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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: 30 JAN 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 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 director did not contest that the petitioner holds a Master's degree in Solid Mechanics from Tianjin University.¹ 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

¹ The record includes a foreign-language document labeled as "Master's Degree," but the record does not include a certified translation as required by 8 C.F.R. 103.2(a)(3).

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, 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 engineering can have a national impact. The petitioner's current project, for example, the use of scrap tires in asphalt to alleviate the environmental issues raised by tire disposal could result in a national benefit. The issue, however, is whether the petitioner's past history of contributions justifies projections of future benefits in the field.

Counsel and several of the petitioner's references note that the Federal Government has mandated research into the incorporation of scrap tires into asphalt. Eligibility for the waiver, however, must rest with the alien's own qualifications rather than with the project. 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.

[REDACTED] an assistant professor at the University of Akron who indicates that he has observed the petitioner in the laboratory, discusses the importance of reusing scrap tires in asphalt and the petitioner's role in this project at the University. He states:

[The petitioner] is responsible for the asphalt-rubber binder design, the asphalt-rubber-aggregate mixture design, and the mechanical property evaluation of the binders and mixtures. He has developed several mixture formulations for the CRM asphalt concretes. Through his testing program, he showed that CRM asphalt concretes exhibit better rutting resistance and low temperature thermal cracking resistance than conventional asphalt concrete. This is a significant contribution to the project and also to the field of pavement design. In the next stage of his work, he will make further improvements to his CRM concretes so that these concretes can be used as a viable asphalt pavement.

[REDACTED] also asserts that the petitioner is the only individual currently working on this project so that the project's success is dependent on his work. The petitioner is currently in the United States on a non-immigrant student visa valid for the duration of his study. He can complete this project as a student in his current visa classification. Upon graduation, he would no longer be involved in this project as a student regardless of the outcome of this petition. Thus, the argument that it is in the national interest to waive the labor certification so that he can continue this project, which he can already do under his current classification, is not persuasive.

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

[The petitioner] has completed a variety of laboratory tests on various crumb rubber modified asphalt binders and mixtures. Through these tests, his work revealed that the additional crumb rubber into asphalt concrete [sic] can prevent or at least attenuate several types of distress associated with conventional asphalt concrete. For instance, the crumb rubber modified asphalt concrete he developed exhibited significant improvement in low temperature thermal cracking resistance and rutting resistance.

Professor [REDACTED] who serves on the petitioner's dissertation advisory committee, and [REDACTED] recent Ph.D. graduate of the University of Akron, provide similar information to that quoted above.

Professor [REDACTED] the petitioner's professor and colleague at Tianjin University, provides general praise of the petitioner's academic performance and teaching ability. He further states:

[The petitioner] received several projects from government agencies and industries. For example, as the principal investigator, he received a project from the National Foundation of Natural Science, "Interfacial Dynamic Behavior Study of Dissimilar Materials[.]" His study revealed an important finding in the interfacial mechanics that only square-root singularities exist near the tips of the interface cracks of two different materials under dynamic load. This is important because it is a breakthrough to the understanding of development of crack tips in composite materials.

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 four 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.

The record also includes a letter advising the petitioner that he received the highest score on the Fundamentals of Engineering examination and two Chinese-language certificates without translations. These documents do not reflect that the petitioner has influenced 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.