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

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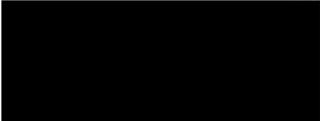
ADMINISTRATIVE APPEALS OFFICE
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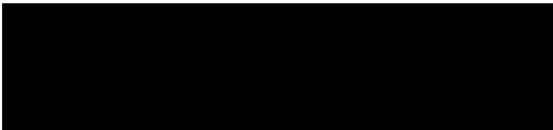
File: WAC-01-280-57501 Office: California Service Center Date:

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:



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 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 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. While the director included a discussion of whether the petitioner is an alien of exceptional ability, the director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree. The director concluded, however, 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.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Ph.D. in soil science from the University of California, Davis. 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, agronomy, and that the proposed benefits of his work, improved use of water resources and adaptation to global warming, 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, note 6.

The petitioner submitted evidence of several professional memberships, scholarships, and fellowships as well as evidence that he has refereed journal articles. These accomplishments all relate to the requirements for aliens of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that meeting one or even all of the requirements for exceptional ability warrants a waiver of the labor certification requirement.

[REDACTED] who supervised the petitioner's Ph.D. thesis and postdoctoral work at the University of California, Davis (UC Davis), discusses the petitioner's work on "the impact of climatic variables and atmospheric carbon dioxide (CO₂) on crop productivity and water use efficiency (WUE)." According to [REDACTED] the petitioner validated "a set of simple equations predicting the effects of carbon dioxide concentration, temperature, and humidity on crop WUE and productivity." The petitioner also discovered that radiation controls rapid changes in canopy photosynthesis and water consumption. The petitioner further developed a technique for monitoring CO₂ and humidity at different locations, a method that, according to [REDACTED] researchers around the world are beginning to adopt. In his postdoctoral work, the petitioner resolved disputes between various users of water resources regarding the benefits of subsurface drip irrigation systems and the suppression effect of air humidification and cooling on crop water use during water application by sprinklers.

[REDACTED] another professor at UC Davis provides similar information, adding that as Chairman of the 24th American Meteorological Society Conference on Agricultural and Forest Meteorology held in August 2000 he included one of the petitioner's papers among the presentations.

[REDACTED] a professor at the University of California, Berkeley (UC Berkeley), discusses the importance of the petitioner's work at UC Davis as well as the petitioner's current research in [REDACTED] laboratory. [REDACTED] provides general praise of the petitioner's previous work, asserting that the petitioner "has significantly advanced the theory about the relationship of water use and CO₂ assimilation, known as the after-use efficiency for different plant species at different ecosystems [REDACTED] explains that the petitioner's work "will be used for large scale research on climate change and environmental studies." Regarding the petitioner's current work [REDACTED] notes that the work, funded by the U.S. Department of Energy and its Terrestrial Carbon program, focuses on modeling and measuring CO₂ and water vapor exchange between ecosystem and atmosphere. While Dr. Baldocchi asserts that the work is important for combating the effects of global warming, he provides little detail about the petitioner's accomplishments on this project.

In a second letter, [REDACTED] reiterates that the petitioner's single-sensor technique for measuring CO₂ and water vapor profiles around vegetation is being used by many other groups in the world to obtain crucial information. [REDACTED] further states that during the petitioner's first year of research at UC Berkeley, the petitioner made some new findings, including "obtaining some key plant physiology parameters and their seasonality." Finally [REDACTED] concludes that the petitioner's results are important to U.S. international negotiations as they

indicate U.S. ecosystems take up more carbon than initially believed, earning the U.S. more carbon credits.

On appeal, the petitioner submits a third letter from [REDACTED]. He asserts that while working for Dr. Hsiao, the petitioner developed a new method to measure carbon dioxide and water vapor profiles and was the first to experimentally quantify radiation's control of rapid changes in vegetation carbon dioxide assimilation and transpiration. Dr. Baldocchi asserts that the importance of this work is evidenced by the fact that the petitioner's work "has been, and is currently, in wide use among other research groups in America, Germany, Australia, and Sweden." [REDACTED] further states that the petitioner "has acquired the first dataset on the annual course of leaf photosynthetic parameters of tree, which will provide the key input to run a large-scale mechanistic biophysical model that can predict how ecosystem physiological function will respond to environmental perturbations." While Dr. Baldocchi asserts that this work "has changed the way we interpret how stomata of plants respond to drought," he does not provide examples of other researchers applying these results.

[REDACTED] another professor at UC Berkeley, provides similar information, asserting that the petitioner's previous work would permit the conservation of a large amount of water in the agricultural sector. Dr. Qi continues that the petitioner's current work "can provide a comprehensive, unbiased scientific understanding of sources and sinks of carbon dioxide between atmosphere and biosphere." Dr. Qi concludes that this information is "essential for the US government in designing and optimizing any potential carbon dioxide mitigation strategies envisioned in the next two decades."

The above letters are all from the petitioner's collaborators and immediate colleagues. While such letters 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. On appeal, counsel notes that the petitioner submitted letters from independent experts, two of whom work for government agencies. We will consider those letters.

[REDACTED] a plant physiologist at the Agricultural Research Service of the U.S. Department of Agriculture, asserts that he became aware of the petitioner due to his research on CO₂ and water vapor measurements. Dr. Sinclair asserts that the data obtained from this research "were used to resolve a critical issue of controversy about crop growth and the influence of atmospheric humidity." According to Dr. Sinclair, the data are also important "for understanding and predicting crop water use and crop response to changes in atmospheric carbon dioxide." Dr. Sinclair, however, concedes that is too early to judge the petitioner's potential, although he predicts that the petitioner's research will have a long term impact on our understanding of the influence of the environment on crop growth and water use.

[REDACTED] Vice President of Strategic Planning at the California Power Exchange, reiterates much of the information discussed above, asserting that the petitioner's research, which "could be a framework" for water reduction in agriculture, has the potential to help alleviate California's

energy crisis since the Department of Water Resources has become the major buyer of power in California.

Finally, the petitioner submitted a letter from [REDACTED] Director of the National Institute for Global Environmental Change (NIGEC) operated for the Department of Energy by UC Davis. While Dr. Reck is also a professor at UC Davis, she claims to have come to know the petitioner only in the last year from his presentations at meetings. [REDACTED] asserts that the petitioner's presentations "received much attention by national and international scientists conducting carbon cycle research" but does not reiterate the claim made by others that other scientists in the field are actually using the petitioner's methods. [REDACTED] then goes on to discuss the prestige of the petitioner's laboratory and the importance of his project. On appeal, counsel also raises the argument that the prestigious nature of the petitioner's laboratory is evidence of the petitioner's abilities in comparison to his peers. As stated above, we do not accept that any alien qualified to work on an important project qualifies for a waiver. Similarly, we do not accept that simply working at a prestigious laboratory qualifies an alien for a waiver.

The question is whether the petitioner himself has already established a track record evidencing his influential role in the field. The independent letters focus on the importance of the petitioner's field and his potential to contribute to that field but fail to provide specific examples of how the petitioner's work has already influenced the field. The record contains no letters from independent researchers explaining how the petitioner has influenced their own work.

In addition to reference letters, the petitioner submits evidence that he has served as a referee for the journal *Chinese Agricultural Meteorology*. In addition, after the date of filing, the journal *Global Change Biology* requested that the petitioner referee manuscripts submitted for publication. On appeal, the petitioner submits evidence that this journal is highly ranked. The e-mail request reflects that the journal's subject editor "nominated" the petitioner as a referee. The subject editor, however, is the petitioner's supervisor, Dr. Baldocchi. Thus, the petitioner's invitation to referee for this journal is not evidence of his recognition beyond his circle of colleagues.

Like most researchers, the petitioner has authored published articles and presented his research at conferences. 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." 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.

On appeal, counsel asserts that the petitioner's articles have "been cited numerous times." The petitioner submits evidence that five independent researchers have cited his article in the *Journal of Experimental Botany*. Five citations are not evidence that the petitioner's work is significantly influential.

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, 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.