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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

[redacted]

File: [redacted] Office: Nebraska Service Center Date: 30 JAN 2002

IN RE: Petitioner: [redacted]
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:

[redacted]

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), 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.

The petitioner holds a Master's degree in Material Science from East China University of Chemical Technology. 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, 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, chemical research. 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 chemical research 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.

Dr. Joseph J. Marcinko, Senior Technical Associate at ICI Polyurethanes Group, writes:

> In 1996 [the petitioner] began working on the ICI Polyurethanes funded project after the departure of a post doctoral researcher who had initially been associated with the project which began in 1995. This research involves the characterization

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of the molecular interactions and molecular dynamics associated with Rubinate® (isocyanate based) adhesives on wood or other lignocellulosic structural composites. This research is very important for the development of new structural adhesives by our company. It is also important to the growth of the wood and lignocellulosic composite industry in general. The manufacturing and use of wood and agricultural composites has grown dramatically in the past few decades. . . .

[The petitioner] is currently applying solid state NMR techniques to study Rubinate bonded wood composites. In this research we are attempting to define the nature of the molecular interactions between adhesive and wood molecules, and the molecular structure and energy dissipation mechanisms operative within the adhesive bond. Solid state NMR is the method of choice for developing structure/property relationships in composite materials. The reason for this is the techniques' ability to probe the molecular interactions and molecular dynamics of the adhesive and substrate non-invasively. To date, [the petitioner's] work has been very helpful in defining adhesion mechanisms and structure/property relationships in wood composites manufactured with our adhesives. To be more specific, [the petitioner's] characterization of the aging effect of the adhesive, the influence of varying moisture contents in different wood species, and his development of sophisticated two-dimensional NMR techniques for defining specific molecular interactions has been invaluable. This work has not only resulted in a fundamental understanding of adhesion within these composites, but it has been practically applied to the development of new adhesive formulas.

Professor L. Rinaldi at the University of Akron, the petitioner's advisor, writes:

[The petitioner] has worked very hard in my group to demonstrate the feasibility of new NMR analysis methods for studying composites from polyurethane and wood-related materials. Those student[s] in my group who perform well are rewarded by having their expenses paid to attend a national meeting where they present their results. [The petitioner] recently received one of these travel awards to present his results at the annual Experimental NMR Conference held this past March at the Asilomar Conference grounds in Pacific Grove CA. His presentation was well received by other scientists who work in the fields of NMR and materials science, and we received numerous requests for reprints and further information describing his work.

He has mastered the operation of solid state NMR instruments and has performed relaxation and two-dimensional NMR experiments on solid materials. [The petitioner] has also had broad experience in using solid state NMR to solve many other research problems, submitted by the many local companies who use our NMR facility. Because of his unique training, when he receives his Ph.D. in

Chemistry, he will be a valued hire for any company in the polymer/materials science industry.

[redacted] assistant professor at the University of Akron, writes:

> [The petitioner's] research involves the application of solid-state NMR to characterize adhesive/wood interactions in engineering wood materials, with the goal of this work being an understanding of the molecular level interactions between the adhesive and wood. These are difficult questions to address, however, a better understanding of the types of interactions present will provide future direction in the design of new and better adhesives. NMR is a very powerful and ideal technique to address these questions and the current literature suggests that out side of Professor Rinaldi's lab, this technique has not been exploited. Thus, [the petitioner's] NMR work is at the forefront, and is providing insights into the adhesive/wood interactions previously unobtainable by other techniques.

[redacted] a former post-doctoral researcher in [redacted] group, provides similar information regarding the petitioner's work in that laboratory.

[redacted] a former colleague of the petitioner's at the East China University of Chemical Engineering, discusses the petitioner's "pioneering work on the formation zone of fluoride glass," which "made a considerable contribution towards the theory of glass formation," "the synthesis and characterization of micro-ceramic glass and ultra-fine powder materials" and the development of a "method to use industrial waste slug as raw materials to make man-made marble, a very useful building material."

[redacted] a professor at the East China University of Science and Technology, provides general praise of the petitioner's student abilities and reiterates the petitioner's role in the projects discussed by [redacted]

All of the above letters are from the petitioner's colleagues, professors and collaborators. While such letters are useful in explaining the nature of the petitioner's role in various projects, by themselves they cannot establish that the petitioner influenced his field as a whole.

The record contains evidence that the petitioner had authored five published articles and another article accepted for publication. 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 reflects that one independent researcher cited one of the petitioner's articles and that the petitioner's co-authors in another article cited that article. While self-citation is a normal practice, it is not evidence of the influence of the article beyond those involved in the research. A single citation by an independent researcher is not evidence that the petitioner's has influenced 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.