

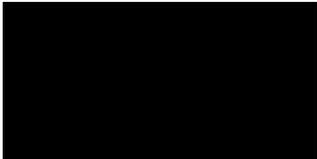


B5

U.S. Department of Justice
Immigration and Naturalization Service

**identifying data deleted to
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invasion of personal privacy**

*OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536*



File: EAC 00 059 54055 Office: VERMONT SERVICE CENTER

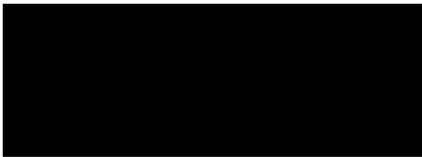
Date: **OCT 02 2002**

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:



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 sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary 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 senior researcher at the Institute for Electrical Power Research, Budapest, Hungary. The petitioner has been collaborating with researchers at Rensselaer Polytechnic Institute ("RPI"). 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, 22 I&N Dec. 215 (Comm. 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.

The petitioner describes his work:

I conduct research in thermo-fluid and computer sciences for nuclear reactor safety and other processes, including design and development of mathematical and physical computer simulation models to examine the behavior and safety of pressurized water nuclear reactors in severe nuclear accidents to prevent accident occurrence and mitigate their consequences. . . .

I have constructed a thermohydraulic experimental loop test facility whereby the behavior of heat- and fluid flow of coolant in a pipe system similar to that of a nuclear reactor may be observed and analyzed following an accident involving loss of coolant.

The petitioner asserts that, for the foreseeable future, nuclear fission will remain one of the United States' main sources of power, and that safety is a paramount concern with nuclear power plants. We do not dispute the intrinsic merit of nuclear power plant safety research. Because the petitioner conducts research of a general nature, rather than work specific to one particular plant, we also acknowledge the national scope of his work.

The petitioner submits examples of his published articles and articles that cite his work, along with background documentation pertaining to his field. The petitioner also submits several witness letters. Dr. Mark J. Embrechts, associate professor at RPI, states:

I have cooperated with [the petitioner] on the fast identification of nuclear power plant malfunctions. . . . [The petitioner] invented novel, elegant and reliable methods for the fast identification of nuclear power plant transients. . . .

Indeed, the work of [the petitioner] for the fast identification of nuclear power plant mishaps is one of the most significant contributions to ensure nuclear power plant reliability during the past decade. . . . The inventions of [the petitioner] could mitigate the negative effects of major nuclear power plant malfunctions (e.g., loss of electricity production). Preventing their consequences has an extremely favourable effect on the nation's economy. Given the fact that [the petitioner's] inventions enable successful malfunction recognition and taking into account that there is a potential of four or five such cases per reactor per year, the economic gain can be safely estimated to be in the range of \$100 million p.a.

Professor Richard T. Lahey, Jr., member of the prestigious National Academy of Engineering and recipient of numerous awards in his field, states:

[The petitioner] has interacted with us here at Rensselaer over the last several years as part of a Hungarian/American Science & Technology program. Our collaboration addresses nuclear reactor safety. More specifically, [the petitioner] worked on resolving one of the primary limitations on operational control and its impact on the reactor's stability characteristics. Indeed, [the petitioner] has developed a new physical model for pressurized water reactors for analyzing nonlinear reactor instability and control. . . .

[The petitioner] is an authority in the area of nuclear reactor safety and has made important contributions to further the understanding of reactor stability analysis.

Other RPI faculty members offer similar endorsements of the petition. The petitioner also submits letters from faculty members of the Technical University of Budapest, where the petitioner had studied. These witnesses indicate that the petitioner's new models of nuclear power plant malfunctions are significantly more accurate than previous models.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. The director specifically instructed the petitioner to submit evidence to show that the petitioner's work has had particularly significant impact on the field. In response, the petitioner has submitted additional witness letters, published materials, and other documentation.

Professor Mujid S. Kazimi, director of the Center for Advanced Nuclear Energy Systems at Massachusetts Institute of Technology ("MIT"), states:

I have known [the petitioner's] work since the 1980s. . . .

Because of his work, which has been published in international journals, he has been invited to join the safety assessment group of the Hungarian reactor, supplied

by a Russian manufacturer. His analysis of the safety of that reactor was essential to the decision-makers in that country. He has also been involved in collaborative research arrangements with several well known faculty members of the Rensselaer Polytechnic Institute of New York. In that capacity he has contributed to the state of the art in numerical simulation of thermal hydraulic transients in reactor systems.

Professor Neil E. Todreas, also of MIT, similarly endorses the petitioner's skills and asserts that he is familiar with the petitioner's work. Professor L.E. Hochreiter of Pennsylvania State University affirms that the petitioner had "made important contributions" in his field.

The petitioner has also submitted further copies of third-party articles containing citations of his work, reflecting the impact of the petitioner's publications on the field.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work but finding that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. The director cited "the lack of citations" of the petitioner's work as evidence that the petitioner has failed to establish influence in the field.

On appeal, counsel observes that the petitioner has indeed provided evidence of numerous citations of his work. Counsel contends that the director "ignored" this evidence as well as letters from third parties that show the petitioner's "reputation has traveled beyond his circle of colleagues to attract the attention and respect of the scientific community." Upon careful consideration of the record, we concur with counsel's assessment. The director's notice of decision contains minimal consideration of the evidence of record, and it is flatly incorrect in its assertion that the record does not contain citations of the petitioner's work. The record does not demonstrate that the petitioner is a nationally or internationally acclaimed figure in his work, but such a standard is not necessary for a national interest waiver. The petitioner has demonstrated that his prolific work has influenced others in the field.

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 field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has 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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.