



U.S. Department of Justice

Immigration and Naturalization Service

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**PUBLIC COPY**

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

[Redacted]

File [Redacted] Office: Nebraska Service Center

Date: **FEB 25 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)

IN BEHALF OF PETITIONER:  
SELF-REPRESENTED

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

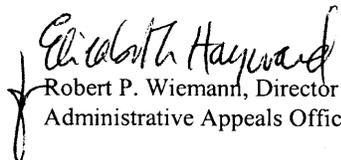
INSTRUCTIONS:

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 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, 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 she filed the petition on May 21, 1999, the petitioner was a doctoral student and research assistant in the chemistry program at Purdue University. 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.

(ii) Physicians working in shortage areas or veterans facilities.

The petitioner holds a Master of Science degree in Industrial Chemistry from the University of Central Florida (1997). 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 Service 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 Service 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.

The petitioner initially submitted four witness letters in support of the petition. Dr. Dale Margerum, Professor of Chemistry, Purdue University, states:

The petitioner entered Purdue University in August, 1997 and joined my research group in November, 1997. She has been active in research studies of the reactions of chlorine dioxide, a disinfectant used for drinking water purification. In addition to working closely with me in her research investigations, she has been a student in two graduate courses that I teach... In

both courses she was one of the very top students in her class.

University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The petitioner's academic achievement may place her among the top students at her educational institution, but it offers no meaningful comparison between the petitioner and those individuals who have long since completed their educational training.

further states:

[The petitioner's] studies of the kinetics and mechanisms of chlorine dioxide reactions with hypobromite and with hypochlorite ions have been truly significant. These fundamental studies provide evidence for the mechanism of these oxidation-reduction reactions and show that oxygen-atom transfer takes place. This work is supported by a National Science Foundation Grant of \$519,000 over a three-year period to study the "Kinetics and Mechanisms of Rapid Reactions in Solution." [The petitioner] has been resourceful, intelligent, and hard working in this research. It was necessary for her to synthesize, separate, and purify chlorine dioxide. She also prepared and standardized all solutions of the reactants by a variety of analytical methods. She used ultraviolet absorption spectrophotometric methods and fast reaction methods (stopped-flow spectroscopy) to measure the kinetics of the reactions and the stoichiometric loss of reactants. She also used capillary ion electrophoretic methods to determine the product yields. The results are exciting and very important because they establish a new mechanism for hypobromite and hypochlorite redox reactions. These experimental results are now being prepared for publication... The results are of fundamental importance in regard to inorganic reaction mechanisms and are also environmentally significant in regard to the necessity to destroy disinfectants after they have served their purpose. Effective disinfection is vital for public health, but use of disinfectants must be balanced by steps to avoid undesirable disinfection byproducts. [The petitioner's] studies should help significantly in these objectives.

Assertions as to the petitioner's potential to make future contributions cannot suffice to demonstrate her eligibility for a national interest waiver. assertion that the petitioner's studies "should help significantly" in developing more effective disinfection methods addresses future results rather than focusing on how the petitioner's findings have already influenced her field. also notes that the petitioner's results are "being prepared for publication." Statements pertaining to the expectation of future results do not persuasively distinguish the petitioner from other competent chemistry researchers. Furthermore, 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 Service held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The petitioner offered no evidence showing that she had actually published her work prior to the filing of the petition. 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, demonstrates more widespread interest in, and reliance on, the petitioner's work. The petitioner in this case has offered no evidence showing that her work was published or heavily cited.

Professor of Chemistry, University of Central Florida, states:

[The petitioner's] research skills clearly make her stand out from her peers. She performed a study involving catalysis for her Master's thesis at the University of Central Florida. In the process she mastered several sophisticated techniques and learned the operation and application of a variety of instruments to measure and solve problems. Her background in catalysis will be beneficial as she continues to work in the environmental science area because catalysts may hold some key to ultimate waste remediation, a significant concern as our society continues to generate waste at a rapid pace.

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 which could be articulated on an application for a labor certification. Furthermore, while the petitioner may have excelled among her student "peers," does not address how the petitioner's research accomplishments distinguish her from chemistry researchers who have long since completed their educational training.

further states:

[The petitioner] possesses the exceptional ability to make more significant contributions in the future to the U.S. scientific and manufacturing community. Her continuing efforts in chemistry benefiting our national environment are very significant and she has been playing a significant role in this endeavor. As she pursues the Ph.D. degree at Purdue University her studies allow her to continue development of skills that will allow her to become a productive member of our society with specific emphasis on human and environmental science.

In accordance with the statute, exceptional ability is not by itself sufficient cause for a national interest waiver. The benefit that the petitioner presents to her field of endeavor must greatly exceed

the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. 204.5(k)(3)(ii)(F). The petitioner must establish that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. It cannot suffice to state that the alien possesses useful skills, or a "unique background." As noted previously, regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. The petitioner must show that she has already significantly influenced her field of endeavor.

Dr. Paul Shepson, Professor, Department of Chemistry, Purdue University, states:

I am an environmental chemist in the same Department at Purdue, and know her through my research collaborations with the Margerum Group. My own work involves studies of atmospheric chemistry, including the chemistry involving halogen species in aqueous solution, such as the ones [the petitioner] is studying in pursuit of her Ph.D. degree at Purdue. I have roughly 80 publications in the field of environmental and atmospheric chemistry. I believe that [the petitioner's] application is meritorious to the extent that her expertise is unique, and that the U.S. has a need for environmental chemists with a strong background in the fundamentals. There are at least two strong points to her background:

1. She will be receiving a Ph.D. from Purdue's Chemistry Department with a focus in Inorganic Chemistry, but with a strong foundation in Analytical and Environmental Chemistry. Thus her background is reasonably broad, which is an asset for tackling complex environmental problems.
2. She is part of the Margerum Research Group, one of the worlds leading research groups working in the area of aqueous halogen chemistry, and its relationship to drinking water disinfection. Her experience in this group will provide her with a unique array of problem solving skills. My own subdiscipline in atmospheric chemistry has been significantly impacted by the Margerum Group's research, which cuts across disciplinary boundaries.

We note here that Dr. Shepson claims a record of "roughly 80 publications in the field of environmental and atmospheric chemistry." The petitioner, however, offered no evidence showing that she had published any scholarly articles in distinguished scientific journals prior to the petition's filing.

The petitioner's initial four witnesses included two former professors, a research collaborator from Purdue's Chemistry Department, and a former professional acquaintance from Florida Hospital in Orlando, Florida. The above witness letters demonstrate that the petitioner has excelled academically and is a competent researcher. The witnesses, however, fall short of demonstrating the petitioner's impact on the field beyond her educational institutions. Their letters fail to demonstrate a past history of significant accomplishment on the part of the petitioner. The petitioner offers no evidence that her work has been published or that her

findings have attracted significant attention from independent researchers in the chemistry field.

The Service acknowledges the undoubted importance of research devoted to improving procedures to disinfect drinking water. However, pursuant to published precedent, the overall importance of a given project (such as the research conducted by Dr. Margerum's Group) is insufficient to demonstrate eligibility for the national interest waiver. 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 (5<sup>th</sup> Cir. 1987). By asserting that environmental chemists inherently serve the national interest, Dr. Shepson essentially contends that the job offer requirement should never be enforced for this occupation, and thus this section of the statute would have no meaningful effect. Congress plainly intends the national interest waiver to be the exception rather than the rule.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Department of Transportation*. In response, the petitioner submitted a statement from counsel citing the witness letters and arguing that the letters demonstrate the petitioner's eligibility for a national interest waiver.

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 stated: "Regarding the petitioner's unique educational qualifications, it should be noted that the Department of Labor allows a prospective U.S. employer to specify the minimum education, training, experience, and other special requirements needed to qualify for the position in question." The director also stated: "[The petitioner's] achievements... do not so substantially exceed those expected of successful researchers in science as to outweigh the national interest inherent in the labor certification process."

On appeal, the petitioner submits two additional witness letters. In his second letter, Dr. Margerum states:

I wish to emphasize that she is outstanding as a research scientist in an area where it is very difficult to find qualified persons. She is formally an inorganic/analytical chemistry major, but she has become an expert in kinetics and mechanisms of reactions that are of great concern for national health, the chemical and pharmaceutical industries, and the environment. Part of this work directly concerns the problem of safe procedures to disinfect drinking water. For example, the 1996 Safe Drinking Water Act Amendments imposed requirements that the Environmental Protection Agency [EPA] use the "best available peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practice" in order to determine sources and levels of harmful disinfection by-products. Furthermore, it required the EPA to use "data collected by accepted methods or best available methods" in order to determine the presence of these by-products which endanger health over a lifetime of drinking water. The research work in which [the

[redacted]

petitioner] is concerned addresses some of these critical problems. This work has in the past been supported by EPA and is presently supported by the National Science Foundation [NSF] and by the Purdue Research Foundation. One aspect of this work concerns the processes by which bromate ion [a known carcinogen and mutagen] and chlorate ion [a species scheduled to be regulated] are formed in disinfection processes. This information has great potential impact on the public health... I believe that in addition the national interest would be adversely affected if an exemption to the lengthy process of labor certification were not granted to [the petitioner].

I would like to elaborate on the latter point. There is still a significant shortage of qualified scientists who are skilled in state-of-the-art analytical instrumentation, are knowledgeable in inorganic, organic, and environmental chemistry, and are able to conduct and interpret research in chemical kinetics. [The petitioner] has these skills. Her abilities are not only vital to the continuation of the research that she is conducting at Purdue, but are important to potential employers in the pharmaceutical, environmental, or chemical industries. It would be a next-to-impossible task to replace her at this time by any available U.S. worker. There are no persons are [sic] available with her educational background, years of scientific research experience, demonstrated scientific abilities, as well as the creativity, originality, talent, and mentality to finish her work. It would be a waste of time [sic] to go through the labor certification process and would have an adverse effect on her important project, which is aimed at serving the health care and the environment. Furthermore, if I look ahead to the completion of [the petitioner's] Ph.D. degree, I strongly believe that employment of a person of her abilities, knowledge, and skills is in the national interest. We need more outstanding researchers like [the petitioner] who can solve critical problems of national interest. I believe that denial of this request will delay her availability and injure her continuous research that will be of benefit to science and the United States as a whole.

We note here that the petitioner was still a student at the time she filed this petition; her continued participation in [redacted] project is already covered by her nonimmigrant student visa, and H-1B nonimmigrant visas are available to postdoctoral researchers. The regulation at 8 C.F.R. 214.2(h)(16)(i) permits an alien to work under an H-1B visa while a visa petition or labor certification application is pending. Therefore, the petitioner's continued participation in Dr. Margerum's particular project is obviously not contingent on her obtaining permanent resident status.

[redacted] indicates that there is "a significant shortage of qualified scientists" with the petitioner's skills. Pursuant to *Matter of New York State Dept. of Transportation*, a shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification.

Once again, [redacted] addresses the petitioner's educational background, years of scientific research experience, and demonstrated scientific abilities. We note, however, that any objective

qualifications necessary for the performance of a research position can be articulated in an application for alien labor certification.

states that “it would be a waste to time [sic] to go through the labor certification process” and that the process “would have an adverse effect on her important project.” Dr. Margerum, however, offers no specific information detailing this alleged “adverse effect.” While assertion leaves little doubt as to his opinion of the labor certification process, it remains that Congress mandates that process through the job offer requirement. As long as that requirement remains in the law, it is not persuasive to argue that labor certification itself is inherently flawed and time consuming and therefore a waiver is in the national interest.

Dr. Joseph Francisco, Professor of Chemistry, Purdue University, states:

As a member of her Ph.D. committee, I must comment on the fact that [the petitioner] is an outstanding candidate for the Ph.D. degree in Chemistry here at Purdue. She is one of those students that you see once in a while. Usually, it is difficult to find someone like [the petitioner] who has a strong background in both chemistry and physics. Since her achievement is rare, I suggested her results be submitted to “Science” or “Nature” for publishing.

While the petitioner may have excelled in her Ph.D. studies at Purdue, it has not been shown that the petitioner’s research accomplishments are particularly significant or that her contributions exceed those of similarly qualified U.S. scientific researchers.

indicates that he suggested that the petitioner’s research results be submitted for publication. We note, however, that the petitioner’s appeal offers no evidence showing that her work was published prior to the petition’s filing. *See Matter of Katigbak, supra.* Further, 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 dozens of sources in her own articles. Numerous independent citations provide firm evidence that other researchers have been influenced by the petitioner’s work and are familiar 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 can have, if that research does not influence the direction of future research.

The letters submitted on appeal offer no specific information regarding the petitioner’s past research accomplishments of significance to the greater scientific community. Dr. Margerum’s assertion as to the “potential impact” of the petitioner’s current research cannot suffice to

demonstrate her eligibility for the national interest waiver. While the petitioner's research may have contributed to the general pool of knowledge regarding safe procedures to disinfect drinking water, there is no evidence that independent researchers view the petitioner's individual work as particularly significant or influential. Nor is there direct evidence from independent industry experts confirming the implementation of the petitioner's drinking water disinfection methodologies.

The petitioner cites several of the witness letters as evidence of her impact on the field. We note, however, that all six of the petitioner's witness letters are from individuals with direct ties to the petitioner. Letters from those close to the petitioner certainly have value, for it is those individuals who have the most direct knowledge of the petitioner's specific contributions to a given research project. It remains, however, that very often, the petitioner's projects are also the projects of the witnesses, and no researcher is likely to view his or her own work as unimportant. The petitioner's witnesses became aware of the petitioner's research work because of their close contact with the petitioner; their statements do not show, first-hand, that the petitioner's work is attracting attention on its own merits, as we might expect with research findings that are especially significant. Independent evidence that would have existed whether or not this petition was filed, such as heavy citation of one's published findings, is more persuasive than the subjective statements from individuals selected by the petitioner.

Clearly, the petitioner's witnesses have a high opinion of the petitioner and her work. The petitioner's findings, however, do not appear to have yet had a measurable influence in the larger field. While witnesses discuss the potential applications of these findings, there is no indication that these applications have yet been realized. The petitioner's work has added to the overall body of knowledge in her field, but this is the goal of all such research; the assertion that the petitioner's findings may eventually have practical applications does not persuasively distinguish the petitioner from other competent researchers. 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, U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.