

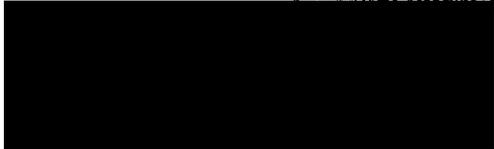


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U.S. Department of Justice
Immigration and Naturalization Service

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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: 14 FEB 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

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 is a graduate research associate studying for a doctorate at Purdue University. 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 director acknowledged 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.

Counsel asserts that the petitioner "is truly an internationally recognized and renowned scientist in the field of water quality and environmental engineering. . . . Researchers, federal agencies, and state agencies rely on his work to make important decisions on handling contamination of water and resources."

Along with copies of his published research work, the petitioner submits several witness letters. [REDACTED] currently the environmental and water resources engineer at Tetra Tech, Inc., states:

[The petitioner] is an internationally reputed and outstanding scientist in the field of agricultural and environmental engineering. [The petitioner] has extraordinary abilities in the research areas of modeling contaminant transport, surface water and groundwater quality modeling due to point and non-point sources of pollution. . . .

Before joining the company, I was at Purdue University where I was involved with the development of different web-based modules of the NRCS National Agricultural Pesticide Risk Analysis (NAPRA). At present, NAPRA-web is the only GIS [Geographic Information System]-linked, readily available (via the Web), risk analysis tool able to evaluate benchmark and alternative conservation management systems. . . .

[The petitioner] worked on pesticide contamination for different counties for the state of Indiana in NAPRA-web project, eventually leading to the development of groundwater vulnerability map to agricultural non-point source pollution. His work dealt with a new approach that used a field scale model/models with regional inputs and generated a regional groundwater vulnerability map (state of Indiana). . . .

Recent work of [the petitioner] involves the study of contamination at Federal Superfund sites. He has worked closely with USEPA region 5 group on one of the projects and is still pursuing efforts for other projects that involve decontamination of Superfund sites contaminated by extremely hazardous chemicals to human and aquatic life like lead and arsenic.

[REDACTED] water quality coordinator at the Office of the Indiana State Chemist and Seed Commissioner, based at Purdue University, states:

[The petitioner] is currently working with me on Indiana Ground Water Generic State Management Plan (SMP). His areas of expertise include quantifying the risks associated with known environmental contamination . . . and developing better numerical models and tools for predicting the fate of agricultural chemicals in the subsurface environment. . . .

[The petitioner] is involved in monitoring ground water wells across ten counties of Indiana monitoring network, which will provide statistical evaluation trends in pesticide occurrence and trends in pesticide concentrations in major aquifers in various counties across the state of Indiana.

His expertise in identifying, quantifying, analyzing water quality samples, and soil physics can be used to help [decide] where money is spent in devising effective containment and

remedial measures for environmental pollution. . . . His work will lead to dramatic savings for the government and farmers with respect to the environmental pollution problem.

Professor Bernard Engel, who supervises the petitioner's work at Purdue University, states:

The nature of his project requires that he work closely with US Environmental Protection Agency (EPA) personnel as his research focuses on development of an information systems approach for decontamination of Superfund sites in Wisconsin, Indiana and Ohio. . . .

Superfund sites are abandoned sites and toxic levels of contaminants in these sites pose a great danger to human and aquatic life. Hence, his research will help in coming up with a cost-effective and viable technology for toxic pollution cleanup operations and thus will provide a tremendous contribution in keeping the environment safe. . . .

His work to develop information systems will help decision-makers, federal agencies and environmentalists understand the complex processes of contaminant transport and groundwater flow in a much more effective manner. His expertise is crucial in developing a feasible and cost-effective solution for contaminated Superfund sites.

[REDACTED] a geochemist/hydrologist with the U.S. Geological Survey, describes in detail the characteristics of a Superfund site in Wisconsin which is contaminated with arsenic. [REDACTED] observes that arsenic cleanup efforts can be "prohibitively expensive" once groundwater is contaminated, and computer modeling allows researchers "to assess the potential impact and migration of arsenic contaminant plumes" at the site. Mr. Cygan asserts that the petitioner "has been instrumental in getting two projects off the ground."

In a letter to the petitioner, [REDACTED] chief of the Federal Facilities Response Section of the U.S. EPA, Region 5, states that the petitioner's "research in the area of contaminant transport and integrated information systems approach . . . has great significance for future environmental and water resource applications." [REDACTED] added that "information technologies like geographical information systems (GIS), mathematical models and 3-D visualization tools . . . will result in a better understanding of geoscientific processes." Other witnesses who have worked with the petitioner assert that his superior skills in these areas allow him to make a particularly significant contribution to the environmental remediation effort.

The record establishes that the petitioner has co-written published articles and conference presentations, but the record contains no objective evidence (such as citations) to establish the extent to which this research work has affected the work of other scientists.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work but concluding that assertions regarding the petitioner's future benefit to the U.S. are speculative. The director noted several instances in which witnesses have asserted that the petitioner's work "will" have a significant impact, implying that it has yet to have such an impact. The director also stated that the petitioner has not "explained why the labor certification process is inappropriate in this case."

On appeal, counsel asserts that the director erred by failing to issue a request for evidence in accordance with 8 C.F.R. 103.2(b)(8). At this point, the decision already having been rendered, the most expedient remedy for this complaint is the full consideration on appeal of any evidence which the petitioner would have submitted in response to such a request.

The petitioner has, in fact, submitted no further evidence on appeal. The initial appeal included a request for an additional 60 days to prepare a response. At the end of this period, the only new submission was a brief from counsel. Counsel asserts that the petitioner should have had the opportunity to remedy deficiencies in the record. The director's decision has now notified the petitioner of such deficiencies, and the petitioner could have used the appeal as an opportunity to submit any supplemental material that he would have submitted in response to such a prior notice. Counsel does not specify what the petitioner would have submitted in response to a request for further evidence, nor does counsel explain why the petitioner has not submitted such evidence with the appeal.¹ Therefore, while counsel asserts that the petition must be returned to the director for issuance of a request for evidence, counsel fails to indicate what practical purpose this would serve apart from delaying a final decision on the petition. Counsel does not even state outright that any further relevant evidence exists; counsel only states that the director should have asked for it.

Counsel states "the Director did not consider . . . published works and conference presentations which objectively demonstrated that the Petitioner has contributed to the national interest . . . to a

¹Between the 30-day period for filing an appeal, and the 60-day extension which counsel requested and received, the petitioner actually had more time to gather evidence than he would have received as part of a request for further evidence (90 days as opposed to 84 days).

greater degree than a U.S. worker." Counsel offers no elaboration on the assertion that the very existence of these materials elevates the petitioner above others in his field. These documents may show that the petitioner has been a productive researcher, but it is not a self-evident fact that such work is beyond the capacity of other qualified professionals in the field.

Counsel states that the director disregarded "statements by experts which show that the Petitioner could serve the national interest to a substantially greater degree than would an available U.S. worker." These witnesses are the petitioner's professors, mentors, supervisors and collaborators. While these relationships with the petitioner do not undermine the expertise of the witnesses, it remains that the letters are not first-hand evidence that the petitioner's work is recognized as important outside of his research group and collaborators (as we could justifiably expect given counsel's claim of an international reputation).

Some of the witnesses discuss the petitioner's potential capacity for future contributions, and discuss the role that the petitioner plays in the various projects. The witnesses do not, however, demonstrate the extent to which the petitioner's work has influenced Superfund projects with which he is not directly involved, as would be expected if he had provided indispensable new methods that affect not only the petitioner's specific projects, but his field of endeavor and the larger area of environmental remediation. These witnesses also fail to establish to what extent (if any) the petitioner will remain involved with the projects after completion of his doctorate, for which the petitioner had been studying for several years as of the petition's December 1998 filing date.

We note that counsel, on appeal, does not address the issue (raised in the director's decision) pertaining to labor certification. We also note that the petitioner was a doctoral student at the time he filed the petition, with a nonimmigrant student visa valid for the duration of his studies. The petitioner's continued involvement in the project as a graduate student is therefore not in any way contingent on the outcome of his immigrant visa petition, and there is no indication from any of the witnesses (including those at Purdue University) that the petitioner's involvement is intended to continue after he completes his degree. Student projects, and postdoctoral appointments which are inherently temporary, are readily available to nonimmigrants and generally do not require permanent resident status as a matter of course.

The petitioner has plainly earned the respect and admiration of his superiors in the particular projects in which he has involved. It appears premature, however, to conclude that the petitioner's work has had and will continue to have a nationally significant impact on the work done in his field.

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.