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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.
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Washington, D.C. 20536

[Redacted]

File:

[Redacted]

Office: Nebraska Service Center

Date: 11 SEP 2002

IN RE: Petitioner:

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 visa petition was denied by the Director, Nebraska Service Center. The petitioner then filed a Motion to Reopen/Reconsider, which the director dismissed. The matter 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 computer scientist with Bluestone Consulting, Inc. 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, 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.

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.

The petitioner describes his work:

Presently, with Bluestone Consulting, I am developing and applying leading edge technology in Internet/Intranet applications, Java technology, mission critical application, Client/Server technology, system security, Y2K, [and] commercial applications and banking. My contributions have been extremely enormous in these areas and I have realized several mission critical duties to companies such as Anxiter/Chicago, InterAccess Chicago, Ratheon/Dallas, Teradyne/Dallas, and Northrop Grumman/San Angelo. My educational background and the vast amount of experience acquired over the years in industry and academic [sic] is absolutely important and would be utterly beneficial to the USA industry/academic [sic] and the world at large.

The petitioner, however, offers no evidence from the above-mentioned companies to confirm or

specify his alleged "mission critical duties" at their organizations. Even if the petitioner were to provide such evidence, it has not been explained how his work with these computer systems is national in scope. The performance of computer services for a given client is of interest mainly to that particular client.

The petitioner submits four letters from his academic and personal acquaintances. Dr. [REDACTED] Senior Lecturer in the Department of Computer Science at Cardiff University, Wales, United Kingdom, served as the petitioner's Ph.D. advisor. Dr. Martin states:

He finished his Ph.D. in 1993, after 3 years of work, and in my opinion it was of a high standard. His Ph.D. concerned an investigation into the relationships between fast orthogonal transforms, and quadrees, a method of hierarchically representing computer images. He established a new mathematical relationship based on the idea that one divides the data up in a certain way, leading to efficiencies, while the other divides the computation up in another way; by combining both greater efficiencies can be obtained than previously realized. This observation lead to a series of papers in prestigious journals, such as the *IEEE Transactions on Communications*, to report these results.

More recently he has been a Professor at the Federal University of Maranhao, Brazil, where he has worked on a variety of medical image processing problems. I have visited him twice there to collaborate on work in such areas as wound volume estimation, which again has lead to publication in international journals.

As well as his technical skills, he has shown considerable managerial and administrative skills in Brazil, and has been instrumental in improving the research rating of the Department there of which he was a member.

Dr. [REDACTED] Director of Postgraduate Research at the Federal University of Maranhao, Brazil, states:

I have worked with [the petitioner] for four years. He joined my institution in 1994 and left for Bluestone Consulting, Chicago/USA in 1998. During this period [the petitioner] accomplished amongst others, the following activities:

He designed and implanted [sic] the Postgraduate courses at the master and doctorate levels. Most remarkably are his efforts in medical image research in the areas of breast cancer. At present, he is still actively involved with this research while working for Bluestone Consulting in Chicago, USA. A prototype of his research is undergoing clinical tests at the university hospital.

He designed and implemented the computing infrastructure; network, system security, Internet services, computing laboratories, equipment and the electronic library.

He established and coordinated international academic and industrial research collaborations under the British Council/CNPQ Brazil convention, with institutions in Great Britain. This ongoing collaboration has enhanced technological growth and brought enormous benefits both to the institution and local industries. Now in USA, links are being sought to expand the collaboration project with US industrial and academic institutions.

He participated in establishing several industrial/academic projects with emphasis on applied research in areas such as breast cancer, clinical morphology, computer vision, and applications of computing.

Dr. [REDACTED] Senior Software Engineer, Mosakin International Corporation, an information technology company, states that he has worked with the petitioner in "designing, building and publishing applications." Dr. Chick describes the petitioner as "industrious" and "conscientious," but fails to specify the petitioner's specific contributions of significance to the computer science field.

Dr. [REDACTED] Programmer Analyst, Teachers Insurance and Annuity Association College Retirement Equity Fund, studied with the petitioner at Cardiff University. Dr. [REDACTED] describes himself as "a close friend [of the petitioner] for over ten years." He refers to the petitioner as an "accomplished researcher" and notes that the petitioner "published papers in top brass computer science journals." In a statement accompanying the petition, the petitioner also refers to his published articles. The record, however, contains no evidence that the presentation or publication of one's work is a rarity in petitioner's field, 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 not provided a citation history of his published works. Without evidence reflecting independent citation of these articles, we find that the petitioner has not significantly

distinguished his results from those of other researchers in the field. It can be expected that if the petitioner's published research was truly significant, it would be widely cited. The petitioner's participation in the authorship of five published articles prior to the filing of the petition may demonstrate that his research efforts yielded some useful and valid results; however, the impact and implications of the petitioner's findings must be weighed. The record fails to demonstrate that the petitioner's findings have had a greater or more lasting impact than those of other researchers in the computer science field.

The petitioner's four witnesses include the petitioner's supervisor at the Federal University of Maranhao, Brazil, the petitioner's Ph.D. supervisor from Cardiff University, a fellow alumnus from Cardiff University, and a computer application project collaborator. The witnesses describe the petitioner's expertise and value to his employers' projects, but do not demonstrate the petitioner's influence on the field beyond the employing institutions' projects. The petitioner's witnesses fail to demonstrate that his work has attracted significant attention throughout the computer science field.

In addition to the witness letters, the petitioner submits an article entitled "Science in the National Interest" discussing the undoubted importance of scientific discovery and technological innovation in the United States. Pursuant to published precedent, the overall importance of a given project or field of research is insufficient to demonstrate eligibility for the national interest waiver. While the Service recognizes the importance of improving computer technology in areas such as medical image processing, 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 field is so important that any alien qualified to work in that field 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 (5th Cir. 1987). By asserting that his employment as a skilled computer scientist inherently serves the national interest, the petitioner essentially contends that the job offer requirement should never be enforced for his occupation, and thus this section of the statute would have no meaningful effect.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States.

On motion, counsel cites several AAO decisions approving national interest waiver petitions. Counsel's attempt to apply statements from previous AAO findings to the current case is flawed. Without the original record of documentation, there can be no meaningful analysis of the decisions to determine the applicability of the same reasoning to other cases. Furthermore, the approvals in question do not represent published precedents and therefore are not binding on the Service in other proceedings.

In a letter accompanying his motion to reopen/reconsider, the petitioner argues that there is an "acute shortage of Ultra Enterprise 10000 Experts in the United States." According to data cited by the petitioner, the percentage of unfilled jobs requiring Ultra Enterprise 10000 certification from Sun Microsystems is "on the rise." Pursuant to Matter of New York State Dept. of Transportation, a shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining, rather than waiving, a labor certification.

The petitioner also refers to the length of time and difficulty involved with the labor certification process. While this assertion leaves little doubt as to petitioner's opinion of the labor certification process, it remains that Congress mandates that process through the job offer requirement. As long as that requirement remains in the law, it is not persuasive to argue that labor certification itself is inherently flawed and time consuming and therefore a waiver is in the national interest.

We note Congress' recent creation of a blanket national interest waiver for certain physicians. The creation of Section 203(b)(2)(B)(ii) of the Act demonstrates Congress' willingness to grant such blanket waivers. We cannot ignore, the absence, to date, of such a blanket waiver for information technology/computer scientists. Furthermore, the creation of the blanket waiver for certain physicians demonstrates that no such blanket waiver for any given occupation is implied in the statute. Otherwise, the blanket waiver for certain physicians would be superfluous.

The director dismissed the motion, stating that the petitioner failed to provide new evidence to overcome the grounds for denial.

On appeal, counsel states that the director applied an incorrect legal standard and failed to consider the petitioner's initial evidence. The record does not support counsel's conclusion. In order to qualify for the classification sought, the petitioner must demonstrate that he has had some measure of influence on the computer science field as a whole. The petitioner's witnesses, however, consist entirely of his research collaborators and academic acquaintances. Such individuals, by virtue of their proximity to the petitioner, are not in the best position to attest to the petitioner's impact outside of the institutions where he has worked. Research which influences the field of computer science in general serves the national interest to a greater extent than research which attracts little attention outside of the institution that produced that research. We note that the record reflects little formal recognition or awards for the petitioner's research, 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 that would have existed whether or not this petition was filed is more persuasive than subjective statements from individuals personally acquainted with the petitioner.

The petitioner's statements regarding his Ultra Enterprise 10000 certification and other advanced computer training cannot suffice to demonstrate eligibility for the national interest waiver. Possession of such certifications does not intrinsically distinguish the petitioner from others who obtained the same certifications. Furthermore, any objective qualifications that are necessary for the performance of a computer scientist position can be articulated in an application for alien labor certification.

The petitioner has not established that his research has consistently attracted significant attention beyond the institutions where he studied, was employed, or provided computer consulting services. The available evidence does not indicate that the petitioner is responsible for any significant advances in computer science or medical image processing, or that his work is viewed as particularly important outside of his own circle of collaborators. For example, the petitioner has provided no documentation showing that his medical imaging system for breast cancer has been implemented outside of Federal University in Brazil. Furthermore, while the petitioner has published some articles, there is no indication (such as heavy independent citation) that the petitioner's research has had an especially substantial impact on the overall field. Counsel contends that the petitioner has made such a showing but offers no support except for the statements from the petitioner and those close to him. These statements cannot establish, first-hand, that individuals outside of the petitioner's circle of colleagues share similar opinions regarding the significance of his work.

The issue in this case is not whether the advancement and implementation of computer technology is 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. While the petitioner is an able computer scientist whose skills have won the respect of those who have taught and employed him, the available evidence does not persuasively establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches itself to the visa classification sought by the petitioner.

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 the 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.

ORDER: The appeal is dismissed.