



B5

U.S. Department of Justice
Immigration and Naturalization Service

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC 99 240 50154 Office: Vermont Service Center

Date: DEC 09 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:



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

for Elizabeth Hayward
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Vermont 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 he filed the petition on August 9, 1999, the petitioner was working as a transportation engineer for A/E Group, Inc. 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)(i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements 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 received his Ph.D. in civil engineering from Pennsylvania State University on May 15, 1999. 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, 22 I&N Dec. 215 (Comm. 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, and that the proposed benefits of his work could be considered 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.

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 sought. 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.

Along with documentation of his academic credentials and research findings, the petitioner submitted several witness letters. Dr. Shyuan-Ren Chen, Senior Transportation Project Manager, A/E Group, was the petitioner's supervisor. Dr. Chen stated:

[The petitioner] is currently affiliated with A/E Group Inc. and is working on traffic engineering, pavement management, and ITS (Intelligent Traffic Systems) related issues. I strongly believe that his work in these fields will play an important role in the nation's

ongoing effort to improve transportation needs especially in urban areas...

Developing demand-responsive and cost-effective solutions to transportation problems in the United States has been a growing concern for the past two decades especially in the urban areas. Traffic congestion and traffic safety are of paramount importance to all the parties involved in providing transportation to the U.S. taxpayers.... With the emergence of new technologies such as Intelligent Transportation Systems (ITS), A/E Group is in the forefront by providing support services for the development of operational test and actual implementation of various ITS based technologies.

Traffic Engineering and control is a matter of concern for the U.S. national interest for a variety of reasons. Traffic congestion and delays increase the travel time thereby increasing the cost of goods being transported. This directly affects the competitive ability of the U.S. in the international market. Traffic congestion also increases fuel consumption and discharge of pollutants into the atmosphere. In a recent study the cost of congestion exceeded \$1 billion for 13 major urban areas... Maintenance and rehabilitation operations place additional burdens on the U.S. taxpayers because of the reduced capacity of the roadway. Hence it is imperative to perform cost effective transportation planning and infrastructure improvements such that tax burden on our citizens are minimized. [The petitioner's] role in providing cost-effective transportation solutions has been excellent. [The petitioner] has provided invaluable engineering services for several projects including CHART (Chesapeake Highway Advisory and Routing Traffic), a major Intelligent Transportation System project currently underway for the State of Maryland.

The petitioner may have benefited various projects undertaken by his employer, but his ability to impact the national transportation system beyond his company's projects has not been demonstrated. The petitioner's performance of engineering services for a local project is of interest mainly to the petitioner's immediate employer and that particular project. Dr. Chen's letter focuses on the overall importance of the petitioner's projects rather than the individual accomplishments of the petitioner. While it is indisputably true that highways play a fundamental role in the national transportation system, and by extension, in the economy itself, Dr. Chen does not explain how the petitioner's individual efforts have significantly impacted the national transportation system.

Dr. Shelley Stoffels, Associate Professor of Civil Engineering, Pennsylvania State University, served as the petitioner's thesis advisor and committee chair for his doctoral program. Dr. Stoffels states:

[The petitioner] tailored his entire doctoral program to develop a unique expertise that is vitally important to our highway infrastructure. His field is in the area of pavement management, that is, the efficient and economical management of the construction, maintenance, and rehabilitation of roadway pavements. [The petitioner's] background is unique in that he has developed significant expertise in the technical and mechanical design and modeling of pavements and pavement materials, as well as in traffic operations. In addition, he completed a graduate minor in statistics, an understanding of which is vital to

managing the inherent risk in such variable processes as traffic flow and pavement performance.

We note here that the above qualifications could easily be articulated in an application for alien labor certification.

Dr. Stoffels continues:

Our nation's highway infrastructure is the backbone of much of our economy and is our single largest public investment. It is important to maintain and improve this infrastructure in the most cost-efficient manner technically possible. However, many of the costs to the American taxpayer to upkeep our roadways are in addition to those of the materials and construction. Some of the most significant costs are those of time delays, vehicle operating costs, accidents, and increased pollution in work zones or due to inadequate facilities...

[The petitioner] had the foresight to design his program to address this extremely important and sorely neglected niche. Although he is just beginning his postgraduate professional career, [the petitioner] is one of only a handful of engineers in the entire country prepared to work in this area. The lack of expertise at the technical intersection of pavements and traffic was illustrated in the difficulty in obtaining qualified personnel for traffic analysis for the Federal Highway Administration's Long-Term Pavement Performance Program. Principal investigators in the regional offices of this large and ongoing research program have discussed their national searches for qualified engineers for these positions.

Pursuant to Matter of New York State Dept. of Transportation, a shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification.

Dr. Stoffels further states:

[The petitioner's] doctoral thesis directly addresses the prediction of user delay in pavement maintenance and rehabilitation work zones. He has taken state-of-the-art simulation modeling used in traffic operations research, and applied it to the field of pavement management in an innovative way. Furthermore, he has kept his focus on developing models that can be used by pavement management engineers who do not have the advantage of his unique background. [The petitioner's] current models are appropriate for use for certain classes of roadway and repair activities. It is important that [the petitioner] have the opportunity to extend and validate this type of model for all pavement work. If so, I would then expect to see his user delay models incorporated into intelligent pavement management systems around the nation. The potential for total savings by the improved ability to consider these costs is enormous.

In addition, [the petitioner] has worked on relevant research projects throughout his program at Penn State. He validated the Pennsylvania Department of Transportation's pavement performance modeling program, and evaluated the effectiveness of their pavement maintenance activities. Of special significance has been his work for the Northeast Center for Excellence in Pavement Technology, where his work has kept him abreast of the very latest developments in pavement materials research and applications.

Statements as to the petitioner's potential to make future contributions cannot suffice to demonstrate his eligibility for a national interest waiver. Dr. Stoffels asserts that the petitioner should have the opportunity to extend his pavement management models. The record, however, contains no evidence showing that the petitioner's models have already been "incorporated into intelligent pavement management systems around the nation." The letter from Dr. Stoffels offers no specific information as to how the petitioner's research findings have already influenced the greater field.

Timothy L. Ramirez, Bituminous Materials Engineer, Bureau of Bridge and Roadway Technology, Pennsylvania Department of Transportation, states:

Pennsylvania was one of the first states to begin the implementation of the new Superpave technology, which offers design and materials analysis tools to construct asphalt pavements with superior performance. [The petitioner's] research represented a key element during this implementation phase. As part of the Department's five-year, one million dollar contract with the Northeast Center of Excellence for Pavement Technology (NECEPT), [the petitioner] performed advanced research on the behavior of aggregates and asphalt and aggregate mixtures relative to the Superpave technology. [The petitioner] performed research on materials collected from major roads including several Interstate Highways. Comparing the aggregate properties and the asphalt mixture properties to the actual field performance of the roadway is a critical issue in the fine-tuning of the Superpave technology. This fine-tuning can result in substantial savings for states as the analysis of materials becomes better at predicting the actual performance of these materials on the roadway.

[The petitioner] was and continues to be instrumental in developing and conducting advanced research on aggregate properties and asphalt mixture properties. The initial results from his research has helped the Department understand material properties better and will lead to longer lasting and more durable roadways. Longer lasting roads will mean lower maintenance costs and fewer user delay costs due to extended maintenance intervals. [The petitioner's] research contributions will improve the roadways and save time and money for millions of Pennsylvanians and U.S. residents.

We do not dispute that the petitioner played a role in implementing the already existing Superpave technology for the Pennsylvania Department of Transportation and that his work helped the Department "better understand material properties" of asphalt. While the petitioner's efforts may lead to "longer lasting and more durable roads" in Pennsylvania, the petitioner's individual impact

on the national highway system would be so attenuated at the national level as to be negligible. Timothy Ramirez's letter states that the petitioner's "research contributions, in the area of aggregates and asphalt paving materials, are excellent and have had a significant and positive impact in the transportation field and on the national economy," but he offers no specific examples or evidence to support this assertion.

Anne Stonex, Operations Manager, Northeast Center of Excellence for Pavement Technology (University Park, Pennsylvania), states:

[The petitioner] served under my direct supervision as the lead researcher on one of several SUPERPAVE validation tasks sponsored by the Pennsylvania Department of Transportation. As a part of this project [the petitioner] performed research on aggregates collected from several Interstate Highway construction projects in Pennsylvania to characterize aggregate properties. The results of his research are very critical in understanding and controlling various performance-related properties of asphalt concrete mixtures. The control of asphalt concrete mixtures is very critical to the performance of the resulting pavement and for predicting the onset and severity of structural, functional and safety-related distresses. Predicting the onset of pavement distresses is a primary factor in pavement management systems. Such systems are widely used by transportation agencies to plan appropriate long term pavement management strategies and allocate funds for a rational, effective and economically sound system of maintenance, repair, rehabilitation and construction operations over time.

The letter from Anne Stonex offers no specific information as to how the petitioner's research on aggregates has already influenced the greater field. Similar to the other letters provided, Anne Stonex's letter is mostly devoted to the overall importance of pavement research rather than the petitioner's individual record of past accomplishment having a significant impact on the field.

The Service acknowledges the undoubted importance of research and engineering efforts devoted to improving the nation's roadways. However, pursuant to published precedent, the overall importance of a given project or area of research is insufficient to demonstrate eligibility for the national interest waiver. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. Mountain States Tel. & Tel. v. Pueblo of Santa Ana, 472 U.S. 237, 249 (1985); Sutton v. United States, 819 F.2d 1289, 1295 (5th Cir. 1987). By asserting that the petitioner's employment as a transportation engineer inherently serves the national interest, witnesses essentially contend that the job offer requirement should never be enforced for his occupation, and thus this section of the statute would have no meaningful effect. Congress plainly intends the national interest waiver to be the exception rather than the rule.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Department of Transportation. In a response received on September 20, 2000, the petitioner submitted additional witness letters and research reports. The information

submitted reflected that the petitioner was no longer working for A/E Group, Inc. and was now employed by Parsons Transportation Group, Inc. Patrick Chang, Senior Transportation Engineer, Parsons Transportation Group, Inc., states:

[The petitioner] is currently involved in many projects in the Intelligent Transportation Systems arena. [The petitioner] has provided invaluable engineering services for several projects including the Theodore Roosevelt Bridge traffic study, the objective of which is to reduce the congestion levels on the Theodore Roosevelt Bridge in Washington, D.C. ITS systems that are being developed and tested by Parsons can be duplicated to solve traffic problems that are experienced in most major cities nationwide.

Patrick Chang's letter gives no specific examples of how the petitioner's individual findings and engineering models have been implemented or duplicated in other major cities. Instead, the letter addresses the petitioner's "educational background" and "unique knowledge, skills, and capabilities." Pursuant to Matter of New York State Dept. of Transportation, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education which could be articulated on an application for a labor certification. The petitioner in this case must demonstrate a past history of significant accomplishment in the field of transportation engineering in order to qualify for the national interest waiver.

Dr. Yanlin Li, Principal Systems Engineer, Parsons Transportation Group, Inc., describes how his company works to provide software solutions to handle traffic related problems. Dr. Li notes that the petitioner "can play a key role" in the future reengineering of CORSIM, a traffic model developed by the Federal Highway Administration that has been used since the 1980's. Assertions as to the petitioner's potential to make future contributions cannot suffice to demonstrate his eligibility for a national interest waiver. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The remainder of Dr. Li's letter describes the petitioner's value to the upcoming project based on the petitioner's extensive experience, skills, training, and education. The petitioner's skills and familiarity with different aspects of traffic engineering, while useful to his employer, do not appear to represent a national interest issue. In accordance with the statute, exceptional ability is not by itself sufficient cause for a national interest waiver.

Dr. Jeffrey Russell, Director, District 8, American Society of Civil Engineers, states that the petitioner "has unique expertise in the transportation safety, design and maintenance and operations." Dr. Russell notes that the "traffic and transportation services provided by Parsons Transportation Group are increasingly vital to the urban and suburban infrastructure and that [the petitioner's] activities with Parson's Transportation Group in this field are very critical." We note that the petitioner's employment with Parson's Transportation Group commenced subsequent to the filing of the petition. See Matter of Katigbak, *supra*. Dr. Russell states that the petitioner's Ph.D.

research is “central to the decision-making process of allocating resources in our transportation system,” but Dr. Russell offers no specific examples of areas or projects where the petitioner’s models or methods have actually been implemented.

Dr. Mihai Marasteanu, Assistant Professor, Department of Civil Engineering, University of Minnesota, states that she has known the petitioner since 1992. Dr. Marasteanu states that the petitioner’s significant achievement is “the successful dissemination of research results that are a concern to aggregate producers and hot-mix asphalt contractors.” She also notes the petitioner’s role in “fine-tuning the results of Superpave for implementation.”

While the petitioner’s research may have contributed to the general pool of knowledge regarding the properties of asphalt concrete mixtures, there is no evidence that researchers view the petitioner’s work as a significant breakthrough. Nor is there direct evidence from transportation officials confirming the implementation of the petitioner’s traffic models in states throughout the country.

The letters from Dr. Marasteanu and John Halkias make reference to the petitioner’s published research. While the petitioner has co-authored published articles and reports, the weight of this evidence is diminished by the absence of direct evidence that these articles have influenced the field. 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.” 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. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner’s findings. Frequent citation by independent researchers, on the other hand, would demonstrate more widespread interest in, and reliance on, the petitioner’s work. The petitioner provides no evidence that his articles have been cited or that they captured significant attention from independent experts in the transportation engineering field.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director indicated that the evidence did not establish that the petitioner’s past record justified projections of future benefit to the national interest and that there was insufficient evidence setting the petitioner apart from other similarly qualified professionals. The director also noted that the petitioner could not establish eligibility for the national interest waiver “simply by virtue of playing an important role in a given project, or a given business.”

On appeal, counsel states that the criteria set forth in Matter of New York State Dept. of

Transportation “are now being used by the INS to set an unreasonably high standard that goes well beyond the legislative intent.” By law, the director does not have the discretion to reject published precedent. See 8 C.F.R. 103.3(c), which indicates that precedent decisions are binding on all Service officers. To date, neither Congress nor any other competent authority has overturned the precedent decision, and counsel’s disagreement with that decision does not invalidate or overturn it. Therefore, the director’s reliance on relevant, published, standing precedent does not constitute error.

Counsel states that the director disregarded the expert testimony of ten letters. Counsel argues that the witness letters demonstrate the petitioner’s past record of significant contributions. The preceding analysis of the witness letters does not support this conclusion. We note here that the petitioner’s witnesses consist almost entirely of individuals with direct ties to the petitioner. The petitioner’s witnesses include his current and former supervisors and coworkers, Ph.D. thesis advisor, and collaborators from various regional highway projects. Letters from those close to the petitioner certainly have value, for it is those individuals who have the most direct knowledge of the petitioner’s specific contributions to a given project. It remains, however, that very often, the petitioner’s projects are also the projects of the witnesses, and no professional is likely to view his or her own work as unimportant. The observation that all of the witnesses have close ties to the petitioner is not intended to cast aspersions on the integrity of the witnesses; we concur with counsel regarding the credibility and reputation of each of the petitioner’s witnesses. Still, these witnesses became aware of the petitioner’s work because of their individual collaborations with the petitioner; their statements do not show, first-hand, that the petitioner’s work is attracting attention on its own merits, as we might expect with groundbreaking transportation engineering methods or research findings that are especially significant.

The witness letters demonstrate that the petitioner has excelled academically and is a capable professional in the areas of traffic engineering and pavement management. The witnesses, however, fall short of demonstrating the petitioner’s impact on the field beyond his employers or the regional projects in which he directly participated. None of the witness letters indicate that the petitioner’s individual contributions are especially important to his field, nor do the letters even devote much space to the petitioner’s specific activities. The message of the letters instead seems to be that because the transportation infrastructure requires professionals with experience in traffic engineering and pavement management, the petitioner serves the national interest by virtue of possessing the required training and skills. While some of the witnesses discuss potential applications for his traffic models and research findings, there is no indication that these applications have actually been implemented or are widely recognized as significant contributions in the transportation engineering field.

Counsel argues that labor certification is inappropriate in this case. The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner must still demonstrate that he will serve the national interest to a substantially greater degree than do others in the same field. Congress plainly intended that, as a matter of course, advanced degree professionals should be subject to the job offer/labor certification requirement. The national interest waiver is not merely an option to be exercised at the discretion

of the alien or his employer. Rather, it is a special, added benefit that necessarily carries with it the additional burden of demonstrating that the alien's admission will serve the national interest of the United States.

The petitioner has not shown how his specific efforts have impacted the national transportation system or significantly influenced the transportation engineering field. While the record amply documents that the petitioner has been an active contributor to several regional projects, and a capable engineering researcher, it does not establish that the petitioner's work has had a greater or more lasting impact than that of others in the same field. Without evidence that the petitioner has been responsible for significant achievements in the field of transportation engineering, we must find that the petitioner's assertion of prospective national benefit is speculative at best. While the high expectations of the petitioner's educational and professional acquaintances may yet come to fruition, at this time the waiver application appears premature. In sum, the available evidence does not persuasively establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner.

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 the 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.

ORDER: The appeal is dismissed.