



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: AUG 24 2015

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the Form I-140, Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. We 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 researcher in the field of bioanalytical chemistry. 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 submits a legal brief and additional evidence.

I. LAW

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 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).

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the beneficiary seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the beneficiary 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.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the beneficiary’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s assurance that the beneficiary will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term “prospective” is included here to require future contributions by the beneficiary, rather than to facilitate the entry of a beneficiary with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

II. FACTS AND ANALYSIS

The petitioner filed the Form I-140 on May 8, 2013, at which time he was working as a postdoctoral fellow in the Department of Chemistry and Biochemistry at the [REDACTED]. In an accompanying introductory statement, the petitioner indicated that he “has made exceptional contributions to the field of chemistry with an emphasis on the development of biosensors and analytical instruments,” and that his published scholarly works “have been **cited at least 105 times** by researchers around the world” (emphasis in original).

The petitioner submitted copies of 12 journal articles that he authored or co-authored, all published between 2009 and 2013. Five of the articles derived from the petitioner’s work at [REDACTED] the other seven were from his later work at the [REDACTED]. The petitioner submitted printouts from the Google Scholar search engine showing 105 citations, including self-citations by the petitioner and his collaborators.

One of the papers that the petitioner co-authored was a 2012 article in [REDACTED] “ [REDACTED] ” The petitioner submitted evidence that this article was the focus of an [REDACTED] 2012, story in [REDACTED] ” The [REDACTED] story stated that the micropumps represent “an advance toward analyzing blood and urine instantly at a patient’s bedside” on “futuristic ‘labs-on-a-chip,’ which reduce entire laboratories to the size of a postage stamp.”

The petitioner submitted five letters in support of the petition. Dr. [REDACTED], now a senior research scientist at [REDACTED], previously collaborated with the petitioner at the [REDACTED] and was the first author of the 2012 [REDACTED] article described above. Dr. [REDACTED] credited the petitioner with developing the high pressure open channel electroosmotic pump that was the subject of their collaboration, and described him as “a driving force in this research area.”

Dr. [REDACTED] supervised the petitioner’s doctoral studies at [REDACTED] where Dr. [REDACTED] is a professor. Dr. [REDACTED] described the petitioner’s success in his past research on the development of analytical instruments for detecting glucose levels:

One of [the petitioner’s] studies that particularly caught the attention of many other researchers was his work on gold nanoparticles-bacterial cellulose nanofibers nanocomposite (AuBC) as a platform for amperometric determination of glucose with biomedical application in treating diabetes. . . .

[The petitioner] has designed and built a glucose biosensor . . . with especially fast response, an acceptable linear range, a low detection limit, satisfied stability, and good anti-interference and reproducibility.

The remaining three letters are from individuals who stated that they have not collaborated with the petitioner but who are aware of his work through his publications. Dr. [REDACTED] “a Reader in Electroanalytical Systems in the School of Engineering and Material Science at the [REDACTED]” stated that the petitioner’s “pioneering research has improved our analytical instruments for biomedical applications.” Dr. [REDACTED] described two of the petitioner’s biosensors in technical detail, concluding that the petitioner “has provided his fellow experts in the field with the critical analytical instruments necessary to determine important biomedical parameters.”

Dr. [REDACTED], professor at [REDACTED], praised the petitioner’s “outstanding research on biosensors as analytical instruments” and states that his AuBC biosensor, described above, “performed exceptionally fast” and that he identified key mechanisms of the composite’s operation on heme proteins. Dr. [REDACTED] asserted that the petitioner’s “fabrication approach can be extended to make other nanoelectrodes used in electrochemical and biochemical applications.”

Dr. [REDACTED] associate professor at [REDACTED], credited the petitioner with “multiple original contributions to the field of bioanalytical chemistry,” such as “a novel hybrid device for two-dimensional protein separation.” Dr. [REDACTED] described this device as “a less labor-intensive and more automatic device, which enhances the standardization we have long been pursuing.”

The director issued a request for evidence (RFE) on July 19, 2013 noting that the petitioner’s articles “have been cited 105 times by other researchers,” but stated: “The number of citations needs to be viewed in the context of [the petitioner’s] career field. . . . [I]t is debatable if 105 citations would be

considered an above-average count for that field.” The director also questioned the significance of the petitioner’s role in his research at the [REDACTED] which was conducted under the direction of a professor. The director stated, “[t]his leads to the question of how much of the work, and the credit for it, accrue exclusively to the [petitioner].”

In response, the petitioner submitted updated citation figures, with the assertion that his **“citation records exceed the average citation records of others in the chemistry field . . . , suggesting that his past record far exceeds the average”** (emphasis in original). The new figures totaled 120 citations, including self-citations.

A table from ISI Web of Knowledge showed “Average Citation Rates for papers published by field, 2003-2013.” The figures included in the table for the field of chemistry indicate above-average citation rates for seven of the petitioner’s published papers.

The petitioner submitted a letter from Dr. [REDACTED] associate professor at [REDACTED] and co-author of the petitioner’s most heavily cited paper (with 45 citations at the time of filing, increased to 52 when the petitioner responded to the July 2013 RFE). Dr. [REDACTED] stated that the petitioner “made significant contributions to” the article, and that without his work, “this material had no application to show its function and the paper would not have been published on Advanced Functional Materials.”

Regarding the extent of the petitioner’s contributions to, and credit for, his work, the petitioner’s response letter stated that “[s]cience, by nature, is a collaborative discipline,” and that the petitioner’s author credits on the published articles serves to demonstrate his active involvement in the projects described in those articles.

The director issued a second RFE on November 26, 2013, stating: “Regarding the 120 citations, analysis reveals that 91 of them were from [the petitioner’s] research at [REDACTED] . . . There appear to be only 7 citations from his current research at the [REDACTED] which does not support the belief that his current work is impacting the field.” The director also stated that the petitioner’s “contributions must be distinctly set apart from [those of] other members of the team,” and that the petitioner has not established his “specific roles at Dr. [REDACTED] laboratory at the [REDACTED].”

In response, the petitioner submitted evidence that his citation total had grown to 139, and stated that the director had undercounted the citations of the petitioner’s work at the [REDACTED]. Review of the record shows that, at the time of filing, the petitioner had documented 14 citations (including a small number of self-citations) of work he produced at the [REDACTED]. The second RFE response documented 22 such citations.

The director denied the petition on July 2, 2014, stating that the petitioner had not shown that the additional citations pre-date the filing of the petition. 8 C.F.R. § 103.2(a)(1) requires the petitioner to show eligibility at the time of filing. An applicant or petitioner must establish that he or she is

eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). The director cited *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which held that events after the filing date cannot retroactively qualify a previously ineligible beneficiary. The director found that the petitioner did not provide sufficient context for the citation figures provided. The director also found that the petitioner did not provide enough information about his current work at the [REDACTED]

On appeal, the petitioner states that the director should have considered the petitioner's body of work as a whole, but instead "focused only on petitioner's most recent contributions at the [REDACTED] [REDACTED]" New documentation submitted in response to an RFE from the AAO shows that the petitioner's citation total has risen to 227.

The director was correct to assert that the petitioner must be eligible at the time of filing, and cannot become eligible at a later date owing to subsequent events. In this instance, however, the citation figures were already substantial at the time of filing and are indicative of the petitioner's influence on the field. Later submissions show that citation of the petitioner's work – both at [REDACTED] and at the [REDACTED] – continues to influence the work of other researchers. The lower citation rate of the petitioner's latest work can be attributed to its being more recent. The ISI Web of Knowledge table shows that citations accumulate, and thus citation rates increase over time.

The petitioner has submitted documentary evidence demonstrating that the majority of his submitted articles have shown above-average citation rates for his field of research. In addition, the letters provided by the petitioner give context to the petitioner's published work and explain its importance in ways that the record otherwise corroborates. We find this evidence sufficient to demonstrate that the petitioner's research has had a degree of influence on the field of bioanalytical chemistry. We therefore find that the record justifies projection that the beneficiary will serve the national interest to a significantly greater degree than would an available U.S. worker having the same minimum qualifications.

III. CONCLUSION

As discussed above, the evidence in the record establishes that the benefit of retaining this beneficiary'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 the job offer and labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has met that burden.

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