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U.S. Department of Justice  
Immigration and Naturalization Service

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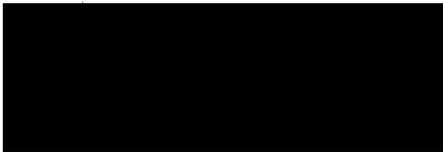
File: [Redacted] Office: Nebraska Service Center

Date: 11 SEP 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 software engineer. At the time he filed the petition on October 26, 1999, the petitioner was employed by Engineering Animation, 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 petitioner holds a Ph.D. in Civil and Environmental Engineering from Ohio State University ("OSU"). 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, 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 sought. 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.

Counsel describes the petitioner's work:

In the field of engineering, [the petitioner's] work focused on the development of a concurrent design approach for industrial facilities. Concurrent design is an organizational methodology that primarily aims at improving the design process through, among others, providing the ability to address downstream project activities early in the design process, and by adopting a team-oriented, multi-disciplinary approach to the design process. To implement this approach, there exists the need to develop models and software systems that can support the integration of project information, domain-specific software tools, and the collaboration of project team members. As yet, there are no

theories or standard models that can be used to apply concurrent engineering or to implement computational support to enable its application. However, advancing this approach is critical as it has the ability to revolutionize the construction industry...

The petitioner submits six witness letters. Dr. [REDACTED] Professor of Construction and Engineering Management, OSU, served as the petitioner's academic advisor. Dr. Hadipriono states:

[The petitioner's] Ph.D. work has contributed to the state-of-the-art of our research area. [The petitioner] has developed a computational model employing advanced high performance computing techniques to support the application of concurrent engineering in the construction industry. [The petitioner's] model promises to solve a multitude of problems that design and construction companies are facing. This work has been very well received in our research community as well as in the local construction industry of Columbus, Ohio.

The petitioner, however, offers no evidence confirming the actual implementation of the petitioner's model, or evidence of its impact beyond Ohio. Dr. Hadipriono letter lists four articles co-authored by the petitioner. 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 engineering 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 provides no evidence that his articles have been heavily cited.

Dr. [REDACTED], Associate Professor Emeritus, OSU, Department of Civil and Environmental Engineering, indicates that he taught the petitioner several graduate courses and served on the petitioner's thesis and dissertation committees. Dr. Larew states:

Of the more than 120 Graduate Studies Program students that I advised over the years, [the

[redacted] petitioner] was clearly among the top 5% in engineering knowledge and skills, and the top 3% in computer science knowledge and skills... He has the potential to assume a future role as a leader in the industry in the development of computer based solutions to age old problems that we continue to face in the domestic and international market places. He successfully solved all technical problems that one might reasonably be expected to solve in a first rate graduate studies program.

Dr. [redacted] offers no evidence of the petitioner's specific contributions in the area of concurrent design/software engineering. Dr. [redacted] discussion relates only to the petitioner's future potential and academic accomplishments at OSU. University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The petitioner's scholastic achievement may place him among the top students at OSU, but it offers no meaningful comparison between the petitioner and experienced software engineers.

Dr. [redacted] Environmental Manager, Evans, Mechwart, Hambleton, & Tilton, Inc. ("EMH&T"), was the petitioner's immediate supervisor at the firm. Dr. Abdel-latif lists the petitioner's duties as an engineering scientist, but does not specify how the petitioner has influenced the industry beyond his work at EMH&T. Dr. [redacted] states: "The demands in our profession are very high for individuals like [the petitioner] who have a multi-disciplinary background and expertise in both civil engineering and computer software technologies." Observations regarding the petitioner's educational background and expertise cannot suffice to demonstrate eligibility for the national interest waiver. Any objective qualifications that are necessary for the performance of an engineering position can be articulated in an application for alien labor certification.

[redacted] Associate with the firm of EMH&T, also worked with the petitioner. He states:

My project required the development of a sophisticated interactive database and GIS interface for analysis of field collected and historical attribute data as well as for result reporting... [The petitioner] was recommended to me because of his computer background and relevance to work that he was completing for his Ph.D.... I provided [the petitioner] with the vision; [the petitioner] provided the product... I found him to be a very quick study.

[redacted] Director of Compensation and Benefits, Engineering Animation, Inc., states:

[The petitioner] has been employed at Engineering Animation since October 1, 1998 as a Software Engineer... [The petitioner's] projects include the development of the following smart factory objects for Factory Computer Aided Design: control cabinets, structurally correct pallet racking, floors, and conveyor/machine pits... [The petitioner] plays an integral role in our business.

The petitioner's six witnesses include three of his academic advisors from OSU and three coworkers. The letters from the petitioner's coworkers describe the petitioner's expertise and

contributions to certain projects, but do not demonstrate the petitioner's influence on the field beyond his employing institutions. It has not been explained how the benefit resulting from the petitioner's work at these companies is national in scope. The performance of software engineering services for a given employer is of interest mainly to that particular employer.

In sum, none of the witness letters indicate that the petitioner's contributions are especially important to his field, nor do the letters even devote much space to the petitioner's specific activities. The message of the letters instead seems to be that because the industry requires trained professionals to do a certain kind of work, the petitioner serves the national interest by virtue of possessing the required training and skills. Pursuant to published precedent, the overall importance of a given project or area of research is insufficient to demonstrate eligibility for the 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 a skilled engineer 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.

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. The director stated: "While the record indicates that the alien petitioner is a productive researcher, the record does not establish that the contributions of the alien petitioner are such that they measurably exceed those of his peers at this time."

On appeal, counsel cites typographical errors in the director's decision pertaining to the petitioner's educational background and area of expertise. While we acknowledge the existence of these errors, the majority of the director's evidentiary analysis was sound and there is no indication that the director would have rendered a substantially different decision without the errors.

Information submitted on appeal reflects that in January 2000 the petitioner commenced employment as a postdoctoral research associate at the Center for Transportation Research and Education ("CTRE"), Iowa State University. The petitioner submits information from the internet explaining CTRE's function, but offers no information regarding his role there.

Counsel refers to the petitioner's five publications and notes that a sixth research article was accepted for presentation in June 2000. This evidence came into existence subsequent to the petition's filing. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Again, we note that the petitioner has not provided a citation history of his published works. Without evidence reflecting independent citation of his 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 were truly significant, it would be widely cited. The petitioner's participation in the authorship of five research articles prior to the filing of the petition may demonstrate that his 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 garnered significant attention from other researchers in the engineering community.

Counsel cites the testimonial letters as evidence of the petitioner's impact on his field. We note that the petitioner's witnesses consist entirely of his academic advisors from OSU and former coworkers. Such individuals, by virtue of their proximity to the petitioner's work, 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 engineering and computer aided design in general serves the national interest to a greater extent than research that 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.

Several of the witnesses assert their confidence in the future significance of the petitioner's work. Dr. [REDACTED] states: "It is reasonable to predict that [the petitioner] will make major contributions to the development of faster, better, and more reliable systems for design and construction of important future projects." Similarly, [REDACTED], academic co-advisor for the petitioner's Ph.D. studies at OSU, states: "I believe that [the petitioner's] potential for future contributions to the field of construction management is extremely promising." Such assertions that the petitioner has a promising future do not establish eligibility, for the published precedent clearly calls for evidence of a past record of demonstrable achievement.

The petitioner provides no evidence that his concurrent design methodologies have been implemented throughout the engineering field. Nor has the petitioner offered evidence demonstrating that his efforts have significantly impacted the construction industry. On appeal, counsel acknowledges: "As yet, there are no theories or standard models that can be used to apply concurrent engineering or to implement computational support to enable its application." Thus, the record fails to show that petitioner's efforts have had a measurable influence on the larger field. Assertions that the petitioner's findings may eventually have practical applications do not persuasively distinguish the petitioner from other competent engineering researchers.

In sum, 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

[REDACTED]

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.

**ORDER:** The appeal is dismissed.