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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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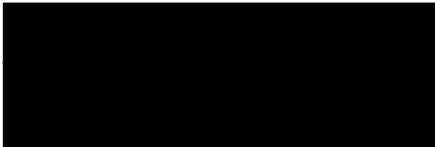
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APR 02 2003

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)

ON BEHALF OF PETITIONER:



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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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 research scientist. 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 did not dispute that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but found 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.

(i) Subject to clause (ii), the Attorney General may, when the Attorney General 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 obtained a Master of Science degree in applied mathematics from Shanghai Jiao Tong University, Shanghai, China in March 1990. He received a Ph.D. in decision and information sciences from the University of Florida in August 2000. Although Part 6 of the immigrant visa petition does not specify the petitioner's proposed employment, other documentation indicates that he seeks to continue employment as a research scientist in operations research and decision science. At the time he filed the petition on October 29, 2001, the petitioner was a research associate for Business Management Consulting (BMC). 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 pertinent 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 pertinent 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.

In this case, the director did not contest that the petitioner had established that he would be employed in an area of substantial intrinsic merit and that the proposed benefit of the petitioner's employment would be national in scope. However, the director found that this petitioner failed to establish that he would serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. We concur with the director.

As noted by counsel, the director throughout the decision made references to the regulatory criteria to establish eligibility as an alien of extraordinary ability under 8 C.F.R. § 204.5(h). In part, the director mistakenly held the petitioner to the distinct and more rigorous requirements to establish eligibility as an alien who is at the very top of his or her field of endeavor under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A). The director's findings specific to the stricter statutory and regulatory criteria are withdrawn. Nevertheless, we find that the director's national interest waiver analysis under section 203(b)(2) of the Act and under the precedent decision, *New York State Department of Transportation*, *supra*, is correct, and will uphold the decision of the director insofar as he found that the petitioner failed to establish that he would serve the national interest to a substantially greater degree that would an available U.S. worker with 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 qualifications rather than with the position sought. This applies whether the position is publicly or privately funded. It is generally not accepted that a given project is of such importance that any alien qualified to work on it must also qualify for a national interest waiver. The 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 219, n. 6.

Documentation submitted with the petition includes copies of the petitioner's degrees, conference presentations, and publications. The petitioner's background and credentials such as work experience and degrees can be presented on an application for a labor certification. A petitioner must show that he will serve the national interest to a greater degree than an available U.S. worker with the same minimum qualifications. Thus, merely presenting credentials is insufficient.

The petitioner includes copies of a 1996 academic excellence award from the University of Florida recognizing a 4.0 grade point average, a copy of a 1993 "Third Prize of the 5th Outstanding Thesis" from the Shanghai Science and Technology Society, an invitation to join a national scholastic honor society called "Beta Gamma Sigma," and a copy of the petitioner's membership card in the "Institute for Operations Research and the Management Sciences." Although commendable, academic achievements are not evidence of a petitioner's professional recognition. We would also note that the record contains no evidence describing the requirements to become a member in the Institute for Operations Research and the Management Sciences. Even if such evidence represented recognition for achievements and memberships in professional associations in the petitioner's field, those are simply two requirements for aliens of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that satisfying one, or even the requisite three criteria for a classification that normally requires a labor certification warrants a waiver of the labor certification requirement in the national interest.

The petitioner submits several witness letters in support of his petition. [REDACTED] the president of BMC, praises the petitioner's ability in finding an algorithm that enabled the firm to complete a project relating to the long-term price forecasting of the electrical power industry.

[REDACTED] an assistant professor of management science at Murray State University who previously worked with the petitioner, describes the petitioner's work:

[T]he petitioner's main research interest is in multiple objective mathematical programming. Multiple objective mathematical programming has been used in solving many important long-term and short-term real world decision problems in the United States in a great number of important areas, such as natural resources management, environment control and energy planning. However because of the size and difficulties of these decision problems, the traditional decision space-based algorithms are usually not able to solve these problems efficiently. By using a global optimization technique [the petitioner] has designed and developed, two new outcome space-based algorithms can be used to solve these problems efficiently.

Professor [REDACTED] of Wenzhou University, China, states that he was the petitioner's graduate advisor at Shanghai Jiao Tong University. Professor [REDACTED] describes the petitioner as an outstanding researcher and relates that while the petitioner taught undergraduate and graduate courses at Shanghai Jiao Tong University, he "designed and developed a new algorithm for finding the major optimal solutions and major efficient solutions of a discrete multiple objective programming problem."

[REDACTED] an associate professor of information technology at the University of Florida and one of the petitioner's research associates, indicates that the petitioner solved a problem "whether the efficient solution set of a strictly quasiconvex multiple objective mathematical programming problem is connected." Professor [REDACTED] provides:

Instead of developing decision space-based algorithms, [the petitioner] has proposed and developed two new outcome space-based algorithms for solving multiple objective programming problems. The distinction is significant because the efficient outcome set is much smaller than the efficient decision set. These algorithms are practical. To my knowledge, one of his algorithms is the first one capable of generating the entire efficient outcome set of a multiple objective linear programming problem.

[REDACTED] a professor of decision and information sciences at the University of Florida and associate editor of four scientific journals including the *Journal of Optimization Theory and Applications*, supervised the petitioner's doctoral work at the University of Florida. Professor Benson states:

[The petitioner's] primary area of scientific expertise is in the area of mathematical optimization. . . . There are, however, at least two problems with this approach. One is that, even in the all-linear case, the number of efficient points that exist becomes extremely large. This set can become so large in realistic problems that no algorithm can generate the set. . . . A second problem is that in the nonlinear case, the mathematical structure of the efficient set is not fully known. . . . [The petitioner's] research has yielded important advancements in solving both of these problems.

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[The petitioner] draws upon the allied area of nonconvex programming to help with the search for the efficient extreme points in the outcome set. The significance of this work is that, it has the potential to allow researchers and practitioners to solve truly large-scale multiple objective linear programming problems. Some of [the petitioner's] work in this new and vital area is in press, and other results will be reported soon. Without his presence in this field, a gaping hole in the research and application of multiple objective linear programming would exist.

██████████ a professor of industrial and systems engineering at the University of Florida, indicates that he taught a graduate course that the petitioner attended. Professor ██████████ praises the petitioner's productivity and notes that the petitioner has been invited to give lectures at national and international conferences. Professor ██████████ states that in the petitioner's dissertation, he developed two "new outcome space-based algorithms which may be used to solve large-scale multiple objective linear programming problems efficiently."

██████████ a senior developer for Wolfram Research, Inc., indicates that he also taught a graduate course at Shanghai Jiao Tong University that the petitioner attended. Dr. ██████████ describes the importance and difficulty of the petitioner's work and reiterates that the petitioner has made substantial advancements in developing algorithms for solving "multiple objective mathematical programming problems by using the vector maximization approaches." Dr. ██████████ adds that the petitioner's superior research skills will be an asset to the U. S. energy industry in developing "decision support systems for long term price forecasting and portfolio risk and yield management."

Sigfried Schaible, a professor of operations research at the University of California, Riverside, praises the petitioner's work as a referee of a paper submitted to the *Journal of Optimization Theory and Applications* where ██████████ is an associate editor. ██████████ indicates that the petitioner "assisted me as Associate Editor of *Mathematical Methods of Operations Research* (MMOR) in the evaluation of the paper 'Characterizations of efficient solutions of multiobjective E-convex programming problems.' Again he did a superb job."

All of the above cited reference letters are from the petitioner's past and present supervisors, teachers, employers and colleagues. While such letters are important in providing details about the petitioner's specific research in various contexts, they cannot by themselves establish the petitioner's influence on the field as a whole. We note that several of the petitioner's support letters are written by experts in the field, who may themselves be said to have established a significant scientific impact that might justify a waiver of the labor certification process. Their standing in the field does not automatically establish, however, the petitioner's impact on the field. The letters do not describe with specificity that the petitioner's scientific contributions have been more than incremental, which would be expected of most scientific research. Further, none of these recommendations came from anyone outside of the petitioner's immediate circle of collaborators, and fail to establish that the petitioner has exerted an influence on the field as a whole. The record

also contains evidence that the petitioner has presented his work at various conferences; however, it is not uncommon for researchers to participate in professional conferences, and this evidence does not persuasively establish that the petitioner's influence has been recognized to a significant degree.

██████████ a professor of information systems at California State University, Long Beach, who indicates that he came to know of the petitioner through his work, also endorses the petitioner. Professor ██████████ states:

[The petitioner's] research at the University of Florida involved the problem of finding the solution to a very difficult multiple objective mathematical optimization which is known to belong to the class of NP-Hard and mathematically intractable problems. He continues to work in this very difficult area of research with his current work on developing new algorithms for both linear and nonlinear cases, with applications in Telecommunication and Information Technology. To the best of my knowledge, there are only few individuals with limited experience in this area of research. The project was first initiated at the University of Florida under the supervision of world-renowned scientist ██████████

██████████ a professor of mathematics and operational research at the University of Limoges, France offers specific praise for two of the petitioner's papers. Professor ██████████ states that "[i]n the first paper mentioned above, [the petitioner] solved the open problem in the general case under the assumption that one objective function is strongly quasiconcave. In the second paper ██████████ and the petitioner solved the problem for the case where the efficient set is closed." Professor ██████████ concludes he is certain that the petitioner's research has a significant future.

Neither of these two letters establishes that the petitioner would serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. ██████████ indicates that the petitioner's work is part of a larger project initiated by a senior scientist, and while he has high regard for the petitioner's work experience, the letter does not indicate that the petitioner contributed to the significant advancement of this important project. ██████████ offers general praise for the petitioner's written work and indicates that the petitioner's research has a significant future, but does not describe any past achievement that might justify a waiver of the labor certification process.

In addition to the evidence discussed above, the record also contains copies of nine of the petitioner's published articles and a copy of an article that was published after the date of filing the immigrant visa petition. The petitioner must establish eligibility at the time of filing the petition. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Further, 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 was 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." This report reinforces the Bureau's position that publication of scholarly articles is not automatically evidence of influence; we must consider the research community's reaction to those articles. Here, the petitioner submitted a citation list for two of his articles. The first article, published in May 1996, has been cited four times; two of those are self-citations by the petitioner and/or his colleagues. While self-citation is a perfectly acceptable practice, it does not provide evidence that the petitioner's work attracted significant attention from other independent researchers. The other article, published in September 1993, has been cited six times; three of those are self-citations. We cannot conclude that the record contains evidence that the petitioner's published material has been widely cited or otherwise influential.

It is apparent that the petitioner has excelled academically and is engaged in important research. Nevertheless, exceptional ability is not by itself sufficient cause for a national interest waiver. The benefit that the petitioner presents to his field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in 8 C.F.R. 204.5(k)(3)(ii)(F) for an alien of exceptional ability. It is not sufficient to suggest that the petitioner possesses unique training or is engaged in promising research as, for example, Professor Benoist states. The labor certification process exists because protecting jobs and employment opportunities of U.S. workers having the same objective minimum qualifications as an alien seeking employment is in the national interest. The alien seeking an exemption from this process must present a national benefit so great as to outweigh the national interest inherent in the labor certification process.

The petitioner's documentation of his accomplishments and projections of future worth may support the argument that the petitioner has exceptional ability in operations research, but do not overcome the intent of the statute that mandates the labor certification process for this occupation or show with specificity that the petitioner's work was of such recognized significance at the time of filing that it had already influenced the work undertaken by other independent researchers.

As is clear from the plain wording of the statute, it is 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. Similarly, 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. Based on 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, 8 U.S.C. § 1361. In this case, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.