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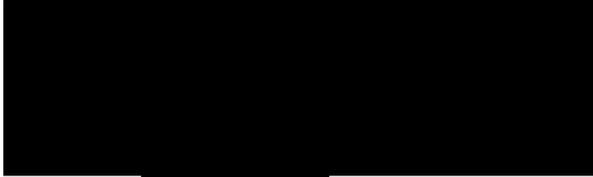
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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FILE: [Redacted] Office: TEXAS SERVICE CENTER
SRC 09 800 15595

Date: APR 30 2010

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.

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 employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

This petition, filed on May 7, 2009, seeks to classify the petitioner 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 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, counsel states that the petitioner's work has been cited to more than one hundred times and that her evidence "proves she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications."

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 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 petitioner received her Ph.D. in Chemistry from Northwestern University in 2008. The director found 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 pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "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).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

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, 216 (Comm. 1998) [hereinafter "*NYSDOT*"], 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. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* 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. *Id.* at 217-18.

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. *Id.* at 219. 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. *Id.*

We find that the petitioner works in an area of intrinsic merit, chemistry, and concur with the director's finding that the proposed benefits of the petitioner's work 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.

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. *Id.* 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 she 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. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

Along with her published articles, citation records, and association memberships, the petitioner submitted several letters of support.

[REDACTED] of Chemistry and Professor of Biochemistry, Molecular Biology, and Cell Biology, Northwestern University, states:

[The petitioner's] research included studies of CueR in both metal sensing and gene regulation aspects. . . . [The petitioner] crystallized the first two metalloregulators of MerR family members in the world, CueR and ZntR. The solved structures (in collaboration with [REDACTED] revealed unusual metal coordination environments and elucidated the molecular mechanism of the metal sensitivity and selectivity. These intriguing results have been published in the top journal *Science* and have been cited 98 times in the last five years.

* * *

[The petitioner's] next project focused on the structural characterization of metallochaperones, another class of copper receptor proteins involved in copper trafficking. Because there is no free copper or copper pool in the cell, a special class of proteins whose major function is to deliver copper (known as the metallochaperone proteins) to the corresponding target proteins is crucial to achieve the appropriate copper level in the cell. . . . To investigate the structure-function relationship of metallochaperone proteins, she independently crystallized the Cu- and Ag- bound CusF, solving the structures. CusF is a periplasmic protein in *E.coli*, thought to serve as copper chaperone. The structures revealed novel copper recognition via cation- π and methionine interactions. The molecular recognition of CusF discovered in [the petitioner's] study is of unprecedented detail compared to other metallochaperones and metalloregulatory proteins. The CusF active site chemistry affords a distinct class of copper receptor proteins with means to both control metal exchange and prevent adventitious redox reactions. These intriguing results have been published in a top journal, *Nature Chemical Biology*, and have already been cited numerous times.

[REDACTED] of Pharmacology at Yale University School of Medicine, states:

In one of [the petitioner's] earlier projects, she focused on the structural characterization of metallochaperones, a class of copper (Cu) receptor proteins involved in copper trafficking. In excess, copper ions are highly toxic, thus proper copper trafficking is essential to cell vitality. Methionine-rich motifs have an important role in copper trafficking, including the putative metallochaperone CusF protein. [The petitioner] crystallized the Cu(I) bound form of CusF and determined the structures. The high-resolution model shows that CusF uses a new metal recognition site wherein Cu(I) is displaced from a Met₂His ligand plane toward a conserved

tryptophan. Spectroscopic studies demonstrate that both thioether ligation and strong cation- π interactions with tryptophan stabilize metal binding. The discovery of this active site chemistry and such cation- π interactions was the first for transition metal receptors.

[REDACTED] Indiana University, states:

Although I have never worked with [the petitioner], I am very familiar with her work at Northwestern University since part of my laboratory works in the same field. These publications convince me that [the petitioner] is a highly skilled and creative scientist. In particular, I am impressed by [the petitioner's] innovative studies of the molecular mechanisms of metalloregulatory protein CueR in copper homeostasis.

* * *

To understand the atomic level metal responsiveness of CueR in the model bacterium *Escherichia coli*, [the petitioner] initiated the structural characterization of CueR protein. She purified the protein and successfully crystallized CueR bound to metal cofactors. This work was of outstanding interest because CueR represented the first crystallized MerR family metalloregulator. [The petitioner's] 3-D structures clearly reveal how CueR binds the metals and further showed that a novel microenvironment provides the selectivity to the coinage metals. To further investigate metal selectivity, [the petitioner] crystallized another MerR-family metalloregulatory protein ZntR. As a zinc sensor, ZntR turns on zinc transport genes once intracellular level of zinc rise above the femtomolar threshold. [The petitioner's] study provided the first atomic resolution clues as to how evolutionarily related metalloregulatory proteins could distinguish among closely related metal ions, something that many of us in field were (and remain) quite interested in. This work, published in *Science*, was truly inspiring and ground breaking for its significance; we continue to refer to this work in our ongoing efforts to understand metal selectivity in another structural family of metalloregulatory proteins.

[REDACTED] of the College of Science and Engineering, University of Edinburgh, Scotland, states:

I have never worked with [the petitioner] and my comments are solely based on my knowledge gained through her publication

* * *

In a clear display of scientific talent, [the petitioner] made critical discoveries while engaging in studies on the structures of soluble proteins involved in copper transport. She used *E. coli* as a model to study the detoxification process of copper through the proteins' binding mechanisms. *E. coli* bacteria maintain a strict cellular copper quota by using copper homeostasis to control and allocate the metal to important enzymes. One of the first responses to excess copper stress is the expression CopA, a homolog of the Menkes and

Wilson disease proteins. Copper-induced expression of CopA and CueO is controlled by CueR, a MerR metalloregulatory protein.

* * *

The biochemical and biophysical data suggested that CueR is responsive to Cu(I), Ag(I) and Au(I), while it shows no response to Zn(II), Hg(II) and Cd(II). To address the molecular basis of this selectivity, [the petitioner] initiated the crystallization of the metalloregulators of MerR family proteins and successfully crystallized Cu and Ag bound forms of CueR as well as Zn bound form of ZntR. Successful crystallization of MerR family proteins had eluded the best efforts of at least 3 other laboratories, including mine. The solved structures indicate that CueR is capable of distinguishing metal ions with a +1 charge from metal ions with a +2 charge in gene regulation, while the models reveal the crucial structural features of the metal selectivity and sensitivity. [The petitioner's] structure-based sequence alignment of MerR metalloregulatory homologs allows for predictions of metal selectivity in other family members as well. The combination of thermodynamic and structural studies reveals the metal selectivity and sensitivity of metalloregulatory proteins and the underlying structural basis. The ultrasensitivity of CueR suggests that the prokaryotic cytoplasm operates under conditions of copper deprivation. This understanding of how structure affects metal sensitivity and selectivity in the MerR family of metalloregulatory proteins at the atomic level has helped my own research.

The petitioner's initial submission included citation indices from ISI Web of Knowledge indicating that her body of work has been cited to more than one hundred times. Such independent citations are solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it.

The director denied the petition, finding that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director acknowledged the national scope of the petitioner's work, but concluded that the petitioner had not demonstrated the ability to serve the national interest to a greater extent than other researchers in her specialty. The director's decision stated: "You were the first author of only one article. . . . You have not established that you were the lead, or one of the lead researchers, in three of the five studies. . . . One published article has been shown to have been cited 103 times, however, you are not [the] primary author of this article."

On appeal, the petitioner submits additional citation records showing that the article she first-authored in *Nature Chemical Biology* has been independently cited to seventeen times as of the petition's filing date. With regard to the petitioner's article in *Science* that was her most frequently cited work, the petitioner submits letters of support from the "co-first-authors" of the article explaining that her contributions were "crucial" to their research results. While we acknowledge the director's concerns regarding the lack of cites to the petitioner's first-authored work and regarding the level of her contribution to her remaining published work (including the article she co-authored in *Science*), we find that the evidence submitted on appeal is sufficient to overcome those concerns.

In this matter, we find that the evidence submitted by the petitioner is adequate to meet the three-prong test established by *NYS DOT*. The heavy citation of the petitioner's published articles corroborates the experts' statements that her work has significantly impacted the field. The record reflects that the petitioner's research findings are important not only to the institutions where she has worked, but throughout the greater field as well. Leading scientists, including researchers with no institutional or personal ties to the petitioner, have acknowledged the value of her work and its influence on the field as a whole.

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 above testimony and the citation records submitted by the petitioner establish that the scientific community recognizes the significance of her 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 alien employment certification process. Therefore, on the basis of the evidence submitted, the petitioner has 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 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.