crop Science and therefore should contain a very thorough presentation of the topic.

In the 2005 message, and again in his new letter, [redacted] quoted from the reviews. One reviewer stated: "This manuscript sets an example of how to use a quantitative, analytical approach to resolving conflicting results from many different manuscripts." Another stated: "This paper definitely helps current and future SCN researchers in prioritizing QTL loci that may be likely candidate[s] for cloning."

The petitioner documented several dozen citations of his published work, both in Chinese and in English.

The director denied the petition on November 17, 2008, stating that the witness letters "have not clearly established the beneficiary has greater ability than [his] peers." The director added that citation of the petitioner's work "is not unusual or different from other researchers who have had their work cited." The director concluded that the petitioner failed to establish that his "accomplishments are of such unique significance that the labor certification requirement can be waived."

On appeal, counsel argues that the director ignored evidence of the petitioner's wider influence on the field. As further evidence of this influence, two new witness letters accompanied the appeal. Professor of Virginia Polytechnic and State University stated:

I have not directly worked with [the petitioner] and I became aware of him through his meta-analysis paper published in *Crop Science* in early 2006. His method is a very useful one and our program started to apply his method to our research later in 2006. . . . Discovery of resistance genes in wheat accessions is crucial in the development of resistant cultivars for the United States. Quantitative trait loci mapping is a major tool

for discovering the genes for resistance to Fus[ar]ium head blight in wheat. Sixty-three QTLs (the genome regions where the genes may lie) have been reported in 23 studies for resistance to this disease. However, inconsistent results were reported due to the limitations of QTL mapping techniques. This inconsistency significantly hinders the use of the identified QTLs in wheat breeding. Thus, our research group is applying [the petitioner's] method to resolve this problem and we have obtained interesting results. The results from the meta-analyses can help breeders identify consistent and unique resistant genes. Therefore, breeders can combine them in new varieties to breed durable resistance. I believe that [the petitioner] has made significant contributions to plant breeding and genetics.

A copy of \_\_\_\_\_ paper confirms his use of the petitioner's methods.

\_\_\_\_\_, Senior Scientist at the International Maize and Wheat Improvement Center, Mexico City, Mexico, stated:

Recently, I wrote a book entitled . . . "Molecular Plant Breeding." . . . This book covers 16 chapters. In one sub-section of Chapter 7 (Molecular Dissection of Complex Traits: Theory), I introduced and discussed [the petitioner's] method called pooled analysis which was published in 2006. After a comprehensive investigation, I found that [the petitioner's] method is the first one for discovering genetic basis of quantitative traits . . . using multiple mapping population data in plant species. . . . Most importantly, this method will lead to an emerging hot field "joint linkage and linkage disequilibrium mapping" which can be used for effectively discovering the genetic basis of quantitative traits I crops. I believe that [the petitioner] has made a significant and important contribution to genetic studies of quantitative traits in crops.

Upon careful consideration of the evidence submitted, we agree with counsel that the director did not give sufficient consideration to evidence of the petitioner's influence beyond his collaborators and mentors. The record establishes international attention to, and implementation of, the petitioner's work in statistical genetics. The combination of credible independent witness letters and objective documentation such as citations indicates that the petitioner's work has been consistently influential in his field. The witnesses have attested specifically to the importance of the petitioner's work and findings, rather than simply praise his skill or his mastery of complicated laboratory techniques. The record likewise establishes the importance of the petitioner's work, which involves more than simply describing work and deeming it to be important.

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.