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U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



File: EAC 99 144 52094 Office: Vermont Service Center Date: 19 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:



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, Vermont 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. At the time he filed the petition, the petitioner was a doctoral student and graduate research assistant at the University of Illinois at Champaign-Urbana. 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 director did not dispute that the petitioner qualifies as 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.

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.

Counsel describes the petitioner's recent projects:

[The petitioner] plays a critical role at the Agricultural Communications Documentation Center at the University of Illinois. He is pivotal in nearly every aspect of the Center's activities including refining the database structure, cataloging materials, as well as overseeing datamining activities to further extend the depth of the Collection Center. . . . A service offered to students, teachers, researchers, professional communicators, and others who are interested in communications related to agriculture, food, natural resources, and rural affairs, the Center's more than 14,500 documents are extremely important. . . . [The petitioner] has played a critical role in ensuring that this valuable wealth of information is available and readily accessible to those seeking it.

[The petitioner] has also played a critical role in the Trec-5 research program at Lexis-Nexis. The Trec Conference Series is cosponsored by the National Institute of Standards and Technology as well as the Information Technology Office of the Defence Advanced Research Projects Agency (DARPA) where it is a component of the Tipster Text Program. . . . [The petitioner] was instrumental in the development of an algorithm that could produce different sets of clusters of information at varying threshold levels. He then implemented the algorithm in a computer program that . . . is extremely beneficial in selecting the best threshold for a given search.

Turning to the issue of labor certification and the national interest waiver, counsel asserts that labor certification "is lengthy, cumbersome, expensive, and, it has been shown, bears no authentic relationship to the business reality inherent in testing of a labor pool for able, qualified, willing and available U.S. workers to fill a specific job vacancy." While this assertion leaves little doubt as to counsel's opinion of the labor certification process, it remains that Congress mandates that process through the job offer requirement. As long as that requirement remains in the law, it is not persuasive to argue that labor certification itself is inherently flawed and obsolete and therefore a waiver is in the national interest.

Counsel argues that, while the labor certification "process works well for a machinist or even tax accountant for instance, where the minimal job qualifications are in fact quantifiable," the process is ill-suited for an occupation such as the petitioner's where "the very essence of the work is creativity, ingenuity, inventiveness, imagination, and sagacity." Congress could have created blanket waivers for specific occupations, and in fact did just that by creating section 203(b)(2)(B)(ii) with regard to certain physicians. No such blanket waiver exists for the petitioner's occupation, however, and therefore we must conclude that Congress intended the job offer/labor certification requirement to apply to that occupation.

For the above reasons, the waiver request must rest on the petitioner's individual merits, rather than on the perceived shortcomings of labor certification as a whole or the overall nature of the petitioner's occupation.

The petitioner submits several witness letters. Professor Feicheng Ma, dean of the School of Library and Information Science at Wuhan University (where the petitioner earned his bachelor's and master's degrees), was the petitioner's academic advisor at that institution. [REDACTED] states that the petitioner, as "the author of more than 10 papers and two books . . . began to have publications in the professional journals even before he completed his Master's Degree course work, which is a first for our school." [REDACTED] asserts that the petitioner's publications have won prizes because of their significance.

[REDACTED] associate dean of the University of Illinois' Graduate School of Library and Information Science, has been the petitioner's doctoral advisor there. Prof. Smith states:

[The petitioner] is now completing his dissertation research investigating the performance of search engines on the Internet and identifying strategies by which this performance may be improved. . . .

[The petitioner] is a scholar who has made and will continue to make vital contributions to the research literature on information retrieval. . . .

In particular he has been responsible for developing a unique and easily used resource in the form of the information system for the Agricultural Communications Documentation Center and he has contributed to private-sector projects in support of computer-based education and full-text retrieval.

[REDACTED] director of Content Technology at [REDACTED] states that he has "worked closely with [the petitioner] to design, develop, implement, and test our research system EUREKA (End User Research Enquiry and Knowledge Acquisition). . . . [The petitioner's] vast scientific knowledge has contributed greatly to the overall success of the program." [REDACTED] credits the petitioner with "many exceptional contributions to the improvement of information retrieval performance in this specialized area of large text file database." [REDACTED] asserts that the petitioner, in his doctoral dissertation, has produced a method that "overcomes the problem that any single search system indexes only a subset of all documents available on the Internet and provides a limited number of search approaches."

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted additional letters and documentation.

Counsel argues that, given the universal accessibility of the Internet, it is becoming ever more important for researchers to be able to obtain relevant information quickly and distinguish it from unreliable, irrelevant, or useless information.

Shortly after filing the petition, the petitioner completed his doctorate. Counsel describes the petitioner's subsequent work:

Today, [the petitioner] is working for C-Bridge Internet Solutions. C-Bridge is dedicated to building Internet-based business solutions for clients by determining client strategy, business case, and architecture for the Internet and then delivering what the client needs as a result of C-Bridge's technical expertise and innovation.

Several witnesses discuss the petitioner's work with C-Bridge, particularly a project called the Chevron Retailer Alliance. While we note that this work shows that the petitioner has continued to work in the same field, we cannot conclude that the petitioner's work for C-Bridge is a major factor in approving a petition filed before the petitioner had begun to work there. See Matter of Katigbak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. A petitioner cannot file a petition under this classification based on the expectation of future eligibility.

That being said, we also cannot ignore that the petitioner has clearly left the Agricultural Communications Documentation Center at the University of Illinois, so any arguments to the effect that he should remain there, or that employment at the center inherently serves the national interest, are moot. We must rely, instead, on evidence to demonstrate an overall pattern of contributions that are of such significance as to justify a national interest waiver. The petitioner's specific past and present positions are, therefore, relevant only to the extent that they establish such a pattern.

Most of the new letters are from individuals connected with the petitioner's work at the University of Illinois, such as [REDACTED] now an assistant professor of Chemistry at Jackson State University, who was previously a postdoctoral researcher at the University of Illinois. [REDACTED] had volunteered to help test and evaluate the petitioner's search methods. [REDACTED] "I was deeply impressed with [the petitioner's] creative research design which addresses the extremely important question of how to locate information needed for a research project from the Web," when such information can often be "extremely difficult to locate . . . in an efficient and effect[ive] manner." [REDACTED] formerly an associate professor at the University of Illinois, indicates that the petitioner's work has had "a major impact . . . by paving the way for truly scientific studies of information retrieval on the Web."

[REDACTED] of the University of Illinois' National Center for Supercomputing Applications states that he and the petitioner worked together "to build a Web-based online virtual classroom," and that the petitioner's "contribution to the project is tremendous." The record offers no other documentation or evidence regarding the virtual classroom project.

Dr. David Kang of the University of Cincinnati College of Business Administration states that he met the petitioner at a 1996 conference "and was very impressed by his research and capabilities." Dr. Kang states that the petitioner "has a solid knowledge and skill base in the areas of information organization and retrieval, web search engine performance, project testing, and

various computer languages." [REDACTED] cites the petitioner's "recognized expertise" and states that the petitioner "is leading the way" in developing Internet-based business systems, but the only specific example he provides is the Chevron Retailer Alliance project at C-Bridge, with which the petitioner was not yet involved at the time of filing.

[REDACTED] managing director, Western Operations, at C-Bridge Internet Solutions, states that the petitioner's work is important not only to C-Bridge's specific projects, but to the economy in general because the petitioner "has been an invaluable asset in the real e-commerce application implementation. He developed a new way to improve web information searching performance."

The director denied the petition, stating that the evidence of record does not persuasively establish that the petitioner stands apart from others in his field to a degree that would warrant a national interest waiver of the statutory job offer requirement.

On appeal, counsel observes that the director incorrectly stated that the petitioner is still a research associate at the University of Illinois. While we acknowledge this error on the director's part, as noted above, the petitioner's change of employment cannot be a strong factor in the petitioner's favor. If the petition was deficient at the time of filing, subsequent material changes in the petitioner's circumstances cannot establish eligibility where it did not already exist. See Matter of Katigbak, supra, and Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998).

Counsel's appellate brief consists almost entirely of repetition of arguments already made and quotations of letters previously included in the record. Counsel asserts that the petitioner's "work . . . in this area is not merely speculative; he has been highly successful in establishing new techniques and solving many of the difficult problems inherent in this area."

While the petitioner is working in an important area, background material in the record shows that many other researchers are also working in the same area. The record shows that the petitioner has participated in research projects designed to improve the efficiency and accuracy of Internet search procedures, but the available evidence does not indicate that this work has proceeded past a limited prototype stage or that it has been recognized or implemented beyond the petitioner's own circle of collaborators, mentors and employers. The petitioner has published some articles but there is no indication (such as heavy independent citation) to show that the petitioner's research has had an especially substantial impact on the overall field. Counsel contends that the petitioner has made such a showing but offers no support except for the statements of those close to the petitioner. These statements cannot establish, first-hand, that individuals outside of that

circle share similar opinions regarding the significance of the petitioner's work.

Counsel has repeatedly stressed the petitioner's election to an academic honor society which admits only the top 10% of students. Graduate study is not a field of endeavor. Even if it were, admission to such a society might constitute part of a claim of exceptional ability, but (as the statute and regulations make clear) exceptional ability does not automatically exempt a given alien from the job offer requirement. In this instance, the petitioner filed his petition as a graduate student with a valid nonimmigrant visa, who required no further immigration status to complete his studies, and he is now employed by a private corporation so a job offer plainly exists.

While the petitioner is an able researcher whose skills have won the respect of those who have taught and employed him, the available evidence does not persuasively establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification that the petitioner chose to pursue.

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.