

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 28 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: SELF-REPRESENTED

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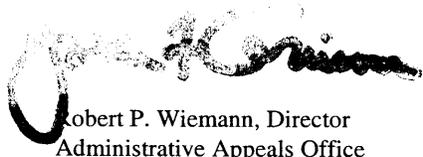
INSTRUCTIONS:

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. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

The petitioner seeks classification as an employment-based immigrant 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 director determined that the petitioner qualified 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.

On appeal, the petitioner asserted that his project investigating the reduction of greenhouse gas emissions is so unique that he would be able to serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

On September 5, 2001, the AAO affirmed the director's decision, concluding that the evidence failed to establish that the petitioner's research work was of greater importance than that of other qualified researchers or that the petitioner's work already had any kind of significant impact on the field as a whole.

On motion, the petitioner submits additional evidence relating to these issues. This evidence will be discussed below.

The requirements for a petitioner to establish eligibility for a national interest waiver under Section 203(b) of the Act, and as outlined in the precedent decision, *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215, 219 (Comm. 1998), were addressed in the September 5, 2001 decision of the AAO and will not be repeated here.

In its decision, the AAO reviewed several witness letters in support of the petition and concluded that while they attested to the petitioner's competence, they failed to identify any particular innovations or contributions that the petitioner had made which had already impacted his field as a whole. On motion, the petitioner's submissions contain an additional letter from [REDACTED] a professor of materials science and engineering at Ohio State University (OSU). Professor [REDACTED] was part of the petitioner's dissertation committee and advised him on his dissertation topic. Professor [REDACTED] indicates that OSU and the Public Utilities Commission of Ohio (PUCO) sponsored the petitioner's dissertation project. He adds that:

The application of the models proposed in [the petitioner's] thesis could assist the stakeholders to choose cost-effective strategies in order to meeting [sic] the emission standards as required by the Kyoto Protocol.

* * *

I anticipate the findings of his research project would assist policy makers in designing energy policies that could result in lower energy costs with reduction in emission of pollutants.

We note that this letter comes from the petitioner's former professor and thesis advisor. While such a letter is important in providing details about the petitioner's work, it cannot by itself establish the petitioner's influence over the field as a whole. Further, Professor [REDACTED] speculation of the future impact of the petitioner's doctoral thesis fails to establish that the petitioner's work has yet had any measurable impact on the scientific community.

The petitioner asserts on motion that because he has found employment with the State of Ohio, this demonstrates that his expertise is recognized outside OSU and PUCO. The petitioner does not provide any independent corroboration for this argument or explain how finding a research job with Ohio establishes his national influence. There is no evidence of record from any high-ranking official of the State of Ohio describing how the petitioner's scientific work has had significant impact in the field. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Included with the petitioner's additional materials are a certificate of completed training from the State of Ohio dated July 11, 2001 and an undated certificate of appreciation from PUCO. While these certificates reflect well on the petitioner's abilities, a certification for a particular occupation and recognition by one's peers are simply two possible requirements set forth in 8 C.F.R. § 204.5(k)(3)(ii) for aliens of exceptional ability, a classification that normally requires a labor certification. Meeting two, or even the requisite three requirements for this classification would not qualify the petitioner for a waiver of the labor certification process. These two certificates were issued to the petitioner, respectively, in recognition for completion of a training course, and in appreciation for a job well done, and do not intrinsically establish the petitioner's eligibility for the national interest waiver. Receipt of the certificates does not prove the recipient's impact on the field. Moreover, the certificate from the State of Ohio was issued after the filing date of the petition, and may not be considered to prove the petitioner's eligibility. *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Com. 1971).

The petitioner also contends that obtaining a copyright supports his request for a national interest waiver. It cannot suffice to state that obtaining a copyright, or asserting that one's skills are unique, is sufficient to secure a national interest waiver. The benefit of the alien's expertise must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process.

The petitioner argues that the requirements associated with obtaining a Ph.D. support his claim to a national interest waiver. The petitioner completed his doctoral program in December 2000, almost two years after the filing date of the I-140 petition in January 1999. Any work performed by the petitioner subsequent to the filing date may not be considered. See *Matter of Katigbak*, *supra*. Additionally, while the petitioner may have completed challenging work during the course of his

studies, obtaining a doctoral degree in one's field does not establish the petitioner's impact. All doctoral research, in order to receive funding or approval, generally expands the general pool of scientific knowledge. It does not follow that every doctoral candidate whose dissertation is sponsored by a state agency inherently serves the national interest to a degree that justifies a waiver of the labor certification process. Further, the petitioner's experience and academic credentials can be presented on an application for a labor certification.

Finally, the petitioner asserts that he has submitted three additional articles to various journals for publication. As of the filing date of the motion, one of the manuscripts had been accepted for publication, but had not yet been published. Two others had been submitted to editors for review. A short essay authored by the petitioner was commended in a private letter to the petitioner, but the publisher declined publication of the article. Articles submitted for publication after the date of filing the immigrant visa petition cannot establish the petitioner's eligibility retroactively. As noted above and in the previous AAO decision, a petitioner must establish eligibility at the time of filing. A petition cannot be approved at a future date after the petitioner may become eligible under a new set of facts. The petitioner's publication history does not establish his national influence in the scientific community. Further, when judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a measure as is the citation history of a published work. Publication of scholarly articles is not automatically evidence of influence on the field. A published article may show 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. Here, the record contains no evidence that independent researchers in the environmental field have cited or relied upon the petitioner's work.

A review of the record does not establish that the petitioner's contributions have attracted any significant attention from the scientific community as a whole. 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. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(2) of the Act and the petition may not be approved.

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. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of September 5, 2001 is affirmed. The petition is denied.