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U.S. Department of Justice

Immigration and Naturalization Service

identification 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: 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:

Public Copy

[redacted]

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

for

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. from Case Western Reserve 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 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's area, mathematics, has intrinsic merit. We further concur that while the petitioner has not demonstrated that his abilities as a teacher will have a national impact, the proposed benefits of his research could be national in scope. Thus, it remains to determine whether the petitioner has demonstrated that he will benefit the national interest to a greater degree 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.

Dr. Peter Kotelenez, a professor at Case Western Reserve University, states that the petitioner has contributed to the math department at Case Western and has served as a reviewer for *Mathematical Reviews*, since 1995. Dr. Kotelenez continues:

> [The petitioner's] contribution in his dissertation is that he extended some [of the] most important limit theorems in probability from the classical setting to the

Markovian context. This was a relatively unexplored field in which he systematically developed the first framework of theory. Indeed, he developed a system of mechanisms in the Markovian context, which is still playing an important role in the study he is conducting today. His dissertation has been accepted by the *Memoirs of American Mathematical Society*, which is regarded by many follow [sic] mathematicians as the top journal in the mathematical fields.

Here I would like to mention another remarkable discover of him [sic] on the recurrence of Markov chains. Recurrence is a concept in Markov chain theory refering [sic] to a tendency of returning to the initial location. A fundamental problem is to find the frequency in which a recurrent Markov chain returns to its initial location. I would like to mention a fact to illustrate how difficult this problem is: Important as it is, the last development regarding this problem happened in 1949, nearly a half century ago when K.L. Chung, who is now regarded as one of the greatest probabilitists still alive, and G.A. Hunt, provided a solution in their joint paper to a very special case. In his recent work, [the petitioner] gives a final solution, which I believe, considering its impact in the area and the ideas developed in the search for the answer, is one of the most important findings in Markov chain theory.

Dr. Xiaosha Zhang, a project manager at Rhone-Poulenc Incorporated who collaborates with the petitioner, states that the petitioner "has established the first systematic framework on the limit theorems for Markov chains." In their collaboration on software, Dr. Zhang asserts that the petitioner "has constructed a new model in his research, which converges to its equilibrium state faster than the one currently used in software design." In another letter, Dr. Zhang states:

The problem [the petitioner] recently solved on the returning frequency of recurrent Markov chains is an excellent example of his achievements. Among other properties, a recurrent Markov chain is a random system which "occasionally" recurs in a certain state. The frequency of such recurrence reflects the basic nature of a recurrent Markov chain and serves as a crucial parameter in some problems as well. Hence, the determination of such frequency appears to be important in the development of Markov chain theory. It is also a very difficult problem which had existed for long time. His success on this problem shows his exceptional talent in his field.

As a statistician, however, I am more interested in the possible applications such progress will bring. Indeed, his work on the limit theorems for ergodic Markov chains can be applied to the development of a new technique called Markov Monte Carlo, a computer simulation method which increases the operation speed of scientific computations on computers thereby saving time and money.

Another promising application of his work is on the queue theory, a system developed for public service design. His work can be used to solve some

> unsolved problems in queue theory, which potentially leads to a great savings of money and increase of capacity in public service design.

Professor James Kuelbs of the University of Wisconsin-Madison was an outside thesis examiner for the petitioner's doctoral dissertation. Professor Kuelbs indicates that the petitioner has made "significant contributions" including "major improvements of the central limit theorem (CLT), the law of the iterated logarithm (LIL), and also moderate deviation probabilities in the setting of the general state space Markov chains."

Dr. Alejandro de Acosta, the petitioner's doctoral advisor, states:

> [The petitioner] is the best student we have had in our graduate program for many years; he has written an outstanding dissertation on the limit theory on Markov chain which gained immediate recognition among the specialists who have seen it and which is certain to have considerable impact in the field. The ideas and techniques developed in the dissertation extend the fundamental regeneration-split chain method to general irreducible Markov chains and thus provide a new framework for the study of limit theorems for Markov chains. Using this framework, he determined for example the iterated logarithm behaviour [sic] of sums of vector-valued functionals of the chain; this important result was not accessible to other approaches.

Dr. Acosta reiterates much of this information in a second letter.

Regarding the petitioner's work in China, Professor Wenbo V. Li of the University of Delaware, who has known the petitioner since they were graduate students at Jilin University in China, writes:

> [The petitioner] made significant contributions to the limit theorems for vector valued random variables. He formalized the necessary and sufficient conditions for the lower bound of moderate deviation. This discovery was surprising at that time since the related development suggested that it was unlikely to establish such conditions. Another of his contributions was that he established the law of the iterated logarithm under very general conditions, which appears to be [the] final result in that field.

The above letters are all from individuals who have collaborated or overseen the petitioner's research. While such letters are important in providing details of the petitioner's role in a project, they cannot by themselves establish that he has influenced his field as a whole.

The petitioner did provide some letters from independent researchers. Peter E. Nay, a professor at the University of Wisconsin-Madison, indicates that he has studied the petitioner's published manuscripts and that his work "constitutes an important theoretical contribution to the foundations of applications like these." Professor Nay does not indicate that the petitioner's

work has influenced his own projects or even that he was aware of the petitioner's work prior to being contacted for a reference.

Dr. Xiaomao Wu, a senior research scientist at Abbott Laboratories, Abbott Park, Illinois, states:

> [The petitioner's] study is anticipated to improve the design of the clinic trial in our business. Complying with FDA regulations is the most challenging part of our job. For example, typically the three phases of clinical trials are required before any new drug can be put on the market. . . . [T]he Markov chain Monte Carlo method based on [the petitioner's] theoretical setup may provide a way of choosing Markovian methods -- which simulates the trial -- with greatest speed of convergence. This method is able to optimize the clinical design, leading to money and time savings.
>
> The Markov chain Monte Carlo method can also speed up the drug screening process. The large scale new drug screening now adopts a very powerful technique named "combinational chemistry." The study on Markov chain Monte Carlo will lead to optimization for the procedure in synthetic chemistry to identify the prominent candidates among millions of others. As such, [the petitioner's] continued work is vital.

Dr. Wu describes potential practical applications of the petitioner's work, but does not indicate that such methods have actually been implemented. Therefore, there is no evidence of the petitioner's actual (rather than anticipated) impact on his field.

Finally, Dr. Andrey Anatolevich Dorogovtsev, a professor at the Institute of Mathematics of the National Academy of Sciences, Ukraine, indicates that he has followed the petitioner's published work which he describes as important. Dr. Dorogovtsev enumerates the petitioner's contributions as follows:

> (1) He established the principle of moderate deviation, a precise estimation of the rate at which the sums of random variables with values in Banach spaces escape from its center. Especially, he gave a complete characterization for the lower bounds of such principle. The conditions found by [the petitioner] can be applied to a well known probelm [sic] posed by J. Kuelbs (1981) on the cluster set of some limit laws for independent and identically distributed random variables in Banach spaces.
>
> (2) He finalized the law of iterated logarithm, a limit theorem discribing [sic] the growth rate of the sums of random variables with values in Banach spaces. In 1988, a characterization of such law for independent and identically distributed random variables with Banach space values was obtained by M. Ledoux and M. Talagrand. They (1989) later established a parallel form for independent, nonidentically distributed and bounded random variables with Banach space

> values. These two results are very significant progresses in the history of probability in Banach spaces. After these events, a[n] important problem was to find the connection of these two different forms. Regarding this, [the petitioner] developed a general law which includes those forms. As a consequence of this wprk [sic] morever [sic], a famous theorem due to Strassen (1964) on the law of the iterated logarithm with p-norm was elegantly extended by [the petitioner] to the Banach space context.

Dr. Dorogovtsev asserts that this work remains "the major latest developments in their fields." Dr. Dorogovstev notes that that M. Ledoux cited the petitioner's work in 1992 and that the petitioner subsequently solved a conjecture posed by M. Ledoux and M. Talagrand. Finally, Dr. Dorogovtsev asserts that the petitioner has made significant findings regarding Markov chains, including resolving a problem believed to be unsolvable. While Dr. Dorogovtsev ascribes great importance to the petitioner's work, he does not indicate that he personally has applied the petitioner's results to his own work or provide examples of how the petitioner's work has changed the field.

Counsel notes that, under the petitioner's advisorship, the Case Western team placed highly (12th out of 300) at the William Lowell Putnam Mathematical competition. This result may reflect well on the petitioner's abilities as an educator, but the petitioner has not shown that he has had a national influence on the teaching of mathematics. Other evidence in the record, including awards issued in China and a letter from *Mathematical Reviews* addressed to the petitioner in China requesting that he serve as a referee for that publication, reflects that the petitioner is highly skilled in his field. A plain reading of the statute and regulations, however, shows that aliens of exceptional ability are generally required to present a job offer with a labor certification at the time the petition is filed. Clearly, exceptional ability in one's field of endeavor does not, by itself, compel the Service to grant a national interest waiver of the job offer requirement. The petitioner must demonstrate some degree of influence on the field.

The petitioner submitted a referee's report on one of the petitioner's recent articles. The referee states "[t]his is an excellent paper, and I strongly recommend its publication as an AMS Memoir. I see it as an excellent future reference for those who use Markov chains, and also for those who do research in the area." The record, however, contains no evidence to show that the article, once published, had unusual significance in the field. The petitioner has not shown, for instance, that any researcher has cited the article or even requested a reprint. He has shown only that an anonymous referee was very impressed with his work.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to present some benefit if it is to receive funding and attention from the scientific community. The record, however, does not establish that the petitioner's work represented a groundbreaking advance in mathematics, or has far-reaching implications. While the petitioner's research clearly has practical applications, it can be argued that any Ph.D. thesis or published article, in order to be accepted or published, must offer new and useful information to the pool of knowledge.

The record also contains evidence that the petitioner has authored several 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 influential contributions; we must consider the research community's reaction to those articles.

Counsel refers to Exhibit VV as "articles citing the works of [the petitioner.]" In actuality, the exhibit is the result of a search for the petitioner's name. The results reflect 58 articles, all of which were authored or reviewed by the petitioner or an individual with the same name. The exhibit is not a list of articles by independent researchers which cite the petitioner's work. The petitioner submitted three articles which cite his own articles. Three citations is not evidence that the petitioner's work is widely cited and influential in the 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.