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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: 25 JAN 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:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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 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.

Section 204.5(k)(2) provides, in pertinent part:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The petitioner's occupation falls within the pertinent regulatory definition of a profession, engineering. The petitioner holds a Bachelor's degree in Plastic Shaping Technology from Beijing Second University of Aeronautics and Astronautics and the director did not contest that the petitioner had at least five years of progressive experience. 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, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner proposes to work in an area of intrinsic merit, polymer engineering. The director concluded that since the petitioner was a student with no specific employment plans, he could not demonstrate that the proposed benefits of his work would have a national impact. While the director's argument is not without any merit, we conclude that major contributions to the field of polymer engineering can have a national impact. The issue is whether the petitioner's past history of contributions justifies projections of future benefits in the field.

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 she 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. Matter of New York State Dept. of Transportation, supra, note 6.

the petitioner's advisor at the University of Akron, states that the petitioner's research at that institution involves the application of injecting molding techniques to polymer materials. Dr. White discusses the "intriguing" aspects of this area, concluding:

Because injection welding is so new an interest in plastics engineering, and because these applications are so demanding, there is not even an established norm for determining the peel strength of test weld specimens. [The petitioner] has produced a new Standard Test Method to be submitted for approval by the American Standard Test Method Committee.

As you might surmise from his background, [the petitioner] is one of our most experienced researchers in plastics engineering. His efforts and knowledge have saves [sic] us all valuable time and expense in designing molds, selecting materials, determining experimental parameters, and especially in analyzing results. Thus, his contribution as a student and research assistant is even more important than usual to an institution like ours.

...

If [the petitioner] is not granted a permanent resident visa and is unable to continue his work in polymers here, the University and the United States will lose a man of notable accomplishments, of exemplary dedication, and of unusual promise, and we, the academic community, American science and industry, and our citizens would all the like be the losers.

fails to explain how the petitioner's work at the University of Akron has influenced the field as a whole. The record does not reflect that the petitioner's new Standard Test Method has been adopted by the community. While asserts that the University of Akron would suffer a loss if the waiver is not granted, the petitioner may already complete his studies at the University of Akron with his current non-immigrant student visa.

a fellow student at the University of Akron, states that the petitioner's area of research is important because "discoveries in this field will lead to the design and production of simpler and cheaper parts and components in numerous applications." then explains why the current technologies for combining disparate materials have disadvantages. continues:

[The petitioner] is particularly interested in the alternative, and much cheaper, possibilities of injection moldings. Because his research is entirely new in the

field of plastics engineering, there is no existing American Standard Test Method for his experiments. He designed a new ASTM to determine the peeling strength of specimens of injection welding and presented it at the Molding Technology Research & Development Center. It has been applied successfully applied [sic] in several studies, and the information gained in this experience will support the standard in its review by the ASTM Committee.

The record contains no testimonials from independent researchers who have applied the petitioner's new standard successfully.

The record includes a letter from [REDACTED] Senior Engineer for Department of Environment Protection for Beijing Institute of Coal Design and Research (BICDR), where the petitioner worked from 1985 to 1988 as an engineer. [REDACTED] states that the petitioner played a "key role" as the most experienced expert in the field of environmental monitoring for two BICDR projects. Specifically, BICDR received \$500,000 from China's Ministry of Energy for compiling a report on Evaluating and Improving the Whole Environment in the Datong Bureau of Coal Mines and another \$4,000,000 from China's Ministry of Coal Industry for setting up a Model Engineering Program in JinCheng Bureau of Coal Mines to treat water under coal mines.

[The petitioner] designed the plan for collecting samples, developed programs for analyzing samples and editing the results in the form of monitoring report. Without his reports we could not have started evaluations because we did not know the original environmental conditions in the coal mines. We could not have continued our air and water treatment programs because we would have failed to follow the results from these programs. [The petitioner] was the eyes and basis for our projects.

Finally, [REDACTED] states that the petitioner was responsible for BICDR's advanced certificate for evaluating the environment as checked every two years. Specifically, during the certificate testing process, the petitioner discovered an error in the General Laboratory of China's Environment Monitoring's calculation of BOD<sub>5</sub>.

[REDACTED] former director of the Plastics Processing Laboratory, discusses the petitioner's role in BICDR's acquisition of the coal project discussed by [REDACTED]

At the final stage of the bid, only two institutes were left, one was BICDR, the other was China's General Institute of Construction Design and Research (CGICDR). CGICDR is the No.1 institute in China's construction industry. Due to [the petitioner's] extraordinary knowledge on plastic formula and environment, and experience in the area of coal mines, BICDR has an exceptional formula for its double wall corrugated plastic pipes (DWCPP). They have the inner wall of their DWCPP made from recycling plastic as smooth as one made from new plastic by adding a kind of special lubricant additive. And they also put some other additives only in the outer wall to reach the customer's requirement. That

cause the cost of their product only to be 80% of their rival's while matching demanding performance at the same time. As a result, BICDR received the contract.

Helmut Gröll, chief representative for Chinese Affairs of AMS Anlagenplanung GmbH & Co. of Hamburg, writes:

[The petitioner] worked with our office and under my supervision as a plastic engineer and sales manager between 1993 and 1995. He started by developing a new processing technology, production lines, and formula for foam plastic sheeting to meet the requirements of the local market and make more efficient usage of local plastic raw materials. He set up a joint venture operation between my company, AMS, and the China Wenzhou Plastic Raw Material Corp. for the production of foamed plastic sheeting to replace wood, steel, cement, and brick as building materials. The sheets are light and have strong properties in resistance to fire, insect damage, and corrosion, and, as a result of [the petitioner's] efforts in part, the cost of housing has been reduced and economic conditions have improved substantially in the area in which the materials are now used.

[The petitioner] enjoys demanding projects. His biggest challenge came in the second half of 1994, when he went to Zhejiang to participate in an international bidding solicited by Zhejiang Machinery & Electric Equipment Tendering Bureau. There he met representatives of leading manufacturers of double-wall corrugated plastic piping from the world over. . . . It was an opportunity for [the petitioner] to display his knowledge, ability, skills, experience in research and design, production management, and marketing, as well as his general character. Ultimately, he won the bidding and concluded a sales contract worth US\$ 5 Million.

Su Yi, Chief Engineer at Beijing Factor of Knives and Scissors (BFKS) where the petitioner worked from 1983 to 1984, writes:

In 1983 BFKS was in major trouble and it could not even afford to pay its workers due to its backward processing technology, pattern, package, color, and working condition. [The petitioner] first updated the processing technology. Then he improved the working conditions for workers. For example, BFKS used to blend its plastic raw materials by opening blending machines. Its workshops were full of plastic dust. [The petitioner] updated them by using closed blending machines. . . . [The petitioner] was awarded the title of Model Engineer of Technological Innovation by the Ministry of Light Industry, P.R. China (MLIPEX) that year, a major honor.

The above letters are all from friends, colleagues and collaborators. While such letters are useful in explaining the petitioner's role in various projects, by themselves they cannot establish that the petitioner has influenced his field beyond his immediate circle of colleagues.

At the time of filing, the petitioner had authored eight published articles. The petitioner submits a new published article on appeal. 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 influential contributions; we must consider the research community's reaction to those articles. The record does not reflect that the petitioner's work has been cited by independent researchers or, in fact, at all.

Several of the petitioner's references refer to prizes won by the petitioner. The petitioner failed to submit copies of the award certificates. Moreover, the record does not establish that the alleged awards represent recognition of the petitioner's contribution to his 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 appeal is dismissed.