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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

[Redacted]

23 SEP 2002

File: [Redacted] Office: Nebraska Service Center

Date:

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]

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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. At the time he filed the petition, the petitioner was a doctoral student at Illinois Institute of Technology. The petitioner initially stated that he seeks employment as an environmental engineer at DAI Environmental, Inc., although the petitioner appears to have accepted other employment. 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 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.

At the time of filing, counsel indicated that the petitioner was "a full-time student" who "has already provided and continues to provide valuable consultation without pay to various environmental companies, media and professional organizations." Dr. Richard J. Vamos, vice president of DAI Environmental, describes the position in which it seeks to employ the petitioner:

DAI Environmental, Inc. (hereinafter "DAI") is an environmental engineering firm committed to helping industries confront the complex environmental problems of today. Centrally located with a main office in Northbrook, Illinois and regional offices in Tampa, Florida and Los Angeles, California, we work with clients from a myriad of industrial categories, as well as select governmental agencies. . . .

DAI offers [the petitioner] continuing full-time employment as a Hydrogeologist/Environmental Engineer responsible for participating in a number of projects including Phase I Environmental Site Assessments, Phase II Subsurface Investigations, and Underground Storage Tank Investigations and Removals. [The petitioner] has been involved in the research and development of his field for more than 8 years. He has been sought by media, attorneys and businesses in providing expert opinions and suggestions in regards to environmental laws and issues.

[The petitioner] continues to make significant contribution[s] to the overall health & safety [of] the people of the State of Illinois and the United States. Specifically, [the petitioner] provides advice and consultation to the companies in helping them understand a very complex set of environmental laws and regulations. He has

participated in radio talk shows and seminars to assist business owners in complying with these regulations. He has researched and published numerous articles in trade journals concerning various environmental issues.

In a separate letter, Dr. Vamos specifies with regard to the petitioner's radio work that the petitioner "has been participating on DAI's behalf in a weekly radio show broadcast on the Korean Broadcast Channel, fielding questions from listeners related to environmental regulations, investigations, and cleanups." In this second letter, Dr. Vamos also indicates that he is an adjunct professor at the Illinois Institute of Technology, where the petitioner was his student in two courses, and that the petitioner "is pursuing potential business relationships for DAI in Korea."

The petitioner submits several additional witness letters. We will discuss examples of these letters below. [REDACTED] senior environmental engineer at Patterson Associates, Inc. ("PAI"), states:

I have been knowing [the petitioner] since September 1997 when he started working for PAI as a bio-operator and chemical analyst at the Industrial Wastewater Treatment Facility located south of Chicago. I was his supervisor.

Since the factory, where [the petitioner] worked, produced *cresol compound* and *cyanide* which are very toxic, the role of a bio-operator at the wastewater treatment plant was very important in respect to the efficiency of the whole factory. As a chief operator, [the petitioner] showed outstanding performance preventing at least 3 system failures.

Due to [the petitioner's] accurate and timely chemical analysis, PAI was also able to prevent overdose of nutrients into the system resulting in saving a lot of money and time.

[REDACTED] an attorney in Skokie, Illinois, states:

I have come to know [the petitioner] in the course of my practice as an environmental attorney. [The petitioner] works as an environmental consultant and is studying to obtain a doctorate degree in environmental engineering. Recently enacted state and federal laws impose new and more stringent requirements on the operation of drycleaning facilities. In Chicago, members of the Korean-American community own or operate more than sixty percent of the affected businesses. There exists a tremendous need for persons like [the petitioner] – fluent in Korean and English and at home in both cultures – to help the Korean-American community understand and respond to these new environmental laws.

[The petitioner] has demonstrated his commitment to meeting this need by regularly appearing on Korean-American radio programs to educate the community about issues of environmental compliance. If allowed to live and work in the United States, I am certain [the petitioner] will continue to serve as a liaison between environmental regulators and the Korean-American community.

Eun Sung Lee, director of Marketing/Public Relations at Chicago Korean Broadcasting, states:

Korean Broadcasting Inc. (KBI) is a radio station (AM 1330) with approximately 140,000 Korean listeners in the Midwest area. . . .

I came to know [the petitioner] since last May when he started co-hosting a weekly call-in talk show through [redacted]. His responsibility in the show was to provide expert opinions and suggestions in regard to environmental problems that Korean business owners were facing. . . . Koreans own more than 20,000 drycleaners in the U.S. and in the State of Illinois alone, about 85% of drycleaners are owned by Koreans. . . . And also, many other small businesses such as auto mechanic shops and gas stations which are strictly regulated by environmental laws and regulations are owned by Koreans. However, due to the cultural difference and language barrier, many Korean business owners are not aware of the environmental laws and regulations that they should know. As a result, many Korean small business owners have been unnecessarily suffering from environmental laws and regulations mostly.

During his three months with KBI, [the petitioner] performed professionally so well in informing the public with the environmental laws and regulations and [much] of the technical in depth knowledge in dealing with environmental problems.

[redacted] president of American Environmental Technology, Inc. ("AETP"), an environmental consulting company based in Maryland with offices in Chicago, states:

Current state and federal environmental regulations mandate strict compliance from property owners and business operators and, as a result, demand for environmental risk management services ha[s] risen across the country. Through effective marketing and sales efforts, [redacted] gained a successful market share in the metropolitan Washington, D.C., and Chicago area[s]. Approximately 25% of [redacted] clients represent Korean-American property owners and business operators, requiring special language and cultural background and skills.

Environmental issues are often complex and almost always costly in which responsible individuals and businesses require a thorough explanation and education before significant time and money is invested. When business and property owner[s] do not understand such complex issues due to language and cultural barrier[s], bad situations become worse. [The petitioner] is able to fill that gap through his formal training, experience, and language and cultural background.

In February 1997, [redacted] launched an effort to educate and gain exposure in the Korean-American community in the states of Maryland, Virginia, Georgia, New Jersey, New York and Illinois and about various environmental compliance issues. . . . [The petitioner] kindly accepted an offer to conduct the environmental seminars,

without compensation. From April 1997 to October 1997, [REDACTED] has successfully conducted six environmental seminars across the U.S. [The petitioner] has since been involved in numerous projects with AETI. Furthermore, it is the company's desire and plan to establish a branch office in Chicago, Illinois, with [the petitioner] as the branch manager.

With regard to the last sentence, the petitioner has stated his intention to work at DAI rather than [REDACTED]. Furthermore, regarding "the company's desire and plan to establish a branch office in Chicago," the letterhead stationery on which the letter appears already gives a Chicago address for [REDACTED] which at least implies that such an office had already been established.¹

The petitioner also submits a copy of an apparently unpublished manuscript and documentation relating to his studies and memberships in professional associations.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted comments from counsel and additional letters and documentation.

Counsel asserts that the petitioner "is a member of a group of dry-cleaning programs officials representing 10 states throughout the country that are researching remedial technologies and pollution prevention measures. He has co-authored publications and presentations with researchers from other states. His work has been noted in a school textbook which is currently used in many states." The petitioner submits a copy of the textbook, *Houghton Mifflin Science Discovery Works: Unit D, Populations and Ecosystems*. The petitioner's photograph appears on page D5 of the book. A two-paragraph piece, "People Using Science," accompanies the photograph and appears on the facing page, D4. The petitioner is depicted as an example of an environmental engineer, and the text describes his work and explains why the petitioner chose this particular career. Other chapters of the book offer similar "People Using Science" profiles featuring other scientists. The petitioner appears to have been selected simply as a representative example of an environmental engineer. Counsel's assertion that the petitioner's "work has been noted" in this book is somewhat misleading, because the "People Using Science" piece contains almost no specific information about the petitioner's work (as opposed to general descriptions of the work of all environmental engineers). The only specific description of the petitioner's work is the statement that the petitioner "has cleaned up water that was polluted by a company that made fertilizers." There is no mention of the dry cleaning industry, which, as counsel acknowledges, constitutes "much of [the petitioner's] work."

Counsel states that the petitioner "has researched and published numerous articles in trade journals." The record contains no published articles. Manuscript copies are not evidence of publication. The

¹ The Chicago address listed on AETI's letterhead is identical to the address that the petitioner had listed on several documents (such as the petitioner's resume and the Form ETA-750B Statement of Qualifications) as his own address. The fax numbers on AETI's letterhead and the petitioner's resume also match. It appears that the petitioner was using AETI's address as a mailing address, despite his stated intent to work for DAI. There is also the (seemingly less likely) possibility that AETI had the petitioner's home address and fax number printed on its letterhead, in anticipation of the petitioner's employment as Chicago branch manager.

petitioner's own resume, submitted with the petition, lists no published articles; it indicates that the petitioner had submitted one article and planned to submit two others. Articles published after the petition's filing date cannot retroactively establish eligibility. If the petitioner had not, in fact, actually "published numerous articles in trade journals" at the time of counsel's statement, then that statement is simply false.

Several letters accompany the petitioner's response to the director's notice. Cassandra Vail, environmental protection specialist at the U.S. Environmental Protection Agency ("EPA" or "USEPA"), states:

I met [the petitioner] in November 1997 at a USEPA Toxic Release Inventory (TRI) Stakeholder meeting in Chicago, IL. . . .

To implement the stakeholder process, the USEPA often seeks assistance from a myriad of interested parties including environmental groups, affected industry, educators, and state and local government officials and environmental consultants. The agency has also been sensitive to the needs of diverse populations that may be affected by TRI regulations and policies. Toward that end, [the petitioner] has been instrumental in assisting the USEPA in reaching these groups especially the minority communities in their planning efforts and in their developing a broader understanding of the TRI program. . . . [The petitioner] has kept these communities informed and updated o[n] any new rules and/or regulation[s] that affect their communities through radio talk shows and seminars on TRI in the USEPA Region VI area. I also believe that his active involvement in the Pollution Prevention Program (P2) throughout the nation and his expertise in the remediation of the contaminated sites have been of great benefit for the national interest of the U.S.

H. Patrick Eriksen, vice president of Williams & Company Consulting, Inc., states:

I met [the petitioner] in September 1998 at an Illinois Drycleaner Environmental Response Trust Fund Council meeting. The Illinois Drycleaner Environmental Response Trust Fund Council was reviewing the criteria for administration of their Fund Program, noting that an essential piece for the success of the program was having someone with a technical and environmental background that could assist in disseminating information about the Fund Program to the Korean drycleaning community. . . .

Williams & Company Consulting, Inc. was hired by the Illinois Drycleaner Environmental Response Trust Fund Council to administer the Fund Program. Williams & Company subsequently hired [the petitioner] to play a key role in the administration of the Program by providing technical and program outreach to the Korean community in Illinois. [The petitioner] has been instrumental in that outreach by doing formal presentations to Korean drycleaners about the Program, conducting radio talk shows and writing newspaper articles for the Korean papers to delineate the benefits and requirements of the Program. . . . [The petitioner] is [also]

a member of a group of drycleaning program officials representing 10 states throughout the country that are researching remedial technologies and pollution prevention measures that can efficiently remediate drycleaning solvent contamination and, more importantly, implement practices to avoid repeat contamination in the future.

George Vaselakos, president of the Illinois State Fabricare Association, states:

I met [the petitioner] in 1999 when he became part of the organization that is currently administering the State of Illinois' Drycleaner Clean-up Law. . . .

[The petitioner] is deeply committed to the environment process [sic] and has been instrumental in helping our drycleaning industry develop pollution prevention strategies and environmental management programs. . . .

[The petitioner's] direct knowledge of site remediation also places him in a very valuable position in expediting the claims that his office has to process as part [o]f Illinois' clean-up law. He plays a valuable role in that he interfaces between US and Illinois EPA, the professional environmental consultants who must do the drycleaning site investigations, and the drycleaners [who] have to do the investigations and the potential clean-ups.

The petitioner has submitted various documents relating to the trust fund and an article co-authored by the petitioner and by six environmental officials in Kansas, Oregon, South Carolina and Florida.

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 record does not show "what especially valuable talents the petitioner brings to his position other than his ability to speak Korean and his volunteer work while attending school. . . . A national interest waiver is not justified because an engineer from Korea has developed a rapport with the Korean businessmen involved in the Illinois dry-cleaning industry."

On appeal, counsel states:

The evidence submitted shows that the beneficiary's work has much broader impact than just in [sic] the Korean American business owners in the State of Illinois. . . . [H]is work will have a far-reaching effect in remediation of drycleaning solvent contamination, not just in the state of Illinois, but in all of [the] United States. Already, his knowledge as an environmental engineer has played a vital role in implementing current environmental law in the state of Illinois.

Two further letters, both from previous witnesses, accompany the appeal. H. Patrick Eriksen states:

[The petitioner] is one of just a few PhD's who has had extensive training and research involving the remediation of drycleaning solvent contamination. . . . [The petitioner] has participated in research and implementation of innovative remediation technologies (e.g. iron filings) that have resulted in cost-effective remediation of contaminated groundwater. . . .

[The petitioner], in working with the Illinois Drycleaner Environmental Response Trust Fund (Fund), has a wide range of responsibilities. [The petitioner] is the Fund's primary technical resource due to his extensive knowledge of remediation technologies. He conducts that technical review of site investigations and corrective action design reports to determine if they are realistic and cost effective solutions for cleaning up the contamination. . . . [The petitioner] works extensively with all Illinois drycleaners, both Korean and non-Korean, in this role. He has developed informational material and conducted presentations about the Fund throughout the state of Illinois.

George Vaselakos repeats prior assertions and states:

In the last year, we have seen his expertise as having a major effect in the way Illinois EPA views the drycleaning site remediation process in Illinois. The national drycleaning industry also sees the importance of what is happening in Illinois and [the petitioner's] role in this process. The feeling is that what is happening in Illinois will influence how contaminated drycleaning sites, and possibl[y] ma[n]y other contaminated sites, will be handled in the future in every other state in this country.

More specifically, we see emerging, with [the petitioner's] influence and expertise, an important protocol of what consultants should and what consultants do not have to do in drycleaning site investigations. This translates into dramatic cost savings while at the same time not compromising public health and safety. . . .

An additional benefit comes [with the petitioner's] expertise of new and emerging technologies that allows these technologies to be implemented rapidly in Illinois by a fast track permitting process. [The petitioner], also working with other states in the US that have clean-up laws, evaluates and shares all new technologies so that implementation will be in a much shorter and less expensive time frame.

The record contains no actual documentary evidence that the petitioner's work has had a significant impact outside of Illinois. There is no evidence, for instance, that the petitioner has actually published any articles that outline new methods, developed by the petitioner rather than merely reported by him, for remediation of sites contaminated with dry cleaning chemicals.

Even within Illinois, it is not evident that the petitioner's work has had so significant an effect that a waiver of the job offer requirement would serve the national interest. Matter of New York State Dept. of Transportation addresses such issues as specialized training in methods and technologies

that the alien did not actually create. If true, the claim that very few environmental engineers possess training specific to the dry cleaning industry would seem to make the petitioner an ideal candidate for labor certification in a position that truly required such specialized training as a fundamental element of the job. The petitioner's familiarity with new technologies that other people have invented is not a strong factor in favor of waiving the job offer requirement.

Regarding the petitioner's work with Korean dry cleaners (which counsel has acknowledged as a major part of the petitioner's work²), compliance with laws and regulations is a duty expected of everyone who chooses to reside and work in the United States. While the petitioner provides a useful service to dry cleaners in Illinois who speak only Korean, the prevention of violations is not so unique or special a service as to qualify the petitioner for special immigration benefits. Furthermore, while most Illinois dry cleaners are Korean, this group still represents a rather restrictive population segment at the national level. Assertions that the petitioner's work will eventually affect all dry cleaners, and by extension the national environment (through pollution prevention), are speculative at this relatively early stage of the petitioner's career. Much of what remains of the petitioner's work appears to be what is routinely expected of environmental engineers and officials charged with responsibility for environmental matters. Given, also, that the record appears to reflect at least three different job offers for the petitioner, it is far from apparent that the national interest would be served by a waiver of the job offer requirement.

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.

² The petition was based largely on this service to the Korean dry cleaning industry. If it is counsel's contention that this no longer applies, then the petitioner has essentially changed the terms by which he seeks to obtain a national interest waiver. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See *Matter of Izumii*, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.