

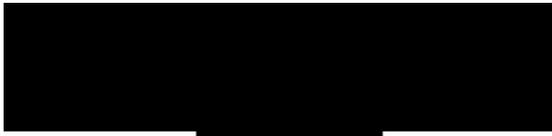


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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: OCT 22 2009  
SRC 07 270 54078

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.

Perry Rhew  
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. The petitioner seeks employment as a postdoctoral fellow at Emory University, Atlanta, Georgia. 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 and exhibits relating to scholarly publications.

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.

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 July 20, 2007. The petitioner described his work in chemistry in technical detail, and asserted that his work had resulted in four published articles that have been "cited nearly 50 times in various scientific articles, book chapters and reviews." The petitioner documented these citations of his published work.

The petitioner submitted several witness letters, mostly from witnesses connected with the petitioner's past work at Carnegie Mellon University (where the petitioner earned his doctorate) and his current activities at Emory University. [REDACTED] supervised the petitioner's doctoral studies there. He stated:

While [the petitioner] was a Ph.D. student in my laboratory, he worked on enzymes from the soil bacterium *Nitrosomonas europaea* [*sic* – the correct spelling is "*europaea*"], which are critical for the conversion of ammonium based fertilizers to nitrogen containing compounds that can be utilized by plants. . . . [The petitioner's] research on a new class of enzymes containing multiple heme cofactors has shed light into the mechanism of these environmentally relevant oxidation processes. . . .

[The petitioner later] chose to work with [redacted] [at Emory] to elucidate structural properties of two clinically important mitochondrial membrane bound flavoenzymes (monoamine oxidase A, and B) in their detergent solubilized and membrane bound forms, using spectroscopic techniques. These enzymes are responsible for the oxidation of neurotransmitters in our body and have been implicated in age related neurological disorders. . . . Understanding the structural properties of these enzymes in their membrane bound forms will be beneficial in developing selective inhibitors for these enzymes for treating these neurological conditions world wide.

[redacted] now an Associate Professor at the University of Pittsburgh, formerly worked in the laboratory adjacent to [redacted] laboratory. [redacted] stated that the petitioner's "research on multiheme proteins from the soil bacterium *Nitrosomonas europaea* . . . can be considered as pioneering works in the field of heme protein spectroscopy." [redacted] asserted that the petitioner's "findings represent the first step towards developing new methods to regulate ammonia metabolism by *N. europaea*, which can be expected to ultimately reduce our fertilizer use in agriculture."

[redacted] who supervises the petitioner's postdoctoral training, stated:

Over his Ph.D. training period at Carnegie Mellon University, [the petitioner] developed an expertise in the spectroscopic and structural properties of environmentally important enzymes. This expertise has been further extended in his postdoctoral training to medically important membrane bound enzymes found in the mitochondrion. . . . This work has received national and international attention from both academic and pharmaceutical industries.

One of [redacted] collaborators, [redacted] of the University of Pavia, Italy, stated that the petitioner's "spectroscopic studies . . . [of] these membrane bound enzymes [are] unprecedented . . . and have already greatly improved our understanding [of] the structural properties of these proteins in the membrane."

[redacted] at Boston University, stated: "I am very well aware of [the petitioner's] scientific impact already, as I have been following his career for the past three years. . . . I have read all of [the petitioner's] scholarly papers, and can attest that he has made a major contribution to the field of bioinorganic chemistry."

of the University of Dublin, Ireland, first met the petitioner at a 2006 workshop and has "interacted with him on several occasions" and "followed the development of his work with great interest." [REDACTED] stated that the petitioner's "findings have important implications for the global pharmaceutical research on developing specific clinically important inhibitors for" monoamine oxidase isoenzymes.

On September 25, 2008, the director issued a request for evidence (RFE), instructing the petitioner "to further clarify how the beneficiary's research is greater/different from [his] peers who have conducted similar research." In response, the petitioner demonstrated that the total number of citations of his work had risen to 64, the great majority of them being independent citations.

The petitioner stated that his "recent spectroscopic work . . . has been featured in the 'Faculty of 1000 Biology' as a technological advancement in understanding the structural properties of membrane bound proteins in their natural environment." The "Faculty of 1000" profile relates to an article published in 2008, after the petition was filed. 8 C.F.R. § 103.2(b)(1) requires the petitioner to establish eligibility as of the petition's filing date. Also, the record shows that the article was "[s]elected by [REDACTED] on February 1, 2008, several months after [REDACTED] had written a letter on the petitioner's behalf. In his accompanying comments, [REDACTED] did not disclose his own ongoing collaboration with [REDACTED] group. (The selected article cites several of the collaborative articles.)

New witness letters accompanied the petitioner's response to the RFE. [REDACTED] at Pfizer Global Research and Development, stated:

[The petitioner] has conducted postdoctoral research on a class of enzymes called monoamine oxidases (MAOs). These enzymes play important roles in human and animal health, and are linked to several pathological conditions including depression, schizophrenia, Parkinson's disease, and nicotine addiction. . . . Efforts to discover new MAO inhibitors are slowed by a lack of understanding of the basic molecular architecture of the enzyme and resultant difficulties in selectively targeting one type of MAO versus another. The insights provided by [the petitioner's] work go to the heart of these problems and therefore have national implications for human health.

[REDACTED] described the petitioner's latest project, undertaken after the petition's filing date:

[The petitioner] is currently a postdoctoral research scientist in my laboratory working on a project funded by the National Institutes of Health (NIH) under the "Discovery of Novel Epigenetic Marks" area of the NIH Roadmap Epigenomics program. . . .

Epigenetics is the study of how cells control gene expression by adding chemical modifications to DNA and their associated histone proteins. These modifications control genetic activity by changing the structure of chromosomes and can affect gene

expression as greatly as changes in the DNA sequence. We believe that understanding how and when epigenetic processes control genes during different stages of development and throughout life will lead to more effective ways to prevent and treat disease.

The director denied the petition on November 6, 2008, stating: "The evidence of record does not establish that the self-petitioner has accomplished anything more significant than other capable members of their profession holding similar credentials and conducting similar work." Regarding the petitioner's citation record, the director stated: "this is not unusual or different from other researchers who have had their work referenced or cited."

On appeal, counsel protests that the director "failed to properly evaluate the evidence in the record," relying instead on "general and vague assertions." We agree with this assessment. The director devoted only one paragraph of the decision to details of the petitioner's work.

We also agree with counsel's assertion that the director should have given greater weight to the many independent citations of the petitioner's work, which establish the extent to which other researchers have relied upon his work. The record also shows that others have cited the petitioner's work in different areas, ranging from agriculture to brain chemistry, indicating that the petitioner's influence did not diminish after one particular temporary project.

Heavy citation is not an automatic sign of eligibility. If a researcher has produced numerous papers, and only one has been cited with any frequency, then it is not clear that the researcher has had consistent impact. The same can be said if the citation of a researcher's publications drops off after a significant shift in the focus of the researcher's work. Also, of course, it is possible that other researchers cite a given paper for the purpose of refuting it. None of these, however, appears to be the case here. The citations, letters, and other evidence in the record point to the petitioner's consistent and growing influence in the field of chemistry.

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 the petitioner'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 AAO will withdraw the director's decision and approve the petition.

**ORDER:** The appeal is sustained and the petition is approved.