

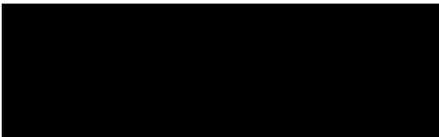
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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



SEP 26 2003

File: EAC-99-122-50133 Office: Vermont Service Center Date:

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

**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, Vermont 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. 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 Mechanical Engineering from Ben-Gurion University of the Negev. 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, engineering. In addition, we find that the proposed benefits of his work, cleaner combustion and improved analysis of fine atmospheric particles, 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.

The petitioner's doctoral research at Ben-Gurion University of the Negev, a joint collaboration with the Massachusetts Institute of Technology (MIT), was supported by the Department of Energy and the U.S.-Israel Binational Science Foundation. The petitioner's supervisor of that research, Dr. [REDACTED] details that work. Dr. [REDACTED] explains that coal combustion

produces flyash, which can be used as raw material for cement if it has a low carbon content but must otherwise be disposed. In addition, coal combustion is the source of toxic gases and particles pollutants. In his doctoral research, the petitioner developed a three dimensional particle position controller on an electrodynamic chamber (EDC). The petitioner's EDC permitted a full set of kinetics data of a single coal particle at high carbon burnout, up from previous measurements at 70 percent to 99 percent. The data demonstrated that reduction in burning rates of coal particles at high burnout is due to its evolution to a less active crystal structure. Thus, by slowing down the process, the petitioner was able to improve carbon burnout. In addition, the petitioner disproved the common belief that percolative fragmentation is a main source of fine particle emission from the coal combustion process.

Dr. [REDACTED] a professor emeritus at the University of Utah who collaborated with Dr. [REDACTED] while on the faculty of MIT, provides similar information. Dr. [REDACTED] adds that the petitioner "is the first to have achieved direct simultaneous measurements of free convective forces (at ambient conditions), and photophoretic forces on a single particle." Dr. [REDACTED] explains that these results "indicate that previous data have errors sometimes approaching 100%." Dr. [REDACTED] concludes that the petitioner's doctoral research provides "the data needed for designing high-efficiency and low-emission combustors." Finally, Dr. [REDACTED] asserts that based on his collaboration with the petitioner, he recommended the petitioner to Dr. [REDACTED] at MIT, where the petitioner was a postdoctoral researcher at the time of filing.

Dr. [REDACTED] a professor at MIT, explains that air quality standards imposed by the Environmental Protection Agency (EPA) regulate particles of less than 2.5 microns. Dr. [REDACTED] notes that current field instruments cannot measure such small particles. Dr. [REDACTED] asserts that the petitioner has developed a laboratory instrument that is capable of such measurements and, at the time of filing, was developing a portable version of the instrument. Dr. [REDACTED] continues:

Specifically, the instrument will be used to measure the extent to which polycyclic aromatic hydrocarbons (PAHs, products of combustion) are bound to size-segregated particles. This will help quantify mutagenic/carcinogenic effects of PAH on humans exposed to atmospheric particles. The instrument has numerous other applications such as in studying the formation of atmospheric particles, which is important for global warming and ozone depletion, and soot formation during combustion processes which is a source of atmospheric particles that threaten human health. The instrument may also contribute to the US instrument industry and its competitiveness in the world market because current published estimates predict a market of \$250 million for this category of instruments over the next 20 years in US alone. We will use the portable version of this instrument to investigate atmospheric particle formation in combustion processes and its effects on human health.

[REDACTED] President of Aerodyne Research, Inc., indicates that the development of a portable instrument to measure and analyze small particles is a joint project between MIT and Aerodyne Research, Inc. Dr. [REDACTED] indicates that the petitioner performed the theoretical analysis

required to design the instrument and assembled and tested the first field prototype instrument. Dr. [REDACTED] asserts that the loss of the petitioner would significantly set back the project, funded by the EPA, the National Science Foundation, the Office of Naval Research, and the National Aeronautics and Space Administration (NASA). In response to the director's request for additional documentation, the petitioner submitted a new letter from another MIT professor providing similar information.

The petitioner's doctoral research was published in *Measurement Science and Technology* in 1996. The paper was the only paper published in the journal that year to receive the journal's annual "Best Paper Award," presented at the 13<sup>th</sup> Annual Conference on Liquid Atomization and Spray Systems in Firenze, Italy. According to the announcement in the journal:

[The petitioner's] technique represents a significant enhancement to previous applications of electrodynamic chambers. It provides a capability for measurement of all three components of force on a particle. The paper describes a separation of photophoretic and free convection forces on a particle irradiated by a focused laser beam. The method also opens measurement possibilities for a large number of particle characteristics, with potential applications in droplet combustion. The balance of theoretical background and experimental measurement, coupled with a detailed discussion and interpretation of results in the light of other published work, enhances the quality of the argument. A comprehensive set of measurements validates the technique and the interpretation.

In response to the director's request for additional documentation, the petitioner submitted a letter from the Editor-in-Chief of *Measurement Science and Technology*. Dr. [REDACTED] a professor at the University of Darmstadt in Germany, asserted that the British journal is one of two leading international journals in the field and that 150 articles were considered for the award. The petitioner also submitted evidence of 11 other published articles and abstracts and several conference presentations.

The director concluded that the petitioner had not established that a similarly qualified researcher would be unable to make similar contributions to the field. On appeal, the petitioner argues that his best paper award makes him unique. He submits a new letter from Dr. [REDACTED] asserting that another researcher might never be able to reach the petitioner's proficiency on his project.

The record is mostly supported by letters 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. While we acknowledge the petitioner's best paper award, recognition from one's peers is one of the criteria for establishing exceptional ability, a classification that normally requires an approved labor certification. We cannot conclude that meeting one or even the requisite three criteria for that classification warrants a waiver of the job offer in the national interest. The petitioner did not submit letters from independent witnesses verifying the petitioner's influence in the field, letters from state agencies expressing their interest in the petitioner's instrument to test

their compliance with EPA standards, letters from high-level officials of the EPA confirming the significance of the petitioner's instrument, or evidence that his articles have been widely cited.

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 government funded 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 work is viewed as a groundbreaking advance in particle testing beyond the petitioner's own collaborators.

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.