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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



19 JUN 2002

File [Redacted]

Office: Nebraska Service Center

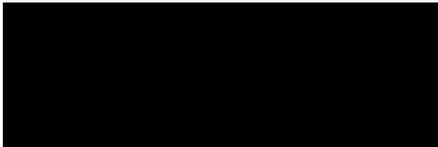
Date:

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 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 sustained and the petition will be approved.

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 did not contest that the petitioner qualifies for classification as a member of the professions holding an advanced degree but concluded 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 did not contest that the petitioner 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.

We concur with the director that the petitioner works in an area of intrinsic merit, polyacene research, and that the proposed benefits of her work, the development optical limiters, electrical conductors, and electrodes for ion batteries as well as biodegradable packaging, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

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. Id. at note 6.

Gregory L. Baker, an associate professor at Michigan State University, discusses the importance and many applications of the acene members of the electroactive class of polymers. He asserts that no one had devised a suitable synthetic route to polyacenes. Dr. Baker further asserts that the petitioner "has devised a simple route to well-defined polyacenes and acene-like materials, and showed that polymerization of a simple, low cost precursor leads predominantly to the acene product." Dr. Baker continues that the lithium in lithium ion batteries must be intercalated in carbon as the anodes for safety. He asserts that the ideal carbon for this use is "partially graphitized and has small regions of crystalline graphite randomly dispersed on a carbon

matrix.” As this process of graphitization is poorly understood, Dr. Baker asserts that the carbon is usually prepared using empirical processes that are closely guarded secrets. Dr. Baker continues that the petitioner “discovered that when her polyacene materials were heated, they graphitized systematically to give materials with properties that can be readily controlled.” Dr. Baker concludes that this process will enable “thoughtful synthesis of new carbons for electrode applications.” Finally, Dr. Baker states that the petitioner has recently begun work on biodegradable polymers through the development of novel copolymers based on lactic acid monomers which “promises to broaden the range of applications that can be fulfilled by these environmentally friendly polymers.”

Alec B. Scranton, another associate professor at Michigan State, also discusses the petitioner’s work with polyacene.

Although polyacene is the most promising conductive polymer, unfortunately, the preparation of polyacene is difficult, owing to the low solubility of linear acenes, and their high chemical reactivity. Therefore, little success has been obtained in this area. Some related structures, however, have been prepared. The longest acene structure that has been reported to date is heptacene, which is only seven units long. It can only be regarded an oligomer, not a true polymer. Thus, the polyacene’s synthesis is still a mystery. After one year of hard work in the lab, [the petitioner] successfully discovered a way to synthesize polyacenic material. She is the first researcher to cleverly use FT-IR to clearly characterize the formation of the polyacene structure. This is a major breakthrough in this area. . . . Besides the difficulty in synthesis, another problem with polyacene is that it is very insoluble in almost any solvent due to the rigid structure. After her first success, [the petitioner] focussed on solving this most challenging problem of discovering soluble polyacenes. The discovery of soluble polymer not only makes characterization and processibility easier, but also is essential for technological application of the materials. [The petitioner] spent one year designing and preparing polymerizable monomers via two synthetic schemes, and another year developing a polymerization method. Unlike most graduate researchers, she did all these projects independently because there were no references to this approach available in the literature. She successfully obtained high molecular weight soluble polyacenes, containing 32 aromatic units - the longest polyacene chain so far. This work represents a huge improvement in this area. . . .

. . . Last fall she started another project “Synthesis of polylactide and glycolide copolymer and kinetic mechanism study.” Polylactide is a main member in the biodegradable material family. Biodegradable polymers can degrade in the body by simple hydrolysis of the ester backbone lactide and glycolide. The degradation products are either excreted by the kidneys or finally eliminated as carbon dioxide and water. Polylactide and its copolymer can be used as biodegradable packaging

thermoplastic materials, surgical suture material and also have wide applications in drug delivery.

Chi K. Chang, another professor at Michigan State, reiterates much of what is discussed and quoted above. He notes:

[The petitioner] spent one year trying numerous catalysts until she found the one best for polymerization, which even surprised her research director who later said that her discovery should be used to test other Ph.D. candidates in the departmental cumulative test, because it is such a[n] uncommon reaction.

Regarding the synthesis of polymers, Professor Chang states:

[The petitioner's] specific contribution in this area is that she is the first to synthesize soluble polyacenes and that she also synthesized the highest molecular weight materials. The solubility of a polymer is very important to allow proper characterization and for easy processing. Polymers typically are processed by heating, but for polyacenes their softening temperature is so high that they will decompose before melting. Thus, the only way to deal with polyacenes is by solution process. Therefore, the problem of characterization and processing of polyacene which has baffled researchers for a long time has finally been solved. Because of her work, polyacenes may have a future in the marketplace.

Finally, regarding her final project at Michigan State, Professor Chang writes:

[The petitioner] is the first one here to have synthesized ethyl, isopropyl, hexyl substituted lactide monomer and she is now copolymerizing these new lactide monomers with glycolide. Therefore, the first synthesized copolymers of lactide and glycolide impart unique toughness, thermoplastic processability and improved biodegradability as compared with the homopolymers and other copolymers.

William Reusch, another professor at Michigan State provides general praise of the petitioner's work.

Cuiming Zhang, Chairman of the Department of Food Engineering at the Sichuan Institute of Technology, discusses the petitioner's teaching accomplishments and her work with the food additive maltodextrin and sweet potato high-maltose syrup, both adopted by industry.

Weixiao Cao, a professor at the College of Chemistry Molecular Engineering at Beijing University, provides general praise of the petitioner's academic accomplishment and discusses her work on stain resistant nylon carpet sponsored by Dupont.

Through several months of extensive literature review, she first related fiber's stain-resistance to its crystallinity, which she believed to be a major breakthrough

in this field, but which unfortunately had not attracted sufficient attention in this field. Although it is common sense in chemistry that the material's property depends upon both its chemical and physical property, none of the previous research projects had ever tried to study the influence of fiber's physical property on its stain-resistance. One specific problem with the fiber's crystallinity study is that it is rather difficult to measure the crystallinity degree of the Nylon fiber. She was the first to use two ways to change nylon fiber's crystallinity, and also creatively used x-ray to measure the fiber's crystallinity degree. Therefore, we were the first group to be able to study how the fiber's crystallinity, one of its most characteristic physical properties, affects the fiber's stain resistance. Her idea was verified by subsequent experimental results. The second part of her thesis concerned the surface treatment of Nylon fiber. She synthesized a series of surface treatment reagents, in which the sulfonated phenolic resin is the most effective one. It can prevent the fiber from being dyed for over two weeks, which is even better than Dupont's sample which is only valid for 3 days. Now we are applying for a patent for this surface treatment reagent. The third part of her thesis involved studying the effect of an additive on Nylon fiber's stain-resistance. This idea has attracted the attention of many researchers since the 1960's, but no satisfactory results had been obtained until now regarding the stain-resistance mechanism. After solid theoretical reading and six-months of arduous exploration on her own, she bravely advanced an original concept, "block on the Nylon fiber's main chain[.]" to explain the mechanism. She believed that the additive block on the Nylon fiber main chain inhibits the dye's permeation from the dyed to undyed area. Although this part of the research is still in process, the experimental results to date have already demonstrated that her assumption is reasonable and logical.

The petitioner also submitted evidence that she had authored three published articles. 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 influence; we must consider the research community's reaction to those articles.

The petitioner submitted evidence that one independent researcher had cited her work. While one citation is not evidence that the petitioner has influenced the field as a whole, the petitioner also submitted three letters generated in response to her presentations and written work. Jian Zhou of the Cambridge Research Center requests additional details about the petitioner's techniques but expresses concern about the petitioner's results. Sam Sun, Head of Organic and Polymer Labs at

Norfolk State University, asserts that he was impressed by the petitioner's presentation at a conference and states:

I am interested in the way you successfully solved the polyacene's solubility problem by attaching long alkyl side chain onto the polyacene backbone. To my knowledge, this is not an easy task since I have tried similar scheme before. As we all know, poor solubility or processability is a major challenge for many conductive and photonic polymers. I am currently conducting a project to develop novel nonlinear optical (NLO) materials. Since most of the NLO polymers I am working on contain conjugated moieties, solubility is a major challenge. Your strategy looks very attractive to me. I would like to keep in touch with you in the future so that we might collaborate on these projects.

Cory J. Ruud of Kent State University expresses his pleasure at meeting the petitioner at an American Chemical Society national meeting and his interest in arranging a time to discuss integrating the petitioner's cross-linking chemistry results into his own work.

The director concluded that the petitioner's work was not known and considered unique outside of the petitioner's immediate circle of colleagues. On appeal, counsel asserts that the petitioner's references have no reason to perjure themselves and notes the positive response to the petitioner's articles and presentations. The petitioner submits letters from a former fellow classmate and a project leader at Solutia Inc., as well as more positive responses to the petitioner's presentations and articles.

To say that a petitioner cannot establish an influence on the field as a whole without evidence from those outside her immediate circle of colleagues is not to accuse the petitioner's colleagues of perjury. Nevertheless, in this case, the petitioner's colleagues provide specific examples of the petitioner's contributions and their significance and are supported by highly positive responses to the petitioner's presentations and published articles. The "requests for reprints" go far beyond the typical postcard requesting a copy of the petitioner's presentation or article. Such postcards merely reflect an interest in the subject matter. The requests submitted by the petitioner, on the other hand, reflect that the requestor was familiar with the petitioner's work and was interested in discussing how that work could be incorporated into the requestor's own project.

In addition, the materials submitted on appeal further reflect that the petitioner's influence continues to extend beyond her immediate circle of colleagues. Ke Liu, a project leader and R&D specialist at Solutia Inc., the former chemical business of Monsanto Corporation, indicates that he previously worked for Exxon-Mobil and is a reviewer for two different journals. Mr. Liu met the petitioner at two conferences and indicates that he was impressed with her presentations. He states:

The significance of [the petitioner's] work is that she developed a general method for the kinetic study of the copolymerization and a new way to evaluate the kinetic parameters. [The petitioner] explained the object and analysis protocol she developed to the attendees. I asked her several questions and was deeply impressed

by her insight in polyactide copolymerization and broadness of knowledge. From then on we kept in touch, exchanging information and discussing problems through email, FAX and telephone.

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 field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the polymer research community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest which is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has 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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.