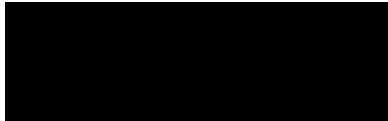


Identifying data related to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



B5

FILE: EAC 03 200 52204 Office: VERMONT SERVICE CENTER Date: **AUG 12 2005**

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 of filing, the petitioner was a research associate at Penn State College of Medicine. 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.

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 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 Citizenship and Immigration Services (CIS)] 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 (Comm. 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.

I . . . am a bio-medical research scientist, working in the Department of Nephrology at Penn State University College of Medicine at Hershey. . . .

Currently, I have several projects going on. One is to study mechanism of acute renal failure by comparing different animal research models. The other one is to study mechanism of human kidney transplantation rejection. . . . The third project is focusing on renal cell repair and regeneration. . . .

As a full-time bio-medical research scientist with a faculty position at Penn State University College of Medicine, I need to work continually on kidney failure research. Penn State University provides the best research support for me to reach my research goal.

The petitioner adds that he has applied for the waiver because, as a permanent resident, he would be eligible to apply for grant funding from the National Institutes of Health.

Along with copies of his published articles, the petitioner submits letters from five witnesses, most of whom have worked with the petitioner, and all of whom work at institutions where the petitioner has worked and trained. [REDACTED] chief of Nephrology at Penn State College of Medicine, states:

[The petitioner] is one of an elite few individuals who have been able to bridge the gap between information processing/data analysis and the theory and practice of modern molecular biology. . . .

[The petitioner] and I have been collaborating on a project to employ high throughput gene expression profiling to examine the mechanisms of acute renal failure. . . .

We hope to utilize the information generated by the NIH Human Genome Project to provide a more detailed picture of the cellular responses to renal failure. [The petitioner] has used his bioinformatics expertise to extract information from NIH-supported public DNA databases . . . in order to assemble a collection of genes which are of particular relevance to the kidney. This work involved sorting through several million DNA sequences in order to determine the relative abundance of these genes in the fabricated customized kidney Gene-chips for use in

our studies. This constitutes a unique resource which will have application . . . to studies of other kidney diseases such as diabetes and AIDS related kidney disease. This is, in fact, the only specialized collection of kidney genes available for such a purpose. . . .

[The petitioner] will need to continue in this cutting edge research by using these custom Gene-chips to measure the patterns of gene expression in kidney disease. These aspects of his work will also require his substantial skills in computer programming and data analysis. . . . I view [the petitioner's] continued research in this project to be critical for its current and future success.

Penn State Professor [REDACTED] describes the petitioner's other projects at that institution:

Gene expression profiling in human renal tissue. Microarrays have been used to study expression of thousands of genes concurrently. This technology has been applied to basic kidney disease but studies are limited in humans because of the lack of tissue. The approach has generally been to use tissue from renal biopsies; however, this does not provide sufficient amounts of material for study. New techniques have been developed for amplification of RNA in order to perform DNA microassays from such small amounts of tissue.

Mechanism of renal injury repair. At an earlier stage of development but perhaps ultimately of potentially more importance are [the petitioner's] efforts to understand renal cell repair and regeneration following acute injury. He is developing methods to culture renal proximal tubular cells (the target of injury in acute renal failure). . . . The planned approach is to use oxidants at a sub-lethal dose to stimulate gene expression, which will then be analyzed using microarray techniques. Genes activated during injury and repair can be assessed for function using cell transfection or RNA interference approaches. This novel approach has the potential to open a new field for the study of renal injury and repair.

[REDACTED] assistant professor at Penn State, states that the petitioner "has taken on the daunting task of establishing an in-house facility for both production and application of cDNA microarray technology. His skills in bioinformatics were instrumental in building and running the facility.

[REDACTED] associate professor at McGill University, states that under his tutelage, the petitioner "increased his knowledge of transcriptional regulation and cell differentiation" and "possesses a unique blend of molecular biology and computer science skills. [REDACTED] "supervised [the petitioner's] Ph.D. in Molecular Biology from the Netherlands Institute for Developmental Biology of the Royal Dutch Academy of Sciences at the University of Utrecht in the Netherlands." [REDACTED] tes that the petitioner "developed an outstanding knowledge in molecular developmental biology directly related to the fields [of] cancer research and molecular medicine," but does not otherwise elaborate.

The director denied the petition, stating "all of the letters of support and recommendation . . . appear to be from individuals who work with the beneficiary." The director added that the evidence submitted "does not establish that the beneficiary's accomplishments have been recognized as having advanced the field to a greater degree than others involved in similar pursuits." The director indicated that it is not sufficient simply to demonstrate that the petitioner possesses useful skills in an important field of endeavor.

On appeal, the petitioner submits an unpublished manuscript that arose from his work at Penn State, as well as a letter prepared in support of a separate, nonimmigrant petition filed on the petitioner's behalf by Colgate-

Palmolive Company.¹ The letter indicates that the company has offered the petitioner a position “[i]n the specialty occupation of Senior Scientist – Geonomics,” in which “[t]he activities and scope of this specialty occupation are focused on Nutrition Technology.” The petitioner cites this information to show that he “was highly sought after for my skills and experience by the Colgate-Palmolive Company.”

Even if the job offer from Colgate-Palmolive were intrinsically a qualifying factor (which it does not appear to be), if the petitioner was not already eligible as of the date he first filed the petition, the job offer from Colgate-Palmolive could not cause him to become eligible. *See Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Furthermore, the materials from Colgate-Palmolive do not indicate that the position offered to the petitioner would involve kidney research, or human medicine; rather, it would involve “feline and canine tissues,” consistent with “Pet Nutrition” as mentioned in the letter. Considering that the petitioner’s original claim relied very heavily and specifically on research relating to human kidney failure, the job offer from Colgate-Palmolive does not tend to support reversal of the director’s decision. The fact that a large corporation, with many employees, has offered the petitioner a job does not, on its face, distinguish the petitioner from others in his field or show that his admission would serve the national interest to an extent that would justify a waiver of the job offer requirement. The record does not reflect comparable demand for the petitioner’s services from employers that engage in human kidney research.

More generally, the record shows that the petitioner’s employers and mentors have valued the petitioner’s contributions, but there is no objective, documentary evidence to show that the petitioner has had a demonstrable impact in his field. His chief contribution appears to be organizing genomic data that had already been gathered and made publicly available by other researchers.

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.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

¹CIS records show that the petition was approved, valid from September 30, 2004 to September 20, 2007. The validity of the petitioner’s nonimmigrant visa petition that allowed him to work at Penn State expired on September 30, 2004, and CIS records show no extension of that visa petition.