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U.S. Department of Justice
Immigration and Naturalization Service

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



Public Copy

File: [Redacted] Office: Nebraska Service Center Date:

AUG 1 2001

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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. Wienmann
Robert P. Wienmann, Acting Director
Administrative Appeals Office

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

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 particle physics engineer at the Fermi National Accelerator Laboratory ("Fermilab"). 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 had 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. -- 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.

The petitioner holds an M.S. degree in Electrical Engineering from Illinois Institute of Technology. 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 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 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.

The petitioner submits several witness letters. [REDACTED] associate director of Fermilab, states:

Fermilab considers [the petitioner] to be an unusually talented and skilled engineer who has demonstrated his value to the laboratory in his extremely strong analytical abilities.

Let me cite one example from my personal experience. [The petitioner] has been working on controls issues for a 2.5 Meter telescope being built for the Sloan Digital Sky Survey at Apache Point in New Mexico. . . . The controls which Fermilab has taken responsibility for are the systems which point the telescope and hold it on an astronomical object with a precision of a fraction of an arc second (1/360 of a degree) for tens of minutes so that a long exposure will not be blurred despite the rotation of the earth. For the controls to work satisfactorily the mechanical properties of the telescope must be understood extremely well so that the feed back elements of the control system will be properly adjusted. [The petitioner] carried out the analysis and measurement of these mechanical properties, an especially complicated and sophisticated task.

Since Fermilab does not have long experience in the subtleties of telescope controls (our expertise is in accelerators), we and the Sky Survey project felt a review of our controls work by outside experts would be necessary. We arranged such a review with the world's leading experts at a 2 day session. [The petitioner] gave a one hour presentation which I personally found extremely thorough and impressive. However, I was most impressed at what I was told by [REDACTED] of the Alan Schier Company, Specialty Engineering, who is one of the world's experts on telescope controls. . . . [H]e said "[the

petitioner's] analysis of the telescope's properties is the best analysis I have ever seen in 20 years. He is absolutely a first class engineer and you should do everything to take care of him and keep him." These remarks were repeated by two of the other external reviewers.

Professor Bruce Winstein of the University of Chicago states that the petitioner "has supplied some custom equipment for our most recent experiment," specifically a "'calorimeter,' a device for accurately measuring the energy of gamma rays. This device performed better than had any other similar one and thus it establishes the 'state-of-the-art.'" Prof. Winstein asserts that the petitioner's "work has enabled our experiment to be a great success, measured by any standard," and that all 80 of the experiment's collaborators "knows his/her indebtedness to" the petitioner, whose "contributions to our country have already been manifest."

Stephen Pordes, deputy head of the Particle Physics Division at Fermilab, states:

[The petitioner] has been selected to work on several projects of major importance to the program at Fermilab, projects where he was the engineer of choice because the projects required absolutely optimum performance - both in terms of sensitivity and in terms of reliability.

Over the last three years [the petitioner] has engineered three major projects; these projects involved the expenditure of more than 1/4 of a million dollars on equipment of [the petitioner's] design and specification.

Dr. George William Foster, staff physicist at Fermilab, states "[i]t is [the petitioner's] range of expertise in high-technology electronics that sets him apart from other engineers that I have worked with." Dr. Foster asserts that the petitioner's "success record is unflawed," regardless of the complexity of the tasks assigned to him.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted background documentation about Fermilab, the Sloan Digital Sky Survey, and the Universities Research Association (which operates Fermilab on behalf of the U.S. Department of Energy). The petitioner has also submitted a letter from Bruce Chrisman, Fermilab's associate director for Administration, who asserts that the petitioner has fulfilled all of the guidelines published in the above precedent decision, and who states:

Requiring Fermilab to follow the Labor Certification Process in this particular case would not be in the national interest. . . . Fermilab as a national facility needs to hire a number of the best scientists and engineers, whether from the United States or abroad for positions which are critical to its success. . . . Fermilab would not expect to hire an engineer for the level of [the petitioner's] responsibilities through a process that did not allow it to consider factors which can only be judged by peers and colleagues. . . . The attempt to replace [the petitioner's] skills through such a process would severely jeopardize ongoing projects such as the Sloan Digital Sky Survey and future projects such as the U.S. CMS experiment.

The director denied the petition, stating that "[e]xceptional ability and/or the overall importance of the field are not inherently grounds for a waiver of the job offer." On appeal, counsel states that a brief is forthcoming within 30 days. To date, two years after the filing of the appeal, the record contains no further submission, and counsel has confirmed that "no brief was filed." We shall therefore render a decision based on the record as it now stands.

In a statement accompanying the appeal, counsel argues that the petitioner "is a crucial employee involved in two projects of great value to the United States: the Sloan Digital Sky Survey and the US CMS experiment." Counsel contends that the labor certification process, intended to designate the minimum qualifications for a given position, cannot take into account the petitioner's highly specialized experience at Fermilab. Counsel also observes that, given the high demands for prestigious positions at Fermilab, there would likely be many applicants for the petitioner's position, in which case an application for labor certification would likely be denied. In such a situation, if it were critical that this particular alien be the one working on the various projects, then the national interest waiver would be an appropriate avenue to ensure the alien's continued involvement with the projects.

With regard to the importance of the petitioner's continued involvement, the record contains statements from several ranking officials at Fermilab. These individuals are not merely the petitioner's immediate supervisors and colleagues, but top officials of a prestigious national research facility, and we cannot lightly disregard their assertions and expert opinions. Also, the record documents specific achievements by the petitioner, rather than relying solely on general attestations regarding the petitioner's talent or unspecified contributions. The laboratory requires the petitioner for ongoing efforts, rather than strictly for short-term projects which could be completed within the term of a nonimmigrant visa.

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 the significance of this petitioner's work rather than simply the general area of endeavor. 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.

ORDER: The appeal is sustained.