



U.S. Citizenship
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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 02 2009
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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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
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 AAO will dismiss the appeal.

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 at the University of South Carolina (USC), Columbia. He has subsequently begun working as a postdoctoral fellow at Oak Ridge National Laboratory (ORNL) in Tennessee. 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 has 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 argues that the director did not sufficiently consider the evidence.

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 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.

The petitioner filed the petition on May 29, 2007. In a statement accompanying his initial submission, the petitioner stated: "My research is focused on the development of self-assembling systems for molecular recognition. . . . My research achievements have been highly evaluated by peers and have huge potential for significant applications in industry." When he filed the petition, the petitioner had one published article, in the *Journal of the American Chemical Society*. The petitioner submitted evidence showing that his "paper has been cited 4 times in just six months." A peer reviewer's

comments indicated that the finding reported in the article "is a nice result" that "is a continuation of work first published in *J. Am. Chem. Soc.* in 2003." The petitioner did not contribute to the 2003 article.

Several witness letters accompanied the petitioner's initial filing. [REDACTED] of the Chinese Academy of Sciences stated "I knew [the petitioner] since 1998 when he joined my research group as an assistant researcher," but [REDACTED] did not describe the petitioner's work there. [REDACTED] stated that the petitioner's later "achievements in his field are indicative of his innovative and pioneering qualities in transition metals separation research."

[REDACTED] a staff member of the Chemistry Division of Argonne National Laboratory, stated:

In 2003, as a Ph.D. student working with [REDACTED] (Western Michigan University) . . . , [the petitioner] spent a number of weeks training in the use of radiotracers under my supervision and applying this knowledge to separations pertinent to the treatment of nuclear wastes using a new family of metal ion extractants . . . developed by him in [REDACTED] laboratory. . . . [The petitioner's] ligand design insights played a critical role in achieving progress in these studies, and have yielded new lanthanide extractants of improved efficiency that may prove useful in the processing of nuclear wastes or the isolation of rare earth elements from their ores.

[REDACTED] stated: "[The petitioner] joined my group as a postdoctoral fellow in July 2005. . . . I have found [the petitioner] to be a highly dedicated, capable and very hard-working post-doc." [REDACTED] described the petitioner's work in technical detail, stating for instance that the petitioner "started a new project in my group on the synthesis of amphiphilic macrocyclic bis-ureas as rigid models of helical antibacterial peptides." [REDACTED] stated that the petitioner's work shows "we can generate a range of porous materials that are broadly applicable as confined environments for reactions." More specifically, "porous crystals formed from bis-urea macrocycles can be used as a container to promote a highly selective photoreaction of 2-cyclohexenone in high yield. The product can be easily removed from the crystals by extraction and the empty crystals recovered by filtration and reused, much like zeolites."

[REDACTED] of the University of Miami stated:

I have never personally met [the petitioner], but I know him through his work in the field of supramolecular self-assembly and molecular recognition. He is currently working in [REDACTED] research group, which is very active and fruitful in supramolecular chemistry. . . .

In the United States, zeolites are employed in the petrochemical, nuclear, agricultural, medical, and detergent industries. The ability of zeolites to trap and release small acid molecules has made them viable catalysts in the petrochemical industry. . . . The nuclear industry uses zeolites because they have found that the micro-pores provided effective traps for nuclear wastes and they are robust and resistant to degradation by radiation

processes. . . . Zeolites can adsorb and remove certain gases and have also found use in producing medical grade oxygen for patients. Since zeolites trap and sequester certain ions from solution, they have been used as potent water softeners, as well as in detergent manufacture.

[The petitioner] has been actively engaged in research aimed at expanding the uses and improving the properties of novel organic zeolites. [The petitioner] has outstanding organic synthetic skills.

_____ of the University of North Carolina at Chapel Hill stated:

I do not know [the petitioner] personally, but I am aware of him and his significant and original contributions from the publication of his high quality paper in the field of supramolecular self-assembly and molecular recognition. . . .

His work is a very good example of employing supramolecular chemistry to develop new materials which are easily to be synthesized and can mimic the biological catalytic systems. . . .

It is inconceivable that anyone else with a comparable level of education and experience could even approximate the contributions to this task that [the petitioner] has performed and will continue to perform in the future. His presence in the United States is an absolute necessity for the continuation of critical project [*sic*] and for the continuous benefit of this nation.

_____ of the University of Maryland stated:

Although I don't know [the petitioner] personally, I was aware of his research by reading his first authored publication in the Journal of the American Chemical Society. . . . I was impressed by his work and his great achievements in the use of self-assembling bis-urea macrocycles as nano reactors for highly selective photo-cycloaddition reactions. . . . [The petitioner's work] represents a great contribution to the area of host-guest chemistry.

_____ of the University of Massachusetts, Amherst, who is "aware of [the petitioner's] research . . . by reading his outstanding publication and also through his advisor's (Dr. _____ introduction," called the petitioner's work "an excellent example of using supramolecular self-assembly framework for highly selective and efficient chemical reactions."

_____ of the University of Iowa, stated that he was familiar with the petitioner's work "because of our common goals in supramolecular chemistry and solid state synthesis. . . . [The petitioner] has been a key contributor in the development of organic nanotubes."

On August 22, 2008, the director instructed the petitioner to submit further evidence of eligibility for the waiver. In response, the petitioner documented 11 independent citations of an article published in 2006, and one citation of an article published in 2008, after the petition's filing date. One citation appeared in a review article by [REDACTED] of ORNL.

The petitioner submitted new witness letters, all from ORNL scientists, one of whom is [REDACTED]. [REDACTED] stated, in his September 2008 letter, that he does "not know [the petitioner] personally," although the beneficiary began working at ORNL in August 2008. [REDACTED] stated that the petitioner's "work represented one of the most important breakthroughs in the field, and I discussed it at length in a major paragraph in the paper" mentioned above. A paragraph in [REDACTED] review article discusses several articles (mostly by [REDACTED] group) regarding self-assembly of bis-urea into nanotubes; one sentence refers directly to the petitioner's 2006 article, and the sentence after it may refer to it as well.

Director of ORNL's Chemical Sciences Division, stated:

I knew of [the petitioner] and his work when he came to ORNL for his interview for a postdoctoral research associate opening. . . . Previously, [the petitioner] was working on the synthesis and characterization [of] functional nanotubes. . . .

[The petitioner] joined my group in August 2008 at ORNL, which is the Department of Energy's largest science and technology laboratory. . . . [The petitioner] works on a project to develop well defined, deuterated organic molecules that will be used to derive new models for the interpretation of neutron scattering data. . . . This is a very important study in chemical and material sciences and very valuable to industry to develop new materials for a variety of applications.

ORNL Staff Scientist [REDACTED] stated that the petitioner's "research at ORNL is still in the area of Supramolecular Chemistry and Material Science; but this is an extension and an expansion of his previous experience at the University of South Carolina."

The director denied the petition on February 13, 2009, stating: "the petitioner has offered no evidence showing that his publications record is noteworthy or that his work was heavily cited." The director noted that the petitioner apparently had only one article published prior to the filing date. The director acknowledged the witness letters, but found that the record lacked "objective documentary evidence" to support the claims in those letters.

On appeal, the petitioner argues: "You cannot judge the influence and impact on a research field only based on the number of publications and the number of citations. . . . Everybody should know that for scientific publications, the quality is much more important than the quantity." The petitioner notes that his 2006 article appeared in the *Journal of the American Chemical Society*, and asserts that the high quality of that journal is evident from its high citation rate. This assertion seems to defeat his argument that "the number of citations" is not a measure of quality, as he himself uses the journal's citations as a

sign of its quality. The petitioner's argument seems to be that the overall citation rate of the articles in a given journal should be as important, if not more so, than the citation rate of his individual article.

The petitioner asserts that the *Journal of the American Chemical Society* is the "flagship" journal in the field of chemistry, and therefore it is significant that his work passed peer review for publication in that journal. The director did not ignore the publication of the petitioner's work in a significant journal. Rather, the director found that this one event does not establish a consistent track record of impact and influence on the field.

The initial reaction to the petitioner's work has been positive, and the petitioner's subsequent work at ORNL relates to the same general area of inquiry as his earlier work with [REDACTED]. We agree with the director, however, that the minimal initial evidence did not form an adequate foundation for a national interest waiver claim. The petitioner's later work may well show that the witnesses' enthusiasm is entirely justified, but such work falls outside the scope of this proceeding.

On the subject of the petitioner's later work, we note the existence of a second immigrant visa petition, receipt number SRC 09 209 50185, filed on July 6, 2008. The Director, Texas Service Center, approved that petition on July 24, 2009. The dismissal of the present appeal has no automatic effect on the approved petition, because the two petitions relate to distinct and separate proceedings. The petitioner, therefore, remains the beneficiary of an approved petition with a national interest waiver; he merely does not retain the 2007 priority date of the earlier petition.

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 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 not sustained that burden.

ORDER: The appeal is dismissed.