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

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

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File:  Office: Nebraska Service Center

Date:

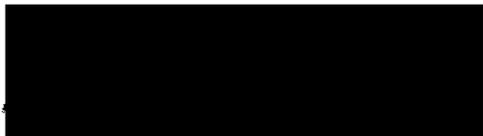
MAY 13 2003

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**

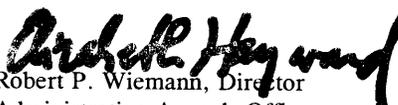
INSTRUCTIONS:

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, 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 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. 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) . . . 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 Doctor of Business Administration degree from Cleveland State University. 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, information technology (IT). The proposed benefits of the petitioner's work include improved design of commercial websites, improved IT education, and, the most recent claim by counsel, improved encryption and protection from Internet terrorism. We concur that these proposed benefits 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, n. 6.

Dr. [REDACTED] Director of the Computer Information Systems Program at Western Michigan University, discusses the petitioner's employment at that university and prior experience. Dr. [REDACTED] asserts that the petitioner's accomplishments are reflected by his publication and conference

presentation history. Dr. [REDACTED] further asserts that the petitioner's "abilities, the extent and quality of his research have been recognized by worldwide researchers and are very likely to yield notable results in the near future." Dr. [REDACTED] also discusses the recent Information Technology Forum for which the petitioner co-chaired the section in information systems and curriculum and IT mission. While Dr. [REDACTED] concludes that the petitioner's contributions to the forum were invaluable, he does not explain what those contributions were. In addition, Dr. [REDACTED] asserts that the petitioner receives positive evaluations from his students. Finally, Dr. [REDACTED] discusses the importance of IT and the difficulty in recruiting qualified information systems educators. In a second letter, Dr. [REDACTED] discusses the lack of professionals with advanced degrees in Management Information Systems, which was not offered as a separate Ph.D. field until recently. Dr. [REDACTED] concludes with a discussion of the importance of online security against terrorism.

Dr. [REDACTED] an assistant professor at Western Michigan University, praises the petitioner's dissertation and discusses the petitioner's contribution of improving the industry's understanding of online users and how they interact with business-to-customer web sites. Dr. [REDACTED] concludes that no U.S. worker with a Ph.D. could play a similar role to that played by the petitioner and further asserts that the petitioner's training is "unique."

Dr. [REDACTED] Graduate Coordinator of the Master of Science in Information Systems (MSIS) program at Dakota State University, discusses the petitioner's teaching and research at that university. Dr. [REDACTED] praises the petitioner's publication history and asserts that the invitations he receives to present his papers at conferences are evidence of his national reputation. Regarding the specifics of the petitioner's contributions, Dr. [REDACTED] states:

While at Dakota State University, [the petitioner] carried out research on behavioral patterns of online users, as well as the dynamic characteristics of Internet dependency. His work has addressed difficult but key issues in the relationships between Internet dependency and electronic commerce, which has not been addressed in information systems literature. Since the commercial use of the Internet and the phenomenon of Internet dependency began in the mid-90s, [the petitioner] has been one of the pioneers in suggesting that the level of Internet dependency should be designed into commercial web sites. This has been critical to the establishment of quality business online channels.

[The petitioner's] work on the fuzzy control-based model for project selection problems has improved the quality of project selection decisions, since his model incorporates both quantitative and qualitative measures for project selections. Traditionally, qualitative factors are difficult to analyze. Therefore, models used in business disciplines include mostly quantitative factors. [The petitioner's] major contribution has been in proposing a fuzzy control approach to include both types of decision factors. Even though this model has its origins in mathematical modeling, the results from this model can be communicated to managers in simple terms. Rather than using mnemonics and mathematical jargon, which frequently confuses readers, his model employs decision rules with linguistic terms. These

terms utilize easily understood words and phrases to enhance communication quality among managers and technical employees.

Dr. [REDACTED] concludes with a discussion of the importance of IT and the difficulty of finding individuals with the petitioner's "outstanding ability and unique expertise."

Dr. [REDACTED] Dean of the College of Business Information Systems at Dakota State University, expands on the above, identifying ten "contributions" made by the petitioner. Dr. [REDACTED] provides a technical description for each "contribution" and explains their significance in equally technical terms. In very brief summary, Dr. [REDACTED] asserts that the petitioner has (1) expanded technology acceptance models by adding human factors and managerial considerations, (2) developed a "fuzzy control-based model" that is similar to existing multi-criteria decision models but incorporates linguistic terms, (3) completed research on Internet use suggesting that the information on a homepage should be limited, (4) completed research on Internet dependency reflecting that Internet dependency more than experience can explain how users adapt to online shopping and searching and analyzed positive dependency for the first time, (5) completed additional research on Internet users, showing that dependency is not necessarily related to technical experience suggesting a limited use of "jargon" on web sites, (6) examined the intangible benefits of visible web sites and noted that interactivity on web sites results in improved visibility, (7) provided clarification on which aspects of interactivity are important in web design, (8) developed a "fuzzy control-based model" to examine tangible and intangible effects (9) demonstrated that dependent Internet users are more likely to adopt highly interactive Internet features and respond to multimedia presentations, and (10) demonstrated antecedents for job "burnout," suggesting that IT managers should rely on loyalty building to avoid turnover. Number eight above was the topic of the petitioner's paper that was recognized at an ACME conference.

[REDACTED] a former student of the petitioner's at Dakota State University, asserts that the petitioner specializes in information security that is the "major means of ensuring that the transactional messages between two parties are encrypted and delivered safely to the intended participants." Mr. [REDACTED] further asserts that while a student, he relied on the petitioner as a resource. Mr. [REDACTED] concludes that the petitioner would not be likely to displace a U.S. worker since the petitioner's outstanding ability and expertise are difficult to find.

Dr. [REDACTED] the Doctoral Program Coordinator at Cleveland State University, discusses the petitioner's accomplishments while in the doctoral program at that university. Dr. [REDACTED] notes that the petitioner's presentation at the ACME 6th International Conference won the Best Paper Award and that later research was published in peer-reviewed journals. Dr. [REDACTED] concludes with general praise of the petitioner's creativity and dedication. Dr. [REDACTED] Chairman of the Computer Information and Science Department at Cleveland State University, provides similar information to that discussed above. In addition, Dr. [REDACTED] asserts that University Microfilm, which stores dissertations, has sold 17 copies of the petitioner's dissertation in 2001. Dr. [REDACTED] an associate professor at Cleveland State University, provides similar information.

Dr. [REDACTED] one of the petitioner's former fellow doctoral students at Cleveland State University, asserts that the petitioner's field is promising and deserving of research. Dr. [REDACTED] further asserts that the U.S. has an interest in educating IT professionals, but lacks sufficient qualified IT educators.

As noted by the director, 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.

The record includes a single independent letter from Professor [REDACTED] of Hawaii Pacific University. Professor [REDACTED] evaluation appears to be a solicited review of the petitioner's credentials as opposed to an opinion based on his prior awareness of the petitioner's work through his reputation alone. Professor [REDACTED] praises the petitioner's academic record and asserts that the petitioner's dissertation was the first research to "address business-to-customer electronic commerce and the integration of technology acceptance models regarding the analysis of Internet users with various usage patterns." Professor [REDACTED] concludes by discussing the importance of the petitioner's area of research and ranks him at the top of the field worldwide.

Despite the director's expressed concern regarding the source of most of the petitioner's reference letters, on appeal the petitioner does not submit any letters from independent web designers or other IT experts discussing their reliance on the petitioner's models in designing their own websites and attesting to the superiority of his models. Further, while counsel and some of the petitioner's references rely on the petitioner's Internet security work, at the time of filing, the petitioner had not published any articles on this subject. While we acknowledge that he teaches courses on this subject, simply teaching courses in a subject is not evidence that he will impact this area to a greater degree than other IT professionals.

Moreover, most of the letters address the shortage of IT professionals, especially at the Ph.D. level. The director expressed concern that the record was "silent" as to why the petitioner's employer could not obtain a labor certification in the petitioner's behalf. Counsel correctly asserts that the petitioner need not show that a labor certification application process would be unsuccessful. On the other hand, *Matter of New York State Dept. of Transportation* states that determinations of shortages remain under the jurisdiction of the Department of Labor and that unique qualifications that could be enumerated on an application for labor certification cannot warrant a waiver of the labor certification requirement. *Id.* at 220-221. Thus, a shortage of Ph.D. level IT specialists does not warrant a waiver of the labor certification process. Counsel then argues that the labor certification process should be waived in the instant case because it would be lengthy. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 221.

In addition to the reference letters, the petitioner submitted his degrees, academic honor society membership, Best Paper Award, Chinese certification as a computer professional dated April 30,

1992, and membership cards for the Association for Information Systems. All of this evidence relates to evidentiary factors for establishing exceptional ability pursuant to 8 C.F.R. § 204.5(k)(3)(ii). The exceptional ability classification, by statute, normally requires an approved labor certification. We cannot conclude that meeting one or even the requisite three factors to establish exceptional ability warrants a waiver of the labor certification requirement.

Further, the petitioner submitted several published papers and papers in process. 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.

The director noted that the petitioner had not submitted any evidence that his papers have been cited. Instead of submitting such probative evidence on appeal, counsel argues that the reference letters adequately attest to the petitioner's influence. We cannot agree that the subjective opinions of the petitioner's immediate circle of colleagues regarding his influence, as sincere and credible as they may be, are as persuasive as objective evidence of citations. Citations reflect the number of independent members of the field who have not only read the cited article, but who have applied its results. Given the focus of the petitioner's research, alternative evidence of the petitioner's influence might include letters from independent web designers who have heard the petitioner lecture or read his articles and who have designed their web sites based on the petitioner's models and can attest to the improvement of the petitioner's models over previous models. As stated above, the record does not include such evidence.

While the sale of 17 copies of the petitioner's dissertation reflects that it is being read, we must consider this evidence in light of the fact that it was not published in a peer reviewed journal. Purchase by 17 individuals or even institutions does not reflect that the petitioner's dissertation was as widely read as an article published in a widely circulated journal. As stated above, the record does not reflect that independent researchers have cited the petitioner's dissertation.

Finally, the petitioner submitted evidence that he has received grants to support his research, reviewed several papers for IT journals and conferences, and participated in conferences at Dakota State University, Michigan State University, Western Michigan University, and conferences with a more national or international reach.

Most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a grant, government

or otherwise, inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

The requests to referee and present papers at conferences are notable. In response to the director's request for additional evidence, the petitioner submitted an e-mail request to serve on the editorial board of a new publication, the *Journal of Website Promotion*. While we concur with the director that it is not uncommon for professors to receive requests to referee articles or for researchers to present their work, the nature of the requests in the record suggests that the petitioner's theories are generating some interest beyond his immediate circle of colleagues. Nevertheless, we cannot presume from this evidence that the petitioner's influence has progressed beyond the theoretical. We find that the director's concerns regarding the lack of objective evidence reflecting that independent web designers are using the petitioner's models are valid. Rather than submit evidence that might address such concerns, the petitioner chose instead to challenge the director's concerns.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or professional research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains a Ph.D. or is working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. The record does not establish that the petitioner's models are recognized beyond his immediate circle of colleagues as groundbreaking.

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, 8 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.