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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: Texas Service Center Date:

JUN 21 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:



Identification 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. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 seeks employment as a postdoctoral research associate at the Fluid Mechanics Research Laboratory at Florida State University ("FSU"). 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 a Ph.D. degree in Engineering Physics from the Indian Institute of Science, Bangalore. This degree has been independently evaluated as being equivalent to a Ph.D. degree from an accredited U.S. institution. 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.

The petitioner states:

I am considered an outstanding researcher by my peers and supervisors and also by distinguished scientist[s] and engineers with whom I have had the opportunity of working at one time or the other.

My research is vital to the:

- (1) Development of next generation fluid mechanics measurement techniques, such [as] Particle Image Velocimetry (PIV) and Holographic Particle Image Velocimetry (HPIV).
- (2) Understanding the cloud dynamics for better weather prediction.
- (3) Improving the performance of STOVL and Joint Strike Fighter (JSF) aircraft and reduction of noise in jets.
- (4) Drag reduction and thus increasing the fuel efficiency and performance of commercial automotive, space and military aircraft.

Along with copies of the petitioner's published and presented work, the petitioner submits several witness letters. The most detailed letter is from Dr. [REDACTED], senior engineer and corporate secretary at Innovative Scientific Solutions, Inc., who knows the petitioner "through conference meetings, personal visits, and research publications." Dr. [REDACTED] states:

[The petitioner] made original unique contributions to the field of fluid dynamics, atmospheric sciences, and laser diagnostics which are applicable to U.S. Air Force, NASA, and other government organizations. He made detailed high-resolution velocity and vorticity measurements using the advanced laser based technique such as holographic particle

image velocimetry that has not been done before, and his results were used by one of the chemical industries to change the design of the mixing devices. In addition, he investigated the velocity and vorticity distributions and the noise suppression mechanisms of a supersonic impinging jet to improve the performance of STOVL (Short Take Off and Vertical Landing) aircraft. The potential benefits of his research resulted in cost and timesaving for validating the computer models, and understanding the behavior of fluid flows pertinent to U.S. Air Force. He is currently working on the design of an experimental facility to simulate cloud-like flows in laboratory, a counter flow technique for flame stabilization, and development of a 3D holographic PIV system. This work is of significant importance for U.S. Air Force, Navy, and NASA organizations.

The petitioner submits various other letters, primarily from faculty members at universities where the petitioner has studied or worked. Many of these individuals say little apart from describing the petitioner's findings and asserting that the petitioner is a skilled researcher. A number of witnesses assert their confidence in the future significance of the petitioner's work; Professor [REDACTED] of Florida State University, for instance, states "I believe some of [the petitioner's] efforts will indeed result in important changes in the science of fluid dynamics," and that the petitioner "will make substantial contributions" to that science. Others assert that the petitioner already "has contributed significantly."

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 additional evidence and a statement in which counsel reiterates the petitioner's academic and employment history, and notes that the petitioner's work has been published and presented at conferences. 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 was that assertion 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," rather than a mark of distinction, among postdoctoral researchers. When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Frequent citation by independent researchers demonstrates more widespread interest in, and reliance on, the petitioner's work.

Regarding such citations, counsel states:

[The petitioner's] work is also an authority for citations. Cited in numerous publications throughout the United States, the national significance of [the petitioner's] work is apparently evident to his colleagues. . . . In addition to national publications, researchers worldwide cite [the petitioner's] work in international publications, among them *Current Science*.

The accompanying documentary submission includes copies of four articles which cite the petitioner's work. All four of these articles, including the *Current Science* article from India, were written by the petitioner's collaborators, who had worked with the petitioner on the articles cited. Thus, these citations are essentially self-citations by the petitioner's collaborators. While self-citation is a common, accepted, and perfectly legitimate practice, it certainly does not establish or imply the petitioner's wider recognition as an acknowledged authority, as counsel claims.

The petitioner has also submitted copies of previously submitted letters, and two new letters, both from FSU faculty members. Assistant professor Farrukh S. Alvi states:

The study of high speed jets is . . . one of the major thrusts in our laboratory and, due to the work of researchers like [the petitioner], our lab has made substantial contributions in this field for which it is nationally and internationally recognized. . . . [The petitioner] has been involved in unique experiments, which have provided invaluable insight into the mechanisms governing supersonic jet noise. More recently he has conducted some excellent experiments on flows generated by the impingement of supersonic jets on ground surfaces using an advanced optical diagnostic technique. . . . The measurements obtained by [the petitioner] are unique in that, for the first time, they provide whole-field velocity field data, which coupled with other measurements have allowed us to better understand this flow, a process that is still continuing.

Professor [redacted] chair of the Department of Mechanical Engineering at FSU, states:

We had been unable to find a suitable candidate until I met [the petitioner] several years ago at an international fluid dynamics conference. Currently he is in charge of our three major projects and is responsible for much of the progress we have seen in these efforts.

The projects under [the petitioner's] guidance are:

1. The study of dynamics of clouds in the atmosphere (simulation and study of clouds)
2. Development of Digital Holographic Particle Image Velocimetry (DHPIV)

3. The study of supersonic impinging jets with application for STOVL configured aircraft and noise reduction. . . .

[The petitioner's] research provides critical information for cloud models used by meteorological scientists in long-term weather prediction. His research should result in improvements in such forecasting which will undoubtedly be beneficial for everyone in the United States. . . .

DHPIV . . . is an important tool for turbulent measurement as it can provide 3D-flow information by volume to enable the detailed study of complex flows. This technique also provides better insight of the flow through enhanced visualization.

[The petitioner's] participation in our supersonic impinging jet work is also very significant. . . . His measurements are unique in that they provide whole field information, which, when combined with other measurements, allowed us to understand the intricacies of the complex flow. After developing an understanding of the problems associated with flow (especially noise), he investigates passive control techniques to suppress them. Through this novel approach, he has already achieved a very significant reduction of noise (about 10 dB).

Prof. [REDACTED] does not specify how much of the above the petitioner had achieved as of the petition's February 1999 filing date. The noise reduction research appears to have been very recent because Prof. [REDACTED] indicates that an article pertaining to that work has been accepted for publication, but not that it has actually been published.

The director denied the petition, stating that the petitioner has not established that his work is of greater value or significance than that of countless other researchers in the field.

On appeal, counsel argues that the director "erroneously overlooked several significant factors, such as [the petitioner's] distinguishable qualifications and expertise, his work's value to other Fluid Mechanics researchers, as well as prestigious organizations such as NASA and the Office of Naval Research, and his crucial role within the field." Counsel offers no elaboration on these points on appeal. The record is ambiguous as to the value of the petitioner's work to others in the field. Counsel and the petitioner have made repeated references to NASA, the U.S. Navy and the U.S. Air Force, but the record contains nothing from ranking officials of any of those entities to establish that any of them consider the petitioner's work to be more important, significant, or valuable than that of others in the field. The appearance of the petitioner's name on a grant application (prepared well after the petition's filing date) does not establish that the funding agencies consider the petitioner to be an especially important researcher in his field.

Furthermore, the petitioner is a postdoctoral researcher. Postdoctoral positions are, by nature, temporary rather than tenure-track or career positions. If FSU has no intention of employing bene permanently (and no FSU official has voiced such an intention), then it is not clear why permanent immigration benefits are necessary for the petitioner to continue his temporary appointment at FSU, which is already covered by an H-1B nonimmigrant visa. The record does not establish that the petitioner's past findings have been widely implemented to an extent which would establish a track record of significant achievement. Rather, many key witnesses have couched their remarks not in terms of what the petitioner has done, but what he is likely to achieve at some unspecified future point. Descriptions of the petitioner's work do not establish the relative significance of that work.

Two letters accompany the appeal. Professor [REDACTED] in his latest letter, indicates that the petitioner's "primary duties have entailed conducting independent experimental research" as well as "supervising graduate students in their thesis and dissertation projects." Prof. [REDACTED] asserts that the petitioner "plays a crucial role in these projects, which . . . will lay the groundwork for faster, more efficient and less expensive production of spacecraft and accessories." Prof. [REDACTED] adds that the petitioner's "aeronautics work performed on the NASA, ONR and AFOSR projects are [sic] responsible for significant innovations that will provide immediate benefit to those agencies and long term benefit to the private aerospace industry." As noted above, no ranking official of the named government agencies has attested that the petitioner's past work has yielded significant benefit to the agencies, and no documentation in the record establishes the extent to which the petitioner has already influenced the design of aerospace hardware. Any project which a government agency deems worthy of funding is "important" in the sense of being worthwhile and positive, but we reject the assertion that independent participation in government-funded research is *prima facie* evidence of eligibility for the national interest waiver. As with previous letters, this letter primarily stresses the unspecified future benefits that the author believes will one day arise from the petitioner's work.

Dr. [REDACTED], assistant professor at the University of South Carolina, was a research scientist at NASA's Goddard Space Flight Center from 1995 to 1999. Dr. [REDACTED] is not in a position to speak on behalf of NASA; the position at the Goddard Center appears to have been a temporary postdoctoral appointment (judging from the way it immediately followed the completion of Dr. [REDACTED] Ph.D. degree). Dr. [REDACTED] ranks the petitioner as "among the top in his field," and asserts that the petitioner's research "should yield interesting solutions to some of the problems in understanding convective processes and formation of clouds." Dr. [REDACTED] asserts "[i]t is definitely in the best interests of the United States to understand and quantify global

change." This last statement addresses the intrinsic merit and national scope of the petitioner's work but does not establish the relative importance of the petitioner's work to that of other qualified professionals in the field. The assertion that the petitioner's work "should yield interesting solutions," while informed, remains necessarily speculative as its truth value is contingent on events which have not yet happened.

The petitioner's H-1B visa allows him to work on his current progress, and there is no indication that his current position is anything but temporary, in which case permanent immigration benefits are not required for that employment. While several witnesses have attested that the petitioner's research will eventually be of value to the aeronautics industry and to the field of weather prediction, the record does not establish that the petitioner has already achieved a track record of significant achievement (rather than potential) in those areas. The record suggests that the waiver request is, at best, premature.

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.