



U.S. Citizenship
and Immigration
Services

TO:

DATE: April 25, 2012

Petition: Form I-140

File
Number:
Beneficiary:

DECISION

Your Form I-140, Immigrant Petition for Alien Worker, has been denied for the following reason(s):

See Attachment

You may appeal this decision to the Administrative Appeals Office. In the alternative, you may file a motion to reopen or reconsider with this Service Center. Your appeal or motion to reopen or reconsider must be filed on Form I-290B, Notice of Appeal or Motion within 30 days of the date of this notice (33 days if this notice is received by mail). You must mail your Form I-290B, along with the appropriate filing fee and other documentation in support of the appeal or motion, to the correct address. Do **not** mail your completed Form I-290B directly to the Administrative Appeals Office or to this Service Center.

To obtain the filing locations, the required filing fee amount, and more information about the Form I-290B filing requirements, please refer to the USCIS website at <http://www.uscis.gov/forms>. You may also contact the National Customer Service Center (NCSC) at 800-375-5283.

This decision does not prevent you from filing any petition or application in the future.

Sincerely,

Gregory A. Richardson, Director
Texas Service Center

Officer# XM 1154

cc: Lawrence Victor Bush, Attorney at Law
Zhang & Associates, P.C.
9999 Bellaire Blvd., Suite 920
Houston, TX 77036

Enclosures: Form I-290B and corresponding instructions

ATTACHMENT

The record indicates that you filed the petition to perform services as Project Head-Phytochemicals under Section 203(b)(2) of the Immigration and Nationality Act (the Act) on November 19, 2010. Upon consideration, it is ordered that your immigrant petition for an alien worker be denied for the following reasons.

Section 203(b)(2)(A) of the Act states in part:

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.

Section 203(b)(2)(B) of the Act explains when the requirements of a job offer may be waived:

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.

In order to be eligible for a waiver of the requirement of a job offer and labor certification, the petitioner must show that the work the beneficiary will be coming to perform in the United States will be in the national interest. 8 Code of Federal Regulations (C.F.R.) § 204.5(k)(4)(ii) states that:

The director may exempt the requirement of a job offer, and thus of a labor certification, for aliens of exceptional ability in the sciences, arts, or business [and later added members of the professions holding advanced degrees or their equivalent] if exemption would be in the national interest. To apply for the exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate, as well as evidence to support the claim that such exemption would be in the national interest.

Neither the statute nor USCIS 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 published at 56 Federal Register 60897, 60900 (November 29, 1991) states that the application of national interest should be as flexible as possible, yet an alien seeking to meet the standard must make a showing significantly above that necessary to prove the "prospective national benefit" required of all aliens seeking to qualify as exceptional. The burden rests with the petitioner to establish that exemption from the job offer requirement will be in the national interest and each case is to be judged on its own merits.

It has been determined in *Matter of New York State Dept. of Transportation* 22 I&N Dec. 215 (Act. Assoc. Comm. For Programs 1998), that several factors 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 persuasively demonstrate that the national interest would be adversely affected if a labor certification were required for the alien. The labor certification process exists because protecting the jobs and job opportunities of U.S. workers having the same objective minimum qualifications as an alien

seeking employment is in the national interest. An alien seeking an exemption from this process must present a national benefit so great as to outweigh the national interest inherent in the labor certification process.

In other words, the petitioner, whether the U.S. employer or the alien, 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 is not sufficient for the petitioner to simply enumerate the alien's qualifications, since the labor certification process might reveal that an available U.S. worker has the qualifications as well. Likewise, it cannot be argued that an alien qualifies for a national interest waiver simply by virtue of playing an important role in a given project, if such a role could be filled by a competent and available U.S. worker. The alien must present a significant benefit to the field of endeavor.

The petitioner is petitioning to perform services as a Project Head-Phytochemicals. The evidence shows that the petitioner has a Doctorate degree in Chemistry.

On September 8, 2011, USCIS requested more specific evidence to show that the granting of the petitioner's waiver request would have significant impact on his or her area of expertise, on a national level. In addition, the evidence was to show that the proposed work would substantially benefit the United States to a greater degree than the work of others in the field.

The response was received on November 21, 2011.

USCIS finds insufficient evidence to demonstrate that the proposed employment of the alien would specifically benefit the national interest of the United States to substantially greater degree than a similarly qualified U.S. worker. Although the beneficiary appears to be an experienced chemist, there is little evidence to persuade USCIS that granting a waiver of the job offer requirement would be in the national interest in this case. The alien may have the experience and education to function as a high level chemist in the food additive industry. However, as stated in the *Matter of New York State Dept. of Transportation*:

. . . Any objective qualifications, which are necessary for the performance of the occupation, can be articulated in an application for alien labor certification; the fact that the alien is qualified for the job does not warrant a waiver of the job offer/labor certification requirement. It cannot suffice to state that the alien possesses useful skills, or a "unique background" [R]egardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. worker through the labor certification process

The petitioner's assurance that he will, in the future, serve the national interest cannot suffice to establish prospective national benefit. While the national interest waiver hinges on prospective national benefit, it must be established that the alien's past record justifies projections of future benefit to the national interest.

The petitioner has submitted extensive documentation of over 20 years of experience in the field as well as continued business and technological training. The petitioner has also submitted various letters of support from the following:

- Dr. Vaman Rao, Chairman and CEO of Indigene Pharmaceuticals Inc.
- Dr. Arvind Kumar, Deputy Director General (Education), Indian Council of Agricultural Research
- CS Mani, Arbecel
- Cristiano Moggi, Corporate Technical Director Assistant, Indena S.p.A.
- Dr. Bharathi Dhasan, Deputy General Manager R&D, Dishman Pharmaceuticals and Chemicals Ltd.
- Binu Cherian, Sr. Manager-Supply Chain, Indigene Pharmaceuticals Inc.
- Janardan Singh, Manager-Phytochemicals, Kancor Ingredients Ltd.

- Dr. Bhaskar Datta, Assistant Professor, Department of Chemistry, Missouri State University

The letters state that the petitioner's most important contributions to the field are the development of Fluazifop-p-butyl herbicide, the extraction of antioxidants and the launching of the anticancer molecule Camptothecin. There is no evidence that Camptothecin and the antioxidants developed by the petitioner have had a widespread impact on the field or are currently being used by other scientists in the field.

The petitioner submitted evidence that his work on Fluazifop-p-butyl herbicide was published in a paper and has been used in the book *Pesticides, Crop Protection and Environment*. The letter from Dr. Bhaskar Datta states that he uses the petitioner's work on the herbicide in his course work and curriculum. The petitioner submitted evidence that the petitioner's work was referenced in the *Weeds Control Methods Handbook*. There is no evidence of any further reference of the petitioner's work or that anyone other than Dr. Datta is currently using the petitioner's research. The petitioner has not shown that the waiver of the required job offer and labor certification would be in the national interest.

The petitioner has not persuasively demonstrated that the proposed benefit of his prospective employment will be national in scope. The petitioner claims that his employment will benefit the nation as a whole because he has a past history of increasing the business success of his previous employers. The petitioner references letters of support from CS Mani of Arbecel and Cristiano Moggi the Corporate Technical Director Assistant of Indena S.p.A. The letter from CS Mani states that the petitioner, "had developed many antioxidants at his lab to be successfully launched by the company in Western and local market." CS Mani also states that your efforts "have turn around the company in a short span of time." The letter from Cristiano Moggi states that your contributions have given Indena S.p.A. a competitive and strategic edge over other companies in India. There is no evidence that your contributions to your previous employers extended to any other companies or other scientists in the field. Although you intend to work with Food Ingredients Solutions, LLC as the Project Head-Phytochemicals, it has not been explained how your employment with Food Ingredients Solutions, LLC will benefit the field on a national level. Your employment will only benefit your employer.

In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefits sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966).

Based on the evidence on hand, and the above regulations, it cannot be determined that the petitioner has met the required burden of proof. Therefore, this petition seeking to classify the petitioner as a second preference alien cannot be approved and is hereby denied.

NOTE: The Small Business Regulatory Enforcement and Fairness Act established the Office of the National Ombudsman (ONO) at the Small Business Administration. The ONO assists small businesses with issues related to federal regulations. If you are a small business with a comment or complaint about regulatory enforcement, you may contact the ONO at www.sba.gov/ombudsman or phone 202-205-2417 or fax 202-481-5719.