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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

[Redacted]

File: [Redacted] Office: NEBRASKA SERVICE CENTER

Date: **OCT 15 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:

[Redacted]

**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 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.

We note that the most recent submission from counsel, dated August 2000, lists counsel's address as Suite 3367 in Tower One of the World Trade Center in New York. An Internet search reveals that, as of February 2001, another company occupied that suite.<sup>1</sup> The record contains no change of address notice, nor any other material that might provide a more recent address for counsel, and therefore we have no choice but to continue to use the last known address of record.

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 research associate at Northwestern University. 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 has 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

<sup>1</sup> [www.tbtf.com/umblinking/arc/2001-09a.htm](http://www.tbtf.com/umblinking/arc/2001-09a.htm) identifies that last known tenant as Rachel & Associates.

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.

Counsel discussed the petitioner's work in the field of optoelectronics:

[The petitioner] is particularly highly regarded for his significant contributions to the development of high bandwidth (40Gb/s) optical modulator for the next generation optical network. At the Northwestern University, for instance, he has set up a time saving and cost effective E-O measurement and made great progress in fabrication of a new type of optical modulator . . . [that] will operate to very high bandwidth, which is very useful for high capacity local area networks (LANs), for video transmission . . . and for ultrafast information processing such as analog-to-digital conversion.

Along with the above materials and background evidence regarding the petitioner's field, the petitioner submits several witness letters. Northwestern University Professor Seng-Tiong Ho, director of Research and Development at Nanovation Technology, Inc., states:

[The petitioner] is one of a small number of scientists who have made several original scientific contributions of major significance in opto-electronics research. . . . [A]t the time [the petitioner] left China for the United States in 1998, he had already established himself as a highly respected expert in opto-electronics in China. . . .

Within the brief period of one year [at Northwestern, the petitioner] made a number of significant achievements in several research projects. . . . Since [the petitioner] began work in my group, he has made great progress in a short time. He set up an E-O measurement system which saved us a lot of time and much money. He also made great progress in fabrication of optical modulator, for example, smart-cut and etching of lithium niobate. This kind of optical modulator will operate to very high bandwidth.

Dr. Hui Cao, an assistant professor at Northwestern, asserts “[t]he benefits of [the petitioner’s] work are bound to have a major impact on American society as a whole,” and that the petitioner’s “work on [a] high speed modulator has made him an outstanding researcher in this novel field.” Several other Northwestern faculty members offer similar comments. The only initial witness not from Northwestern is Professor Guotong Du of Jilin University, where the petitioner had earned his bachelor’s and master’s degrees. Prof. Du states that the petitioner’s “research findings have received great response from the scientific community and have facilitated the work of many other scientists.” Prof. Du states that the petitioner played a key role in award-winning projects before leaving China.

The petitioner submits copies of many scholarly articles that he has co-authored. Materials in the record show independent citations of only three of these articles, an aggregate total of five times (one article cited once, the other two cited twice each). Given this low citation rate, and the fact that all of the petitioner’s witnesses are from universities where the petitioner has worked or studied, the record contains little objective evidence of the petitioner’s measurable influence in the field as a whole (as opposed to his immediate circle of collaborators and supervisors).

The record contains evidence of press coverage of Nanovation’s work, largely through press releases issued by Nanovation. None of these articles even identifies the petitioner, much less credits him as a significant contributor. Because these articles derive from Nanovation’s own press releases, they do not necessarily reflect the response of the rest of the field to the work conducted there. One article contains a quotation by an outside researcher: “[i]f their claims are true, it’s a significant breakthrough. . . . The question is whether they have done a heroes experiment or will they actually deliver products.”<sup>2</sup>

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 stated that the petitioner has not “established a history or pattern of significant contributions to his field.” The director acknowledged the importance of the petitioner’s field of research but concluded that the petitioner has not shown that he, specifically, plays so significant a role in that field that he warrants a national interest waiver. The director noted that the witness letters do not directly establish recognition outside of the petitioner’s circle of collaborators and superiors.

<sup>2</sup> Nanovation Technologies, Inc., went out of business in late 2001 following an attempt to reorganize under Chapter 11 bankruptcy protection (source: [www.smalltimes.com/document\\_display.cfm?document\\_id=3132](http://www.smalltimes.com/document_display.cfm?document_id=3132), accessed September 26, 2002). Its equipment was sold at auction in February 2002. The company’s website, identified in press releases as [www.nanovation.com](http://www.nanovation.com), is no longer active. Nanovation’s failure would seem to justify concerns about the company’s ability to deliver on its highly optimistic projections.

On appeal, the petitioner submits a copy of counsel's introductory letter, first submitted with the initial filing of the petition, as well as a new letter from counsel. Counsel argues that the petitioner has already submitted "evidence to prove that [the petitioner] is an accomplished scientist" who works "in critical areas of computer and electronic engineering." Counsel asserts that each of the initial witnesses "has offered convincing evidence" of the significance of the petitioner's work. Counsel offers no response to the director's observation that the record contains no evidence that the opinions of these witnesses are shared outside of Northwestern University and Jilin University.

Counsel notes "the citations of [the petitioner's] scientific publications by other scientists across America and in other parts of the world." As we have already observed, the record documents only five citations of the petitioner's work, with no more than two citations of any given article.

Counsel argues that the petitioner "is indeed one of the few scientists in the world capable of carrying on the important research he has been conducting in the United States. Few experts today possess such extraordinary expertise, and have had such profound impact on the course of scientific research." The burden remains on the petitioner to establish this "profound impact." Five citations, and letters from co-workers and supervisors, are not sufficient to show that the petitioner has had, and will continue to have, an impact on scientific research that a qualified U.S. worker would be unlikely to match.

Another issue of note is that, as a postdoctoral researcher at Northwestern, the petitioner held an inherently temporary position, already adequately covered under his existing nonimmigrant visa. If the petitioner's service to the national interest is closely tied to the continuation of his work on a specific project at Northwestern, then an explanation is in order as to why the petitioner requires permanent immigration benefits for a temporary job. If the university is unwilling or unable to employ the petitioner permanently, then the petitioner's work there will end in the short term, with or without a waiver.

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.