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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
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[REDACTED]

**JUL 03 2003**

File: EAC 02 106 50805 Office: VERMONT SERVICE CENTER Date:

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]

**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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont 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 or an alien of exceptional ability. 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 did not dispute that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but denied the petition finding that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner contends that the evidence establishes that he is an exceptional researcher and that his unique skills and knowledge merit a national interest waiver.

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. -- The Attorney General may, when he 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 seeks employment as a research associate. At the time the petition was filed on February 6, 2002, the petitioner was employed as a research assistant for the University of Connecticut. He had obtained a master of science degree in environmental engineering from that institution in December 2001.<sup>1</sup> The record indicates that the petitioner's area of research is wastewater treatment and water pollution abatement. 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

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<sup>1</sup> The petitioner later received a Ph.D. from the University of Connecticut on August 31, 2002.

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 pertinent 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 United States 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, wastewater treatment and abatement of water pollution, and that the proposed benefits of his work, improved understanding of microbial toxicity and nitrogen removal from wastewater, are national in scope. It remains to determine whether the petitioner has established that he will benefit the national interest to a greater extent than an available United States 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 it 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. *Matter of New York State Dept. of Transportation*, at 219, n.6.

The petitioner submits numerous witness letters in support of his petition. Representative of these endorsements are ones submitted by [REDACTED] Mr. [REDACTED] is the superintendent of the University of Connecticut's wastewater treatment facility where the petitioner worked. Mr. [REDACTED] first letter states that the petitioner is an "excellent researcher" working to develop critical technology involving nitrification and wastewater treatment. Mr. [REDACTED] provides:

The subject of [the petitioner's] research is on the title of "Inhibition and Biological Nitrogen removal: Microbiology, Physical Chemistry, and Process Engineering", which were supported by the Connecticut Department of Environmental Protection through a US EPA Long Island Sound Study Grant. He was involved in characterizing wastewater component and differentiating soluble chemical oxygen demand and soluble organic nitrogen in municipal wastewater, which is critical for accurate modeling of biological wastewater treatment processes. He has evaluated the accuracy and precision of a commonly used soluble COD determination technique (coagulation using ZnSO<sub>4</sub> at pH10.5) and developed a new coagulation method using lanthanum chloride to determine both soluble COD and organic nitrogen simultaneously. . . . The results are already published in scholar journals [sic].

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[The petitioner] has the knowledge, experience, and talent to create new ideas in the wastewater field. He is also an expert at Atomic Absorption Spectrometer (AAS), Ultra filtration, Extant respirometry, Challenge respirometer systems, Ion Chromatography (IC), and on-line system setup. While such skills are necessary for this type of research, very few researchers possess all of them. It is very difficult to find such an outstanding researcher in the same field.

Mr. [REDACTED] subsequent letter dated October 6, 2002, states that the petitioner's student position was terminated, but that the petitioner was able to return to work at the university wastewater treatment facility after completing his doctoral course work. Mr. [REDACTED] reports that the petitioner's research in nitrogen abatement mandated by the Long Island Sound Study, together with the teamwork effort at the facility, resulted in a significant decrease in the facility's discharge of effluent total nitrogen. Mr. [REDACTED] clearly has a high regard for the petitioner's skills, but his comments do not explain how the petitioner has already measurably influenced the field as a whole or address how the petitioner's research accomplishments distinguish him from wastewater treatment researchers who have long since completed their educational training. Although Mr. [REDACTED] describes the difficulty of locating an individual with the petitioner's unique combination of skills and educational background, we concur with the director's conclusion that the record does

not establish why any objective qualifications necessary for such a research position could not be articulated in an application for alien labor certification.

██████████ an associate professor at the University of Connecticut and one of the petitioner's Ph.D. advisors, also extols the petitioner's research abilities. In his first letter, Professor ██████████ explains the importance of studying the unresolved issues relating to the implementation of nitrification. He states that there is not a full understanding of how to improve nitrification in wastewater treatment plants nationwide and that the petitioner's work will probably have a "significant impact on increasing nitrification efficacy, improving environmental water quality, and helping public health."

Professor ██████████ second letter dated October 9, 2002 was submitted with the petitioner's appeal. He asserts that the petitioner's work has already "had a national and far-reaching impact." As evidence of interest in the petitioner's work, Professor ██████████ indicates that international scientists have requested copies of the petitioner's recently published article, and that the petitioner's research will be featured at an upcoming workshop. Professor ██████████ contends that the labor certification process is too time consuming and not applicable to a researcher with the petitioner's skills. We note that references to the petitioner's activities subsequent to the filing date of the petition cannot be considered as evidence of eligibility. A petitioner's eligibility must be established at the time of filing the petition; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Moreover, assertions that the petitioner's work will have a future significant impact do not support the argument that the petitioner had already significantly influenced wastewater treatment research at the time of filing.

██████████ is the petitioner's other major Ph.D. advisor. He also submits two letters echoing the praise of Professor ██████████ and the other witnesses. Professor ██████████ notes that the petitioner's knowledge and expertise have been extremely beneficial to the research team at the University of Connecticut and that his research has appeared in two publications, with another three in preparation.

██████████ a supervising environmental analyst and the Long Island Sound Study Coordinator with the Connecticut Dept. of Environmental Protection, explains the importance of studying nitrogen removal at sewage treatment plants and its impact on water quality in Long Island Sound. He contends that the petitioner's skills help satisfy the need to provide the best scientific oversight available for the project.

██████████ the Executive Director of the Water Pollution Control Authority of the City of Stamford, has been working with the professors and the petitioner at the University of Connecticut since 1999. She emphasizes the importance of the effort to protect the water quality of Long Island Sound and asserts that the petitioner's research on nitrification inhibition by heavy metals and chelating agents has been a "key component of this project."

██████████ an environmental engineer with the state of North Carolina, studied with the petitioner at the same university in China. He attests to the petitioner's knowledge in the field of nitrification process and wastewater engineering and states that the petitioner's expertise in "microbial toxicology and process engineering is crucial in contemporary advanced wastewater treatment including biological nitrogen removal."

██████████ a professor of environmental engineering at Zhejiang University, China, directed the petitioner's graduate study in China in the mid-eighties. He describes the petitioner's important work in studying arsenic removal from waste water which was published as part of the petitioner's master's thesis in 1990. Professor ██████████ asserts that the petitioner is a uniquely qualified researcher who has already made a significant impact in the field of water pollution control.

██████████ an assistant professor at Worcester Polytechnic Institute that works in close collaboration with the University of Connecticut's water pollution research team, confirms that nitrogen removal is a major water pollution control issue all over the United States. He characterizes the petitioner's research expertise as "exceptional" and views him as "indispensable" for the study of water pollution control.

Although we do not discount the opinions of these and other experts contained in the record, we note that they are from the petitioner's former or current mentors, supervisors, colleagues or collaborators who are connected to the petitioner through direct association. While such letters are important in providing details about the petitioner's specific research achievements, they cannot independently establish the petitioner's impact or influence on the field as a whole. On appeal, the petitioner submits copies of two e-mail inquiries from researchers in Poland and Ukraine requesting reprints of an article published after the date of filing the petition. Although this seems to indicate that the petitioner's work has attracted some attention, the record would be more persuasive if it were supported by substantive evidence that the petitioner's research had already specifically influenced the work of other independent experts to a significant degree at the time of filing the petition. *See Matter of Katigbak, supra.*

The petitioner's evidence includes documentation of a doctoral dissertation fellowship award and a travel award to a water environment conference that he received from the University of Connecticut. The record also contains evidence of the petitioner's membership in the American Chemical Society, the Water Environment Federation, and the American Society for Microbiology. Awards recognizing academic accomplishments do not generally constitute professional peer recognition. Nor does the evidence contain independent evidence from the associations noted above documenting what the membership requirements are or how the petitioner's selection demonstrates exceptional ability. Even if this evidence represented recognition of achievements by one's peers and membership in professional associations, those are only two possible requirements for aliens of exceptional ability, a classification that normally requires a labor certification as set forth in 8 C.F.R. § 204.5(k)(3)(ii) enumerating the criteria for an alien of exceptional ability. We cannot conclude that satisfying two requirements or even the requisite three requirements for this classification makes one eligible for a waiver of the labor certification process.

The record also contains copies of one published article in which the petitioner was the lead author, two papers presented at technical conferences in which he was a co-author, copies of several articles which had not yet been published at the time of filing, and one article which was published after the date of filing the petition. The record contains nothing showing that the presentation or publication of one's work is rare in an academic career.

When judging the influence and impact that the petitioner's research 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. Here, the record contains no evidence that independent researchers have cited the petitioner's written work. As noted previously, the petitioner's unpublished articles or articles published subsequent to the filing date of the petition may demonstrate the petitioner's diligence, but do not establish the petitioner's influence on the field as a whole as of the filing date. *See Matter of Katigbak, supra.*

On appeal, the petitioner notes that he is a post-doctoral fellow at the University of Connecticut. He asserts that his presentation at a recent workshop has been highly appreciated and that a plant manager in the UK asked him for technical support. The petitioner contends that he is an exceptional researcher and that the labor certification process is not applicable to an individual with his skills. The petitioner also includes a copy of the October 2001 e-mail from the UK plant manager and a reference letter from Kunchang Huang, an assistant professor at the University of Connecticut. Professor ██████ asserts that the petitioner's post-doctoral research will "significantly contribute to the study of biological removal of recalcitrant pharmaceutical compounds" from wastewater effluents.

It cannot be concluded that appreciation for a recent conference presentation or an e-mail inquiry represents a significant influence on the field as a whole. It must be emphasized that even if the petitioner demonstrates that he has exceptional ability, pursuant to *Matter of New York State Dept. of Transportation* exceptional ability is not by itself sufficient cause for a national interest waiver. The benefit that the petitioner presents to his field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in 8 C.F.R. § 204.5(k)(3)(ii)(F) for an alien of exceptional ability. It is not sufficient to state that the alien possesses unique training or is a talented researcher. The labor certification process exists because protecting jobs and employment opportunities of United States workers having the same objective minimum qualifications as an alien seeking employment is in the national interest. Objective minimum qualifications may, by necessity, reflect the need for an individual with specific educational and employment experience. The alien seeking an exemption from this process must present a national benefit so great as to outweigh the national interest inherent in the labor certification process. The plain wording of the statute indicates that members of the professions holding advanced degrees (including research scientists) as well as aliens of exceptional ability in the sciences are, generally, subject to the job offer/labor certification process.

It is clear that the petitioner possesses superior research skills; however, the evidence in the record does not support the claim that this petitioner's work or influence greatly exceeds the significant contributions of an alien of exceptional ability. We cannot conclude that the petitioner has already influenced wastewater treatment research at the level necessary to justify waiving the labor certification process.

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. In this case, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.