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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: [Redacted] Office: Nebraska Service Center Date: 27 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: 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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

In this decision, the term "prior counsel" shall refer to Emily J. Curray of Stern and Elkind, who represented the petitioner prior to the filing of the appeal. The petitioner has indicated that Ms. Curray no longer represents him.

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 seeks employment as a mathematician, "[r]esearching and solving nonlinear boundary problems to the benefit of various industries." At the time he filed the petition, the petitioner worked as an adjunct instructor at the Colorado School of Mines. 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. degree in Mathematics from the University of Kentucky. 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.

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.

Prior counsel describes the petitioner's work:

[The petitioner] is conducting ground-breaking work for the Colorado School of Mines. Specifically, [the petitioner] is the lead researcher on a project conducting advanced research on numerical methods for solving partial differential equations. . . . [The petitioner] is doing in-depth analysis of a unique numerical method called orthogonal spline collation¹ (OSC) which will have important applications in mathematical modeling technology, benefiting industries such as the military, aeronautics, computer industries, and environmental research.

The petitioner submits several witness letters. The most detailed letter is from Prof. Graeme Fairweather, head of the Department of Mathematical and Computer Sciences at the Colorado School of Mines. Prof. Fairweather states:

[I]t would be highly unlikely, if not impossible, to find another mathematician with the in-depth expertise and understanding of orthogonal spline collocation methods for nonlinear boundary value problems that [the petitioner] possesses. . . .

The area of [the petitioner's] specialization in numerical analysis is called numerical methods for solving partial differential equations. A wide and important range of applied problems in science and industry are mathematically modeled by partial differential equations and called boundary value problems (BVPs). . . . [T]he importance of numerical methods for solving partial differential equations cannot be overestimated in practical applications in science and industry.

The area of [the petitioner's] unique expertise is called orthogonal spline collocation methods (OSC) for nonlinear boundary value problems. . . . [T]he OSC method is generally considered superior [to other methods] for a number of reasons. . . . However, analysis of correctness, accuracy and stability of the OSC method is usually more difficult, often needs applications of special techniques. . . .

[The petitioner's] work on OSC methods for non-linear problems is of significant theoretical value. . . .

Results of [the petitioner's] work have direct application in the following areas: military . . . oil-gas industry . . . automobile industry . . . environmental studies . . . aerospace

¹Counsel uses the word "collation," but judging from other witness statements the appropriate word appears to be "collocation."

industry . . . weather prediction, nuclear physics, and many other[s]. . . .

The results of [the petitioner's] work opened new prospects in the study of the OSC methods for other types of non-linear differential equations. . . .

It is critical for scientists and engineers to have available to them numerical methods for solving non-linear partial differential equations which are easy to implement, possess optimal accuracy, and are stable and reliable. This is precisely the work that [the petitioner] is leading for OSC methods.

Prof. Fairweather states that the petitioner's "specific work was on analyzing the finite difference method for solving certain problems in hydrology and hydraulics and served as an excellent foundation for his later work," but does not offer any details about this work or its significance. While the petitioner's work may have potential applications in a number of areas, the petitioner has not shown what impact, if any, his work has already had in those areas.

Dr. Charles L. Werner of the Jet Propulsion Laboratory states that the petitioner "is a valuable expert in [his] field" whose findings "have direct application in a number of areas including prediction of aerodynamic performance of aircraft and spacecraft, analysis of explosions, and meteorology among others." Dr. Werner comments on the overall importance of the petitioner's specialty, and deems the petitioner "a very talented expert," but like Prof. Fairweather he offers no specific example of findings by the petitioner that have already had a significant impact or influence on the field.

Dr. Erkin Sidick, senior Research and Development Engineer and Coating Department manager at CVI Laser Corporation, states that the petitioner "has quickly emerged as a leading authority on OSC methods for solving nonlinear problems," and that the petitioner "has already become a renowned expert" and "a distinguished researcher with impeccable credentials." Dr. Sidick states "[b]y becoming an expert in this area, [the petitioner] has created a unique and vital niche for himself." Dr. Sidick asserts that OSC methods are difficult to master, and have a wide range of potential applications, but he offers no specific examples or explanation as to how the petitioner is said to have earned distinction in his field.

Professor Thomas L. Hayden, who served on the petitioner's Ph.D. committee at the University of Kentucky, states that the petitioner's "extensive experience in mathematics and mathematical modeling provides him with unique knowledge which is critical to significant progress" in the specialty. Prof. Hayden states that

the petitioner "has developed a highly efficient algorithm for computer performance of OSC."

Xiao-Chuan Cai, associate professor at the University of Colorado, states:

[The petitioner] has achieved important results early on. For instance, he is the first scientist to have explicated a detailed analysis of orthogonal spline collocation procedure for solution of nonlinear boundary value problems. In-depth analysis of applying an orthogonal spline collocation solution to general nonlinear problems is nothing less than a revolutionary technique, and to my knowledge, it has not been replicated anywhere in the world.

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 arguments from prior counsel, deriving primarily from witness letters. The petitioner has also submitted two additional letters.

Professor Fairweather, in his second letter to the Service, states:

[P]rior to [the petitioner's] research, no mathematician has ever been able to solve nonlinear BVPs using OSC methods. . . . He is the first mathematician to obtain substantial theoretical results on the accuracy and stability of OSC solutions for nonlinear BVPs.

Prof. Fairweather repeats his assertion that the petitioner's "work is relevant to military research, the oil-gas industry, the automobile industry, environmental studies, the aerospace industry, weather prediction, nuclear physics, and many other fields of interest," but he offers no evidence that experts in these many fields have shown special interest in the petitioner's work. The claim that the petitioner's work has great potential does not establish or imply that such potential will in fact be realized. The assertion that, for instance, the petitioner could hypothetically create models for the automotive industry does not establish the petitioner's intent to perform such work, or the industry's desire to hire the petitioner for such a purpose.

Prof. Fairweather asserts "[t]he labor certification requirement should be waived in [the petitioner's] case because his position at the Colorado School of Mines is not a permanent one." If the petitioner's position is temporary, and covered by an existing nonimmigrant visa, it is not clear why the petitioner would require additional, permanent benefits in order to continue his temporary work. Prof. Fairweather offers no persuasive support for his assertion that the waiver "is the only way for our nation to profit from" the petitioner's skills. While the petitioner may prefer to

be able to move freely from one employer to another, there has been no showing that a permanent job offer is inherently out of the question, and therefore the waiver is not the petitioner's only chance at securing permanent resident status.

Prof. Fairweather adds that the petitioner "has shown that he will contribute to the national interest to a much greater degree than would another scientist with the same minimum qualifications." The record, however, does not support this assertion. Several witnesses have stated that the petitioner is highly skilled in a complex and difficult branch of mathematics, and they have listed a number of industries which may conceivably benefit from the petitioner's work. Nevertheless, assertions regarding significant benefit to industry lack weight without some evidence that the petitioner's work has already produced such benefit. Such assertions are more akin to speculation than to evidence. The petitioner completed his doctorate only a few weeks before the petition was prepared and submitted.

Bernard Bialecki, an associate professor at the Colorado School of Mines and one of the petitioner's doctoral advisors, discusses the overall value of the petitioner's field of mathematics, and states that the petitioner "has become the expert in solving nonlinear boundary value problems by the orthogonal spline collocation methods," and that the petitioner has "obtain[ed] results which were, in fact, long awaited in the community of numerical analysts specializing in collocation methods." While the achievement of "long awaited" results would appear to be newsworthy within the profession, the record does not show that the petitioner's work attracted significant notice outside of his circle of mentors and collaborators.

The director denied the petition, noting the absence of persuasive evidence from "disinterested parties." On appeal, the petitioner notes that he has received grant funding from the U.S. Army Research Office and the National Science Foundation. The record contains nothing from either of those entities to confirm the grants first-hand, or to establish that they funded the petitioner's research because they believe it to be as important as the petitioner's witnesses claim.

The petitioner asserts that his witnesses "are distinguished scientists" whose objectivity should not be in question. We do not suggest that the witnesses are wilfully biased or untruthful, but at the same time their statements are not first-hand evidence that others in the field share their high opinions of the petitioner's work. The assertion that the petitioner's work is invaluable to a half-dozen important industries carries much less weight given that the record does not contain any direct evidence that officials from any of those industries have, themselves, acknowledged that the

petitioner's work has substantially more potential than the work of other trained mathematicians in the same specialty.

The petitioner observes that he has recently submitted a paper for publication, but due to the lengthy publication process in his field, "it will take some time for other researchers to become acquainted with [his articles] and to cite them." The petitioner appears to argue, in effect, that he is unable to show an independent reaction to his work because the field, as a whole, has yet to learn about it. If this is the case, then it is not clear how the petitioner could already be "a renowned expert" as one witness claim. If the petitioner claims renown in his field, then it is not unreasonable to expect direct documentation of such renown; if he is not renowned in his field, then questions inevitably arise as to why he submitted letters alleging such renown. It is certainly possible that the petitioner's work, once published, will have a major impact on his field of mathematics, in which case evidence of that impact could support a new visa petition, but it is mere speculation to assert that a recently-submitted paper, once published, will garner wide attention and result in citations. At best, the petitioner's waiver request in this matter appears to be premature.

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.