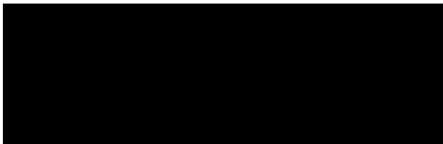


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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

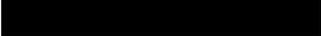
**Identifying data deleted to  
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invasion of personal privacy**

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



File: WAC-02-025-55822 Office: California Service Center

Date: **AUG 18 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)

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 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 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.

In her decision, the director spent several pages discussing the criteria for extraordinary ability under 8 C.F.R. § 204.5(h)(3). On appeal, counsel attempts to rebut this discussion. We find, however, that this part of the director's decision was unnecessary, as the petitioner is not seeking classification under that restrictive regulation. Nevertheless, on page eight, the director acknowledges that national or international acclaim is not required for this classification and that the petitioner need not demonstrate that he is one of the very few at the top of his field. The remaining analysis uses the correct standard. Further, the director raised legitimate concerns, which will be discussed below. Thus, while we withdraw any inference from the director's decision that a petitioner need demonstrate national or international acclaim, we find that, in light of the remaining discussion, the director's use of such language is not reversible error.

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 transportation engineering from the University of Tennessee at Knoxville. 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 Dep't. of Transp.*, 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, engineering, and that the proposed benefits of his work, improved highway traffic flow and improved road resistance to earthquake damage, 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.

The record contains evidence of the petitioner's scholarships, other honors, inclusion in Strathmore's *Who's Who* after the date of filing, and professional memberships. All of this evidence relates to the criteria for exceptional ability set forth at 8 C.F.R. § 204.5(k)(3)(ii). This

classification normally requires a labor certification. Thus, we cannot conclude that meeting one or even the necessary three criteria for exceptional ability warrants a waiver of the labor certification requirement. Moreover, counsel states on appeal that the petitioner's research assistantship "award" was essentially a job offer.

Dr. [REDACTED] a senior research engineer with the California Department of Transportation (Caltrans), asserts that he has worked closely with the petitioner at Caltrans. While Mr. [REDACTED] discusses the importance of the petitioner's position and asserts that the petitioner was selected for the position based on his "unique background, skill, experience, and outstanding accomplishments in his field," he does not identify any specific contributions made by the petitioner or explain how they have influenced the field.

[REDACTED] Chief of the Office of Infrastructure Research at Caltrans, indicates that his letter is based "solely on my review of [the petitioner's] credentials, his published works, and his research achievements." In his final paragraph, however, Mr. [REDACTED] indicates that he was responsible for hiring the petitioner and has worked with him since that time. Thus, it is clear that Mr. [REDACTED] letter is a reference letter from a colleague and not an independent evaluation of the petitioner's credentials. Mr. [REDACTED] discusses the petitioner's previous work in Tennessee as follows:

For his Ph.D. study, [the petitioner] developed a customizable procedure for the formulation of [a] pavement distress index for the Tennessee Department of Transportation (TDOT). He implemented cutting edge technologies, such as artificial intelligence and non-linear programming in his research, and the procedure proved to be very efficient in solving the practical index formulation problem. His novel work greatly facilitated the pavement management system implementation process in TDOT. Actually, his research may benefit any highway agency that is considering implementing a pavement management system.

Mr. [REDACTED] does not indicate that any other highway agency is considering such a system and his speculation that the petitioner's work might influence such a system is not evidence that the petitioner's work is already influential.

[REDACTED] a transportation engineer at Science Applications International Corporation, indicates that he worked with the petitioner on several team projects at the University of Tennessee at Knoxville (UTK). While Mr. [REDACTED] did not include his resume, he indicates that he received his Master's degree from UTK. As such, he may have only been a Master's candidate while working with the petitioner. Mr. [REDACTED] states:

As part of his Ph.D. work, [the petitioner] developed a Pavement Management System for the Tennessee Department of Transportation (TDOT), which has enabled TDOT personnel to make more informed decisions in spending their highway maintenance dollars. In fact, his development would be applicable to

highway agencies throughout the country, particularly given the current stringent budget problems in financing the maintenance of the U.S.'s aging highway system.

Once again, Mr. [REDACTED] is simply speculating as to the possible usefulness of the petitioner's work for TDOT outside of Tennessee.

[REDACTED] Director of the Traffic Engineering Division of the Highway Research Institute in China, indicates that he was the petitioner's supervisor at the institute from 1992 to 1996. Mr. [REDACTED] asserts that the petitioner "demonstrated a strong command of computer knowledge," "was proficient with the technical aspects of software development," and was a "team player." Mr. [REDACTED] asserts that the petitioner's dedication and skills allowed the institute to complete the Computer Aided Design (CAD) systems "on time, on budget, and with such a high degree of quality." Mr. [REDACTED] further states that the petitioner was one of the youngest project managers promoted and was selected to participate in a one year advanced Freeway Traffic Management Systems (FTMS) training program conducted by Canadian experts. The record reflects that the Capital Airport Expressway Traffic Engineering Design project, conducted by the institute and for which the petitioner was a major designer, received first prize for excellent design by the Ministry of Communications in 1994. As stated above, however, recognition from peers or a government entity is simply one of the requirements for aliens of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that this one achievement is evidence of a track record of success with some degree of influence on the field as a whole.

Dr. [REDACTED] the petitioner's thesis advisor at Tongji University, discusses the petitioner's work as a graduate research assistant. According to Dr. [REDACTED] the petitioner's project, "Modeling of Vehicle Operating Costs," won a graduate award at the university. In his project, the petitioner surveyed various logistic companies and analyzed "a significant amount of data," allowing him to establish the relationship between road conditions and vehicle operating costs. In a separate letter, Dr. [REDACTED] indicates that the petitioner's work was incorporated into China's Pavement Management System (PMS) and published by the *Journal of China Highway*.

In her request for additional documentation, the director stated that the record did not reflect that the petitioner had been "acknowledged by independent experts in the field." In response, the petitioner submitted new letters, some of which are from the petitioner's immediate circle of colleagues.

Dr. [REDACTED] an associate professor at UTK and a collaborating scientist with the Oak Ridge National Laboratory (ORNL), indicates that he recruited the petitioner to UTK from the National University of Singapore. Dr. [REDACTED] discusses the petitioner's work in Singapore and at UTK. According to Dr. [REDACTED] the petitioner's research on "motorist gap-acceptance behaviors" in Singapore "proved to be insightful and promising for the development of new countermeasures to prevent traffic accidents." Dr. [REDACTED] continues:

As a part of his Ph.D. work, [the petitioner] developed an algorithm that successfully overcame one of the most complex problems for the implementation

of an infrastructure management system, namely, the formulation of a pavement distress indexing system. This algorithm reduced the normally time-consuming and labor-intensive effort to an automated and simple computer exercise. As a result, highway agencies and airport maintenance engineers across the US can benefit from his work.

As with the letters submitted initially, Dr. [REDACTED] merely speculates that the petitioner's work has the potential to be influential in the field.

Dr. [REDACTED], a senior research engineer at ORNL in Knoxville, Tennessee, asserts that the petitioner's gap-acceptance research is a contribution of great significance and that the petitioner's pavement distress index "can substantially accelerate the implementation process for any State DOT's asset management system." Dr. [REDACTED] concludes that the petitioner's work at Caltrans "will produce optimized strategies to help agencies such as Caltrans to better prepare its highway system against possible earthquake threats."

Dr. [REDACTED] is an assistant professor at Villanova University in Pennsylvania, but claims to have collaborated with the petitioner and to have daily interactions with the petitioner. Dr. [REDACTED] asserts generally that the petitioner has contributed to the field and discusses the importance of the petitioner's current project.

The petitioner also provided letters from individuals who appear more independent of the petitioner. Dr. [REDACTED], Research Bureau Chief at the New Mexico State Highway and Transportation Department, asserts that the petitioner's published works "reflects an exceptional ability in transportation engineering research," and that the petitioner's current research "is of substantial relevance to the United States" with "the potential to be a major contribution to transportation engineering." While we acknowledge Dr. [REDACTED] involvement in the petitioner's field, his resume reveals that all of his higher education is in theology, divinity, and political science.

Finally, [REDACTED], a professor of Decision Sciences and Public Policy at the Wharton School of the University of Pennsylvania, asserts that the petitioner's "research would be of great interest to our Risk Center in developing a strategy for reducing the costs of earthquakes to society." Mr. [REDACTED] does not indicate that his center has already begun building upon or working with the petitioner's methods.

On appeal, the petitioner submits an e-mail from Dr. [REDACTED] to another official at Caltrans requesting that the petitioner stay at his current location because his project could not go forward without him. The petitioner also submits correspondence evaluating the seismic program on which the petitioner works as an important step towards improved seismic risk modeling.

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.

As stated by the director, most of the letters are from the petitioner's immediate circle of colleagues. On appeal, counsel asserts that Dr. [REDACTED] and Dr. [REDACTED] are "some of the highest ranking officials within the U.S. transportation system" and notes that the petitioner did submit letters from independent references.

We agree with the director's implication that while letters from colleagues 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. While the record does contain letters from individuals independent of the petitioner, they are not persuasive. The letters as a whole reflect that the petitioner's work has the potential to be influential but has yet to be adopted or seriously considered for adoption beyond those agencies with which the petitioner has worked. While the petitioner's research clearly has practical applications, it can be argued that any Ph.D. thesis, published article, or government report, in order to be accepted or published, must offer new and useful information to the pool of knowledge.

The record also contains evidence that, as of the date of filing, the petitioner had published 19 articles, a book chapter, and several conference presentation abstracts. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, sets forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are 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.

In response to the director's request for additional documentation, counsel characterizes Exhibit IV(2) as follows:

Publications listed by the International Road Research Document, Organization for Economic Cooperation & Development (IRRD-OECD) database. This database cites only the most qualified publications worldwide. It is comparable to the Science Index (SCI) & the Engineering Index (EI) issued by the USA.

The exhibit includes database search results for the petitioner's name. The results are all articles authored by the petitioner. Evidence of the petitioner's publication history is already in the record.

This exhibit does not reflect that any independent researchers have cited the petitioner's work as the basis for their own work or otherwise distinguish the petitioner's work from the thousands of other articles published in the many respected journals in the world. Thus, this exhibit does not add anything to the record.

On appeal, the petitioner submits e-mail correspondence with the Transportation Research Institute in Michigan. This correspondence reveals that this institute, which routinely acquires material on highway safety, acquired some of the petitioner's work but is unable to advise how many times the petitioner's work has been loaned. Thus, this correspondence does not establish the influence of the petitioner's work.

Finally, the petitioner also submits on appeal an e-mail from another engineer in academia requesting some tables and asserting that the petitioner's work "will refine the PCI method if functions of DV weights are developed based on distress observations/PC data nationwide." This one e-mail is not evidence that the petitioner's papers are widely influential. Moreover, the author expressed only a qualified belief that the petitioner's work might refine a current method.

It remains, the record does not demonstrate that the petitioner's articles have been particularly influential. Specifically, the record does not indicate that the petitioner's articles have been widely cited. Nor does the record include letters from high-level officials at the U.S. Department of Transportation or several state transportation departments discussing the influence the petitioner's articles *have already had* on their departments.

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 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.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.