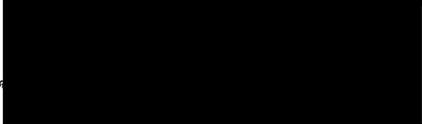


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



APR 08 2003

File: WAC-01-246-52400 Office: California Service Center Date:

IN RE: Petitioner:
Beneficiary:

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:

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 Bureau of Citizenship and Immigration Services (Bureau) 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 sustained and the petition will be approved.

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 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.

On appeal, counsel argues that the director considered the evidence under the standard for a higher classification than that sought by the petitioner. We agree with counsel that the director's decision contains several troubling references to the criteria for aliens of extraordinary ability under section 203(b)(1)(A). For example, page three includes a discussion of the lack of national or international prizes and participation as a judge. Prizes and judging experience, however, are not required for the classification sought by the petitioner. On page four the director asserts that citations of one's work is not evidence of national or international acclaim, a standard not required for the instant classification. On page five, the director notes that the accomplishments of the petitioner's references "outweigh" his own. Once again, in order to obtain a waiver of the labor certification requirement in the national interest, one need not be one of the small percentage at the top of one's field. While the director subsequently goes on to discuss the evidence under the correct standard and even states that national acclaim is not required for the classification sought, the initial discussion is troubling. By discussing the lack of evidence regarding national acclaim, the director certainly implied that this absence was a consideration in the decision.

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) . . . 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 holds a Ph.D. in Polymer Science and Engineering from the University of Akron. 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 the 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.

We concur with the director that the petitioner works in an area of intrinsic merit, nano-technology and polymer synthesis, and that the proposed benefits of his work, improved materials development, would be national in scope. It remains, then, to determine whether the

petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

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 he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

In addition to the reference letters discussed below, the petitioner submitted his articles, citation history, and patent application. As stated by the director, it is inherent to the research field to publish one's work. We do not agree with the director, however, that citations are similarly inherent to the field. A widely cited article is indicative of that article's influence in the field. The petitioner's articles have been moderately cited. Regarding the petitioner's patent application, the record does not reveal that it was approved. Regardless, it is not clear that everyone who holds a patent for a useful invention inherently qualifies for a national interest waiver of the job offer requirement. *See id.* at 221, n. 7. As none of this evidence is remarkable on its own, we will consider the petitioner's reference letters.

The petitioner currently works for ZMS, LLC. He submitted a letter from the president of that company [REDACTED] asserts that the petitioner has direct responsibility for the scale-up of the company's ophthalmic lens technology from "a budding idea in the laboratory" to "proof-of-concept prototypes using commercial-scale manufacturing processes." [REDACTED] continues that the petitioner was able to quickly gain an understanding of the company's approach to precision casting of optical components and subsequently identified the appropriate "commercial-scale processes" the company needed to employ to "scale-up." Finally, the petitioner located "suitable equipment manufacturers, set up trial runs, and produce[d] a number of prototype parts for characterization by ZMS and our possible commercialization partner, work which is currently on-going." [REDACTED] asserts that the above task was difficult and involved adjusting material formulations and processing techniques. According to [REDACTED] the petitioner's accomplishments resulted in ZMS transferring one portion of its technology to its industrial partner for small-scale production of its first product.

[REDACTED] founder of ZMS, asserts that he has been "pleased" by the petitioner's performance with that company [REDACTED] asserts that ZMS focuses on research into developing new optical materials through the use of nano-technology. [REDACTED] asserts that the petitioner helped resolve a processing challenge "due to the requirement of precise control of structure." In addition, the petitioner developed new methods for manufacturing photochromatic ophthalmic and composite lenses, resulting in improved protection from ultra violet rays [REDACTED] asserts that ZMS is seeking to patent this development.

In response to the director's request for additional documentation, the petitioner submitted a letter from [REDACTED] President of Alnis BioSciences, Inc., who worked alongside the petitioner at a shared research facility [REDACTED] states:

[The petitioner's] skills are currently employed at ZMS, a maker of high performance ophthalmic products. At ZMS, [the petitioner] synthesizes polymers used to make eyeglass lenses and biocompatible contact lenses. ZMS has recently reached an agreement to pursue a novel method of manufacturing contact lenses, aiming towards commercialization by a major U.S. contact lens manufacturer. The product offers superior performance and promises a reduction [in] manufacturing costs. [The petitioner] has also recently made important scientific contributions to a second company, Innovative Construction and Building Materials, which is using novel polymeric materials to make high performance products that will improve wall strength and quality of our buildings.

[REDACTED] the petitioner's Ph.D. advisor at the University of Akron, provides general assertions of the petitioner's accomplishments. [REDACTED] asserts that "problems of thermooxidative degradation of synthetic rubber compounds are very critical to many industrial applications such as tires, sealants, and pressure sensitive adhesives, among others." Dr. Kyu concludes:

[The petitioner] has well rounded expertise in research and development of various aspects of polymers, encompassing polymer synthesis of liquid crystalline polymers, rheological characterization on order-disorder transitions of block copolymers, miscibility studies of polymer blends and modified asphalt systems, and nonlinear dynamic phenomena in polymers and liquid crystal materials for electro-optical applications.

In response to the director's request for additional documentation, the petitioner submitted a letter from [REDACTED] Research Group Leader at Wright-Patterson Air Force Base, Ohio. He asserts that the petitioner collaborated with the Air Force while at the University of Akron. Specifically, the petitioner "did an excellent job in characterization" of the new materials sent to the university for "processing and evaluation." The letter concludes:

Through his study on the reaction kinetics of the phase separation process and theoretical modeling and simulation on the dynamics of phase separation of these polymers and their composites, he has provided critical understanding to the Air Force Research Laboratory to develop this new class of materials for structural applications. Our collaboration with [the petitioner] has been extremely rewarding and beneficial to DOD.

[REDACTED] formerly a staff scientist at the Institute of Polymer Engineering at the University of Akron, provides a general discussion of his collaboration with the petitioner at that institution. He asserts that the petitioner has "made a number of his unique contributions to

liquid crystals physics, polymer science and engineering.” Regarding their joint project, [REDACTED] states that they worked “to solve very important problems on nonlinear phenomena, pattern formation, liquid crystals and polymers, which are of practical significance in advanced materials, information and communication industries.” Finally [REDACTED] notes that their work was published in two highly ranked journals and provides general praise of the petitioner’s skills, enthusiasm, and creativity.

The final letter from a colleague is from [REDACTED] previously a fellow student of the petitioner at the University of Akron who is now a materials engineer for the Navy. While [REDACTED] did not co-author any articles with the petitioner, he did co-author articles with the petitioner’s collaborators. [REDACTED] asserts that the petitioner has been consistently published in *Macromolecules* and *Physical Review*, suggesting that his performance is significantly higher than the average “member of the professional community.” [REDACTED] further asserts that quality work in an interdisciplinary field is likely to have a broader impact. For example, [REDACTED] asserts that while the contributions of materials researchers and systems developers will be limited, the petitioner’s ability to “bridge the gap between these two sets of individuals” has the potential to make a significant impact. While we do not find the above assertions particularly persuasive, [REDACTED] further states that the petitioner’s work “in the areas of refractive-index tunable materials and self-assembly of optical materials via phase separation in the presence of thermal gradients is of interest to me and my colleagues, insofar as we hope to build on some of [the petitioner’s] accomplishments in order to develop new technology for military applications.”

The above letters are all from the petitioner’s collaborators and immediate colleagues. As noted by the director, while such letters are important in providing details about the petitioner’s role in various projects, they cannot by themselves establish the petitioner’s influence over the field as a whole. Nevertheless, the record contains several letters from independent experts that the director barely acknowledged. We will discuss those letters below.

Many of the independent reference letters provide general discussions of the importance of the petitioner’s field and his skills. For example [REDACTED] Senior Research Engineer at the Goodyear Tire and Rubber Company, indicates that he has read the petitioner’s publications and had frequent discussions with the petitioner while the petitioner was at the University of Akron. [REDACTED] asserts that the petitioner’s work in phase separation, structure development and crystallization in nano-polymers and polymer blends are “cutting edge studies.” [REDACTED] continues that the petitioner’s work is important to understanding nano-materials and blended systems as well as the projected need for special polymer material by the high tech industries.

The petitioner submitted additional independent letters in response to the director’s request for additional documentation. One of these references [REDACTED] a Distinguished Research Professor at the University of Cincinnati, simply reviewed the petitioner’s resume and concluded that he is “one of the most talented Ph.D. scientists worker earlier on polymer blends, and polymer crystallization in general.”

██████████ Director of Advanced Chemistry at Nano-Tex, LLC, asserts that the petitioner has “published extensively” and “made important contributions” to his field. Specifically, ██████████ asserts that the petitioner “provided theoretical explanations for observed self-assembly and self-orientation of nano-meter scale materials. ██████████ also references the petitioner’s work with contact lenses and the development of lightweight, high strength building materials, but does not explain the significance of the petitioner’s work in these areas.

██████████ a Senior Scientist/Head of Biology at Alnis BioSciences, Inc., asserts that based on a review of the petitioner’s publications and inventions, the petitioner is “a rare researcher with extensive experience in many important materials, including organic material, polymers, inorganic materials, composites, and biomedical materials.”

More significantly, ██████████ professor at Case Western Reserve University, asserts that he knows the petitioner through reviewing his research and publications. Indeed, ██████████ is one of the authors who have cited the petitioner’s work. ██████████ asserts of the petitioner:

He invented novel photochromic lenses and solvent-assisted polymerization processes and materials for next-generation contact lens production. He has also investigated plastic optical flat lenses and devices, as well as optical application of block copolymers. In a most recent project, he is applying his experience in polymer science and material physics to the development of super strong, super fire-resistant building and construction materials.

Finally, the petitioner submitted a letter from ██████████ Branch Chief Scientist and Technical Director at the Saint-Gabain Performance Plastics Corporation. Saint-Gabain is a Fortune 500 company with a presence in 50 countries. ██████████ who specializes in polymers, polymer blends, engineered plastics, nano-structured materials, and processing of polymers, holds more than 65 patents in the U.S. and other countries. ██████████ indicates that he was introduced to the petitioner and was impressed with his research work and publications. ██████████ asserts that the petitioner’s work on thermo-oxidative reaction induced macrophase separation in copolymers significantly enhances the understanding of thermal stability and durability of plastics and rubbers, important for increasing tire safety. ██████████ further asserts that the petitioner’s work on optical polymers for lenses, biomedical polymers for health care and vision care products “attracted a broad interest from some major chemical and optical lens companies.”

Letters of support with more specific examples of how the petitioner has influenced the field would clearly bolster the record. Nevertheless, the petitioner did submit independent letters of support that provide more than general praise of the petitioner’s abilities. We must take into account that the petitioner works for a private company with an interest in marketing products developed by the petitioner. That the petitioner has been contracted as a consultant on a construction materials project completely unrelated to his work on optic lenses further suggests that his influence goes beyond his employer.

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 field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has 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. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.

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