U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: LIN-99-094-51534 Office: Nebraska Service Center Date: JAN 11 2002

IN RE: Petitioner: [redacted]
Beneficiary:

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)

PUBLIC COPY

IN BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and affirmed on motion. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

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 an alien of exceptional ability. 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 did not contest that the petitioner had demonstrated exceptional ability, but concluded 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.

The petitioner filed an untimely appeal, which the director treated as a motion. In his final decision, the director concluded that the documentation submitted on motion did not demonstrate that the petitioner was internationally recognized as outstanding. The petitioner filed the instant appeal, asserting again that he is an alien of exceptional ability and requesting a waiver of the labor certification requirement in the national interest.

Being recognized internationally as outstanding is not a requirement for an alien of exceptional ability who seeks a national interest waiver. The relevant criteria will be discussed below.

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. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Ph.D. in biology from Cleveland State University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue 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 Service 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 Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> 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 Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 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.

As acknowledged by the director in his first decision, the petitioner works in an area of intrinsic merit, biomedical research, and the proposed benefits of his work, improved therapies for iron retention disorders, would have a national impact. It remains, then, to determine whether the petitioner would benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Dr. Paul L. Fox, the petitioner's thesis advisor at Cleveland State University, writes:

> During his Ph.D. training [the petitioner] made important contributions to our understanding of the role of the protein ceruloplasmin in oxidant injury and arteriosclerosis. Advanced arteriosclerotic lesions can occlude the blood flow and

> lead to myocardial infarction or stroke, both leading causes of death in the U.S. It is thus very important that we understand the regulation and activity of this oxidant protein. [The petitioner] has also shown an important role of ceruloplasmin in iron metabolism. His recent discoveries may pave the way to a deeper understanding of common iron diseases including anemia and hemochromatosis. [The petitioner] has thus made major contributions to our understanding of the function of this important blood protein.

Dr. Paul E. DiCorleto, Chairman of the Cell Biology Department at Cleveland State University, writes:

> While in my department as a member of Dr. Fox's laboratory, [the petitioner] has performed at an outstanding level in uncovering the mechanism by which the copper-containing protein ceruloplasmin interacts with LDL to cause its oxidation. This project has critical importance to our understanding of the development of atherosclerosis (narrowing and occlusion of blood vessels) – a disease which is responsible for more deaths in the U.S. than any other. This is a very high priority project in our department, and its findings may be critical to the design of therapeutic agents against this nation's number one killer.

Dr. Michael Gates, a professor at Cleveland State University; Dr. Philip H. Howe, of the Cleveland Clinic Foundation; Dr. Stanley Hazen of the Cleveland Clinic Foundation; and Dr. Kevin Carnevale of the Lerner Research Institute, Cleveland Clinic Foundation all provide similar information. Hussein Saadi, an assistant professor of Medicine at the United Arab Emirates University indicates that he knew the petitioner during his time on the faculty at Cleveland State University and also provides information similar to that quoted above.

In a letter submitted in response to the director's request for additional evidence, Chris Vulpe, an assistant professor at the University of California Berkeley, asserts that the petitioner's work at the Cleveland Clinic "made a fundamental contribution to our understanding of cellular iron metabolism." Dr. Vulpe goes on to discuss the petitioner's work at Berkeley and his coordination of a collaborative effort between Dr. Vulpe's laboratory and other laboratories in London, Australia, and Utah. The petitioner had not started working at Berkeley at the time the petition was filed. A petitioner must establish eligibility at the time of filing. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner's work after the date of filing is not relevant to his eligibility at the time of filing.

The director concluded that the letters were all from the petitioner's circle of colleagues. As noted by the petitioner on appeal, however, the record contains the following letters from independent researchers. Dr. Linda Graham, a professor of surgery at The University of Michigan Medical Center, writes:

> I have followed [the petitioner's] work since his arrival in Dr. Fox's laboratory at the Cleveland Clinic Research Laboratory in 1994. . . . His studies on the role of

> ceruloplasmin in oxidant injury are important additions to our understanding of disease states such as atherosclerosis. In addition[,] his studies on the role of ceruloplasmin in the regulation of cellular uptake of iron have opened a new frontier in the field of iron metabolism.
>
> . . . His work has resulted in a new model for the mechanism used by cells for the uptake and regulation of iron content. His studies have direct application, not only to atherosclerosis, which is the leading cause of death in the United States, but also to other disease states, such as anemia. As a vascular surgeon[,] I have been studying and treating the effects of atherosclerosis for more than 15 years, so I can attest to the fact that [the petitioner's] work is at the cutting edge of research in cell biology in this area.

Dr. Marianne Wessling-Resnick, an associate professor at the Harvard School of Public Health, writes:

> During his work in Dr. Paul L. Fox [sic] at the Cleveland Clinic Foundation, [the petitioner] has made original contributions to our knowledge of the cell, biology and biochemistry of iron metabolism. [The petitioner] has shown that human ceruloplasmin induced iron uptake in iron-deficient K562 cells (a pre-erythroid cell line). His studies demonstrated that this induction was dependent on the ferroxidase activity of ceruloplasmin and the presence of a trivalent cation transporter on the surface of iron-deficient cells.

The file also reflects that Dr. Wessling-Resnick has cited the petitioner's published articles. Dr. Greg Anderson, Head of the Iron Metabolism Laboratory at the Queensland Institute of Medical Research, writes:

> I have followed [the petitioner's] work on the role of ceruloplasmin in cellular iron uptake for the last three years. During that period, [the petitioner] was able to demonstrate a new role for ceruloplasmin in promoting the uptake of iron by erythroid cells [citation omitted]. This novel work not only identified a new pathway of cellular iron uptake, but also demonstrated [the petitioner's] original thinking and creative capabilities. In view of the close similarities between ceruloplasmin and hephaestin, I have decided to seek [the petitioner's] advice and skills in our studies of the role of hephaestin in iron mobilization from the small intestine. We are currently arranging for a possible visit of [the petitioner] to my laboratory to help establish some enzymatic and transport assays to study hephaestin function. His help is crucial for this work as he has considerable expertise in developing new assays for detecting the ferroxidase activity of hephaestin and for studying the transport of iron into and out of cells in culture. There is perhaps no scientist in the world better qualified to carry out this work than [the petitioner] and I am greatly looking forward to working with him.

In addition, on appeal, the petitioner submits another letter from an independent researcher. Dr. Sean Burgess, an assistant professor at the University of California, Davis, writes:

> Although my work is not related to iron or anemia, I still recognize the significance of iron metabolism in maintaining cellular homeostasis. The effort that [the petitioner] has exerted into the elucidation of the role of some of the genes and proteins in tissue iron metabolism, whether at the Cleveland Clinic or at the University of California at Berkeley, reflects impressive scientific design and innovation. Only a handful of scientists working in a specific field are responsible for the significant observations and discoveries, the rest will refine these discoveries and fill the gaps. In that connection, [the petitioner] is one of the leading researchers in iron metabolism and other scientists are building on the foundation of his fundamental discoveries.

While letters from experts in the petitioner's own area of research are more persuasive, the letters from independent researchers in the record considered together reflect that the petitioner's work is recognized outside his immediate group of professors and collaborators.

The petitioner has authored two published articles and another article not yet published as of the date of filing. The director dismissed these articles, stating that authoring published articles is inherent to the field of research. The publication of research results is inherent to the field of research. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of influential contributions. A positive reaction to those articles by the research community, however, is evidence of an article's influence in the field. The director failed to consider the community's response to the petitioner's articles in his decision.

The petitioner submits evidence that his work was referenced in *Research Notations* and submits a copy of the publication. The Cleveland Clinic where the petitioner works, however, publishes this publication. Thus, the reference to his work is not evidence of the national research community's reaction to his research.

An independent newspaper, however, also referenced the petitioner's work with ceruloplasmin. *BioWorld Today*, a daily biotechnology newspaper, interviewed Dr. Fox on the ceruloplasmin research in which the petitioner participated for an article entitled, "Role of Ceruloplasmin in Iron Overload Disorder Stood on its Metabolic Head." The petitioner's article on this subject,

"Role of Ceruloplasmin in Cellular Iron Uptake" published in *Science* had been cited four times by independent researchers at the time of filing. In response to the director's request for additional documentation, the petitioner provided evidence that the article at that time had been cited 25 times, only two of which were self-citations by the petitioner's co-authors. While most of the citations occurred after the petition was filed, they demonstrate the continuation of a trend. The research was discussed in *BioWorld Today*, the article appeared in *Science*, an extremely prestigious journal, prior to the date of filing and four independent researchers had already cited it at the time of filing.

The petitioner's article in the *Journal of Biological Chemistry* was published the month before the petition was filed and, as such, had not been cited at that time. In response to the director's request for additional documentation, the petitioner submitted evidence that eight independent researchers had cited the article and five additional requests for reprints.

The record taken as a whole, including the reference letters from independent researchers and the community's reaction to the petitioner's article sufficiently establish that the petitioner has influenced his 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 further testimony in the record, establishes that the 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 which 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, 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.