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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



File:  Office: Nebraska Service Center

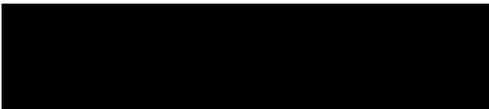
Date: 6 DEC 2002

IN RE: Petitioner:  
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:



**Identifying data deleted to  
prevent identity of unrepresented  
invasion of personal privacy**

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. The Associate Commissioner for Examinations summarily dismissed a subsequent appeal. The matter is now before the Associate Commissioner on motion. The motion will be dismissed, the matter will be reopened on Service motion, the previous decision of the Associate Commissioner will be vacated, and the petition will be denied.

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.

On appeal, filed July 23, 1999, counsel requested 45 days in which to supplement the record. On January 2, 2001, the Administrative Appeals Office (AAO), on behalf of the Associate Commissioner, summarily dismissed the appeal, concluding that the petitioner had failed to submit any additional evidence or a brief.

On motion, the petitioner submits evidence that additional materials were submitted to the Service Center on September 9, 1999. The instructions to the Appeal Form I-290B state that while the appeal is to be submitted to the office that issued the decision, a supplemental brief or additional evidence should be submitted directly to the AAO. 8 C.F.R. 103.2(a) incorporates all form instructions into the regulations. By filing the additional materials with the Service Center, the petitioner did not comply with the instructions on the Form I-290B. As such, the motion will be dismissed. Nevertheless, in the interest of fairness, we will reopen the matter on Service motion and consider the petitioner's appellate brief and new exhibits.

On appeal, counsel argues that the petitioner was denied due process because the director failed to adequately explain the grounds of denial. Counsel notes the depth of analysis contained in Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998). That decision, however, was an appellate decision issued as a precedent decision under 8 C.F.R. 103.2(c). It is unreasonable and unnecessary to require that every initial decision include the type of detail normally found in a precedent decision issued at the appellate level. Moreover, we find that the director, while not discussing every reference letter individually, adequately explained the deficiencies in the record. Counsel's specific arguments and the new evidence submitted on appeal will be discussed below.

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.

(i) . . . the Attorney General may, when the Attorney General 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 Inorganic Chemistry from Michigan State. 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, *supra*, has set forth several factors that 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, organometallic chemistry, and that the proposed benefits of his work, the development of new methods to synthesize new classes of solid-state compounds, 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 will.

Initially, the petitioner submitted several reference letters, three review articles regarding his area of research, and seven published articles. On September 15, 1998, the director advised the petitioner of the requirements set forth in Matter of New York State Dept. of Transportation, supra, and provided an opportunity to provide additional documentation. In response, counsel referred the director to the previously submitted documentation. In her final decision, the director noted that "original contributions, publications and presentation of research work are inherent to the position of a researcher" and concluded that success in one's field is insufficient. Finally, the director stated:

The testimonial letters contained in the record do not sufficiently establish that the alien petitioner's work has resulted in an appreciable improvement in his field of specialty, rather they seem to emphasize the implications his work may someday have because of the importance of his area of research.

On appeal, counsel argues that the petitioner's curriculum vitae (C.V.) reflects 17 publications and presentations, an accomplishment beyond what is inherent to a researcher's duties. A self-serving C.V. is insufficient evidence of the petitioner's accomplishments. The petitioner's publications will be discussed below. Finally, counsel raises concerns regarding the director's treatment of the reference letters, asserting that the "plethora" of reference letters from "throughout the world" reflect the petitioner's "outstanding research." Somewhat inconsistently, counsel first states that the director dismissed these letters without explanation, but then references the above quote from the director's final decision. Specifically, counsel asserts that the director's concern regarding the content of the letters is "more applicable" to whether the petitioner's work is national in scope, "a fact which has already been conceded by the Director in prior paragraphs." Counsel's statements are essentially correct but they only reinforce the director's concern; specifically, that the letters are more persuasive regarding the importance of the field (prong two) than they are regarding the petitioner's track record of contributions in the field (prong three). It remains to analyze the evidence itself.

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 219, note 6.

In a letter dated October 23, 1997, Mercuri G. Kanatzidis, a professor at Michigan State University, discusses the importance of developing new synthetic methods to allow the development of more complex materials for use in the technology industry. Professor Kanatzidis notes that there are limits to the traditional method of developing new solid-state materials, the use of high temperatures. In light of those limits, Professor Kanatzidis asserts that the development of methods using solvent-assisted synthesis is necessary. Professor Kanatzidis continues with a discussion of the petitioner's projects, presumably at Michigan State where the petitioner obtained his Ph.D. Professor Kanatzidis states:

To date, [the petitioner] has been successful in achieving technologically important results from his research that will advance new synthesis methodologies to be used for the production of new solid state materials. The importance of this synthesis process in our economy is that it involves the use of abundant elements (carbon and sulfur). In contrast, many materials used in [the] semiconductor industry involve elements such as gallium, arsenic, mercury, and tellurium that are in short supply or are expensive to produce or are unstable to the extent that they must be subject to high cost techniques to produce a marketable product (such as in crystals used for semiconductors). [The petitioner] has been the first person to synthesize the first compositionally pure and structurally well defined polycarbon sulfide. His use of solventothermal method was critical to this work. Solventothermal methods rely on heating of solvents above their boiling point with enough pressure to keep them in a fluid state. Until [the petitioner's] research, the use of the solventothermal methods were limited to the production of metal oxides such as zeolites, used in the crude oil refining process. During the last decade, there is a growing interest in the synthesis of f [sic] new materials other than oxides since the oxide based zeolitic structures are limited in their practical applications. The use of the solventothermal method opens the way for this new generation of nonoxide solids. The synthesis of the first structurally characterized carbon sulfide solid state materials by [the petitioner] is a great beginning.

While Professor Kanatzidis refers to articles in *Nature* and *Science* discussing the importance of the petitioner's area of research, neither article refers to him or his research group. Professor Kanatzidis also quotes a review on new technologies in the petitioner's field. As will be

discussed below, the review does cite three of the petitioner's articles for a single proposition. The statements quoted by Professor Kanatzidis, however, cite to the work of others.

On appeal, Professor Kanatzidis asserts that the petitioner "developed new hydrothermal synthesis techniques which we in my lab and other[s] around the world use to carrying [sic] out important experiments." He further states:

[The petitioner] has opened new fields of research in the nanoporous materials capable of molecular oxidation catalyst, creating a new research area essentially single-handedly. No other U.S. scientist has developed materials on this type previously. [The petitioner's] research has resulted in great improvements in the preparation of this important class of new materials, and he has made this progress to a substantially greater degree than any other available U.S. research scientist.

Thomas B. Rauchfuss, the petitioner's supervisor at the University of Illinois, Urbana-Champaign provides similar information with almost identical language, adding:

Using his groundbreaking and important methods, [the petitioner] has also synthesized the first electrochemically active carbon sulfide heterocycles. Thus, the new materials are of potential importance in electrochemically based applications, as indicated by the commercial interest in [the petitioner's] compounds as candidate cathode materials for new batteries. The need for light weight batteries for consumer electronics (laptop computers, cameras, cellular phones) has driven both established (e.g. [D]uPont Corp.) and start-up (e.g. PolyPlus Battery Co.) to search for energy density materials (i.e. lighter weight electrodes) including the specific use of carbon sulfides for these applications.

In addition, Professor Rauchfuss asserts that the petitioner is one of the few in his field who has the expertise to synthesize materials and determine the resulting compound.

Peter K. Dorhout, a professor at Colorado State, asserts that he met the petitioner in 1993 at a conference when the petitioner was working in the laboratory of one of Professor Dorhout's competitors. Professor Dorhout asserts that he has been following the petitioner's career ever since. Professor Dorhout, in addition to four other references who do not indicate how they know the petitioner, Shiou-Jyh Hwu of Clemson University, Yoshitaka Matsuchita of the High Pressure Chemistry Group in Japan, Shu-Chun Joyce Yu of National Chung Cheng University in Taiwan, and Chun-Guey Wu of National Central University in Taiwan, all provide similar information to that discussed above. In fact, we note that all of the above letters include entire paragraphs identical to Professor Kanatzidis' letter, sometimes in a different order. For example, Professor Rauchfuss, Dr. Matsuchita, Professor Hwu, Professor Yu and Professor Wu all quote the *Science* and *Nature* articles. Professor Rauchfuss and Professor Yu both introduce this quote with the same language as Professor Kanatzidis: "To further buttress my conclusions, I wish to direct your attention to the attached articles." Professor Wu introduces the quote with, "to further

support my points, I wish to direct your attention to the attached article.” All five summarize the relevance of these articles by stating, as Professor Kanatzidis does, “thus, the methods where [the petitioner] is expert [sic] are allowing scientists to mimic biological processes in developing new materials.” Professor Dorhout does not quote from those articles, but repeats Professor Kanatzidis’ language regarding the review that cites the petitioner’s articles discussed above.

Professor Kanatzidis and Professor Dorhout both use nearly identical language regarding the national interest of the petitioner’s work by referencing the impact of “synthesis of semiconductors as single crystals” on the semiconductor industry, “the foundation upon which” the high tech industry is based.

Most significantly, Professor Rauchfuss, Dr. Matsuchita, Professor Hwu, Professor Dorhout, Professor Yu, and Professor Wu all use Professor’s Kanatzidis’ language quoted above to discuss the petitioner’s accomplishments. The language is used nearly verbatim, albeit in some letters there are missing sentences and paragraphs appear in a different order. Professor Rauchfuss’ use of this language with little discussion of the specific work performed while working under his direction raises the concern that the petitioner has not continued his accomplishments under Professor Rauchfuss’ supervision at the University of Illinois. We note that the letter from Yoshitaka Matsuchita, while dated prior to Professor Kanatzidis’ letter, is identical to that letter including typographical errors.

While the author’s signatures reflect that they did attest to the information contained in the letters, it is clear that much of the language relating to the importance of the petitioner’s work, and sometimes all of the language in the letter, is not their own. The reliance on boilerplate language, in some cases to the exclusion of any original language, diminishes the evidentiary weight to be accorded these letters.

On appeal, the letters once again are not original. The letter from Kenneth S. Suslick, the petitioner’s collaborator at the University of Illinois, Urbana-Champaign, includes the paragraph quoted above from Professor Kanatzidis’ appellate letter.

The record does include the following original letters. W. S. Sheldrick, a professor at the University of Bochum, Germany, chronicles the petitioner’s educational and research history, asserting that the petitioner has “profound experimental experience” and has published articles which have “aroused worldwide interest.” Professor Sheldrick concludes, “on the basis of his previous scientific work I am sure that he will continue to make significant contributions in any one of the above areas of research and development.” Professor Sheldrick does not indicate that he was aware of the petitioner’s work prior to being contacted for a reference. In addition, his assertion that the petitioner’s papers have received worldwide recognition is not supported with evidence that those papers have been widely cited.

Songping Huang, a professor at the University of Puerto Rico, asserts:

The methodologies [the petitioner] has developed in the last few years have benefited a large number of research scientists in this field and will eventually lead to breakthroughs in the design and synthesis of new catalysts, semiconductors and zeolite materials.

Professor Huang then goes on to discuss the importance of zeolite in decontaminating cows after the Chernobyl nuclear power plant incident. Professor Huang does not explain how he has come to know of the petitioner; nor does he assert that he himself has been influenced by the petitioner's work.

Dr. Enos A. Axtell, a member of the petitioner's research group at Michigan State University and currently a senior chemist with Cerdec Corporation, provides general praise of the petitioner's abilities and accomplishments.

The above letters from Professor Kanatzidis, Professor Rauchfuss, Professor Suslick, and Enos Axtell are all from the petitioner's own professors and collaborators. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's influence over the field as a whole. While we acknowledge that the record contains letters from independent researchers in the field, the letters include little, if any, original language and do not explain how the author came to know of the petitioner's work or how that work has influenced their own work, if at all. The only exception is the letter from Professor Dorhout, who claims to have met the petitioner at a conference and includes some original language. Professor Dorhout, however, does not indicate that he personally has applied the petitioner's results in his own laboratory.

In light of the above, we concur with the director that the letters in the record are more persuasive regarding the importance of the petitioner's field than of his track record of contributions to the field.

As stated above, the petitioner submitted evidence of seven published articles. The director acknowledged these publications, but noted that original work is inherent to the position of researcher. On appeal, counsel argues that the petitioner's work is beyond what is inherent to the position. 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 influence; we must consider the research community's reaction to those articles.

On appeal, counsel submits evidence that the journals in which the petitioner's articles appear are frequently cited. Such evidence does not imply that the petitioner's articles themselves are widely cited. The only evidence of citation of the petitioner's work is in the review article discussed above. Three of the petitioner's articles are cited for the following proposition: "The solventothermal design of such M/As/E covalent framework should provide an exciting synthetic challenge for the coming years." Without additional evidence that the petitioner's articles are widely cited by researchers applying his results, this single citation is insufficient evidence of the petitioner's alleged influence on the field.

On appeal, Professor Suslick asserts that he and the petitioner "are about to submit a scientific publication to *Science*." An article submitted to a journal after the date of filing is not evidence of the petitioner's eligibility at that time. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Finally, on appeal it is noted that the petitioner is working on a project funded by the U.S. National Institutes of Health. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to present some benefit if it is to receive funding and attention from the scientific community. The record, however, does not establish that the petitioner's work represented a groundbreaking advance in inorganic chemistry. While the petitioner's research clearly has practical applications, it can be argued that any published article, in order to be accepted or published, must offer new and useful information to the pool of knowledge.

We cannot conclude that the record, consisting of articles of unknown influence and letters containing almost exclusively boilerplate language, reflects that the petitioner has a track record of influence on the field as a whole.

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 motion is dismissed. The Associate Commissioner's decision of January 2, 2001 is vacated pursuant to a Service motion. The petition is denied.