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U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

[redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: [redacted] Office: Nebraska Service Center Date: 11 MAR 2002

IN RE: Petitioner:
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 sustained.

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. At the time of filing, the petitioner was a doctoral student and graduate research assistant at the University of Illinois at Urbana-Champaign. 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 an M.S. degree in Agricultural Engineering from Iowa State University. 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 sole issue in contention 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.

Counsel states that the petitioner "is truly an internationally recognized and renowned scientist in the field of hydrologic modeling for both point and non-point source pollution and groundwater contamination due to agri-chemicals. His work is a significant innovation in this area."

Along with copies of his published research, the petitioner submits several witness letters, mostly from University of Illinois ("UI") faculty members and researchers employed by the U.S. Department of Agriculture ("USDA").

Leon Wendte, district conservationist with the USDA's Natural Resources Conservation Service ("NRCS"), has been collaborating with the petitioner. He describes the petitioner's work:

> Before the arrival of settlers, much of the Midwest was a swamp and unsuitable for agriculture. Subsurface tile drains made of clay were installed to drain excess water from fields during [the] late 19th and early 20th century. These artificially drained agricultural lands became suitable to grow corn and soybeans. With time, part of these tiles stopped functioning. Maps showing locations of these old underground tiles rarely exist. Therefore it is extremely difficult to find non-functional tile drains.
>
> Previous attempts to map subsurface drainage tile have been unsuccessful. However, with the help of [the petitioner] we were able to develop a procedure to delineate subsurface tile drains using color infrared (CIR) aerial photographs. . . . The northern two thirds of Illinois and ten more states . . . would benefit from similar subsurface tile mapping. . . .

> Surface and subsurface water contamination from nonpoint source pollution is a serious environmental concern to [the] Environmental Protection Agency (EPA). In recent years due to the extensive use of fertilizer and pesticides, some rural drinking wells are now at risk. . . . Any agri-chemicals applied over the tile drains may short-circuit and end up in our surface waters. By knowing the location of tile drains, application of agri-chemicals can be avoided at those spots.

The record contains an article from an unidentified newspaper, featuring several quotations from Mr. [redacted] In the article, Mr. [redacted] did not mention the petitioner's name, let alone credit him with developing the mapping technique. Rather, according to the article, [redacted] said . . . the technology isn't new, but the scale of the project is unique."

Dr. Richard Cooke, an assistant professor at UI who is supervising the petitioner's doctoral studies, indicates that, prior to the petitioner's mapping technique, "subsurface drains were located manually by . . . poking a steel rod (4 to 5' long) into the ground." Dr. Cooke adds:

> [The petitioner] is developing a computer model for predicting/forecasting flood flows, that incorporates drain density and new technologies such as Geographic Information System (GIS) and Global Positioning System (GPS). To my knowledge, there are no other existing models that can be successfully applied to midwestern, subsurface-drained watersheds.

Dr. Binayak P. Mohanty, research scientist with the USDA's Agricultural Research Service, Pacific West Area, Riverside, California, states that the petitioner "is making seminal contribution[s] to the understanding of soil and water quality" and that the petitioner "has proved himself a leader in the [field of] water quality research."

Several other witnesses discuss various significant aspects of the petitioner's mapping technique, observing (for instance) that pinpointing the location of drains assists in tracking waterborne pollutants. A number of these witnesses attest that the petitioner possesses rare expertise in hydrology and agricultural engineering.

The record establishes that the petitioner served on the conference planning committees for American Water Resources Association ("AWRA") conferences in 1997 and 1998. The petitioner acted as the moderator of one session at the 1998 conference.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work but concluding that the petitioner has not shown that he is "using [new sensing] technology

to provide greater benefits than other researchers in the field," or that the petitioner's "work is known and considered unique outside his/her immediate circle of colleagues."

On appeal, counsel argues that the petitioner's work is indeed well-known and influential outside of his circle of collaborators and mentors. The bulk of counsel's arguments derive from quotations from previously submitted letters.

The petitioner also submits two new letters, from assistant professors at Michigan State University and the University of Hawaii, attesting to the importance of the petitioner's work. We note that the witness in Hawaii, Dr. Chittaranjan Ray, was formerly a research scientist at the Illinois State Water Survey who "maintained close collaboration with scientists in Illinois," so Dr. Ray's letter is not a strong example of the petitioner's influence outside of Illinois. More persuasive is the letter from Dr. William Northcott of Michigan State University, who asserts "[m]y own scholarly research . . . is based heavily on [the petitioner's] previous work."

While many of the initial letters were from UI faculty members and USDA employees in the Urbana area, there were also letters from officials as far away as California, with no demonstrated link to the petitioner apart from their common area of research interest. The petitioner has also acted in a significant capacity on several occasions for a national organization, the leadership of which again has no demonstrated connection to the petitioner.[1]

The petitioner has rebutted the director's finding that the petitioner's work is of interest only to those researchers who are closest to the petitioner. Witnesses from a variety of public and private institutions have asserted that the petitioner has made discoveries of unusual significance and importance, in an area of intrinsic merit and national scope.

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 research community recognizes the significance of this petitioner's research

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[1]We note that the AWRA's web site lists its "Top 10 Requested Online Articles" (www.awra.org//proceedings/top10pro.html, accessed March 5, 2002). One of these articles is "Mapping Subsurface Drainage systems with Color Infrared Aerial Photographs," of which the petitioner is the principal author. This evidence suggests that the petitioner's work continues to attract significant interest from members of this national organization.

rather than simply the general area of research. 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.

ORDER: The appeal is sustained.