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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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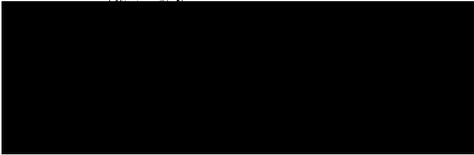
File: [Redacted] Office: Nebraska Service Center

Date: MAY 02 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, 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 seeks employment as a research associate in the Department of Applied Mathematics at the University of Colorado at Boulder ("UCB"). 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 acknowledged that the petitioner 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.

Counsel describes the petitioner's work:

The petitioner is a Research Associate in the Department of Applied Mathematics at UCB. In this capacity, he develops computational solutions of partial differential equations by multi-level algebraic iterative solvers. The petitioner's work is funded by the United States Department of Energy... The petitioner's fields of specialty include the development and implementation of methods for parallel computing, problems related to unstructured meshes, multi-grid methods, domain decomposition, scalable algorithms, inverse problems, and pre-conditioning.

Professor Thomas A. Manteuffel, Professor of Mathematics at UCB, states:

[The petitioner] is currently a Research Associate in the Department of Applied Mathematics at the University of Colorado at Boulder where he is participating in pioneering research. Specifically, [the petitioner]'s work focuses on the computational solutions of partial differential equations by multi-level algebraic iterative solvers. The foundation of his work is the utilization of aggregation, which provides an alternative way to treat specific problems. He is an excellent candidate for the national interest waiver because he is quickly emerging as a leader in his field, having developed breakthrough methodologies in computational mathematics; and because his unique mathematical work allows for defense and other industries to solve complex problems which have eluded others.

Our research group at the University of Colorado at Boulder has earned a reputation as one of the finest in computational mathematics. I am pleased to say that we developed and implemented the original algebraic multi-level approach, or methodology, of a purely algebraic multi-level solver for partial differential equations. The multi-level method is based on constructing and solving a hierarchy of smaller "coarse" problems approximating the problem to be solved. By this process we find solutions to critical components which are then used to solve the overall original problem. This results in a very efficient solver and was a major breakthrough in applied mathematics. It has also been widely used in various industries. The distinguishing mark of our approach is that the computation can be carried by simple algebraic means, without explicit knowledge of the continuous problem to be solved.

However, [the petitioner] has developed a new approach to solve such partial differential equations. His approach is theoretically well founded and retains all the benefits of our algebraic multi-level method, but differs in that the component problems are constructed more easily. The convergence properties of his method make it extraordinarily efficient in both cost and time. Thus, his method represents an important breakthrough because it is simpler to implement and therefore much more friendly and practicable for those in industry. The foundation of [the petitioner's method is smoothed aggregation. By using aggregation, [the petitioner] was able to develop an alternative way to construct coarse problems which serve as the component pieces in solving the overall problem. One of the beauties of using aggregation lies in the simplicity with which the software implementation can be carried out. As an additional benefit, aggregation is tailored to take full advantage of modern parallel computers, which in turn reduces the time required to obtain the solution.

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The improvement of convergence depends on certain approximation and smoothness properties achieved through smoothed aggregations, and this has been one of [the petitioner's] biggest contributions. Perhaps the best way to understand the contribution that utilizing smoothed aggregation represents is through an example.

One brief example is illustrated in a project funded by the Department of Energy (DOE). The DOE requested development of software that would allow them to maintain nuclear weapons and defense capability by simulating storage and aging of weapons without conducting actual nuclear tests. Utilizing the classical direct methods, a problem of such complexity can not even be solved because it would take decades of computer time and excessive amounts of data storage to generate the solution. In contrast, [the petitioner's] method can reach a solution in a very practical time frame. Obviously this is of enormous benefit to the Department of

Energy and our defense. It serves as but one example of the improvement that [the petitioner's] new method provides.

\* \* \*

The first project is the one I briefly alluded to in the foregoing discussion, the Department of Energy funded project. This is a collaboration project in which [the petitioner] is working with a team of scientists at the Lawrence Livermore National Laboratory to develop high performance software for solving elasticity problems arising in nuclear simulations, among others. The computer model will replace the empirical factors and allow our nation to maintain its nuclear weapons and defense capabilities without having to conduct actual nuclear tests. The result will be that we can predict performance of full nuclear weapon systems and analyze the consequences of the aging process or complex accident scenarios on our nuclear defense system. Various performance simulations will be developed.

\* \* \*

[The petitioner] has also done work on heat transfer. Among other things, this allows design of state of the art machine tools with computer-controlled compensation for thermal material expansion. Similarly, his method is applicable to problems in other industries, such as oil extraction and prediction of contamination spreading. A number of companies have already expressed interest in this work. In fact, he was offered a post doctoral research position by Chevron after his research was brought to their attention.

[The petitioner] has been at the top of his field since he worked toward his master's degree at Charles University, from where he graduated with honors in numerical mathematics in 1990. As a graduate student, he repeatedly received recognition from the University for his academic and research achievements. His master's research focused on single-velocity neutron transport equations, for which he developed a method using the aggregation technique. Thus, he began developing his expertise in aggregation approximately 10 years ago. The utilization of aggregation is the foundation of [the petitioner's] work, and he has amassed a great deal of expertise in this area. This is another factor which distinguishes him from his peers. Specifically, he is one of only three researchers in the field doing research on smooth aggregation. Of course, the important point is that the preliminary results regarding his method indicate that it has many benefits over other approaches developed to date.

As would be expected from someone of [the petitioner's] intellect, he already has a number of publications in leading journals in his field, and a number of papers which are already submitted for review or in preparation. I must confess that we offered him a position as a Research Associate immediately after attending his

dissertation defense where we quickly recognized what a truly talented mathematician he is.

██████████ Director of the Center for Applied Scientific Computing at the Lawrence Livermore National Laboratory, is a member of the Program Committee for Colorado Conferences on Iterative Methods. We note that Dr. Ashby co-authored three publications with Professor Manteuffel. ██████████

[The petitioner] has developed a novel multilevel approach to solving partial differential equations, which has produced excellent results. His method has broad application to a number of challenging problems in industry and government. Specifically, it is likely that this and related methods will significantly advance the nation's scientific simulation capabilities. Since these advances are singular in their nature, and because [the petitioner] is responsible for the work, it is essential that he be actively involved in each step of the further exploration of these ideas. It is thus clearly in the national interest that [the petitioner] remain in the United States so that he may continue this important research.

Partial differential equations provide an elegant yet complex formulation of physical systems. Advanced methods for solving partial differential equations are integral to computer modeling of physical phenomena, which offers faster, safer and more economic means for applications ranging from automobile design to large-scale scientific simulations. [The petitioner's] novel methods for solving such equations on unstructured meshes are extremely important in this context. Specifically, he is currently collaborating with members of my Center to solve elasticity problems on unstructured meshes. Our progress toward the solution of these problems would be severely hindered by the loss of [the petitioner].

It is my understanding that [the petitioner] also is developing a new system to redress glaucoma more effectively through the use of computer modeling. This approach would use vital statistics from each individual patient to predict the distribution of pressure build up in the individual's eye. If the correct point in the eye for release of pressure can be located more precisely, the effects of the disease may be more successfully mitigated. While using computer models in medicine is not novel, [the petitioner's] approach is new, and may yield tangible benefits beyond those of other similarly qualified scientists.

██████████ Research Scientist at Sandia National Laboratories, holds a Ph.D. in Applied Mathematics from the University of Colorado, where he later worked as an associate research professor. It should be noted that ██████████ authored four publications with Professor Manteuffel, and one with ██████████ while working at the University of Colorado. ██████████

[The petitioner] has developed a multi-level approach which constructs the component problems significantly more easily than existing methods. The obvious

benefit of greater ease in processing is much greater time and cost efficiency. However, the savings in time and money are not the only advantages of his approach. His method allows for solution of highly unstructured problems, which is a feature lacking in more traditional methods. This hugely expands applicability of this method.

For instance, storing nuclear weapons is an activity that rightfully causes many Americans great concern. It is not possible to perform field tests upon the actual devices because of the expense and high risks involved. Yet in order to design highly effective storage and maintenance facilities, reliable knowledge of the aging and deterioration properties of the weapons is necessary. Computational simulation emerges as the only viable alternative. But the old methods of simulation required too much time and data storage to be able to approximate reliable solutions.

[The petitioner's] method however, enables these solutions to be reached in a dramatically reduced time. The benefits of this breakthrough are readily apparent. Since the safe storage and maintenance of nuclear devices affect the safety of all Americans, including future generations, [the petitioner's] work is very obviously in the national interest. As he is the one who devised this methodology, it follows that he himself is integral to the continuation and advancement of this research. In order for the work to continue to accrue to our nation's benefit, he should remain here, and continue to lead the research.

Jan Mandel, Professor of Mathematics at the University of Colorado, states:

I was [the petitioner's] Ph.D. thesis advisor, and have co-authored several papers with him. Thus, I am uniquely qualified to comment on [the petitioner] and his work from a both a personal and also a professional standpoint.

Manifold economic advantages can accrue from the application of [the petitioner's] work to numerous industries. But this work is also useful in so vital an area as management of our nuclear capability. For instance, the safe maintenance of our nation's nuclear weapons is unquestionably one of the most critical areas of technological advancement in the United States. The awesome power of these devices warrants the utmost care in their storage and support. Unfortunately, performing many types of field tests which are critical to determining the weapons' resistance and response to a variety of factors is impossible, for obvious reasons. Therefore, tests must be modeled, using computer simulations. Despite the availability of ever-faster computers, these modeling efforts have been plagued by methodologies which take far too long to be practical. In order to keep up with the increasingly complex physical simulations, development of new solver techniques must accompany the advances in computational hardware design.

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[The petitioner] has developed new multilevel iterative methods, which allow for solutions to be found in a far more practical time frame. This allows for a safer and faster evaluation of many elusive factors for which physical tests would be too dangerous or expensive. Furthermore, these methodologies are also applicable to a variety of other problems, including heat transfer and image processing.

[The petitioner's] insight, which has already resulted in the practical implementation of new methods numerically solving partial differential equations, is irreplaceable. As an educator, I am only too aware of the scarcity of talented young American mathematicians. One must also realize that advances in applied science require not only insight, ingenuity and enterprise but years and years of training in a specialized field. Without [the petitioner's] exceptional talent and unique expertise, America is without one of literally a handful of people in the entire world with the capacity and training to advance this methodology. Without his insight, the technology could not have developed to such a degree. It is fundamental that in order for original research to continue to progress, the person who profoundly understands the problem must continue further investigation and experimentation.

Therefore, it is safe to say that [the petitioner] is personally necessary to the continued development of these versatile iterative methods. In order to ensure the United States' continued leadership in technology, it is critical for us to retain the very best scientists, and the originators of new developments.

The petitioner submits a total of four witness letters; two from current faculty members at the University of Colorado and two from former research collaborators of Professor Manteuffe. [REDACTED] formerly served at the University of Colorado as an associate research professor. [REDACTED] is the Director of the Center for Applied Scientific Computing at the [REDACTED] National Laboratory where the petitioner is collaborating on a project to develop high performance software. All four of the petitioner's witnesses have ties to the University of Colorado or research projects involving the petitioner.

We note that the record reflects little formal recognition or awards for the petitioner's work in mathematics, arising from various groups taking the initiative to recognize the petitioner's contributions, as opposed to private letters solicited from selected witnesses expressly for the purpose of supporting the visa petition. Independent evidence from outside the petitioner's educational and research institutions which would have existed whether or not this petition was filed is more persuasive than subjective statements from individuals with an expressed interest in the petitioner's research projects.

The witness letters submitted are contradictory in regards to the necessity for a waiver of the

labor certification requirement. [REDACTED] contends that the petitioner's collaborative project with members of his research group at Livermore "would be severely hindered by the loss of the petitioner." [REDACTED] concludes his letter by stating the national interest waiver is necessary for the petitioner to continue research in collaboration with his group at Livermore. [REDACTED] on the other hand, argues that labor certification would tie the petitioner to one particular university or laboratory, thus failing to provide the petitioner with scientific training in "many stimulating environments." He describes the temporary nature of the postdoctoral research appointments and their importance in training young scientists. [REDACTED] states that the "national interest waiver category is the only avenue for [the petitioner] to acquire permanent residence at this time." If the position the petitioner seeks at UCB is temporary, the question necessarily arises as to why permanent immigration benefits are necessary when the petitioner already holds a nonimmigrant visa which allows him to work temporarily in the United States. We note that the petitioner's postdoctoral appointment at UCB is already covered by his H-1B nonimmigrant visa. Therefore, the petitioner's continued participation in research projects involving UCB is obviously not contingent on his obtaining permanent resident status.

Postdoctoral positions are inherently temporary for the very reason that they represent advanced training rather than independent career positions. The logical conclusion of [REDACTED] argument is that more experienced researchers, who have completed their training and are in a position to seek permanent employment, should be subject to an added requirement (labor certification) which ought not to apply to those researchers who choose to immigrate to the United States before completing their training. We reject the implied claim that, for the very reason that the petitioner has yet to complete his training, he is entitled to an exemption from the job offer requirement which, by law, attaches to the visa classification he seeks.

[REDACTED] also mentions the length of time and inconvenience involved with the labor certification process. However, nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process.

Witnesses describe the overall importance of computational mathematics and how smoothed aggregation allows for more efficient problem solving. Pursuant to published precedent, the overall importance of a given occupation is insufficient to demonstrate eligibility for the national interest waiver. While the Service recognizes the importance of improving computational methodologies and the associated benefits, 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. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. Mountain States Tel. & Tel. v. Pueblo of Santa Ana, 472 U.S. 237, 249 (1985); Sutton v. United States, 819 F.2d 1289, 1295 (5<sup>th</sup> Cir. 1987). By asserting the petitioner's employment as mathematical researcher inherently serves the national interest, the witnesses for the

petitioner essentially contend that the job offer requirement should never be enforced for this occupation, and thus this section of the statute would have no meaningful effect.

states that the petitioner's smoothed aggregation method "represents an important breakthrough because it is simpler to implement and therefore much more friendly and practicable for those in industry." The witnesses cite various potential applications for the petitioner's method, such as solving elasticity problems in manufacturing, improving glaucoma treatment, and nuclear weapons testing. However, the petitioner offers no evidence from experts in these industries to confirm that the implementation of his method resulted in a significant improvement over existing methods. Nor has the petitioner provided evidence from independent researchers confirming the impact of his smoothed aggregation method as a significant contribution in the field of computational mathematics.

The witnesses offer little information regarding the petitioner's specific contributions that have actually been successfully implemented by leading companies and governmental agencies. All of the witnesses assert their confidence in the future significance of the petitioner's work; for instance, states that the petitioner "is quickly emerging as a leader in his field." describes the petitioner's work in "developing" computer modeling systems and how his models "will replace" existing systems. As noted by the director, the witnesses use of phrases such as "will result in great benefit" and "will significantly advance" fail to demonstrate a past record of significant achievements and contributions in the field of computational mathematics.

The testimonial letters submitted demonstrate that the petitioner's expertise makes him a valuable asset to research projects affiliated with UCB. The petitioner's skills and familiarity with different aspects of computational mathematics, while useful to his research projects, does not appear to represent a national interest issue. In accordance with the statute, exceptional ability is not by itself sufficient cause for a national interest waiver. The benefit that the petitioner presents to his field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. 204.5(k)(3)(ii)(F).

Stated another way, the petitioner, whether the U.S. employer or the alien, 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 cannot suffice to state that the alien possesses useful skills, or a "unique background." As noted previously, regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. Likewise, it cannot be argued that an alien qualifies for a national interest waiver simply by virtue of playing an important role in a given project, if such a role could be filled by a competent and available U.S. worker. The alien must clearly present a significant benefit to the field of endeavor.

Along with the witness letters, the petitioner provides a list of five refereed publications, five publications in preparation or under review, and five non-refereed publications that he wrote or

co-authored since 1993. The record contains no evidence that the presentation or publication of one's work is a rarity in mathematical research, nor does the record sufficiently demonstrate that independent researchers have heavily cited or relied upon the petitioner's work in their research.

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." When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. Frequent citation by independent researchers, on the other hand, demonstrates more widespread interest in, and reliance on, the petitioner's work. The petitioner has failed to provide any evidence of independent citation of his published works. A simple listing of the petitioner's publications offers no valuation of their overall significance to the field of mathematics.

The director found that the petitioner's research possesses substantial intrinsic merit and is national in scope, but denied the petition, noting a lack of evidence establishing "benefits already provided by the petitioner's work." The director commented that the record lacked "corroboration from government agencies such as the Department of Defense." The director concluded that the petitioner failed to demonstrate that he would serve the national interest to a greater degree than would an available U.S. worker having the same qualifications.

On appeal, counsel argues that the Service erred by adopting an incorrect interpretation of the law, ignoring substantial evidence favoring the petition, failing to request additional evidence from the petitioner, holding the petitioner to an excessive standard, and ignoring the petitioner's ineligibility for a labor certification. We have already offered a detailed discussion of the petitioner's evidence and the labor certification issue. We will address counsel's remaining arguments.

Counsel argues that the director failed to request additional evidence from the petitioner pursuant to 8 C.F.R. 103.2(b)(8). The regulation at 8 C.F.R. 103.2(b)(8) states: "If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence." Counsel argues that the petitioner has not pointed to any evidence in the record demonstrating the petitioner's ineligibility. The record does not support this conclusion. The director quoted both [REDACTED] and their speculation regarding the future significance of the petitioner's research. This evidence has already been addressed in detail above. While counsel argues that the director erred in not requesting additional evidence, no such evidence is offered on appeal. Counsel also claims that the director ignored "substantial" evidence favoring the petition. We disagree with counsel's conclusion that the four letters submitted from

witnesses having direct ties to the University of Colorado or research projects involving the petitioner constitute “substantial” evidence of the petitioner’s eligibility.

Counsel argues that the petitioner is not a “research assistant” and therefore the director’s decision contains a factual error. While this may be true, there is no indication that the director would have rendered a substantially different decision without this error.

Counsel takes issue with the following statement made by the director: “It has not been established that others aren’t involved in the same type of research, and are making progress.” Counsel cites the letter from [REDACTED] referring to the petitioner: “Specifically, he is one of only three researchers in the field doing research on smoothed aggregation. Of course, the important point is that the preliminary results regarding his method indicate that it has many benefits over other approaches developed to date.” This statement is not supported by independent corroboration from other mathematical researchers outside the scope of UCB’s research endeavors. Further, [REDACTED] refers to “preliminary results” regarding the petitioner’s method. This seems to suggest that the method has not yet significantly impacted the computational mathematics field. Far greater weight attaches to a past track record of proven accomplishments in the field as recognized by independent experts. We disagree with the director’s statement above because there is no requirement in the statute, regulations, or case law that an alien must “establish that others aren’t involved in the same type of research” in order to qualify for the waiver. The director’s standard here is unacceptably restrictive. We note, however, the latter part of the director’s statement referring to “making progress” in the field. Requiring a demonstrable record of progress superior to other mathematical researchers having the same minimum qualifications as the petitioner is an acceptable standard for determining eligibility for the waiver.

Another flaw in the wording of the director’s decision, as noted by counsel, is reflected in the following statement: “It has not been established that the alien’s contribution places him above all those others who continually contribute to the field of knowledge.” This requirement is onerous and unsupported by statute, regulation, or case law. Pursuant to Matter of New York State Dept. of Transportation, the petitioner need only establish that the benefit he presents to his field of endeavor greatly exceed the “achievements and significant contributions” contemplated in the regulation at 8 C.F.R. 204.5(k)(3)(ii)(F). We concur with counsel that the director’s decision does contain some flawed statements, however; the decision is by no means so flawed as to undermine the grounds for denial.

Counsel also takes issue with the director’s statement that the record is not persuasive without corroboration from government agencies such as the Department of Defense. Counsel notes the submission of letters from [REDACTED] (operated by Sandia Corporation for the Department of Energy) [REDACTED] of the Lawrence Livermore National Laboratory. We find no error in the director’s statement because while these agencies may receive federal funding, they are not U.S. Government agencies. While corroboration from government agencies is not specifically required by the statute, regulations, or case law; we believe that the director was simply seeking independent evidence beyond those involved with

the petitioner's research groups, the faculty of the University of Colorado and their research collaborators.

While the Service recognizes the importance of improving methodologies for computational mathematics, 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. We do not dispute that the petitioner's work has yielded original results in his mathematical research at UCB, but it is not apparent that an accredited university will generally grant a postdoctoral fellowship in recognition of unoriginal work. The petitioner has not shown how his work has been of greater impact or benefit than that of other mathematical research associates.

The issue in this case is not whether the advances in the field of computational mathematics are in the national interest, but, rather whether this particular petitioner, to a greater extent than U.S. workers having the same minimum qualifications, plays a significant role. There is no indication that researchers outside of the petitioner's university and research groups regard his work to be of greater significance than that of other researchers. Rather, many key witnesses have couched their remarks not in terms of what the petitioner has done, but what he is likely to achieve at some unspecified future point. While the petitioner certainly need not establish national fame as a researcher, the claim that his research is especially significant would benefit greatly from evidence that it has attracted significant attention outside of individuals with ties to UCB.

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. Without sufficient evidence that the petitioner has been responsible for significant achievements in the field of computational mathematics, we must find that the petitioner's assertion of prospective national benefit is speculative at best. While the high expectations of the petitioner's research collaborators and professors at UCB may yet come to fruition, at this time the waiver application appears 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.