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

PUBLIC COPY

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



File: LIN-02-178-52280

Office: Nebraska Service Center

Date:

NOV 24 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

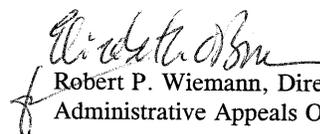
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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 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 a member of the professions holding an advanced degree. 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.

The petitioner holds a Ph.D. in Geology from Miami University in Oxford, Ohio. 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 Dep't. of Transp., 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, earth science, and that the proposed benefits of his work, remote sensing of geological and water contamination data, 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.

The director concluded that the record did not support the petitioner's claim to have created an entire new "field" of earth science known as spatial biostratigraphy. We agree that the record is not conclusive regarding whether the petitioner truly initiated this concept. Nevertheless, the record is persuasive that the petitioner has had an influence in the field.

Dr. Brian S. Currie, the petitioner's dissertation advisor at the University of Miami, discusses the petitioner's research during that time. As part of his Ph.D. dissertation, the petitioner "developed a new, remote-sensing based, field of research termed Spatial Biostratigraphy." The process provides "a detailed picture of the stratigraphy and structural geology" of an area such as an entire mountain range by comparing satellite spectral signatures with the data of rocks of a known age. The petitioner used this technique to assist Dr. Currie's research into the age of sedimentary rocks in Pakistan, India, Nepal and Tibet. The petitioner produced "a true chronology of the tectonic events that led to the development of the world's largest mountains." Dr. Currie explains

that this technique is relevant beyond academia, specifically, "since greater than 70% of the earth's surface geology has not been mapped in detail and would be of interest to those in the United States Geological Survey and natural resource-based industry."

As evidence of the petroleum industry's interest in the petitioner's work, the petitioner submitted a letter from Mahmood Akbar, Chief Geologist at Schlumberger Oilfield Service, Gulf Market. Mr. Akbar indicates that he has followed the petitioner's work since he first developed spatial biostratigraphy in Pakistan. Mr. Akbar not only indicates that the work has great potential for the petroleum industry, he indicates that "AMOCO Pakistan and Integrated Exploration & Development Services of U.K. used [the petitioner's] expertise for sequence stratigraphic studies of Kohat concession and lower Indus basin of Pakistan respectively." This statement is supported in the record by a report prepared solely by the petitioner for AMOCO.

The petitioner also submitted a letter from Dr. Edwin Gnos, an employee of the Institute of Geological Sciences at the University of Berne. Dr. Gnos asserts that while he was performing studies of former ocean floor fragments in Pakistan, petroleum geologists and the Geological Survey of Pakistan referred him to the petitioner. Dr. Gnos continues that he used the petitioner's work on the Afghanistan-Pakistani border "in the selection of key areas for additional ground checks."

Bradley C. Autrey, a biologist at SoBran, Inc., where the petitioner works under a contract with the U.S. Environmental Protection Agency (EPA), states that the petitioner analyzed a database looking for correlations between water quality and spectral signatures collected through remote sensing. Using the results of this analysis, the petitioner created maps showing the distribution of water quality parameters, thus demonstrating that remote sensing was a viable means to monitor water quality.

Dr. [REDACTED] Director of Research at [REDACTED] Inc., indicates that he supervises the petitioner's work there. Dr. Pittinger asserts that the petitioner "is one of the nation's leading experts on the use of hyperspectral and multispectral analytical sensing techniques to monitor chemical concentrations and water quality conditions of surface waters." Dr. Pittinger continues:

The significance and potential of [the petitioner's] research are far-reaching. First, his method of detecting blue-green algae by measuring chlorophyll in surface waters could be used as an early warning system for identifying blooms of noxious and toxic algal species, thus protecting human, livestock and wildlife health. Second, the detection of turbidity in surface waters could be a tracer for spills of chemicals and/or illegal discharges of effluents into surface waters. . . . Third, the detection and quantification of total phosphorus is immediately applicable in monitoring nutrient runoff from agricultural fertilizers and livestock feedlots.

The petitioner also submitted a letter from Dr. Susan Cormier, Branch Chief of the Ecological Exposure Research Division, National Exposure Research Laboratory (NERL), Office of Research and Development of the EPA in Cincinnati, Ohio. Dr. Cormier explains:

Specifically, [the petitioner] has developed spectral indices to optimize the measurement of water quality parameters. Using these mathematically derived spectral indices, he has demonstrated that high resolution images from aircraft, that selectively target discrete, narrow wavebands of reflected light, can be used to measure the turbidity and time and labor associated with taking water samples. Furthermore, the hyperspectral measurement method expands characterization of these pollutants for the entire river and is therefore a huge improvement over methods that relied on a limited number of site measurements. Annually, clean up associated with blue green algae and suspended particulates cost drinking water plants billions of dollars. The benefits of [the petitioner's] research toward protecting the Nation's waters include:

- Landscape level evaluation of the sources of pollutants that increase the cost of drinking water treatment[.]
- Early warning of toxic algal plumes for drinking water facilities[.]
- Information that can lead to the restoration of the anoxic dead zone in the Gulf of Mexico[.]
- Improved monitoring of pollutants and stressors in our rivers[, and]
- Evaluation of restoration efforts for rivers, lakes and estuaries.

The research that [the petitioner] has pursued is cutting edge research that has already made a big impact on research in our Division and has the potential for expand[ed] application in the Ohio and Mississippi Basin.

Florence Fulk, a statistician with NERL, recounts the petitioner's successful development of indicators for chlorophyll, turbidity, TSS, and phosphorus in large rivers. Ms. Fulk continues: "Building on the success of the Great Miami River data, [the petitioner] proposed the Ohio River Hyperspectral Project (ORHyP) to monitor water quality using hyperspectral remote sensing data from the Markland Pool area of the Ohio River." Ms. Fulk asserts that this proposal was accepted and funded by NERL. Ms. Fulk concludes: "Preliminary results indicate successful indicators for chlorophyll, turbidity, TSS, and phosphorous for the Ohio River."

The letters are all from the petitioner's immediate circle of colleagues and local EPA officials. While the record certainly would have been bolstered with letters from high-level officials at EPA, the record establishes that NERL was responsible for conducting the EPA's pilot program on remote sensing technology. The record further suggests that this pilot program, for which the petitioner played a significant role, was a success and will likely be expanded. Further, the petitioner's publication and citation history suggests that other independent researchers have relied on his work.

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, and further testimony in the record, establishes that the

geological 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.