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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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BCIS, AAO, 20 Mass., 3/F  
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: Texas Service Center

Date: MAY - 8 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)

IN BEHALF OF PETITIONER:

[REDACTED]

**PUBLIC COPY**

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, Texas 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 filing, the petitioner was pursuing his doctorate and working a research assistant in the Computer Vision and Image Processing Laboratory at the University of Louisville. 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 did not qualify for classification as a member of the professions holding an advanced degree or an alien of exceptional ability, and 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 Master of Science degree in Civil Engineering from the Technical University of Denmark. On appeal, the petitioner has provided a credential evaluation report from World Education Services, Inc. indicating that this degree has been independently evaluated as being equivalent to a master's degree from an accredited U.S. institution. 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. Therefore, we withdraw the director's finding that the petitioner has not established eligibility for the underlying immigrant classification.

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 his educational credentials and information pertaining to his field of research, the petitioner submitted a witness letter from Dr. [REDACTED] professor of Electrical and Computer Engineering and Director of the Computer Vision and Image Processing Laboratory, University of Louisville. Dr. [REDACTED] states:



It was through my interaction in the review process of [the petitioner's] application for admission to the University of Louisville, and then my supervision of his Ph.D. research together with his work as my research assistant at the Computer Vision & Image Processing Laboratory, that I became fully aware of his extraordinary knowledge and expertise.

[The petitioner's] Master degree in Applied Mathematical Physics has gained him a full scholarship and admission to the Ph.D. program at Speed Scientific School at the University of Louisville. He will use his multidisciplinary expertise in advanced mathematical modeling, information technology and visualization- in an ongoing work in medical imaging - to facilitate and develop an Automatic Discrimination System of lung carcinoma based on "automatic screening" of CT-Scans funded by the National Institute of Health and Norton Hospital, Louisville, KY.

[The petitioner's] continued presence and work with the early detection of Cancer will improve the quality of health care and impact survival of the citizens of United States.

It is in my opinion that an exemption of the job offer requirement and subsequent labor certification is in order.

We generally do not accept the argument that a given project is so important that any alien qualified to work on that project must also qualify for a national interest waiver. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5<sup>th</sup> Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule. Statements from counsel supported by documentation indicating the undoubted importance of research devoted to diagnostic imaging, tomography, and ultrasonics may establish the intrinsic merit and national scope of the petitioner's work, but they fail to distinguish the petitioner from other competent researchers in those specialties.

Similarly, assertions as to the petitioner's potential to make future contributions would fall short of demonstrating his eligibility for a national interest waiver. We note D. [REDACTED] statements that the petitioner "will use his expertise... to facilitate and develop an Automatic Discrimination System" and that the petitioner's "work with the early detection of cancer will improve the quality of health care and impact the survival of citizens of the United States." Statements pertaining to the expectation of future results rather than a past record of demonstrable achievement fail to demonstrate eligibility for a 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 Bureau held that aliens seeking employment based immigrant classification must possess the necessary qualifications as of the filing date of the visa. The petitioner's eligibility for a national interest waiver is contingent upon a showing that his work has already significantly influenced the research field.

Dr. [REDACTED] states that the petitioner "is currently involved in a project that is funded on an annual basis therefore it is impossible to make an offer of full-time, permanent employment in accordance with Department of Labor guidelines." Pursuant to *Matter of New York State Dept. of Transportation*, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner must still demonstrate that he will serve the national interest to a substantially greater degree than do others in the same field. Congress plainly intended that, as a matter of course, advanced degree professionals should be subject to the job offer/labor certification requirement. The national interest waiver is not merely an option to be exercised at the discretion of the alien or his employer. Rather, it is a special, added benefit that necessarily carries with it the additional burden of demonstrating that the alien's admission will serve the national interest of the United States.

We note here that the petitioner was a doctoral student at the time he filed the petition, with a nonimmigrant student visa valid for the duration of his studies. The petitioner's continued involvement in Dr. [REDACTED] project as a doctoral student is therefore not in any way contingent on the outcome of his immigrant visa petition, and there is no indication from Dr. [REDACTED] that the petitioner's involvement is intended to continue after he receives his Ph.D. Student projects, and postdoctoral appointments, which are inherently temporary, are readily available to nonimmigrants and generally do not require permanent resident status as a matter of course. Nothing in the legislative history suggests that the national interest waiver was conceived as a means to facilitate the ongoing training of alien researchers.

The record also contains a response letter, addressed "To Whom It May Concern," from U.S. Congresswoman Anne Northrop of Kentucky's Third District. The letter cites one of the petitioner's family members as the source of the information and goes on to repeat the assertions of Dr. [REDACTED]. The Congresswoman's letter asks that the Service (now the Bureau) give full consideration to the petitioner's immigrant visa petition.

In a brief accompanying the petition, counsel argues that the petitioner qualifies for a waiver of the job offer requirement through satisfying several of the regulatory criteria for exceptional ability. Because the beneficiary already qualifies as an advanced-degree professional, however, an additional finding of exceptional ability would be of no further benefit to the petitioner in this proceeding. Even if the petitioner were to qualify for classification as an alien of exceptional ability, a plain reading of the statute and regulations shows that aliens of exceptional ability are generally required to present a job offer with a labor certification at the time the petition is filed, and only for due cause is the job offer requirement to be waived. As has been observed in *Matter of New York State Dept. of Transportation*, exceptional ability in one's field of endeavor does not compel the Bureau to grant a national interest waiver of the job offer requirement. At issue is whether the 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.

Counsel cites the petitioner's educational credentials and work experience as evidence of his past record of success. We note here that any objective qualifications that are necessary for the

performance of a research position can be articulated in an application for alien labor certification. 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 that could be articulated on an application for a labor certification.

Counsel cites the petitioner's publication record as further evidence of his documented success. The record, however, contains no evidence that the publication of one's work is a rarity in the petitioner's field, nor does the record sufficiently demonstrate that independent researchers have heavily cited or relied upon the petitioner's findings 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.

The record, however, does not contain citation records or other evidence to establish that independent researchers throughout the engineering field or medical community regard the petitioner's published work as especially significant. While heavy citation of the petitioner's published articles would carry considerable weight, the petitioner has not presented such citations here.

The director requested further evidence that the petitioner had met the guidelines published in *Matter of New York State Department of Transportation*. In response, the petitioner submitted copies of documentation that had already been provided.

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 indicated that the petitioner had failed to satisfy the three factors forth in *Matter of New York State Dept. of Transportation*.

On appeal, the petitioner submitted an independent credentials evaluation demonstrating that he qualifies as a member of the professions holding an advanced degree. Also submitted were second and third place awards issued by the Speed Scientific School, University of Louisville on "Engineers' Day

2001.” The petitioner received the awards for his “Medical Imaging of Visualization” exhibition. It has not been shown that these awards were received prior to the petition’s filing date. *See Matter of Katigbak, supra*. Evidence that did not exist as of the filing date cannot retroactively establish eligibility as of that date.

Aside from the issue of the filing date, the petitioner must show not only that his work is important to his school, but throughout the engineering research field. University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The petitioner’s Engineers’ Day awards may place the petitioner among the top students at his educational institution, but they offer no meaningful comparison between the petitioner and experienced professionals in the research field who have long since completed their educational training.

We note here that the record contains the opinion of only one expert in the petitioner’s field, his Ph.D. supervisor at the University of Louisville. While a letter from an individual close to the petitioner certainly has value, the letter does not show, first-hand, that the petitioner’s work is attracting attention on its own merits, as we might expect with research findings that are especially significant. Independent evidence that would have existed whether or not this petition was filed, such as heavy citation of one’s published findings, would be more persuasive than the subjective statements from an individual selected by the petitioner. In this case, the petitioner’s ongoing research may contribute to the general pool of knowledge, but it has not been shown that researchers throughout the field have viewed the petitioner’s achievements as particularly significant.

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. Without evidence that the petitioner has been responsible for significant achievements in the engineering or medical fields, the petitioner’s assertion of prospective national benefit is speculative at best.

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 that, 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.