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

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: Nebraska Service Center

Date:

APR 16 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:

[REDACTED]

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

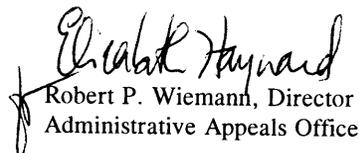
INSTRUCTIONS:

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, Nebraska 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.

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 Meteorology from the University of Utah. 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, meteorology research, and that the proposed benefits of his work, improved understanding and prediction of weather and its interaction with pollution, 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.

Professor [REDACTED] Head of the Department of Earth and Sciences at Purdue University, discusses the petitioner's current postdoctoral work at that institution. Specifically, he asserts that the petitioner is a "crucial member of the Global Aerosol Climatology Project," that he "has already had and will continue to have a strong positive impact on the success of this global

project,” and that the project would suffer without the petitioner’s participation. Regarding the petitioner’s past work, Professor [REDACTED] asserts that the petitioner’s “work on the microphysical characterization of cloud particles in the Arctic has received worldwide attention,” and that the petitioner has also contributed to the “parameterization of aerosol effects on cloud properties and the climatic effect of cloud-aerosol interactions.” In a subsequent letter, Professor [REDACTED] also at Purdue University, asserts that the petitioner’s contributions to understanding the feedback between cirrus clouds and climate are unique and have received international attention.

Given the limited discussion of the specifics of the petitioner’s work at Purdue by his colleagues there, the director’s conclusion that the record did not describe the petitioner’s “future employment” is understandable. Dr. [REDACTED] in whose laboratory the petitioner worked at the University of Utah, however, provides a slightly more detailed discussion of the petitioner’s work at Purdue. Dr. [REDACTED] indicates that at Purdue, the petitioner’s research, funded by the National Aeronautics and Space Administration (NASA), is focusing on sulfur and nitrogen and the magnitude of their influence on climate change. Dr. [REDACTED] concludes that this work will result in predictions of “pollutant concentration in the atmospheric boundary layers where human activities take place.”

Moreover, it is clear that the petitioner is continuing in his field and the remaining evidence establishes that the petitioner has a track record of success in that field. Specifically, Dr. [REDACTED] discusses the petitioner’s research at the University of Utah on the properties of ultramicro cluster and the theory of homogeneous condensation nucleation funded by the National Science Foundation. Dr. [REDACTED] asserts that the classical theory of homogeneous condensation nucleation could not be applied to describe the natural process despite the contributions of many scientists over 100 years. Dr. [REDACTED] continues:

After three years’ pioneering work, [the petitioner] unearthed new behaviors of ultramicro clusters and applied them to develop a new theory on the nucleation process. The new theory thoroughly clarified the confusions and established correct concepts, ideals and themes in the field. It solved the problems that had remained for several decades. The new theory is a milestone in its development and opened a new era in the field. With this theory, one can better understand the interactions among the atmosphere, clouds and aerosols and the formulation of cloud droplets, ice crystals and aerosols.

Other collaborators provided similar information or simply general praise of the petitioner. The director concluded that the petitioner had only demonstrated that he is highly regarded among those with whom he has worked. On appeal, the petitioner asserts that of the twelve reference letters “only four or five of them have worked with me.” More than five of the petitioner’s references claim to have collaborated with him. Nevertheless, Dr. [REDACTED] a scientist at the Forecast Systems Laboratory of the National Oceanic and Atmospheric Administration (NOAA), asserts that he has never worked with the petitioner but knows of him through their shared

interests. Dr. [REDACTED] states that the petitioner "is one of the pioneers who introduced artificial neural network and genetic algorithm into weather forecast modeling." Dr. [REDACTED] continues:

In nucleation theory, [the petitioner] has almost single-handedly developed a new approach and solved problems that had resided in the theory for several decades and that other scientists before him had attempted to solve without success. His new approach is of foundational importance. With his new approach, people can better understand the formation of clouds and aerosols, better understand the interaction between clouds, aerosols and atmosphere, and better understand the so-called global warming and climate change.

Dr. [REDACTED] Chief of the Weather Prediction Research and Tropical Meteorology Division of the World Meteorology Organization (WMO), provides similar accolades.

[The petitioner's] outstanding research achievements to date are primarily in four relevant areas. First, as one of the very few pioneers, [the petitioner] creatively introduced neural network and genetic algorithm into meteorology and further developed modeling for weather forecasting especially for high impact weather forecasting. Second, he developed a new theory on homogeneous condensation nucleation and solved a difficult issue that had been unsolved for decades. The new theory better describes the natural processes, specifically the formation of cloud droplets and ice crystals and aerosols and the interactions between atmosphere, clouds and aerosols. It is of vital importance for the accuracy of weather forecasting and also of critical importance for many other areas such as astrophysics, material science, metallurgy, etc. Third, he co-developed a new fog seeding technique. Compared with traditional techniques, its costs are lower and the scales to be cleared are larger. It is of high commercial value. Fourth, he focused on the method to predict pollutant concentration in the atmospheric boundary layer so as to control air pollution and improve living environments.

Dr. [REDACTED] was the Vice Director of the Department of Meteorology at the Nanjing Institute of Meteorology in China while the petitioner was a student and professor there; Dr. [REDACTED] appraisal nevertheless carries significant weight given his current position with the WMO.

Additional documentation, such as evidence supporting the claim that the petitioner is widely cited and that his seeding techniques "recently helped NATO peacekeeping operations at Bosnian airports," would have significantly bolstered his case. Nevertheless, the record sufficiently, if minimally, demonstrates the petitioner's past record of achievement with some degree of influence on the field as a whole.

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.

