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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: EAC 99 208 53443 Office: Vermont Service Center Date: **SEP 26 2002**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:
[Redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 an environmental pollution-control engineer for the Maryland Department of the Environment. 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, 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 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.

The petitioner describes how he will serve the national interest:

I possess a diverse and highly specialized combination of skills and experiences that would significantly contribute to the goal of pollution abatement in both water and air environments that distinguishes me from other professionals in the field with similar degrees... I have worked in the industry sector, in research institutions, and in government agencies, and have had the opportunity to interact with EPA representatives, environmental consultants, the public sector, and representatives from various industries, all with the goal of addressing environmental problems. I have particular expertise in the application of environmental colloid and surface chemistry to the environmental engineering field, specifically, colloid particle (i.e. suspended particles, viruses, and bacteria) interaction with solid surfaces (i.e. soil, filter media).

Along with documentation of his academic credentials and published and presented research, the petitioner submits several witness letters. Dr. Justin Hsu, Chief of the Chemical and Mineral

Division, Air and Radiation Administration, Maryland Department of the Environment, credits the petitioner with ten years of experience in the chemical and steel industries and notes the petitioner's expertise in utilizing "various computer models to explore nutrient transport in biofilm and particle-particle interaction for predicting particles deposition on the collector surface." He also credits the petitioner with conducting research to identify "the mechanism of colloid interaction which enhances the removal of trihalomethane precursors in our drinking water" and to improve the "biodegradation process of hazardous organic compounds and petroleum residues" through the use of bacteria. Dr. Hsu further states:

As to the importance and contribution of [the petitioner's] works as related to the national interest of the United States, obviously advanced researches are extremely important to the preservation of our natural resources and to the improvement of our environmental quality.

For example, one of his projects involves the development of an advanced biodegradation process which can be utilized to reduce pollution, detoxify hazardous waste, revitalize contaminated soil, and decontaminate waste water and ground water.

The Service acknowledges the undoubted importance of research devoted to preserving natural resources and improving environmental quality. However, 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 (5th Cir. 1987). By asserting that the petitioner's employment as an environmental researcher inherently serves the national interest, Dr. Hsu essentially contends that the job offer requirement should never be enforced for this occupation, and thus this section of the statute would have no meaningful effect. Congress plainly intends the national interest waiver to be the exception rather than the rule.

Dr. Hsu also states: "The most valuable of [the petitioner's] contributions is the application of his experience and knowledge day in and day out in helping the [Maryland Department of the Environment] as well as various industries implement cost-effective environmental measures..." The petitioner may have benefited various environmental projects undertaken by his current employer and companies within the State of Maryland, but his impact on the environmental engineering field beyond Maryland has not been demonstrated.

The petitioner also submits letters from four of his former professors and research supervisors at Johns Hopkins University ("JHU"), where he obtained his Ph.D. in 1996. Three of these letters describe the petitioner as an excellent student. University study, however, is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The petitioner's academic achievement may place him among the top students at his educational institution, but it offers no meaningful comparison between the petitioner and those individuals who have already completed their advanced degrees.

Dr. Edward Bouwer, Professor in the Department of Geography and Environmental Engineering, JHU, states:

[The petitioner] was a superb student in my graduate classes and earned A grades in both 570.411 Engineering Microbiology and 570.446 Biological Processes. His research project with me involved biodegradation of hazardous pollutants. There is much interest today in cleaning up waste sites and understanding the true risks of environmental contaminants. [The petitioner] helped to identify important factors that control the success of biodegradation which can be used to design an engineered system to stimulate biodegradation of organic pollutants (often termed engineered bioremediation). Common physical/chemical processes for waste remediation, such as air sparging, pump and treat, excavation, and soil flushing, are generally quite costly. There are great economic incentives to employ biological processes. Therefore, the research that [the petitioner] has conducted will have significant economic benefits at waste sites.

Dr. Bouwer, however, offers no specific information verifying the actual implementation of petitioner's findings in the environmental industry or the resulting benefits.

Dr. Bouwer also describes the petitioner's doctoral research at JHU:

[The petitioner] completed his Ph.D. under the direction of Prof. Charles O'Melia on the topic of virus deposition in porous media. A major challenge for the drinking water industry is to produce water that is free of pathogens so that the consumer does not get sick. Viruses are among the problematic pathogens, and [the petitioner's] research gives us a better understanding of how effective rapid filtration can be in removing viruses from our drinking water. EPA has promulgated the Surface Water Treatment Rule which requires most drinking water systems to include filtration in their treatment system. [The petitioner's] work is being used to help design and operate these new filtration systems so that optimum virus removal can be achieved.

While the petitioner's research may have contributed to the general pool of knowledge regarding the effectiveness of rapid filtration in removing viruses from drinking water, there is no evidence that independent researchers view the petitioner's work as a significant finding. Nor is there direct evidence from independent industry experts confirming the implementation of the petitioner's virus removal filtration methodologies.

Dr. Charles O'Melia, Professor of Environmental Engineering, JHU, and Member of the National Academy of Engineering, states:

[The petitioner] ranks among the very good students with whom I have had the good fortune to work in over three decades of teaching and research in environmental engineering.

[The petitioner] has worked with me primarily in the area of potable water treatment and,

more specifically, the removal of viruses by filtration processes in the treatment of surface and ground water supplies for potable use. We have published our results in the international literature.

[The petitioner] is a talented environmental engineer. He is intelligent and creative, very hard working, mathematically skilled, chemically literate, experimentally capable, and experienced in research and practice in environmental engineering, a field important to the utilization of the Nation's resources and the health of its citizens.

Dr. Eugene Shchukin, Professor of Engineering, JHU, and Member of the National Academy of Engineering, describes the petitioner as "among the best in [his] courses" and as "precise in the lab as he was in class."

The letters from Drs. Shchukin and O'Melia refer to the petitioner's published research. While the petitioner has co-authored two published articles in scientific journals, the weight of this evidence is diminished by the absence of direct evidence that these articles have influenced the field. Witness statements to the effect that the petitioner's publications represent a significant influence in his field cannot suffice to establish such impact, when the petitioner provides no evidence from citation indices to support these claims.

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.

The petitioner's initial seven witnesses include his supervisor at the Maryland Department of the Environment, four of his academic and research supervisors from JHU, his master's thesis research supervisor from the University of Cincinnati, and a fellow alumnus who met the petitioner in the late 1980s while pursuing a Ph.D. at JHU. The above witness letters demonstrate that the petitioner has excelled academically and is a competent researcher. The witnesses, however, fall short of demonstrating the petitioner's impact on the field beyond his employer and educational institutions. The petitioner has not shown that his individual work has attracted significant attention from independent experts in the environmental engineering field.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Department of Transportation. In response, the petitioner submitted four additional witness letters.

Dr. Merrylin Zaw-Mon, Director of the Transportation and Regional Programs Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, was formerly Director of the Air and Radiation Management Administration in the Maryland Department of the Environment, where she met the petitioner in 1997. Dr. Zaw-Mon describes the petitioner as a "well-rounded environmental scientist" with "a strong knowledge of U.S. environmental issues."

Dr. Chin-Pao Huang, Professor and Chair of the Department of Civil and Environmental Engineering, University of Delaware, has co-authored published materials with Dr. O'Melia, who he has known for thirty years. Dr. Huang met the petitioner in Dr. Omelia's laboratory in 1993. Dr. Huang repeats previous witnesses' observations regarding the petitioner's Ph.D. dissertation and discusses the petitioner's study of two Maryland water treatment plants that he helped to reduce disinfection byproducts in their water treatment systems.

Dr. Karen Irons, Administrator of the Air Quality Permits Program, Maryland Department of the Environment, describes the petitioner's current job responsibilities, educational background, and prior work experience. She describes the petitioner as a "key member" on several of the Department's environmental projects.

The letters from Drs. Iron and Huang both refer to the petitioner's conference presentations and authorship of scholarly 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. We cannot ignore that the publication record of many of the petitioner's witnesses far exceeds that of the petitioner. Furthermore, 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 scientific conferences and co-authorship of two published articles 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 published works have garnered significant attention from throughout the environmental engineering field.

Dr. Kwok-Keung Au, Environmental Scientist, American Water Works Service Company, Inc., states that he has known the petitioner since 1988. Dr. Au states:

Trihalomethanes ("THMs") are disinfection byproducts ("DBPs") resulting from the chlorination of drinking water. THMs, once formed, are difficult and expensive to be removed... [The petitioner] focused on removing the organic matter (THM precursors) before chlorine is added to the raw waters. More significantly, [the petitioner] accomplished this feat using existing conventional treatment processes. This means that no additional equipment or

facilities are required by the water utilities. This important concept has already been implemented in water utilities in the United States and throughout the world, producing great improvement in water quality everywhere.

The last sentence in the preceding paragraph from Dr. Au's letter suggests that the petitioner's findings have been implemented nationally. The petitioner, however, offers no independent evidence to corroborate Dr. Au's claim. The petitioner offers no specific evidence as to the number of water treatment plants that have implemented his concept or their names and locations. Furthermore, the letters from the petitioner's research supervisors at JHU offer no similar statements to confirm the national implementation of his individual research findings.

All four of the new letters are from individuals with direct ties to the petitioner. In order to qualify for the classification sought, the petitioner must demonstrate that he has had some measure of influence on the environmental engineering research field as a whole. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful national interest waiver claim. Evidence in existence prior to the preparation of the petition would carry greater weight than new materials prepared especially for submission with the petition. 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, such as heavy citation of one's published findings, would be more persuasive than the subjective statements from individuals selected by the petitioner.

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 noted: "We are aware that Ph.D. students must develop a new insight or advance in their field in order to be awarded the degree and the evidence does not indicate that your [research] contributions are substantially beyond that normally made in a doctoral program." The director acknowledged the importance of the petitioner's field of research, but indicated that the overall importance of a given field is not sufficient to demonstrate eligibility for the national interest waiver.

On appeal, the petitioner submits photocopies of documents already provided and a brief from counsel. We concur with counsel's assertion that the petitioner works in an area of intrinsic merit, environmental engineering, and that the proposed benefits of his research would be national in scope.

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. There can be no meaningful analysis of the cited 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.

Counsel mentions the length of time and inconvenience involved with the labor certification process. Counsel states: "Labor certification, a Department of Labor determination, is not merely inconvenient, but has become virtually impossible to attain or so slow to process as to be nearly impossible." While this assertion leaves little doubt as to counsel's opinion of the labor certification process, it remains that Congress mandates the 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 obsolete and therefore a waiver is in the national interest.

Counsel argues: "Matter of New York State Dept. of Transportation seems to be clearly nothing more than an opportunity to deny national interest waiver petitions subjectively..." By law, the director does not have the discretion to reject published precedent. See 8 C.F.R. 103.3(c), which indicates that precedent decisions are binding on all Service officers. To date, neither Congress nor any other competent authority has overturned the precedent decision, and counsel's disagreement with that decision does not invalidate or overturn it. Therefore, the director's reliance on relevant, published, standing precedent does not constitute error.

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 individuals with direct ties to the petitioner, his research supervisors at JHU, or the Maryland Department of the Environment. The petitioner has not shown how his individual work or collaborative findings have had significant repercussions throughout the field. The petitioner's contributions to environmental engineering, such as improving water treatment methods for removal of trihalomethane precursors, appear to be incremental rather than fundamental. While the record amply documents that the petitioner has been an active researcher at JHU, and a capable environmental engineer for the State of Maryland, it does not establish that the petitioner's work has had a greater or more lasting impact than that of others in the same field.

Several of the witnesses, such as Drs. Bouwer and Shchukin, assert their confidence in the future significance of the petitioner's work. Drs. Bouwer and Shchukin state that the petitioner "has the capacity to make substantial and effective contributions to improve the environment and make more productive use of the natural resources in the United States." Their identical use of this statement seems to suggest the expectation of future results rather than a past record of demonstrable achievement. Without evidence that the petitioner has been responsible for significant achievements in the field of environmental engineering, we must find that the petitioner's assertion of prospective national benefit is speculative at best. While the high expectations of the petitioner's supervisors, educators, and associates may yet come to fruition, at this time the waiver application appears premature.

Clearly, the petitioner's witnesses have a high opinion of the petitioner and his work. The petitioner's efforts, however, do not appear to have yet had a measurable influence in the larger field. While some of the witnesses discuss the potential applications of his concepts, there is no indication that these applications have been implemented or widely recognized as a significant contribution. 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 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.