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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



File: [Redacted] Office: Nebraska Service Center

Date: APR 29 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)

PUBLIC COPY

IN BEHALF OF PETITIONER: Self-represented

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 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.

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 Engineering from Louisiana Tech 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. In addition, we concur that the proposed benefits of his work, increased efficiency for U.S. car manufacturers, would be national in scope, although the petitioner's argument in this regard is less persuasive on appeal since he is now working for a single U.S. car company, General Motors, as opposed to working for a consulting company providing analysis for several U.S. car companies. 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.

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 he 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.

[REDACTED] currently Dean of the College of Engineering at Michigan Technological University and the petitioner's advisor at Louisiana Tech University, states:

[The petitioner] has made significant contributions to the understanding and

analysis of micro-scale structures by developing a new and practical computational method. With better understanding and effective analysis of design and manufacturing of micro-scale structures, smaller lighter, more functional and less expensive products may be developed and manufactured. Devices such as micro-sensors, micro-actuators, and microconnectors, can be enhanced. His research is definitely in the "critical technology" area.

further asserts that the petitioner's work will improve the competitiveness of the U.S. auto industry by "reducing cost and shortening the cycle of new product development in both prototype and preproduction."

a professor and one of the petitioner's supervisors at Louisiana Tech University, writes that the petitioner's presentations on "flow in a microtube with constant heat flux" and "heat transfer in a microtube" were well received at conferences. further states that the petitioner's work on "heat transfer in microchannels for his doctoral dissertation was a significant contribution to the optimal design and improved manufacturing process of silicon microchips." asserts that the petitioner's work has applications for micro-sensors used in air-bags, "smart" canes for the legally blind, and medical micro-probes.

Senior Research Engineer at the Research and Development Center of General Motors Corporation (GM), discusses the petitioner's work at that company. He asserts that the petitioner has been a principle analyst on many projects, including the significant GMT240. The goal of GMT240 was to implement "advanced technology of manufacturing processes to produce more vehicles with more styles and less cost." continues that the petitioner was responsible for designing and evaluating plant layout, manufacturing processes, and high-volume production lines. He also performed cost reduction, material flow, and time studies. provides that, more specifically, the petitioner was responsible for the development of manufacturing processes of aluminum decklids and liftgates of General Motor's next generation 2002GMT250 minivan, as well as the doors of other GM cars and trucks. concludes:

By improving the manufacturing processes of GMT240, it is estimated that GM saved 12% in the investment cost and increased 40% of operator by reducing 30% of robots for the manufacturing of liftgate[s]. GM is increasing its use of aluminum for applications like front doors, rear doors and sliding doors as well as other automotive parts. [The petitioner's] work promised to increase the quality and productivity, and therefore the competitiveness of US-build automobiles.

The petitioner also submitted a letter from Vice President of Capitol Design, Inc., a design and analysis company performing contract work. reiterate discussion of the petitioner's doors, liftgates, and decklids. concludes:

In particular, [the petitioner] has been getting involved in the development of the Cami and Greenfield project with new lean manufacturing processing for General

Motor Co. This is directly related to improving and enhancing the competitiveness of U.S. built automobiles in the global automotive markets.

[REDACTED] a senior engineer at [REDACTED] where the petitioner worked from 1983 to 1992, writes:

During [the petitioner's] time [at the] [REDACTED] he lectured on Manufacturing Processes, Machining, Machine Tools, Strength of materials, [REDACTED]. He also conducted experiments and supervised students laboratory works [sic]. [The petitioner's] research area was in the optimal design and analysis of manufacturing processes. For the project on design and analysis of manufacturing processes of transmission for [REDACTED] [REDACTED] he applied optimization methods to minimize the production costs, cycle time and maximize the productivity. . . . He also designed a pedestal structure of a movable laser instrument for operator's safety, [and] performed its analysis using [the] FEA [Finite Element Analysis] method. In the meantime, [the petitioner] as a concurrent engineer participated in the design of a medical needle in [the] [REDACTED]. He instructed the manufacturing processes and its quality and performance testing.

In response to the director's request for additional documentation, the petitioner submitted a new letter from [REDACTED] an engineering specialist at the [REDACTED]. [REDACTED] asserts that he first met the petitioner at the Second U.S.-Japan Seminar in Santa Barbara where he presented his work micro-scale structures, work which [REDACTED] asserts is "on the forefront of this research area." [REDACTED] asserts that he had more contact with the petitioner while he was working at Capitol Design, Inc. on a Chrysler van project. Regarding that project, [REDACTED] asserts:

He developed a new more effective and more efficient analytical method to study the new production line layout, cost reduction, material flow, time study, selection of presses, dies, robots, welding guns, safety guarding as well as quality analysis and reliability analysis. As a principal analyst, he played an extremely important role in the implementation phases of manufacturing processes. By choosing more economical and productive lean production lines, we saved 17% in investment cost and increased 21% in productivity, compared with the traditional production lines.

While the petitioner and his references claim his work is vital to GM, Chrysler, and the U.S. automotive industry in general, these assertions are not supported by letters from high officials at any of the major U.S. car companies such that their opinions could be considered the opinion of the company itself. Moreover, the above letters are all from collaborators and immediate colleagues of the petitioner with whom he has worked on various projects. While such letters are important in providing details of the petitioner's work, they cannot by themselves establish that he has influenced his field as a whole.

The record includes evidence of the petitioner's membership in ASME. The petitioner does not claim, and the record does not establish, that ASME requires influential contributions from its members. As such, this membership is not evidence that the petitioner has influenced his field as a whole.

The record also contains four published articles by the petitioner. 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. Despite the director's statement that the petitioner has submitted evidence of citations, the record initially contained no evidence that independent researchers had cited the petitioner's work or that independent practicing engineers had incorporated the petitioner's results into their own projects. On appeal, the petitioner submits evidence that four independent researchers cited one of the petitioner's articles and three independent researchers cited a second article by the petitioner. This low number of citations is not evidence that the petitioner's work is influential on the industry as a whole.

The petitioner also submitted articles regarding the need for technologies which can cut vehicle manufacturing times and costs, instantaneously detect defects or allow transfer presses. None of these articles mention the petitioner or reflect that Capitol Design, Inc. is at the forefront of the technology in these areas. Nor are any of the petitioner's projects referenced as examples of this technology.

On appeal, the petitioner argues that "change of regulations" in Matter of New York State Dept. of Transportation caused a delay, preventing him from utilizing the labor certification process before his non-immigrant visa expires. Matter of New York State Dept. of Transportation is a decision interpreting the already existing regulations pertaining to the national interest waiver. Those regulations remain unchanged. Regardless, 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.

The petitioner further argues that his skills in both practical and theoretical mathematics resulted from China's Cultural Revolution and that no one else has such a unique combination of skills. It cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the



jurisdiction of the Department of Labor.

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.