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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



File: EAC 99 110 53297

Office: Vermont Service Center

Date: 27 MAR 2002

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:

Self-represented

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 of filing, the petitioner was a Ph.D. candidate at the University of Connecticut ("UConn"). 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 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.

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.

In a personal statement accompanying the petition, the petitioner discusses his work:

During the last two decades, the demands placed on parachute designers have increased tremendously. . . . [T]he traditional semi-empirical approach to parachute design is inadequate. . . .

Computational methods have the greatest potential for providing the necessary predictive models for parachute and parafoil inflation. In our research, we construct and develop new structural models and associated algorithms to simulate parachute and parafoil deployment and inflation. The goal of this research is to shorten the time and cost associated with parachute development from the initial concept to the final product. . . .

There are many issues in the simulation of parachute employment. Two of them are critical. One is damping out high oscillation which make the computation prone to be unstable. This has been successfully developed and implemented by the petitioner. The other issue is to simulate the wrinkling phenomena. . . . It was not until 1987 that some Dutch researchers . . . found a sound physical model. But the derivation of the formula is lengthy and complex and implementation is based on numerical approximation which makes the computation prone to be unstable. In my research . . . I invented new notation and made the theory more concise and easy to understand. . . . Our research has been used by the Army, NASA and private industries.

The petitioner submits two witness letters in support of his petition. Dr. Michael L. Accorsi, an associate professor at UConn and one of the petitioner’s two principal advisors, states:

The dynamic behavior of parachutes is extremely complex and therefore it is very difficult to simulate. . . . The ability to simulate parachutes on a computer will significantly reduce the time and cost of development, and will potentially lead to new innovative designs. . . .

As part of a large team effort, we are simulating candidate parachute systems being evaluated for precision air delivery. Finally, we are collaborating with Pioneer Aerospace and NASA to simulate and evaluate a large parafoil type parachute that will be used for landing an emergency recovery vehicle for astronauts in the event of an emergency evacuation of the International Space Station. . . .

[The petitioner] has developed a new theory in continuum mechanics which describes the dynamic wrinkling of parachute fabrics. We have found that the inclusion of his wrinkling theory is essential to correctly predict the dynamics of parachutes. We are using his research results in all our projects.

The petitioner's other advisor at UConn, Professor John W. Leonard, states:

[The petitioner] has a strong background and high potential in his research field. His knowledge of mathematics and structural mechanics is very solid. . . . He often comes up with new and valuable ideas in his research. . . .

[The petitioner] is a critical member in our team. His Ph.D. dissertation prospectus on the wrinkling problem received high reviews from experts in his field. He developed a new well-founded wrinkling algorithm for membrane theory. . . . His research results will not only be used by the U.S. Army, the U.S. Air Force and the National Aeronautics and Space Administration to simulate and design new parachutes and parafoils, but also by government agencies and U.S. companies to simulate and design many other membrane structures, such as auto airbags, fabric roofs, etc.

The petitioner also submits various background documents regarding parachute research, and copies of his scholarly writings (such as graduate theses) on the subject. One of the petitioner's professors had previously solicited comments from professors at various universities, in regard to the petitioner's proposed thesis topic. These comments are in the record; the professors deem the petitioner's ideas "interesting," and his prospectus "well written, organized, and argued." This evidence does not, however, show the impact of the petitioner's work in the field.

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 new documents (such as a copy of the petitioner's doctoral diploma, awarded August 1999) and new letters. Professor William L. Garrard of the University of Minnesota, who served as a reviewer for the petitioner's Ph.D. thesis, states:

[The petitioner's] research addresses an important technical area in membrane theory. He has derived the control conditions for a wrinkled membrane and the algorithm which is guaranteed to converge to the real strain. He also derived the explicit formulation of the internal forces and tangent stiffness matrix for a wrinkled membrane. These conditions allow computer simulation of wrinkled membranes with finite-element methods. . . .

His research has great academic and practical value and is essential to future progress in this important field.

Professor Raymond H. Plaut of Virginia Polytechnic Institute and State University states:

I reviewed [the petitioner's] research proposal and final Ph.D. thesis independently. I believe his work is a significant advance in finite element analysis of wrinkling membranes. . . .

In his research, he inventively derived the concise control conditions for a wrinkled membrane and developed an efficient and reliable algorithm to compute the real strain and stress of a wrinkling membrane. Furthermore, he was the first to successfully derive the explicit formulation for the internal nodal forces and tangent stiffness matrix for a wrinkled membrane. This significant advance makes it realistic to simulate general wrinkling membranes accurately with the finite element method on computers. . . .

[The petitioner's] research is invaluable and should have a major impact on the finite element analysis and simulation of wrinkling membranes.

Professor X.F. Sun of Southwest Jiaotong University states that the petitioner's research pertaining to wrinkling membranes represents "a significant advance in analysis and simulation of general wrinkling membrane with finite element method on computer."

Other documentation submitted in response to the director's request for further evidence includes background materials about the petitioner's specialty and evidence that the petitioner has acted as a peer reviewer, evaluating manuscripts submitted for publication in scholarly journals.

The director denied the petition, stating "the record does not establish that the [petitioner's] work is already widely accepted by most of the people in the field as a breakthrough and worthy of general implementation. It appears the work is still in the early stages of development and . . . it will be years before it has concrete effects."

On appeal, the petitioner asserts that the project currently underway at UConn "can not be successful" without the petitioner's continued involvement. This argument presupposes that the petitioner's continued involvement is contingent on the approval of a national interest waiver, or of an immigrant visa petition. The fact that the petitioner is already involved with the project proves that the petitioner can work on the project with a nonimmigrant visa, and absent evidence that the

university intends to employ the petitioner permanently, we infer that the university intends only temporary postdoctoral employment.

The petitioner asserts that his “research has been implemented in the finite element code, which has been used in NASA, Airforce and Army.” The record contains no evidence from any of those entities to confirm the degree to which they utilize the petitioner’s work in particular.

The petitioner submits documentation to show that the International Journal for Numerical Methods in Engineering has accepted one of his articles for publication. The petitioner also shows that this journal has a high impact factor, arising from heavy citation. The petitioner apparently did not submit the article for publication until several months after the petition’s March 1999 filing date; the letter acknowledging the journal’s receipt of the article is dated October 25, 1999. 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.

Regarding the citation of the journals, the petitioner is plainly aware of the value of establishing a journal’s impact through citation, but he has not shown that others in the field have cited his particular articles with any great frequency. A given journal’s overall citation record is an average, which does not directly imply comparable citation of any given article in that journal.

The petitioner has demonstrated that he is a productive researcher in a field of scientific interest, but he has not demonstrated persuasively that independent experts in the field generally regard his work as being more important than that of other fully qualified researchers in the same specialty. The petitioner has stated that his work is relevant to the work of NASA and the military, but the record contains nothing from these agencies to establish their reaction to the petitioner’s work. The petitioner has also not shown that permanent resident status is required for him to continue in his inherently temporary postdoctoral position at UConn.

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.