

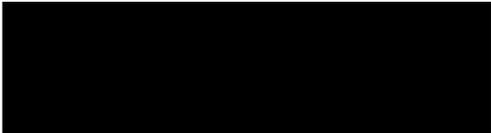


U.S. Department of Justice

Immigration and Naturalization Service

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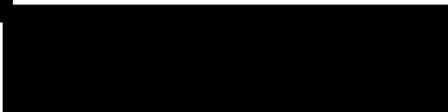
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: Nebraska Service Center

Date: 11 DEC 2001

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)

Monitoring data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:



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 is now before the Associate Commissioner for Examinations 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 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. On appeal, counsel provides some arguments and asserts that he will submit a brief and/or additional evidence in 60 days. As of this date, more than two years later, this office has received only a change of address for counsel. The decision will be based on the record as it stands.

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 a Ph.D. in chemistry from the University of Cincinnati. 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.

The director conceded that the petitioner's area of research has intrinsic merit and that the proposed benefits of his research would have a national impact. It remains, then, to determine whether the petitioner has established that he would benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

On appeal, counsel asserts that the petitioner solved vexing problems in his research and that he contributed to "significant breakthroughs" in projects with defense, aerospace, environment and health applications. The record does not support this assertion.

The petitioner's advisor at the University of Cincinnati, Professor J.E. Mark discusses the importance of research on high-temperature composites and asserts that the petitioner "contributed tremendously" to Professor Mark's 21-year project, but doesn't elaborate on the details of the petitioner's work.

Dr. W.J. van Ooij, another professor at the University of Cincinnati, writes:

[The petitioner] performed studies of the reaction kinetics of organofunctional silanes in the water-methanol system. Knowledge of such reaction is of paramount importance in the development of novel, environmentally friendly metal pretreatments that might replace the toxic chromate in several metal-finishing industry [sic]. To date, no acceptable alternatives have been put

forward. I firmly believe that our system will become a major breakthrough in industries such as automotive, steel, aerospace, and appliance industries. [The petitioner's] work has significantly contributed to the understanding of the behavior of silanes in water-based solutions. Without his in-depth studies, we would not have been able to develop the treatments that we currently have and that are currently under evaluation in many countries across the globe. Thus, he has made a major contribution to the clean-up of the US environment and to the well-being of workers in US industry.

Professors Mark R. Meeks, R.J. Roe, Jonathan Breiner, and Stephen Clarson of the University of Cincinnati provide general praise of the petitioner's abilities, but fail to identify any specific contribution.

Dr. Fred E. Arnold, a research fellow at the Air Force Research Laboratory writes:

[The petitioner] has demonstrated a remarkable creativity and productivity in research on organic/inorganic hybrid systems for structural applications. In conjunction with AFOSR, our inhouse efforts in our laboratory synthesized a series of new high performance polymers adaptable for sol-gel processing. These materials were sent to UC for processing and evaluation as hybrid systems. [The petitioner] did an excellent job in formulating these new polymers via sol-gel processing into both xerogels and aerogels. These new inorganic/organic composite materials offer a wide variety of potential applications in space and aerospace systems. Through his creativity in this new area of technology, he has opened the door for many material scientists to follow this new technology area.

Marilyn R. Unroe, a research chemist with the Air Force Research Laboratory discusses the importance of the petitioner's research area to the Air Force and praises the petitioner's abilities. She states:

[The petitioner's] work with rubber toughening Air Force transparent polymer compositions has opened the possibility, on a small scale, for the proof of concept of a key approach to make brittle polymers more elastic and tougher so that impact resistance is improved.

Dr. A.P. Silva, a professor at The Queen's University in Belfast who taught the petitioner at the University of Colombo in Sri Lanka; Junzo Masamoto, a visiting professor at the Kyoto Institute of Technology who claims to have worked on a book with the petitioner; Dr. Zahoor Ahmad, a professor at Quaid-i-Azam University in Pakistan who worked with the petitioner while a fellow at the University of Cincinnati; Thuy Dung, an associate research chemist at the University of Dayton who worked with the petitioner on the Air Force project; and Dr. Mark Van Dyke, a research scientist at Southwest Research Institute and former fellow student of the petitioner's all provide general praise of the petitioner's abilities and discuss the importance of his area of research.

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. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. Matter of New York State Dept. of Transportation, *supra*, note 6.

The above letters are all from colleagues and collaborators. While such letters are important in providing details about the petitioner's work, they cannot establish that the petitioner has influenced his field as a whole.

The record also contains a letter from Professor Mark to the petitioner requesting that the petitioner review a manuscript for publication. A request from the petitioner's advisor is not evidence that the petitioner has influenced his field beyond his colleagues.

At the time of filing, the petitioner had presented three papers published in *Polymer Reprints*, and authored articles published in the *Journal of Sol-Gel Science and Technology* and the *Materials Research Society Symposium Proceedings*. The petitioner had submitted several other articles for publication. 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 significant contributions; we must consider the research community's reaction to those articles.

The articles which had yet to be published cannot establish that the petitioner has influenced his field as the community had not been able to react to the articles. The petitioner submitted evidence that his article in the *Journal of Sol-Gel Science and Technology* has been cited six times, three of those articles also cite the petitioner's article in the *Materials Research Society Symposium Proceedings*. Of the six articles which cite the petitioner's work, four of them are self-citations by Professor Mark. While self-citation is normal and expected, it is not evidence that the petitioner has influenced his field beyond his immediate colleagues. Two citations by independent researchers is not significant.

The record does contain evidence that the petitioner has authored five chapters for an upcoming book entitled the *Polymer Data Handbook*. The petitioner was recommended to the Oxford University Press by Professor Mark and the petitioner's articles were approved for inclusion in

the book after an independent peer-review process. Matt Giarrantano, Managing Editor at Oxford University Press, writes:

The *Polymer Data Handbook* will present, in a standardized and readily accessible format, key data on approximately two hundred of the most important polymers currently in industrial use or under study in industry and academia for potential new applications. Once published one will be able to find this volume on the shelves of industry and university laboratories across the United States, and certainly, the world.

Review of the chapters submitted by the petitioner reveal that they consist of descriptions of collagens, poly(α -phenylethyl isocyanide), poly(*n*-butyl isocyanate), polychloral, and poly(*n*-hexyl isocyanate). The descriptions include the class, acronym, structure, functions, major applications, properties, and major types of these compounds. It is clear that the handbook and the chapters contributed by the petitioner are merely reference materials. While we do not discount the importance of such a reference or the amount of work required to compile reference material, the compilation of previously researched material into a reference chapter is not a groundbreaking research achievement.

In addition to concluding that the petitioner had not influenced his field to a greater degree than similarly qualified researchers, the director also stated that the petitioner had failed to explain why the labor certification requirement was inappropriate in this case.

On appeal, counsel asserts that the nature of the research funding combined with the lengthy labor certification process made it impractical to obtain a labor certification for the petitioner. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. Moreover, the inapplicability of the labor certification process is simply one factor to consider. As stated above, the petitioner has not demonstrated that he would benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

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, 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.