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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: AUG 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)

IN BEHALF OF PETITIONER: Self-represented

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 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. At the time of filing, the petitioner was a postdoctoral research associate at Colorado State University. The petitioner has since moved to another postdoctoral position at Notre Dame University in Indiana. 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 has 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 director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention 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 petitioner states that his "current research includes the measurement of solvation dynamics at the surface of semiconducting nanoparticles." The petitioner states that his work is in the national interest because he is "investigating a suitable and efficient system for the photoelectrochemical cells," which are a "potential new approach to economical solar energy conversion to the electrical energy." The intrinsic merit and national scope of research into inexpensive, nonpolluting solar energy are immediately apparent. At issue here is not the overall value of such research, but rather, the significance of the petitioner's contributions to that research and the degree to which the U.S. is likely to benefit from the petitioner's continued involvement.

Along with copies of his published articles and documentation pertaining to his field of research, the petitioner submits several witness letters. Professor Edward L. Quitevis supervised the petitioner's first year of postdoctoral training at Texas Tech University. He states that the petitioner's "research at Texas Tech University involved using state-of-the-art ultrafast lasers to do optically heterodyne-detected femtosecond optical Kerr effect studies in liquid fluorinated benzenes to understand the reorientational and intermolecular dynamics in these systems." Prof. Quitevis does not explain the significance of that work, instead devoting the bulk of his letter to a discussion of the petitioner's later work at Colorado State University. Prof. Quitevis states that the goal of the petitioner's research in Colorado is "to improve the conversion efficiency of photoelectrochemical cells, which at this time is only 10-15%."

Dr. Kristen A. Peterson, now a senior research scientist at Southwest Sciences incorporated, previously served on the faculty of New Mexico State University, where she supervised the petitioner's second year of postdoctoral training. Dr. Peterson states that the petitioner "worked on an Office of Naval Research funded project on vibrational dynamics of biologically important proteins using the free electron laser facilities at Stanford University. Protein vibrational dynamics play an important role in the fundamental mechanisms of laser surgery." Dr. Peterson does not comment on the extent of the petitioner's contributions to that project. Instead, she, like Prof. Quitevis, concentrates on the importance of developing solar energy cells. Dr. Peterson explains that the petitioner "is studying interactions between solvent (liquid) and semiconductor particles and how these interactions effect electron transfer in these materials," and that through these studies, "improvements in solar energy cells may be realized."

Dr. Nancy E. Levinger, assistant professor at Colorado State University, supervised the petitioner's postdoctoral work at that institution. She describes the petitioner's work in her laboratory:

Initially, he worked in a laboratory to develop a time-correlated single photon counting apparatus. He was able to build this apparatus in a short amount of time and it has served as a diagnostic tool for all the other group members since then. After working on some difficult fruitless experiments for a while, [the petitioner] began work on dynamics of polar solvation in restricted environments. His work includes the first to probe solvation dynamics at the surface of semiconductor nanoparticles. These experiments have met with significant acclaim as they provide key information about potential solar energy conversion systems. . . .

Current state-of-the-art photovoltaic cells have an efficiency of 10-15%, but the expense of these devices makes them unattractive. The alternative photoelectrochemical cells under development promise both cheap and efficient solar energy conversion. . . . However, to improve the current ~10% conversion efficiency of these devices, further basic research is imperative.

The petitioner submits letters from two senior scientists at the National Renewable Energy Laboratory in Golden, Colorado, Dr. Raghu nath Bhattacharya and Dr. Kannan Ramanathan. These letters are completely identical except for the signatures at the bottom, and therefore it is not clear who actually wrote the text of the letters. The letters read, in part:

In order to increase the conversion efficiency [of photoelectrochemical cells] it is extremely important to study the dependence of various dynamical processes such as the forward and backward electron transfer rates on to the surrounding solvents and onto the various dye-semiconductor systems. [The petitioner] has undertaken this challenge and [is] presently working to understand how the motion of the solvent impacts the motion of the electrons at the surface of semiconducting nanopoles. . . . Once the conversion efficiency of photoelectrochemical cells is improved, these will replace all the other conventional photovoltaic cells and will

be used in various domestic, national and international power projects and will save hundreds of millions of dollars over the conventional energy sources.

The petitioner submits copies of his published articles, as well as reviewer comments from the anonymous peer review stage that preceded publication of one of the articles. One reviewer states that the "article presents some exciting early work on a subject of great relevance to the chemical physics community. . . . This work certainly deserves to be published quickly." The other reviewer agreed that the work should be published promptly because "many researchers are working hard on this problem and the tack taken by [the petitioner] and Levinger is promising."

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 an additional witness letter and further documentation. Dr. Greg Hartland, an assistant professor at the University of Notre Dame, states that the petitioner's published articles "have had significant impact" but otherwise limits his comments to the overall importance of the field of research, and to the petitioner's experience with laboratory equipment and techniques.

The petitioner submits documentation from a citation index, indicating that 13 of his articles have been cited a cumulative total of 44 times. Nearly half of these citations are self-citations by the petitioner and/or his collaborators. Self-citation is certainly accepted practice, but it has no value as an indicator of the impact of the cited work. The greatest number of independent citations for any one article by the petitioner is seven. The number of independent articles containing citations is further reduced, because many single articles contain multiple citations of the petitioner's work. The petitioner's total number of citations derives not from the impact of any particular article, but from heavy self-citation and from the sheer volume of lightly cited articles.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work but finding that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. The director noted that training and competence in an intrinsically important field cannot suffice to establish eligibility. The director also noted that the letters submitted with the petition are from individuals with close ties to the petitioner, and therefore the letters do not directly establish that the petitioner's work has had a wider impact.

On appeal, the petitioner submits an additional witness letter. Professor Robert G. Hayes of the University of Notre Dame states "it is my professional opinion that the contributions made and being made by [the petitioner] substantially exceed those being made by the vast majority of scientists in his field of endeavor." Prof. Hayes' letter contains passages that are extremely close to passages in previous letters. For example, Prof. Hayes states that the petitioner "is the first to probe solvation dynamics at the surfaces of semiconductor nanoparticles. . . . This work has met with significant acclaim because it provides key information about solar energy conversion systems." Dr. Nancy Levinger, in an earlier letter, had offered the largely identical assertion that the petitioner's "work includes the first to probe solvation dynamics at the surface of



semiconductor nanoparticles. These experiments have met with significant acclaim as they provide key information about potential solar energy conversion systems.”

The record contains no evidence of the nature or degree of the “significant acclaim” accorded to the petitioner’s work, or to establish that researchers outside of the petitioner’s circle of collaborators regard the petitioner’s efforts as being especially significant toward the goal of efficient, large-scale solar power. The assertion that the petitioner’s “early work” opens up the possibility for future development in this area is too vague and speculative to establish the necessary track record in this instance.

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.