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

[redacted]

Public Copy

File: EAC-99-178-51980 Office: Vermont Service Center Date: DEC 17 2001

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER: Self-represented

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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

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.

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.

At the time of filing, the petitioner held a Master's degree in Physics from Brown University. 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 failed to address the first prong, although it is clear that the petitioner is working in an area of intrinsic merit, theoretical physics. The director initially stated that the proposed benefits of the petitioner's work would have a national impact, but later states that the impact of a single researcher would be negligible nationally. We find that the proposed benefits of the petitioner's research, a greater understanding of theoretical physics, would be national in scope. The remaining discussion, then, will focus on whether the petitioner has established that he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Nobel Laureate Dr. Chen Ning Yang, Professor Emeritus and former Director of the Institute of Theoretical Physics at the State University of New York, Stony Brook where the petitioner obtained his Ph.D., writes:

> [The petitioner's] research area covers quantum field theory and string/M theory. There has been a remarkable progress in these area for the last few years. This progress has been driven mostly by the concept of duality. The idea is that one can describe a strongly coupled theory using the weakly coupled dual theory. In particular, it was proposed one and one-half years ago that string theory on certain backgrounds can be described by lower dimensional dual conformal field theories. This proposal, now known as Maldacena's Conjecture, has been a hottly [sic] debated topic and is under active investigation. As a specific example, type IIB

> string theory on AdS_5 x S_5 is dual to four dimensional N = 4 super Yang-Mills (SYM) theory. In his recent work where he played the key role, [the petitioner] computed two and three point correlators of N = 4 SYM using N =1 superspace technique and found contact term corrections. These contact terms may have very important significance and has been surprising for many workers. They will cause subtleties in the verification of the conjecture. [The petitioner's] work also shows that the known nonrenormalization theorems are true only up to such contact terms.
>
> In short, [the petitioner] is a brilliant graduate student. I and my colleagues know he will mature into an excellent theoretical physicist. His work is supported by the National Science Foundation.

Dr. Warren Siegel, another professor at Stony Brook, writes:

> In particular, one of [the petitioner's] topics of research, the Matdacena conjecture on the relation between string theory and four-dimensional conformal field theory, is probably the most-talked-about topic in theoretical high-energy physics today. Although there is presently a flood of research papers internationally on this subject, few have produced explicit numerical results to test the conjecture. Of these few, those produced at Stony Brook, including some to which [the petitioner] contributed, have been the most technically detailed. Furthermore, similar work from other institutions has been mostly complimentary, without much overlap.
>
> [The petitioner's] contribution to these works has been mostly of a computational nature; however, these computations are highly nontrivial, requiring experience and skill in a wide background of subject matter, including string theory, supersymmetry, general relativity, and conformal field theory. Although graduate students of American citizenship are also being trained to perform similar research, in practice this research must be completed in a timely manner: In today's fast-paced world of research in theoretical physics, new results are obtained so rapidly that it is necessary to distribute them electronically, since they become obsolete by the time it takes them to appear in print. This means that qualified researchers cannot be obtained quickly enough. For similar reasons, it is not feasible to have collaborations where the contributors doing the brunt of the calculations are separated by long distances. The bottom line is that people experienced in this area are rare and invaluable, hiring ones that are competent is difficult, and it would be unfortunate if any were lost to other countries. Under these circumstances, much of this work would not have been possible without [the petitioner's] contribution.

Dr. Martin Roček, another professor at Stony Brook writes:

> [The petitioner] is still a graduate student, but he has already written four papers on such diverse subjects as the implications of self-duality for the effective action N=4 super Yang-Mills theory, dual–brane actions with nonlinearly realized supersymmetries, and correlators of composite operators in N=4 super Yang-Mills theory. Three are already published in Nuclear Physics B and Physics Letters B, the preeminent journals in our field. His contribution to three out of four of these papers was central – without him, the papers would not have been written. Though the papers are of very recent vintage, all are already cited. His work was supported in part by a grant from the National Science Foundation.

In a subsequent letter, Dr. Roček details the petitioner's role in each research project resulting in a published paper. The petitioner's role ranged from performing the calculations for a problem suggested by Dr. Roček to being the sole author of a paper reflecting his own ideas and calculations.

Dr. P. van Nieuwenhuizen, Director of the Institute for Theoretical Physics at Stony Brook, writes:

> [The petitioner] has presented two talks at [seminars for advanced graduate students and faculty] which solved some problems in the fields, and which were of great help for other participants. Moreover, he has been involved in several research projects which produced important results. In one of his papers, a method to construct self-dual effective actions was obtained, which has been adopted by other physicists to be applied to different cases. This is an important result since it can be viewed as evidence for the Montonen-Olive conjecture.

Dr. Nieuwenhuizen then goes on to discuss the petitioner's other projects reviewed in the letters quoted above.

Dr. Kyungsik Kang, a professor at Brown University, indicates the petitioner had a 4.0 grade point average at that Institution when he obtained his Master's degree there and provides similar information to that discussed above.

The petitioner also obtained an independent evaluation of his work from Dr. S. James Gates, Jr., a professor at the University of Maryland. Dr. Gates lists the petitioner's articles as posted on the Los Alamos web site, and states:

> I have read all of these works and have had the opportunity to form an opinion. In this present period of investigation of modern theoretical and mathematical physics, these works are of a very high quality and address aspects of one of the most studied topics in the discipline. As you known, this topic called "M-theory," has been the object of intense study for the last three or so years.

> The works above are essentially unique in the application of rigorous calculationally based studies of M-theory. In fact, I am sure that it comes as no surprise to you to learn that there are only two group[s] in the world capable of making such detailed calculations. Accordingly, these investigations demonstrate that you are among a very small group of no more than a dozen theoretical physicists positioned to develop such a detail[ed] understanding to this topic.

The director characterizes these letters as follows:

> Most of the supporting letters are from research associates, professors, and/or colleagues of the beneficiary and are more akin to reference letters than to testimonials to his individual potential to benefit the country on a "national impact" level.

This brief dismissal of the letters is unwarranted in this case. While letters from independent experts who have been influenced by the petitioner's work would have been more persuasive, Dr. Gates is an independent expert who provided a detailed explanation of how the petitioner's research is unique and influential. Moreover, while Dr. Yang may have recently led the Institute for Theoretical Physics at Stony Brook, he is not a collaborator. As a Nobel Prize winner, his opinion carries significant weight. Dr. Yang did not merely provide general praise of the petitioner. Rather, he clearly stated that the petitioner's contributions were significant and surprising to the physics community. It is unfortunate that a reference letter from another Nobel Laureate, Professor Cooper, which is referenced by Peter Stephens, Director of the Graduate Program at Stony Brook, is not in the record. According to Professor Stephens, the letter from Professor Cooper was included in the petitioner's application for admission to Stony Brook.[1] The letters which the petitioner did submit, however, are noteworthy and, in conjunction with the petitioner's publication history discussed below, reflect that the petitioner's work has been influential in his field.

The record contains evidence that the petitioner's published articles have been well received by other researchers in his field. The petitioner provided a personal statement explaining that physics researchers generally post their research papers on the Los Alamos E-print Server prior to publication. The petitioner initially submitted reprints of his three published articles and a printout of a fourth article from the e-print server. While the petitioner asserts that his articles were published in the most prestigious physics journals, he provides no independent evidence of this assertion.

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[1] The director's specific request for the application material is confusing. The petitioner claims to have done his influential work at Stony Brook, and not prior to entering the Ph.D. program there. Yet, since the director specifically requested such materials and since it is difficult to imagine an application containing more favorable recommendations, the director should have at least addressed these materials in his final decision. If the director did not feel such materials were relevant it is not clear why he requested them.

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 influential contributions; we must consider the research community's reaction to those articles.

The petitioner submitted evidence that his four articles had been cited nine times, four times, six times, and three times respectively prior to even being published. While only three of the citing articles had been published – the others were simply posted on the Los Alamos E-print Server – they clearly reflect that other researchers have taken notice of the petitioner's research. In response to the director's request for additional evidence, the petitioner submitted evidence of several more citations. While these are not evidence of the petitioner's eligibility at the time of filing, they reflect that the petitioner continues to remain influential.

Much of the documentation submitted on appeal, such as the recent job offer from Texas A&M University, is simply not relevant to the petitioner's eligibility at the time of filing. Regardless, the evidence discussed above is sufficient to establish that at the time of filing, the petitioner had already influenced his field as a whole. We find that the director's conclusion that the petitioner had not established a track record of success or that it is unclear how the petitioner's abilities set him above other highly qualified researchers to be in error.

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 that the community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest which is inherent in the labor certification process. 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 and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.