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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.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: Nebraska Service Center

Date: **MAR 24 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 214(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 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. At the time of the petition's filing, the petitioner was working as a postdoctoral research associate at the University of Minnesota. 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.

The petitioner holds a Ph.D. in Chemical Physics from the University of Illinois. 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 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 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.

Along with evidence of his published articles, the petitioner submitted two witness letters. [REDACTED] Professor of Chemistry, Stanford University, states:

I am writing this letter in support of [the petitioner's] candidacy for a "National Interest Waiver" to obtain Permanent Resident status in the U.S.A. I have never met [the petitioner] in person but I have studied two of his papers...

I find both published works quite remarkable in that they provide a clear and compelling argument for a great simplification in the calculation of quantities that are at the heart of how angular momenta are coupled together. What [the petitioner] has done is to replace the

laborious, unstable, and subject to overflow and round-off errors of factorial computations with a clever recursion relation for binomial coefficients. Angular momentum coupling factors appear essentially everywhere that quantum mechanics is used to describe physical phenomena. [The petitioner's] method is fast and exact. It is an important contribution, the type that can only be made by a true expert in the field who has great insight.

[The petitioner] is in my estimation one of the small percentage of scientists whose achievements rank in the very top of his field of endeavor. He is presently a postdoctoral research associate in the Department of Chemistry of the University of Minnesota at Twin-Cities, working on a project involving quantum scattering calculations. In this project he already has found application for the exact calculation of angular momentum coupling coefficients with large arguments.

Thus, I am encouraged to believe that this breakthrough of his will have wide significance. I urge that [the petitioner] be granted a national interest waiver; I believe it is very much in the interest of this country to keep such talent here.

In a letter to the petitioner dated January 30, 2001, Professor [REDACTED] University of Perugia, Italy, states:

I read with much interest your paper on quantum angular momentum coupling coefficients which was published in *Computer Physics Communications*. It is indeed a very nice work, dealing with a most important subject which is both a basic ingredient for the understanding of the quantum behavior of systems at the microscopic level but also a practical tool for the actual computations of structural and dynamical properties.

In fact, it permeates modern science from elementary particles to atoms and molecules, and quantum chemistry needs for its elaborate codes efficient algorithms for the calculation of these coefficients.

Your formulation is indeed elegant and compact, and the numerical advantages are very well documented, ranking your method among the top ones. Current approaches are based on an indirect (recurrence) method. Instead, your algorithm allows the direct calculation for large values of the entries: this is important in chemistry and in atomic and molecular physics. I am confident that many scientists - in particular those belonging to the theoretical chemistry community - will appreciate and use your work for solving their demanding problems in applied quantum mechanics.

The petitioner, however, has offered no evidence showing that his computational methods are widely used by other scientists or institutions. We note the statements from Professors [REDACTED] and [REDACTED] pertaining to the petitioner's published works. The record, however, contains no evidence that the publication of one's work is a rarity in petitioner's field, nor does the record sufficiently demonstrate that independent researchers have heavily cited or relied upon the petitioner's work in their research.

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, would demonstrate more widespread interest in, and reliance on, the petitioner's work. In this case, the petitioner failed to provide evidence showing that his work was heavily cited.

The petitioner's initial two witnesses offer only speculation regarding the future significance of the petitioner's published findings. For example, [REDACTED] concludes his letter stating: "Thus, I am encouraged to believe that this breakthrough of [the petitioner's] will have wide significance." Similarly, Professor [REDACTED] concludes: "I am confident that many scientists - in particular those belonging to the theoretical chemistry community - will appreciate and use [the petitioner's] work for solving their demanding problems in applied quantum mechanics." Statements pertaining to the expectation of future results rather than a past record of demonstrable achievement fail to demonstrate the petitioner's eligibility for the national interest waiver. 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 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 acknowledged the intrinsic merit and national scope of the petitioner's work, but found that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek.

On appeal, the petitioner states: "I have shown with the submitted documents that I am a well-established and uniquely trained scientist in multiple fields with exceptional ability." However, 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. The petitioner's appeal includes evidence to address the director's finding that the record lacked "evidence of membership in professional organizations." This evidence further demonstrates the petitioner's

exceptional ability in his field; however, 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 his 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). It cannot suffice for the petitioner or his witnesses to state that he possesses useful skills, or a "unique background." Rather, the petitioner must demonstrate a past history of significant research accomplishment and influence in his field of endeavor.

The petitioner submits a letter from [REDACTED] Professor of Chemistry, Catholic University of America, stating: "I am very impressed by [the petitioner's] published works in the angular momentum coupling and recoupling coefficients, which are not only fundamental and important, but also have applications in almost all the fields in modern sciences." [REDACTED] however, does not specifically identify any ways in which the petitioner's published methods have already been applied. 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 himself has cited sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work. Their citation of the petitioner's work would demonstrate their familiarity 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 would have, if that research does not influence the direction of future research. In this case, the petitioner has offered no evidence demonstrating heavy independent citation of his published findings.

In this case, the petitioner's three witnesses have expressed their high opinion of the petitioner and his published work. The petitioner's findings, however, do not appear to have yet had a measurable influence in the larger field. While the petitioner's witnesses discuss the potential applications of his 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 his 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, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.