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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: EAC 98 237 51715 Office: Vermont Service Center Date: 25 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:  
(Last known address of record:)  
[Redacted]

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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

In this decision, the term "prior counsel" shall refer to [REDACTED] who represented the petitioner prior to the filing of the appeal. The term "counsel" shall refer to the present attorney of record. Counsel appears to have assumed prior counsel's practice; their documents list the same address and telephone numbers.

We acknowledge that, on the cover page for this decision, the address provided for counsel is obviously no longer current. In the absence of a change of address notice in the record, however, we have no choice but to use the most recent address in the record, with the understanding that counsel is responsible for making the necessary forwarding arrangements with the U.S. Postal Service.

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 an alien of exceptional ability. At the time of filing, the petitioner was a doctoral student and research scientist at Columbia University's Manufacturing Research Laboratory; after completing his doctorate, he began a postdoctoral program in the same laboratory. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences,

arts, professions, or business be sought by an employer in the United States.

The petitioner claims eligibility as an alien of exceptional ability. The director did not address this claim, but acknowledged that the petitioner qualifies as a member of the professions holding advanced degrees (master's degrees from Dartmouth College and Columbia University). Because he qualifies as an advanced-degree professional, an additional finding of exceptional ability would be of no further benefit to the petitioner. 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.

Prior counsel states that the petitioner qualifies for a national interest waiver because of "his skills in non-conventional manufacturing, laser material processing, heat transfer, fluid dynamics, combustion, chemical and metallurgical process and computational simulation."

The petitioner submits several witness letters. Professor Vijay Modi, also of Columbia University, states:

[The petitioner's] research topic is laser material interaction. Laser processing is an innovative method . . . [with] many advantages over conventional processes. The process, however is quite complicated in terms of its physics. . . . It is clear that many of the physical phenomena in laser processing can not be better understood without comprehensive modeling efforts. One important part of [the petitioner's] research is to develop a transient three-dimensional model embracing coupled equations for heat transfer and fluid dynamics. . . .

[The petitioner] has already made some important strides in this research area. Based on a hydrodynamic instability analysis, he was able to formulate an analytical prediction on striation formation, which is an important phenomenon influencing laser cut quality. Oxidation has long been suspected of playing an important role in providing additional energy during laser processing. [The petitioner] has developed a numerical model to quantitatively account for the oxidation effects and their impact on striation formation. Another important but difficult aspect of laser processing is the effect of the gas jet. [The petitioner] is currently carrying out research on numerical simulations of the gas jet with the most advanced CFD techniques.

Other Columbia University faculty members, including the petitioner's supervisor, [REDACTED] state that the petitioner's modeling techniques have provided insight into striation and other aspects of laser processing.

Professor [REDACTED] who directed the petitioner's master's studies at Dartmouth College, describes the petitioner's work there:

The winning of metals from ores is a very energy intensive process. Recently new reactors have been invented in the USA, e.g., the QSL-reactors for lead or copper production and lately for steelmaking which decrease dramatically the pollution in the environment and decrease the energy requirements by producing the metal from the ore in one single sealed reactor. Oxygen or a reducing gas are injected directly into the liquid bath through submerged nozzles.

[The petitioner] contributed substantially to the understanding of this injection process by providing a careful analysis of jet stability in submerged nozzles. . . .

Several of these novel reactors are now in operation worldwide and [the petitioner's] theoretical work on jet instability might help to improve their performance or help in design changes.

[REDACTED] now a research scientist at the University of California, Los Angeles, previously conducted research at Dartmouth College while the petitioner was also a student there. [REDACTED] states:

[The petitioner's] thesis work at Dartmouth College focused on the study of two-phase characteristics of the QSL continuous oxygen converters, which produce lead bullion directly from ore concentrates. . . . It is important to understand several variables, including the behavior of gas and particulate matter in the turbulent liquids. Such knowledge is of fundamental value in designing reactors for continuous, direct metal making. [The petitioner] increased current understanding of the behavior by formulating an in-depth instability analysis and presented a convincing explanation of the phenomenon of the transition from bubbling to jetting. . . . His accomplishments are practically essential for the production of specialty metal making. . . .

Lasers can produce parts with very narrow kerf and excellent surface finishes. These aspects enable laser machining [to be] a growing alternative to traditional machining. However, current understanding of laser machining is far from complete. [The petitioner's] theoretical research activities [at Columbia University] currently include the investigation of the striations in laser cutting in terms of fluid dynamics; oxidation during laser cutting in terms of materials science and chemistry; [and] optimization of laser machining processes based on his theories.

James J. Pellegrini, former manager of Stent Engineering Development at Cordis, states that he managed a joint research project between Cordis and Columbia University "aimed at improving

in-depth understanding of laser material processing." [REDACTED] states that the petitioner "provided process insight which was not otherwise available."

The petitioner also submits copies of his published articles and documentation pertaining to his education, demonstrating that the petitioner has exhibited superior academic achievement. While many of these achievements are impressive, a plain reading of the statute and regulations shows that exceptional ability in one's field of endeavor does not, by itself, compel the Service to grant a national interest waiver of the job offer requirement.

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 further letters and documentation. Prior counsel argues that the Manufacturing Research Laboratory at Columbia University "has been the world leader in laser-machining related research" and the laboratory's staff "are world-class experts in the field who are in the best position to attest that . . . it would clearly be contrary to the national interest" to hold the petitioner to the job offer/labor certification requirement.

The petitioner submits copies of news articles about laser machining technology. These articles establish the intrinsic merit and national scope of the petitioner's work but, because they make no mention of the petitioner, they cannot show that the petitioner's work is more significant than that of other fully qualified researchers in the field.

In a new letter, [REDACTED] states that the petitioner's work is significant for four reasons:

1. It provides a comprehensive platform from which various phenomena important to the field can be conveniently investigated and better understood;
2. It promotes the development of a real capability to predict how material and laser will interact in novel situations and on novel materials;
3. It leads to effective methods for process design in place of the current trial-and-error approach;
4. The economic viability, along with quality, will be improved as a result of the improved process design because it yields more reproducible processes.

The above list appears to couch the significance of the petitioner's work in terms of benefits that will one day arise from it, rather than demonstrable examples of existing benefits. The record does not provide any examples of how the petitioner's work has already had an appreciable impact on laser machining on an industrial scale.

Dr. Yao acknowledges that the petitioner "can possibly get permanent residency . . . through labor-certification which takes two years or more," but he asserts that the nation would benefit greatly if the petitioner receives a "National Interest Waiver which will immediately avail him of a permanent resident status." We note that the granting of a waiver does not immediately or inevitably result in permanent resident status. The recipient of a waiver must still apply for either adjustment of status (if in the U.S.) or an immigrant visa (if abroad), and the waiver does not expedite the processing of such applications, nor does it guarantee that a given application will be approved.

The petitioner submits further letters from other witnesses, all of them Columbia University faculty members. Like [REDACTED] they refer to potential future applications of the petitioner's work rather than to existing uses of the petitioner's work already in use on an industrial scale. The witnesses observe that laser machining has been in use for several years, and therefore the petitioner is clearly not involved in a barely-nascent technology that has yet to see industrial applications.

As evidence of the petitioner's impact outside of Columbia University, the petitioner submits copies of messages from various researchers who saw the petitioner's presentation at a 1998 scientific conference and who found the presentation to be "very interesting," "helpful" and "relevant" to the research that these individuals are undertaking. The conference in question took place in November 1998, three months after the petition's August 1998 filing date, and therefore these communications do not establish any outside interest in the petitioner's work as of the filing date. For the same reason, we cannot award the petitioner an August 1998 priority date based on new postdoctoral projects with which the petitioner was not yet involved as of August 1998. See Matter of Katigbak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's occupation but stating that the petitioner has not submitted independent evidence to establish the reaction to the petitioner's work outside of Columbia University. On appeal, the petitioner submits a copy of the previously submitted letter from [REDACTED] has already identified himself as someone who worked at Dartmouth during the petitioner's studies there, and therefore his assertions are no more independent than those of the Columbia faculty.

The only new letter submitted on appeal is from [REDACTED] manager of Data Management at the IBM T.J. Watson Research Center. Given that one of the first things Dr. Li states is that he used to

be "an assistant professor at Columbia University," it is not entirely clear how [REDACTED] statements represent opinions independent of the petitioner and Columbia University. [REDACTED] states:

I am particularly interested in [the petitioner's] work since I believe it produces valuable guidance for industrial applications in laser materials processing, which an area that IBM has practiced over decades. . . .

Laser micromachining has been [in] manufacturing use in microelectronics and data-storage industries for over 15 years. . . .

[The petitioner's] work aims at producing a comprehensive account that will make ablative micromachining processes to be more predictable, which is directly applicable to the technology base underlying the microelectronics industry and other areas such as MEMS. The work has potential to provide far-reaching and more precise simulation capabilities which lays valuable groundwork to aid and stimulate new development in the area of laser micromachining. Overall, his work of improved process simulation capabilities would be very beneficial towards the goal of industrial practice.

[REDACTED] like other witnesses, is very complimentary of the petitioner's skills as a researcher, and clearly believes that there is much promise in the petitioner's work. Like the other witnesses, however, [REDACTED] does not indicate the extent to which such promise has already been fulfilled, nor does he show that the petitioner's past work has been sufficiently influential to justify the conclusion that he will continue to influence his field beyond the extent that is expected of any competent researcher who produces published work.

We stress that it is not our intention to impugn the competence or integrity of the petitioner's mentors at Columbia University, which has earned a reputation in the top echelon of prestigious American universities. At the same time, however, the petitioner cannot establish a track record of significant achievement if strong praise for his work is largely confined to his professors and collaborators. [REDACTED] an influential figure in his field, has high praise for the petitioner's work, but many of the petitioner's papers were co-written by [REDACTED] himself.

The record shows that outside researchers consider his work "interesting" but the record does not demonstrate the degree of impact that the petitioner's work has already had. Considering that he researches industrial applications of lasers, it is not unreasonable to expect evidence pertaining to existing industrial uses of the petitioner's work.

Also, while counsel has observed that the petitioner has written many published articles, publication itself does not prove impact; it establishes only that the petitioner has had a forum to disseminate his findings. The record does not contain evidence of consistent citation or comparable evidence to demonstrate that the petitioner's published work has garnered a significant amount of attention and influenced others in the field.

Counsel observes that the petitioner has won several academic awards and honors. Graduate study is not a field of endeavor, and the petitioner's performance in a student environment is not necessarily a reliable indicator of future success in a career setting. The petitioner has not demonstrated comparable recognition from the overall research community, or from the businesses in the industry that his work is said to benefit.

Counsel asserts that the petitioner has continued producing valuable work since the petition's filing date. The proper context for considering such new evidence would be a new petition, with a filing date that falls after the dates of publication and presentation.

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.