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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: LIN 00 258 53238 Office: Nebraska Service Center

Date: OCT 29 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 sustained and the petition will be approved.

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 she filed the petition on September 5, 2000, the petitioner was pursuing her Ph.D. as a research associate at the Corrosion and Multiphase Systems Center ("CMSC"), Ohio State 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 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 Master of Science degree in Environmental Engineering from the Beijing Municipal Institute of Labor Protection. Her acceptance into a U.S. doctoral program at Ohio University demonstrates the equivalence of this degree to a U.S. master's degree. 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 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, 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.

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. 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 she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at note 6.

Dr. W. Paul Jepson, Professor of Chemical Engineering at Ohio University and Director, CMSC, is the petitioner's research advisor. Dr. Jepson states:

The Center conducts research and development projects aimed at understanding, characterizing, and mitigating corrosion processes in systems that have multiphase or multi-component flows or environments (e.g. mixed oil-water flows). This type of research is becoming significantly more important as the oil and gas industries rely increasingly on deep-sea or distant reserves that must be transported over long distances through pipelines. Typically, deep-sea or distant wells produce a mixture of oil, water, and gas. This mixture is usually pumped through a large diameter pipeline to central

processing stations where it can be efficiently and cost-effectively separated. As the oil industry builds ever more long-distance multiphase flow pipelines, the need to characterize these flows and minimize corrosion-related expense becomes absolutely crucial.

* * *

I have authored several major publications with [the petitioner]. The primary focus of her research has been to develop a mechanistic model for mixed oil-water flows. This model can be employed to predict water film height, oil-water phase distribution, and corrosion in mixed flow (or "multiphase") pipelines. [The petitioner] developed her model after years of data collection related to multiphase flow characteristics such as pressure gradients, water holdup, velocity profiles, and the effect of surfactant and inclination on flow characteristics in large diameter pipelines. The industry participants at the [REDACTED] have been very interested in her work. Her model has direct practical application to pipeline development and corrosion inhibition problems common in the oil industry.

* * *

The U.S. oil industry is already employing her research results and the model that she developed to reduce corrosion and develop better pipeline and separator designs... Furthermore, oil leaks due to corrosion have environmental impacts as well. Reducing corrosion in pipelines will contribute to reducing these impacts.

In my many years of experience with the oil and gas industries, I have never encountered anyone duplicating [the petitioner's] work on multiphase flow. Her research is unique, and she is one of the few brilliant researchers with the necessary understanding and experience to assist our industry in developing techniques to better access and exploit deep-sea and remote resources. There are no comparable U.S. workers in the private or academic sectors who can perform the research that she is now doing.

[REDACTED] states: "[The petitioner] is one of the few individuals in the world with the requisite understanding and experience to assist our industry... The studies and models that she has developed have been of great interest to major oil companies in the United States, including my company."

[REDACTED] states:

[The petitioner's] research involves studying and characterizing oil-water flows in pipelines and developing methods to inhibit corrosion due to such flows. Her studies have provided crucial insights on predicting corrosion rates in oil-water pipelines... [The petitioner] has incorporated her data into a mechanistic model that can be used to predict water film height, oil-water phase distribution, and the onset of corrosion in oil-water flows.

[REDACTED] credits the petitioner with providing valuable research on "the effect of surfactants on flow characteristics and phase distribution as well as their effects upon pipeline corrosion." [REDACTED] further states: "The experimental setup that [the petitioner] uses is one of a kind in the U.S.... [The petitioner] is responsible for the design, setup, commissioning, and operation of this unique facility."

[REDACTED] and [REDACTED] Director of [REDACTED] offer additional letters of support for the petitioner.

The director denied the petition, indicating that the petitioner met the first prong of the above-described national interest test, but that the petitioner had not established the national scope of her research or her ability to serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

On appeal, the petitioner submits two additional witness letters and a brief statement from counsel. [REDACTED] former [REDACTED] and former Associate Professor of [REDACTED] at the [REDACTED] states that while serving as Director of the [REDACTED] program, he became aware of the petitioner's research activities through her scholarly publications and presentations at international technical conferences. [REDACTED] repeats the assertions of previous witnesses and describes the petitioner as a leading researcher in the industry.

In his second letter [REDACTED] states:

The research provided by [the petitioner] is unique. It is the only research which has elucidated the three-dimensional character of oil-water flows. This research lays the foundation for modeling and design tools. Based on the petitioner's data and understanding of oil-water flows, Texaco is constructing a state-of-the-art model for oil-water flows which will be used for designing separation facilities. The three-dimensional approach used by [the petitioner] is unique and allows such a design tool to be constructed. Previous efforts in this area have been restricted to one-dimensional analysis with no ability to predict the fluid distributions, thus allowing only pressure drop to be modeled... Cross-fertilization has occurred with her work being considered in the design of hydrate inhibitor treatments and prediction of hydrate plugging of pipelines.

We concur with counsel's assertion that the proposed benefits of the petitioner's research would be national in scope. Documentation provided in support of the petition, including the statements of academic scholars and oil industry experts, demonstrates the widespread impact of the petitioner's research.

Contrary to the assertion of the director, we find that the petitioner's work has indeed attracted attention beyond her colleagues at [REDACTED]. The petitioner's work has garnered the attention of experts throughout the industry, including individuals with no direct ties to the petitioner. The petitioner has shown that independent experts have acknowledged the value of her research contributions and that the U.S. oil industry is already utilizing her research results and the model that she developed.

In this case, the petitioner has established a prior track record of achievement in her field. Upon careful consideration of the documentation submitted, we find that the petitioner has demonstrated the significance of her research findings and their influence upon the field as a whole. Certainly, not every Ph.D. candidate qualifies for a national interest waiver, but in this case the petitioner has presented findings which experts throughout the industry deem to be of special significance.

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. That being said, the above testimony, and further testimony in the record, establishes that the industry 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.