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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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BS

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

[Redacted]

JUN 24 2003

File: [Redacted] Office: NEBRASKA 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]

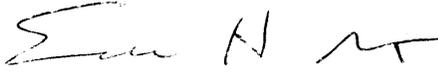
**INSTRUCTIONS:**

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, 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 (AAO) 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 seeks employment as a postdoctoral research associate. At the time he filed the petition, the petitioner was a postdoctoral staff research associate in the chemistry department at the University of Akron, Ohio. 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 concluded 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 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 received a Ph.D. in physical chemistry from the Dalian Institute of Chemical Physics, China, in July 1998. 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 sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor 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, supra*, 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.

The director does not contest that the petitioner's field of research in high resolution laser spectroscopy has substantial intrinsic merit, and that the proposed benefits of his work, improved technology in monitoring air pollution and the detection of poison gases, would be national in scope. It remains to determine whether the petitioner has established that he will serve the national interest to a substantially greater degree than would 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 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 several reference letters in support of his petition. Professor [REDACTED] supervises the petitioner's work in his laboratory at the University of Akron. Dr. [REDACTED] states:

Both [the petitioner's] doctoral and postdoctoral research have been on cavity ringdown spectroscopy (CRDS). CRDS is a simple and powerful new technique that is revolutionizing absorption spectroscopy and trace gas detections. At an international spectroscopy conference in Columbus, Ohio, [the petitioner] reported what I believe may be the first successful attempt to apply the CRDS technique to liquid samples.

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I invited [the petitioner] to join my group at the University of Akron in order to help me apply the CRDS technique to my research supported by the U.S. Department of Energy. That work is a fundamental study of how energy transfer occurs within polyatomic molecules that are cooled in a jet to very low temperatures. . . . [The petitioner] has shown determination and remarkable ingenuity to overcome the technical difficulties to achieve a successful experiment.

Professor [redacted] subsequently submitted a second letter noting the strategic potential of the petitioner's research and the petitioner's unique skills. He states that "the ability of this new technique to detect trace amounts of gases can be applied to detection of vapors of terrorists' materials, pollution monitoring, and industrial process control." While the Bureau acknowledges the undoubted importance of research devoted to improving technology for monitoring pollution and detection of unknown gases, the significance of a given field of research such as the petitioner's is insufficient to demonstrate eligibility for the national interest waiver.

[redacted] a professor of chemistry at the University of Akron, provides similar information about the petitioner's work and considers him a "very intelligent and capable researcher." [redacted] an assistant professor in the chemistry department at the University of Akron, also praises the petitioner's research abilities and adds that the petitioner is also using CRDS techniques to study the combustion of methanol.

[redacted] is a professor of physics at Vrije Universiteit, Amsterdam, The Netherlands. He supervised the petitioner's postdoctoral work at the Laser Centre at Vrije Universiteit for several months in 1999. Professor [redacted] characterizes the petitioner as a versatile, "hard-working and dedicated researcher" whose efforts "allowed our project to be successfully completed within the required time limitation."

[redacted] a professor of chemistry and member of the Chinese Academy of Sciences, supervised the petitioner's doctoral work at the Dalian Institute of Chemical Physics. Professor [redacted] describes the petitioner as an important and significant researcher in his laboratory, who successfully developed CRDS techniques in their group.

[redacted] professor of chemistry at Wake Forest University, submits a letter on behalf of the petitioner. A copy of one of Professor [redacted] articles that cites the petitioner's work is also

submitted on appeal. Professor [REDACTED] states that his own research interests include the use of ultrasensitive laser spectroscopic techniques to study molecular motion and interaction with light. Professor [REDACTED] became aware of the petitioner's work through reading the petitioner's published articles in preparation for publishing his own research results. Professor [REDACTED] states that he is extremely impressed with the accomplishments of the petitioner and his colleagues. He asserts that the only two other major university research groups have comparable CRDS expertise to that of the petitioner's and that the field is very specialized. He contradicts the director's assumption in the denial that other researchers with doctorates in laser spectroscopy are also CRDS experts or "soon could be if they focused on these techniques." While we do not dispute that the director's presumption is somewhat speculative, we note that a shortage of qualified researchers in a specific field does not constitute grounds for a national interest waiver, given that the labor certification process was designed to address the issue of worker shortages.

We note that all of the testimonials except Professor [REDACTED] appear to be from individuals from the petitioner's past and present educational institutions. Letters from those with connections to the petitioner certainly have value, because such persons have direct knowledge of the petitioner's contributions to a specific research project; however, their statements do not show, first-hand, that the petitioner's work has already influenced the wider scientific community as a whole, as might be expected with research findings that are especially significant.

The record also contains evidence that the petitioner is a member of the International Union of Pure and Applied Chemistry (IUPAC), the American Association for the Advancement of Science (AAAS), the American Chemical Society (ACS), and Sigma Xi, The Scientific Research Society. On appeal, counsel argues that the invitation to join Sigma Xi as an elected member is evidence of exceptional ability. While such membership could represent an exceptional achievement as set forth in 8 C.F.R. § 204.5(k)(3)(ii)(E) that designates "memberships in professional associations" as one criterion indicating exceptional ability, we cannot conclude that satisfying one, or even the requisite three criteria for a classification that normally requires a labor certification warrants a waiver of the labor certification requirement in the national interest. As set forth in *Matter of New York State Dept. of Transportation*:

Because, by statute, 'exceptional ability' is not by itself sufficient cause for a national interest waiver, the benefit which the alien presents to his or 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). Because the statute and regulations contain no provision allowing a lower national interest threshold for advanced degree professionals than for aliens of exceptional ability, this standard must apply whether the alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree.

*Id.* at 218-219.

We note that the record contains evidence that the petitioner has authored/coauthored ten published articles and has presented his work at scholarly conferences. There is no evidence indicating that

publishing or presenting research findings is rare in the petitioner's field. 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 acknowledgment 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. If an alien is pursuing research which he, and his immediate circle of colleagues consider to be critical, but which other researchers do not view as particularly significant, then the extent of the alien's influence is not established. Frequent citation by independent researchers, on the other hand, would demonstrate more widespread interest in, and reliance on, the petitioner's work.

In this case, the record contains evidence that eight other articles have cited the petitioner's work. Three of these citations were by the petitioner's colleagues. These citations and the additional five citations do not support an argument that the petitioner's work has already influenced the wider scientific community to any significant degree.

We note that on appeal, along with background material on the importance of CRDS technology, counsel submits copies of two additional articles (one is Professor Swofford's) that cite the petitioner's work. Both articles were published after the March 2002 filing date of the petition. While the articles show that the petitioner's work is recognized, to support the petitioner's eligibility for a national interest waiver, the petitioner's reputation and influence must be established as of the filing date of the petition. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner's documentation of his achievements and projections of future contributions may support the argument that the petitioner has exceptional ability in CRDS technology, but do not overcome the statutory mandate of a labor certification for this occupation or establish that the petitioner's work has already influenced the wider scientific community to any significant degree as of the filing date of the petition. We cannot conclude that the evidence as a whole shows that the benefit that the petitioner presents to his field "greatly exceeds the 'achievements and significant contributions'" contemplated in 8 C.F.R. 204.5(k)(3)(ii)(F) for an alien of exceptional ability. See *Matter of New York State Dept. of Transportation*, at 218. The labor certification process exists because protecting jobs and employment opportunities of U.S. workers having the same objective minimum qualifications as an alien seeking employment is in the national interest. As is clear from the plain wording of the statute, it is 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. Similarly, 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. Based on the evidence submitted, the petitioner has not



established that a waiver of the requirement of an approved labor certification would 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.