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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

[Redacted]

File: [Redacted] Office: Nebraska Service Center Date: 6 - MAR 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:
[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), 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.

The petitioner holds a Ph.D. in Mechanical Engineering from the University of Akron. 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.

We concur with the director that the petitioner works in an area of intrinsic merit, mechanical engineering and increasing minority retention rates in the field of engineering. The director next concluded that the petitioner's impact would not be national. Specifically, the director stated:

The impact of an individual dean administrator and teacher, working in a specific geographic area, providing services primarily to one institution in one particular geographic area, is so attenuated at the national level as to be negligible.

On appeal, counsel asserts that the University of Akron where the petitioner teaches has students from 43 states and 64 countries. She further asserts that the petitioner "shares his discoveries with others throughout the field in an effort to increase diversity in the field of engineering." She notes a presentation he gave in Anaheim, California in 1998.

That the University of Akron enrolls students outside of Ohio does not expand the petitioner's impact. We acknowledge, however, that the petitioner has published articles regarding this issue and gives presentations outside Ohio. As such, the proposed benefits of his work would be national in scope.

The director then concluded that the petitioner had not established that he will benefit the field of mechanical engineering or minority recruitment and retention in this field 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 he 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. On appeal, counsel asserts that the petitioner has made "stellar contributions" to his field.

Regarding the petitioner's impact on minority retention in the field of engineering at the University of Akron, counsel initially stated:

Overall, during his tenure and involvement in the Minority Engineering Program at the University of Akron, the retention rate has risen from 31% for students admitted in 1991 to 74% for students admitted in 1997. This retention rate compares favorably with the estimated national retention rate of 70% for all students and 50% for minorities.

These statistics appear in the petitioner's 1997 article (co-authored with Dr. Paul Lam and Dr. Dennis Doverspike) entitled "Increasing Diversity in Engineering Academics (IDEAs): Development of a Program for Improving African American Representation," published in the *Journal of Career Development*. In a letter submitted in support of the petition, however, Dr. Lam, Association Dean for the College of Engineering at the University of Akron, asserts that, due to the petitioner's efforts, the retention rate for minority students at the College of Engineering has risen from three percent to over 40 percent. The record does not resolve this inconsistency.

Dr. Doverspike, a professor of psychology at the University of Akron, asserts that the petitioner is recognized as "one of the major names in the field of minorities in engineering." Dr. Doverspike continues:

Together with [redacted] [the petitioner] and I have already published one article on minority engineering, have another one accepted for publication and have a number in progress. This work has helped to advance our knowledge of the factor contributing to African American success in engineering programs. Our article describes in detail a program for increasing African American participation in education.

Regarding the petitioner's engineering research, [redacted] asserts only that the petitioner's research is "well thought out."

Dr. Q. Julie Neifert, a senior engineer at Goodyear Tire and Rubber Company, asserts that the

petitioner "has been highly successful in developing simpler model of nonlinear dynamics of single and two-phase flow models based on is doctoral dissertation." Dr. Neifert continues that the petitioner has a strong mathematical and technical background.

Dr. Ted Conway, the petitioner's thesis advisor, asserts that the petitioner has expanded his fluid dynamics research into model blood flow in arterial systems, and area in the forefront of biomedical engineering research. Dr. Conway concludes that the petitioner, "has the potential to make a significant contribution to this critical area of research."

Dr. Nicolae Mazilu, a senior project engineer at Bridgestone/Firestone and former fellow student of the petitioner's, writes:

[The petitioner's] research is focused mainly on the hot issue of nonlinear dynamics of two-phase flow, and covers uncharted areas in this field, playing a key role in understanding the nature of instabilities and vibration of polymerized flows that are used in the manufacturing of tires, for instance. This kind of research is vital in developing better tires that do not have any defects thereby enhancing safety for occupants of the various vehicles. His other research in fluid flow is essential in the understanding of fluid flow behavior in turbines, condensers, boilers and evaporators that are used in power plants and by the energy industry. A specific task of this research is the discovery and development of the mathematical and computational models necessary for the description and control of the dynamical systems having a highly nonlinear behavior, such as those present in the fuel channels of nuclear reactors. These nonlinear dynamical effects stem from vibrations and instabilities, and are due to the effects of kinetic energy, interfacial forces between a fluid and its walls, as well as the properties of the fluid itself. Experimental work done in this direction is time consuming and is not as effective due to the nature of its complexity and monetary expenses that can be incurred in systems modeling. [The petitioner] is working on a relatively new and simpler approach to model these nonlinear dynamical effects which use mathematical and computational approaches that can be utilized to understand two-phase flows without resorting to experiments. Based on some of his work such as his Master of Science thesis on modeling air conditioning systems and the Doctoral Dissertation, [the petitioner] has been highly successful in developing simpler computer two-phase models. These models are unique in that a system that depends on many variables such as temperature, mass, pressure, time, density, area, length, gravity, and energy, is reduced to only three variables which are pressure, temperature and time.

Dr. Lemmy Meekisho, an associate professor at the Oregon Graduate Institute of Science and Technology who serves with the petitioner¹ on the Minority Leadership Program of the American Society of Mechanical Engineers, asserts that the petitioner's work:

¹ The petitioner is an intern on this committee.

Establishes a foundation for the understanding of temperature effects and the interaction between fluid flow in channels and their walls. Such research is important in determining ways that will help in the prevention of failure in thermal equipment such as boilers, heat exchanges, and turbines, which are used in the power plant industry.

Dr. Meekisho further comments on the petitioner's work with minority recruitment and retention, asserting that the petitioner's published article on this subject "discusses the elements of the diversity recruitment and retention program that he helped develop."

Terry G. Logan, president of the consulting company The Logan Group, writes:

[The petitioner's] involvement in the computer simulations of heating and air conditioning systems can be used in the cooling of electronic equipment. Electronic equipment in systems such as computers tend to heat up during operation as a result, [the petitioner's] research, is vital in enhancing the performance of electronic systems. Also, the development of computer models is an important step in understanding the interaction between the conduction of temperature between electronic chips and the computer circuit board.

Mr. Logan does not indicate how he knows the petitioner or how the petitioner's work has influenced his own projects.

The record also contains grant awards listing the petitioner as a co-principal investigator in the minority retention projects. The petitioner's important role in this project is not in doubt.

The above letters, however, are nearly all from colleagues and collaborators. While such letters are important in detailing the petitioner's role in his projects (which is acknowledged to be significant), these letters cannot by themselves demonstrate that the petitioner has influenced his field beyond his immediate colleagues. None of the letters from individuals who have not collaborated with the petitioner explain how the petitioner has influenced their own projects. There are no letters from deans at other engineering colleges asserting that they are adopting the petitioner's IDEAs program (or a program based on IDEAs) at their own institutions.

On appeal, the petitioner submits a letter from Norman L. Fortenberry, Division Director of Undergraduate Education at the National Science Foundation expressing appreciation for the petitioner's services reviewing grant proposals. The letter is dated April 20, 1999. While the petitioner's participation on a review panel for the National Science Foundation is impressive, the record does not indicate that the petitioner was a member of this panel as of the date of filing, August 7, 1998.

The record also includes several of the petitioner's articles which have been published or 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 contains no evidence that independent researchers or educators have cited the petitioner's articles.

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.