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

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



File: [REDACTED]
LIN 01 191 53470

Office: Nebraska Service Center

Date: APR 21 2003

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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

PUBLIC COPY

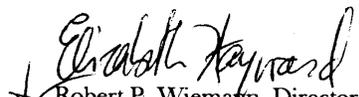
INSTRUCTIONS:

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. Wieman, 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 dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time of filing, the petitioner was working as a research associate in the Department of Chemistry, University of Nebraska at Omaha. 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) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements 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 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 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.

Along with documentation pertaining to his field of research, the petitioner submitted three letters. None of the letters indicated that the petitioner's research contributions were especially important to his field, nor did the letters even devote much space to the petitioner's specific activities.

A letter from Dr. [REDACTED] Assistant Professor, Department of Chemistry, University of Nebraska at Omaha ("UNO"), in its entirety, states:

I am writing on behalf of [the petitioner], an employee of mine at the University of Nebraska at Omaha. [The petitioner] has been employed in our department since April of 2000. [The petitioner's] position is that of a research associate and his current salary is \$26,000 per year. [The petitioner's] current contract extends until February 1, 2002. Pending grant renewal, his contract will be extended to October of 2003.

The record also contains a memorandum to the petitioner from [REDACTED] an UNO personnel official, stating: "Your supervisor rated your performance as Creditable, and I concur with this rating. Your total exceptional performance increase is \$473."

A letter dated October 29, 1999 from Dr. [REDACTED] Professor, Department of Chemistry, Wilfrid Laurier University, Canada, in its entirety, states:

[The petitioner] has been a postdoctoral fellow in my research group in the Department of Chemistry at Wilfrid Laurier University since July of 1998.

[The petitioner's] major responsibility at Wilfrid Laurier University has been research in Theoretical University. He has also audited several chemistry courses and may be asked to teach several classes.

A letter from Dr. [REDACTED] Professor of Theoretical Chemistry, University of Siegen, states that the petitioner "held a research and teaching assistant position" under his supervision and that the petitioner's "main responsibilities were doing Ph.D. research work and supporting students' coursework."

The record also contains an "employment certificate" issued by the Department of Chemistry, Sichuan Union University verifying the petitioner's employment as a "research and teaching assistant from September 1991 to June 1994." It further states: "The responsibilities of the position were to work on the scientific research projects approved by the National Science Foundation of China and take care of students' chemistry course work."

The petitioner also provided evidence of his published work, but the record contains no evidence that the publication of one's work is a rarity in the chemistry field, nor does the record sufficiently demonstrate that independent researchers have heavily cited or relied upon the petitioner's findings in their research.

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, would demonstrate more widespread interest in, and reliance on, the petitioner's work.

The record, however, does not contain citation records or other evidence to establish that independent researchers throughout the scientific community regard the petitioner's published work as especially significant. While heavy citation of the petitioner's published articles would carry considerable weight, the petitioner has not presented such citations here.

The evidence offered by the petitioner failed to address his past record of research accomplishments and his ability to serve the national interest of the United States. No information was provided regarding the petitioner's specific activities or how those activities have significantly influenced the chemistry field.

The director requested further evidence that the petitioner had met the guidelines published in *Matter of New York State Department of Transportation*. In response, the petitioner submitted a statement regarding his ability to serve the national interest, a completed Form ETA-750B, copies of documentation previously submitted, additional published articles, and further background information.

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 acknowledged the intrinsic merit and national scope of the petitioner's work, but found that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. The director stated that "the record does not establish that the contributions of the petitioner are such that they measurably exceed those of his peers."

On appeal, the petitioner argues that his educational background and "ten years of continuous professional experience in chemistry" demonstrate his eligibility for a national interest waiver. We note, however, that any objective qualifications that are necessary for the performance of a research position can be articulated in an application for alien labor certification. Pursuant to *Matter of New York State Dept. of Transportation*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education that could be articulated on an application for a labor certification.

The applicant further states that he "has shown promise to be a successful chemist." The petitioner's assertion as to his potential to make future contributions cannot suffice to demonstrate his eligibility for a national interest waiver. Statements pertaining to the expectation of future results rather than evidence of a past record of demonstrable achievement carry little evidentiary weight in this matter. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. See *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Bureau held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The petitioner further states that if he had a permanent job offer, he would not need a waiver of the labor certification process. The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner must still demonstrate that he would serve the national interest to a substantially greater degree than do others in the same field. 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). The national interest waiver is not merely an option to be exercised at the discretion of the alien or his employer. Rather, it is a special, added benefit that necessarily carries with it the additional burden of demonstrating that the alien's admission will serve the national interest of the United States.

Postdoctoral research positions are inherently temporary for the very reason that they represent advanced training rather than independent career positions. Nothing in the legislative history suggests that the national interest waiver was conceived as a means to facilitate the ongoing training of alien researchers. The petitioner has not explained why he requires permanent immigration benefits to secure short-term employment, for which nonimmigrant visas exist (indeed, at the time of filing, the petitioner was working under J-1 nonimmigrant status). We reject the implied claim that, for the very reason that the petitioner has yet to complete his training, he is entitled to an exemption from the job offer requirement which, by law, attaches to the visa classification he seeks.

In this case, while the petitioner's published findings may have added to the general pool of knowledge, it has not been shown that researchers throughout the field have viewed those findings as particularly significant. Publication, by itself, is not a strong indication of impact, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the petitioner's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner herself has cited sources in her own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work. Their citation of the petitioner's work demonstrates their familiarity with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and national benefit — a researcher's work would have, if that research does not influence the direction of future research. In this case, the petitioner has offered no evidence demonstrating heavy independent citation of his published articles.

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 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, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.