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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]

File: [Redacted] Office: Nebraska Service Center Date: 11 APR 2002

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:
[Redacted]

Public Copy

INSTRUCTIONS:
This is the decision 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.

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 that 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 that 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 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.

The petitioner holds a Master's degree in engineering from Tianjin 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.

We concur with the director that the petitioner works in an area of intrinsic merit, engineering, and that the proposed benefits of her work, improved quality in the U.S. auto industry, would be national in scope. 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.

Counsel initially asserted that the labor certification is a "sterile procedure" designed to protect minimally qualified U.S. workers who may not be the best applicant for a given position. Counsel argued that Congress provided the national interest waiver as an alternative for positions which require elements that cannot be expressed on a labor certification application, such as creativity and ingenuity. Even if we accepted counsel's overly broad claim that the labor certification process is inappropriate for all positions involving creativity and ingenuity, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. Id. at note 5.

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. 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 she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. Id. at note 6.

Dr. Darek J. Ceglarek, in whose laboratory the petitioner works at the University of Michigan, writes:

[The petitioner] has been a member of my research team where she plays a critical role in modeling, analysis and performance optimization for handling sheet metal parts with focus on automotive tamping and assembly manufacturing. She was selected to conduct an on-going project entitled “Agile and Precision Sheet Metal Stamping - Near Zero Stamping (NZS)” because of her excellent performance in previous research and her great expertise with manufacturing industries. The NZS program is funding by the National Institute of Standards and Technology - Advanced Technology Program (NIST/ATP) (US Department of Commerce). This project is a three-year effort with a total budget of \$18 million. Twenty four (24) companies and organizations including Ford, General Motors and Daimler Chrysler who are members of the Detroit-based Auto Body Consortium, and five domestic research institutions are involved. In this project, [the petitioner] is the leading researcher on the Integration of Material Handling and Press Motion in Die Design. She is responsible for development of production rate optimization methodology (see NIS-ATP Technical report No. NZS2.3.2-1998), and generalized fixture system for handling compliant parts (see NIST-ATP Technical report No. NZS2.3.2-1999).

This field is extremely important for narrowing the quality gap between the U.S. and Japan in automotive manufacturing. The importance of material handling has been recognized for only five years and is really a newly defined research area. [The petitioner] is the nation’s first researcher who set foot in this virgin field of material handling relative to the sheet metal stamping process. The success of the research is leading to next generation technology for sheet metal stamping process control. Before it had been common practice in the domestic auto industry to deal with the design of material handling and press motion as well as die design in a separate parallel fashion. Design decisions and tradeoffs are made based on the requirements and considerations of each design component only -- without a global overview. Often these decisions are made without regard for - or knowledge of - how they affect design requirements of other components. Thus, costly time and effort must be expended at a later tryout stage to accommodate production requirements.

[The petitioner’s] efforts are focused on the development of a systematic methodology for the performance optimization of material handling for sheet metal parts to avoid the current trial-and-error method used by industry. With her profound, unquantifiable knowledge in both academia and industry, [the

petitioner] has made great contributions which can be summarized as: (1) proposed and developed a unique approach -- FEA modeling and non-linear optimization based method for quantifying sheet metal behavior during handling, (2) developed and implemented a production rate optimization methodology which incorporated part flexibility models (this is currently being successfully implemented by the HMS Inc.). These contributions push the manufacturing process parameters forward into the design process so that both can be dealt with simultaneously and optimally. She is not only creative in this area, but also has an exceptional talent for articulating her ideas. The knowledge accumulated during her research was described in a paper, transferred to a computer program - "Production Rate Optimization Software for Automated Stamping", as well as transferred to the engineering staff of several domestic automation system companies (Lamb Technicon, HMS Inc., Atlas) and plants (Warren Stamping, Flint Stamping). . . .

The developed technique and software is being made available now due to the great success in the testing period. It will assist thousands of manufacturing engineers to design material handling processes in automated stamping lines with a much shorter design cycle than they currently need.

Dr. Richard Scott, a professor at the University of Michigan, asserts that the petitioner's sheet metal stamping work will reduce design times for U.S. auto makers, whose average design time in 42-48 months compared with 24 months in Japan. Dr. Scott further states that "tests at Wayne State University have verified the feasibility and effectiveness of the new methodologies." The record contains no letters from anyone at Wayne State University.

Gary F. Kelly, an engineer at Manufacturing Data Systems, Inc., indicates that he collaborated with the petitioner on "Advanced Compensation System for Geometric-Thermal and Force-induced Error for Turning Centers," at Saginaw Machine Systems, Inc. (SMS). Mr. Kelly lists the following contributions made by the petitioner:

- (1) Thermal error compensation based on the error modeling of multi-variable correlation analysis, a very creative procedure which was powerfully proven.
- (2) A highly successful solution to the interference problems inherent in any system which combines compensation for these three different error sources.
- (3) An actual workpiece accuracy increase of 10 fold, which is far higher than other approaches have achieved.

This is the first comprehensive compensation system in the world. A turning center was exhibited at the 1996 International Manufacturing Technology Show (IMTS96) in Chicago, which is the largest, most comprehensive manufacturing show in the Western Hemisphere. The dynamic compensation feature attracted many machine tool builders and users. The same technique was applied on

another machine tool and that machine was displayed at the 1997 China International Manufacturing Technology Show in Beijing.

The effectiveness and the significance of [the petitioner's] research is also illustrated by the following facts. In early 1998 General Motors requested bids for the build of several machine tools for the manufacture of transmissions. The selected candidate providers were eleven national and international machine tool builders. In the performance test, the Saginaw Machine Systems turning center, a prototype, did not employ these error compensation techniques, and did not perform very well. However, in subsequent tests, by implementing the dynamic compensation system, the Saginaw Machine Systems turning center jumped to the top of the list. Thus, with the help of [the petitioner's] research, SMS beat all the other national and international machine tool competitors and won the contract.

The record contains no letters from high-level officials at GM verifying that they contracted with SMS based on the technology developed by the petitioner and that they consider such technology to be a contribution to the field. Nevertheless, [redacted] assertions are indicative of the petitioner's contributions to SMS.

Roy J. Schimmel, a project manager at GM for a project on which the petitioner worked while at the University of Michigan, asserts that the petitioner "contributed her own insights towards achieving the goals of the project." Dr. Scott A. Hucker, a project leader for another of GM's project on which the petitioner worked at the University of Michigan, asserts:

As leader of the team, she organized the tests to measure and quantify the thermal error modes of this unique machine. In addition, she contributed suggestions and participated in conversations concerning future machine designs, testing and manufacturing philosophies.

Dr. Jun Ni, a professor at the University of Michigan, and Dr. Jan Shi, the petitioner's advisor at the University of Michigan, provide similar information to that quoted above.

Guoxiong Zhang, a professor at Tianjin University, writes:

In her [Master's] thesis, she developed a new error calibration device for coordinate measuring machines (CMM) - called telescoping ball bar. Her approach was highly innovative. IT was a new advanced device which could, by itself, be used to calibrate all the geometric errors of CMM. Before this, the National Bureau of Standards of America had announced that a similar device was recommended for the acceptance test of a CMM. Her developed was not only the first in China to respond to the standard, but also improved the existing world design by creatively incorporated the optic fiber transferring system and laser interferometer system into one measurement system, and also by innovative mechanical structure enabling the telescoping range to extend from 2mm to

210mm, which was a significant improvement. . . . Her research results were later summarized into a paper published in CIRP -- a high rank conference and widely applied in practice.

As discussed below, the record contains no evidence that the petitioner's articles have been cited. Nor has the petitioner submitted letters from independent experts in the field confirming that her results are widely applied in practice.

The above letters are all from the petitioner's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects and the instant letters provide significant detail regarding the petitioner's accomplishments, they cannot by themselves establish the petitioner's influence over the field as a whole.

On appeal, the petitioner submitted a job offer letter from General Motors. The record, however, still remains absent any letters from high level officials at any of the major U.S. auto manufacturers such that their opinion can be considered the opinion of the company. Without such letters, the petitioner's colleagues' assertions that she has already influenced the auto industry is not supported by independent experts within the industry.

The record, however, does contain a letter which provides a slightly more independent view of the petitioner's work. While [REDACTED], project leader of NZS 2.3 at Lamb Technicon Body and Assembly Systems, was in charge of the petitioner's task with NZS, he does not appear to have directly worked with the petitioner. He asserts:

Material handling is still one of the top five causes of dimensional variation of sheet metal parts. One of the two key shortcomings of current material handling technology is related to material handling system design which consists of setting parameters of, and trajectory planning for, the material handling hardware/device. Efforts to reduce the gap between the capability of presses and the equipment feeding them have been ill-fated since (1) material handling system designers have little feedback on how their systems affect part variation and (2) there exists no methodology for optimally designing these systems.

Thus to achieve agile precision stamping a thorough study of the material handling system is required. [The petitioner] has researched an FEA modeling and non-linear optimization based technology to simulate quantitatively part deformation behavior during the handling process. The technology has been verified by extensive experimental tests and case studies. The findings of this simulation technology have helped us to develop material handling system design guidelines. Based on this, [the petitioner] defined a systematic method for the optimal design of press/die/material handling/part system. She has finished quantification of physical structure and motion characteristics of transfer presses and automation equipment, as well as the optimization algorithm. At the same time, she has been developing software "Production Rate Optimization Software

for Automated Stamping” (ProSas) to describe and transfer her ideas and research into implementation.

The initial version of the software has been evaluated and proven powerful by HMS Products Company, one of many national providers for the design and manufacture of automation systems. Further validation tests are planned in General Motor’s Flint Metal Fab stamping plant. A workshop has been scheduled in June to demonstrate the achievements as well as to begin the technology implementation.

While a letter from a high-level official at HMS or GM confirming these assertions would have significantly bolstered the petitioner’s case, Dr. Schlafhauser’s letter must be given significant weight. He is listed as a co-leader of the task team for Task 2.3 in an article published in *Metal Forming Magazine*.

The petitioner initially submitted evidence of her membership in American Society of Mechanical Engineering and the Society of Manufacturing Engineers. On appeal, the petitioner submits additional information regarding these societies. This information does not indicate that either society restricts membership to those who have a track record of influential contributions to the field.

The petitioner submitted copies of three presentations published in proceeding publications and three published articles. 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 record contains no evidence that independent researchers have cited the petitioner’s articles.

Finally, the record contains seven reports and proposals, reporting the results of projects (some involving several companies and institutions) on which the petitioner worked.

As stated above, the record lacks evidence that any independent experts have cited the petitioner’s work and lacks letters from high-level officials at the major U.S. auto manufacturers. Such evidence would unquestionably bolster the petitioner’s case. Nevertheless, the reference letters go beyond simply stating the importance of the petitioner’s area of research, providing general praise of the petitioner’s skills, or speculating as to the petitioner’s ability to make significant contributions. Further, the record does reflect that independent experts have reviewed

the petitioner's work favorably. The petitioner has provided a letter from a leading expert in the field who asserts that her software package has been tested by one independent company and will be tested by GM. Other references assert that her software is being distributed to other companies. Finally, another engineer attests that the petitioner's work resulted in a contract with GM for turning centers. As such, the petitioner has provided evidence of a track record of achievement with some degree of influence on the field as a whole.

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 automotive industry 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.