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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.
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Washington, DC 20536

[REDACTED]

File: [REDACTED] (LIN-99-116-52672) Office: Nebraska Service Center

Date: JUL 18 2003

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be 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.

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 mechanical engineering from Northwestern University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term 'national interest.' Additionally, Congress did not provide a specific definition of 'in the national interest.' The Committee on the Judiciary merely noted in its report to the Senate that the committee had 'focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .' S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the 'prospective national benefit' [required of aliens seeking to qualify as 'exceptional.']. The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term 'prospective' is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, engineering, and that the proposed benefits of his work, more efficient measures of friction and reduced wrinkling of stamped metal in the automotive industry, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

Initially, the petitioner submitted encyclopedic definitions of friction and tribology (the study of friction), textbook materials on tribology, the petitioner's dissertation and other unpublished papers, a published article by a colleague at Northwestern University that cites one of the petitioner's

published articles and an unpublished article that cites one of the petitioner's published articles. Finally, the petitioner submitted reference letters.

██████████ a professor at Northwestern University and co-author of one of the petitioner's articles, discusses the petitioner's work at that university. Professor ██████████ asserts that the petitioner has "developed and implemented sophisticated computer models for friction which include the influence of lubrication and the deformation of surface features." Dr. ██████████ continues that these models are more accurate than previous models, reducing costs and lead-time in the development of new tools and process designs. Dr. ██████████ a member of the petitioner's Ph.D. thesis committee, and ██████████ another professor at Northwestern University, provide similar information.

██████████ President of Livermore Software Technology Corporation, indicates that his company developed the computer simulation software packages currently used by steel companies and all three major automobile manufacturers. Mr. ██████████ indicates that the petitioner identified the proper friction co-efficient that will allow the software to predict the amount of friction build-up. Mr. ██████████ concludes that "it is currently our intent to incorporate [the petitioner's] findings into LSTC's software at the earliest possible time, and we are currently studying how to accomplish this as expeditiously and efficiently as possible." Mr. ██████████ does not indicate whether the petitioner's co-efficient is merely an incremental improvement in the field or is truly a breakthrough in friction modeling.

In addition, the petitioner submitted two independent letters. Dr. ██████████ whose position or title is unknown, asserts that the petitioner's formula is "being adapted for use in a research project sponsored by the National Institute of Standards and Technology." This claim is not supported by any of the major participants in the project, the big three automobile manufacturers, US Steel Corporation, and Alcoa. ██████████ a professor at Gifu University in Japan, asserts that he met the petitioner while visiting Northwestern University in 1993. Professor ██████████ praises the petitioner's development of a new friction model but fails to indicate that this model has influenced his own work.

On appeal, the petitioner submits a letter from his current employer, DaimlerChrysler. ██████████ Senior Manager of E-Commerce for Volume Production, asserts that the petitioner is currently contributing to the Springback Predictability Program, an industry consortium. Of the petitioner's previous work, Mr. ██████████ states:

With Prof. ██████████ he conducted leading edge research in friction modeling of the sheet metal forming processes for steel and aluminum alloys planned for use in high mileage vehi[c]les. This is under the direct sponsorship of the US Department of Commerce's NIST-Advanced Technology Program and will directly support the Partnership for New Generation Vehicles (PNGV) program. The main objective of the five-year SPP Project is to make the use of high strength and low weight materials economically feasible for mass production by providing new software and technology for predicting springback of sheet metals early in product design. We

expect that this will significantly reduce tooling costs and improve lead times in the production of automotive body panels, thereby improving our competitiveness.

[The petitioner's] research provided many of the new software features and technology improvements used in our project and in his activities here at DaimlerChrysler. These were documented in his recent doctoral dissertation at Northwestern University.

Any thesis or research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every improvement over prevailing formulas constitutes an influential contribution such that a waiver of the labor certification is warranted in the national interest. The letters discussed above do not establish that the petitioner's work represents a groundbreaking advance in friction modeling.

The petitioner's publication history is consistent with the above conclusion. The two articles authored by other engineers reveal that the petitioner has authored at least two articles with the same title. 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 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." 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. As stated above, the petitioner has submitted evidence that he has been cited twice, once by a colleague at Northwestern University. Two citations are not remarkable. Thus, the record does not reflect that the petitioner's publication history is indicative of an influence on the field as a whole.

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.