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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.  
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Washington, D.C. 20536

MAY 12 2003

File: WAC 01 239 57894 Office: Vermont 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)

IN BEHALF OF PETITIONER:

**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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

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 seeks employment as a researcher in the field of geographic information systems ("GIS"). 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 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 director's decision was ambiguous regarding whether the petitioner qualifies as an alien of exceptional ability. Instead, the decision erroneously considered the petitioner's evidence under the regulatory criteria for aliens of extraordinary ability. In this matter, we find that the petitioner qualifies as an alien of exceptional ability. 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 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.

Counsel states:

[The petitioner] is one of China's pioneers in the field of geographic information systems (GIS)... Specifically, in 2000, [the petitioner] developed a novel solution to an extraordinary difficult "bottleneck" problem facing the GIS field: achieving the progressive transmission of vector map data over the Internet.

Along with documentation pertaining to his field of research, the petitioner submitted witness letters from independent experts in the GIS field from throughout the United States.

D. [REDACTED] Professor of Geography and Political Economy, University of Texas at Dallas, states:

[The petitioner] has nearly 20 years of research and technical work in GIS, computer science, and (more important) the intersection of GIS theory and computer technology. Most important, [the petitioner] has succeeded in achieving progressive transmission of vector data over the Internet using an original technology he independently developed. I believe his being the first researcher in the world to achieve this goal demonstrates both the solidity of his track record in the past and foretells of the tremendous continuing success expected of him in the future. There are several recent papers by top GIS research groups (most notably, Professor [REDACTED] group at the University of Colorado and Professor [REDACTED] group at the University of Maine) that specifically acknowledge the extraordinary difficulty of progressively transmitting vector map data over the severely limited bandwidth of the Internet. Even with increased Internet access speeds, achieving progressive transmission of vector data has proven virtually impossible. Unfortunately, achieving this difficult goal is critical to the efficient distribution of valuable GIS data for use by governmental planners and the general public. It has been a "bottleneck" problem of grand proportion. For [the petitioner] to solve it single-handedly is an amazing scientific feat. It is certainly a major advance in worldwide research in this field.

In conclusion, I believe that [the petitioner] has done outstanding work and that his breakthrough is one of great positive impact on the field of GIS research in the United States.

Dr. [REDACTED] Professor of Geography and Director, Meridian Laboratory, University of Colorado at Boulder, states:

I had the opportunity to review a demonstration of a prototype software program that [the petitioner] created by himself to demonstrate an original solution to progressively transmit vector data over the Internet. The problem he solved is tremendously difficult. GIS data sets are very large (on the order of terabytes and petabytes of data). Because of their complexity, data compression algorithms do not reduce data volume significantly. On the other hand, the amount of data that can be transmitted quickly over the Internet, though increasing in bandwidth, is still relatively extremely small, causing very restrictive transmission bottleneck. I have personally conducted significant research into this exact problem, as have other leading research groups in California, Maine, Ireland, and elsewhere. Frankly, we have uniformly found the problem to be extraordinary and frustrating.

\* \* \*

I am convinced that [the petitioner] has in fact solved the geometric portion of the problem. What is says about [the petitioner] as a scientist is that he is extraordinarily bright [and] possesses a deep understanding of the principles and practice of GIS data structure [and] data compression.

Dr. [REDACTED] Professor of Geography, University of California, Santa Barbara, states:

Based on my independent review, it is my professional opinion that [the petitioner] is an

outstanding GIS researcher who has made a discovery of significant impact on the field of GIS. He will easily be able to benefit U.S. national interests in GIS science and technology to a substantially greater degree than the majority of his colleagues in this field... [The petitioner] has solved a complex and difficult problem facing the GIS research community: the progressive transmission of vector map data over the Internet.

Dr. [REDACTED] Assistant Professor of Geography, Appalachian State University, states:

I believe any leading GIS expert who has seen the demonstration of [the petitioner's] prototype system will confirm that he has really solved the problem of progressively transmitting vector map data over the Internet. There is a large body of research published in the field of GIS that repeatedly confirms the extraordinary difficulty faced by other research leaders who have tried to solve this problem. Just looking at what the top few American research groups have published is enough to confirm that — other than [the petitioner's] solution — the entire rest of the field is still in the dark. For example, in 1999 and again just last month, Professor [REDACTED] of the University of Colorado called this problem a “challenging” one. Likewise, in both 2000 and 2001, Professor [REDACTED] group at the National Center for Geographic Information and Analysis at the University of Maine published papers also calling the problem “challenging.” Both groups explain different theories about how it might be solved, but it is clear from reading their papers that they are still at the very fundamental stage of trying to grasp with the problem at the theoretical level. While America's best scientists have at best reached the theory stage (and nobody even knows if these theories are correct or not), [the petitioner] has already developed a complete working prototype — theory, solution, and functioning example, all in one.

Dr. [REDACTED] Assistant Professor of Geography, San Diego State University, states:

In my professional opinion the petitioner has achieved a major breakthrough in this area. Specifically, he has developed a software program that convincingly demonstrates not only that progressive transmission of vector map data over the Internet is *theoretically possible*, but that it in fact *has already been achieved*. Several top research groups in this field, not only in the United States but in Europe and elsewhere, had been trying to achieve this breakthrough for a long time.

As an example of where the field believed it was, one of the most recent major articles on the progressive transmission problem was published in *Geoinformatica* last fall, and it describes the problem this way:

As we are heading towards increasing availability and global sharing of data, the need for efficient strategies to deliver vector data over the Internet is becoming more pressing. *Currently, progressive transmission of vector map data is still a challenging topic due to the intrinsic complexity of map generalization.*

This is only one of the many recent examples of leading research groups confirming that the

progressive transmission of vector map data over the Internet has not yet been solved and remains a “challenging” problem... [The petitioner] developed not only a plausible *theory* about how the progressive transmission problem *might* be solved, but an actual working *solution*. By himself, [the petitioner] has succeeded in moving the entire field forward on a problem that top groups around the world could hardly budge.

\* \* \*

In summary, I believe [the petitioner] has successfully removed a major roadblock in the GIS field. He has been working on solving complex problems in this field for many years. Far more important than that, however, is the fact that he has solved an incredibly difficult problem that some of the top research groups in the United States and beyond have struggled with for a long time. I believe that [the petitioner’s] breakthrough speaks very loudly about how his ability to impact this field stacks up against that of other researchers. I also believe that [the petitioner] will continue to have an important impact on this field for many years to come.

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, counsel objects to the director’s references to the regulatory criteria for aliens of extraordinary ability. We agree with counsel that the director’s decision contains several erroneous references to the criteria for aliens of extraordinary ability under section 203(b)(1)(A) of the Act. For example, pages three and four include a discussion of the lack of “nationally recognized prizes” and participation as a judge. Prizes and judging experience, however, are not required for the classification sought by the petitioner. On page six the director asserts that citation of one’s work is not evidence of “national acclaim,” a standard not required for the instant classification. Erroneous references to the “regulatory criteria” and “national acclaim” appear several times throughout the director’s decision. By discussing the lack of evidence regarding national acclaim and raising issues unrelated to this particular petitioner, the director presented improper grounds for denial. While the director subsequently goes on to discuss the evidence under the correct standard and even states that national acclaim is not required for the classification sought, the initial discussion indicates serious flaws in the director’s analysis and the application of an unacceptably restrictive standard.

Upon careful consideration of the documentation submitted, we find that the petitioner has shown that independent researchers from throughout his field have viewed his prototype as a significant breakthrough. The witness letters point toward a consensus throughout the GIS research community that the petitioner has developed a plausible theory and working solution for the progressive transmission of vector map data over the Internet. Distinguished experts from throughout the country regard the petitioner’s achievement as being unusually significant.

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 field of research, rather than on the merits of the individual alien. That being said, the above testimony establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has 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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.