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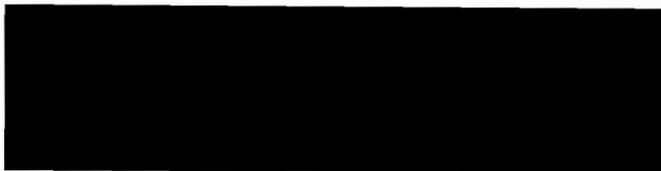
Date: **OCT 25 2007**

IN RE: Petitioner:  
Beneficiary:



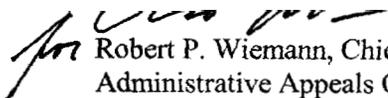
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office 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. The petitioner seeks employment as a field service engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment 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 had 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 his own statement. For the reasons discussed below, the petitioner has not overcome the director's basis of denial.

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 holds a Ph.D. in Electrical Engineering from Technische Universität Berlin (TU Berlin). 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 an alien employment 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 (Nov. 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, 217-18 (Commr. 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 concur with the director that the petitioner works in an area of intrinsic merit, engineering. The director concluded that the petitioner was providing technical support and that the benefits of this work would not be national in scope. On appeal, the petitioner asserts that his job duties involve more than technical support; he is also involved in the “improvement and further development analysis” of the equipment with which he works.

Initially, the petitioner submitted his job offer from OESS Corporation. The title of the job is “Field Service Engineer” and the “Summary of Duties” in its entirety is as follows:

On-site customer support including application engineering for “Equipment” inside customer’s facility in Boise. Back up customer support in other location[s] in US and Europe.

Report to Site Manager.

\* "Equipment" shall refer to the e-beam mask writing system, inspection system (CD-SEM), and other semiconductor manufacturing equipments [sic].

Other items that are related improvement of customer support.

A few months factory training in Numazu[,] Japan and OIT in customer [sic].

It appears that the customer in Boise referenced in the job letter is [REDACTED]. Specifically, the petitioner initially submitted a letter from [REDACTED] Section Manager. [REDACTED] asserts that he met the petitioner in June 2005 when OESS assigned the petitioner to work with [REDACTED] as a field engineer supporting [REDACTED] Mask-writers (EBM) equipment. [REDACTED] attests to the petitioner's assistance eliminating technical problems by analyzing and locating the source of the problem in a short time thereby minimizing expense, improving product quality and ensuring on-time delivery.

As noted by the petitioner on appeal, the petitioner also submitted a letter from [REDACTED] a former coworker at [REDACTED]. In his letter, [REDACTED] discusses the national significance of semiconductors and EBMs in general. [REDACTED] asserts that the petitioner "works to solve arising problems and is actively involved in discussions and improvement of EBM's quality." [REDACTED] continues:

The slightest improvement of EBMs reflects considerably on quality and availability of semiconductor chips and their products for our US consumers. Besides troubleshooting these highly sophisticated Electron Beam Accelerators, [the petitioner] also works on improvements to these tools that result in higher throughput. His significant contributions are not only confined to [REDACTED] in Boise, Idaho, but also in EBMs located in FAB's of other major semiconductor companies nationwide: Intel (California), Photronics (Texas) [and] IBM (New York).

We concur with the director that the petitioner's primary responsibilities involve troubleshooting rather than research and development of new or significantly improved technology. Participating in discussions about technical improvement does not rise to the level of actually participating in the research and development of new or significantly improved technology. While technical support clearly has intrinsic merit and is important to the national economy in the aggregate, we concur with the director that the impact of a single technical support engineer at the national level would be negligible. *See NYSDOT, 22 I&N Dec. at 217 n.3.*

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.” *Id.* at 221. 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 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 he seeks. By seeking an extra benefit, the petitioner assumes an extra element 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. In evaluating the petitioner’s achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

On his curriculum vitae, the petitioner lists eight “publications,” including a 1999 article in *Astrophysics*. Counsel indicates that exhibits 18 through 23 include “published” articles by the petitioner. Most of the exhibits are actually reports for the Tev Energy Linear Accelerator (TESLA) that bear no indicia of publication and widespread distribution. The petitioner did submit a 2003 abstract booklet for the 6<sup>th</sup> European Workshop on Beam Diagnostics and Instrumentation for Particle Accelerators that contains a brief abstract by the petitioner. The petitioner did not submit his purported article in *Astrophysics*. As noted by the director, the record lacks evidence indicating that the petitioner’s publications and conference presentations have been influential in the field, such as evidence that the petitioner’s work has been cited or otherwise noted in engineering literature. The petitioner does not address this concern on appeal.

The petitioner also submitted certificates of recognition and participation that fail to demonstrate the petitioner’s accomplishments in his field. Specifically, the petitioner submitted a Certificate of Gratitude from the Student Scientific Society of Yerevan State University (YSU) in Armenia where the petitioner received his Master’s degree, a letter advising him of his scholarship at TU Berlin, a certificate that, according to the uncertified translation,<sup>1</sup> recognizes his “first-place award he won in [the] competition of scientific publications regarded to [sic] [the] 80-th [sic] anniversary of Yerevan State University,” a certificate for participation in an “interuniversity conference” for students in Armenia and secondary school recognition. None of these certificates recognize accomplishments in engineering. Student recognition and scholarships, which are typically based on academic performance, are not persuasive. Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. *Id.* at 219 n.6. In all cases the petitioner must demonstrate specific prior achievements that establish the alien’s ability to benefit the national interest. *Id.*

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<sup>1</sup> All foreign language documents must be accompanied by translations certified by the translator as described at 8 C.F.R. § 103.2(b)(3).

The remaining documents are the reference letters. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of industry interest and positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review and a brief professional encounter.

The petitioner obtained his Master's degree in Physics from YSU in 1993. As stated above, the petitioner obtained his Ph.D. in Electrical Engineering from TU Berlin in 2000. The petitioner completed Form ETA 750B listing the following employment history. From October 2000 through December 2003, the petitioner worked as an assistant professor at TU Berlin. From January 2004 through April 2004, the petitioner worked as a visiting scientist at the Deutsches Elektronen-Synchrotron (DESY) in Germany, where TESLA appears to be based. From August 2004 through June 2005, the petitioner worked as a postdoctoral researcher at the Idaho Accelerator Center at Idaho State University. Finally, as of the date of filing, the petitioner was working as a field services engineer at OESS (Boise Site, Micron).

██████████ one of the petitioner's professors at YSU, discusses the importance of the petitioner's field and asserts that the petitioner has made "original and significant contributions" to that field. ██████████ does not provide details regarding the petitioner's research at YSU other than to assert he coauthored an article with the petitioner, which is not in the record. Rather, ██████████ asserts that the petitioner's work at DESY, "a leading scientific center with unique particle accelerator facilities on their site," resolved a long-standing problem in pill-box cavity Beam Position Monitors (BPMs).

██████████ the petitioner's Ph.D. advisor at TU Berlin, provides additional detail about the petitioner's work on pill-box cavity BPMs. Specifically, ██████████ explains that the "cross-talk" (the isolation between vertical and horizontal offset signals of the electron bunch) performance in pill-box cavity BPMs "can be unstable." ██████████ states that the petitioner "concluded that there will always

be two dipole modes, with unpredictable polarizations.” The petitioner then “computed and clearly demonstrated the performance of the cross-talk depending on the polarization of those dipole fields in reference to the coupling antennas axes, and showed a way to provide excellent cross-talk performance.” [REDACTED] concludes that this work “is a step further in cavity BPM understanding, performance, and most of all in its stability.” In addition, [REDACTED] asserts that the petitioner improved the readout electronics for BPMs, with the benefit of lowering manufacturing costs. Dr. [REDACTED] concludes that the petitioner’s innovations demonstrate his ability to continue contributing to “this fast developing technology,” which requires comprehensive knowledge and diverse expertise in science and technology.

The petitioner also submits a letter from [REDACTED] a former fellow colleague in [REDACTED] department. [REDACTED] asserts that the petitioner’s Ph.D. project involved the design, development and testing of a new cavity-type BPM system. Specifically, the petitioner “introduced recesses inside the cavity which create obvious ellipticity and polarisation [sic] of the dipole modes in a predictable way, to the best of the signal monitoring.” While [REDACTED] asserts that the petitioner’s BPM is being applied by TESLA, the record contains no letters from TESLA or DESY officials confirming the adoption of the petitioner’s designs.

[REDACTED] a research professor at Idaho State University, asserts that the petitioner’s work in Germany led to “six publications in peer-reviewed journals as well as conference proceedings.” The record does not confirm that the petitioner’s TESLA reports appeared in peer-reviewed journals and the record contains no other published articles by the petitioner. [REDACTED] also discusses the petitioner’s work at Idaho State University. Specifically, the petitioner designed an experimental chamber and software to detect extremely short pulsed-power electron beams within the university’s accelerator. [REDACTED] who spent two weeks at Idaho State University, asserts that he was impressed by the petitioner’s achievements as reflected on his resume and in his publications. While [REDACTED] asserts that the petitioner has an international reputation, he provides no specific examples of the petitioner’s work being applied beyond his employers.

As discussed above, the petitioner’s references from Micron attest to his ability to resolve technical problems on Micron’s equipment.

The petitioner also submitted letters from more independent members of the field. [REDACTED] a project scientist at the University of California, Riverside, asserts that he knows of the petitioner “through his publications” and met him at a conference. While [REDACTED] asserts that one of the petitioner’s TESLA reports was “revolutionary” and improves our understanding of BPMs, Dr. [REDACTED] does not indicate that the petitioner’s design is being applied at the two accelerator projects on which [REDACTED] has worked, the European Organization for Nuclear Research (CERN) or the Stanford Linear Accelerator Center (SLAC).

[REDACTED] a senior scientist at the radiology service company Synarc, Inc., asserts that he knows of the petitioner’s work “through his publications in periodicals of” DESY. [REDACTED]

explains that BPMs are vital to the semiconductor, medical device and defense industries and that “constant innovations and upgrades” of BPM technology over “a two-year cycle” are important to the U.S. economy. [REDACTED] praises the petitioner’s work at DESY and his troubleshooting abilities at OESS. In a subsequent letter, [REDACTED] asserts that the petitioner’s BPM design was adopted by TESLA and SLAC. [REDACTED] does not profess any first-hand knowledge of designs used by either accelerator facility. [REDACTED] the petitioner’s advisor and colleague in Germany, makes no such assertion that DESY or TESLA actually adopted the petitioner’s design. The record lacks letters from top level officials at SLAC confirming their adoption of the petitioner’s design. The record also lacks evidence that the petitioner is listed on a patent or patent application.

It is inherent to the field of engineering to design new technology and improve existing technology. We reiterate that [REDACTED] indicates that the technology for BPM is constantly being updated over a two-year cycle. Research and designs that are not original would hardly warrant publication even in an internal report. We cannot conclude that every engineer producing original designs warrants a waiver of the alien employment certification in the national interest. Even a listing on a patent application is insufficient, the significance of the patented technology must be evaluated on a case-by-case basis. *NYS DOT*, 22 I&N Dec. at 221 n.7. In this matter, the petitioner has not provided sufficient evidence that high-level officials in charge of the world’s major accelerator facilities such as CERN and SLAC view the petitioner’s designs as groundbreaking. Moreover, as discussed above in relation to whether or not the petitioner’s work will produce benefits that are national in scope, the petitioner is no longer designing new BPM systems as one of his primary duties.

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 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 not sustained that burden.

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

**ORDER:** The appeal is dismissed.