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U.S. Citizenship
and Immigration
Services



FILE: [REDACTED]
LIN 02 242 52744

Office: NEBRASKA SERVICE CENTER

Date: APR 05 2004

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 of the Administrative Appeals Office 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.

A handwritten signature in black ink that reads "Mari Johnson".

Robert P. Wiemann, Director
Administrative Appeals Office

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) 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 working as a postdoctoral research associate in the Biological Systems Engineering Department at Washington State University. 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) 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 was awarded a Ph.D. in Biochemical Engineering from the Dalian University of Technology in China in 1999. The director found that the petitioner qualifies as a member of the professions holding an advanced degree. 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 he 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 documentation pertaining to his field of research, the petitioner submitted several witness letters.

Dr. Claudio Stockle, Chair, Department of Biological Systems Engineering, Washington State University (WSU), states:

[The petitioner] joined our department in December 2001, and was appointed as a research associate.

[The petitioner’s] work here involves bio-based industrial products research and development, a research field that is of substantial intrinsic merit...

* * *

[The petitioner] has extensive research experience and expertise in the area of biochemical engineering, in particular novel integrated bioprocesses [research and development] for the production of bio-based industrial products. He has published 16 papers in peer-refereed journals, 10 presentations in conferences, 1 patent and 2 pending patent applications.

Because of [the petitioner’s] unique expertise in bio-based product research, he is essential to the further development of research in this key area at WSU.

Dr. Stockle mentions the petitioner's published and presented work, but he does not explain how that work has measurably influenced the greater field. The record contains no evidence that the presentation or publication of one's work is unusual in the petitioner's field, nor does the record sufficiently demonstrate that independent researchers have heavily cited or often relied upon the petitioner's work in their research. Publication, by itself, is not a strong indication of impact, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the petitioner's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work. Their citation of the petitioner's work demonstrates their familiarity with it. If, on the other hand, there are few citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and national benefit — a researcher's work would have, if that research does not influence the direction of future research.

The petitioner's initial submission included a summary of citation references of the petitioner's work. According to the documentation presented at the time of filing, the greatest number of times one of the petitioner's published articles had been cited was seven times. While the citation summary presented demonstrates some degree of interest in the petitioner's published work, he has not shown that an aggregate total of twenty citations of sixteen published articles adequately distinguishes him from other capable researchers in the biochemical engineering field.

In regard to the petitioner's approved Chinese patent and patent applications, we find little evidence to support the conclusion that these innovations have had a significant impact in the biochemistry field or throughout the biochemical manufacturing industry in general. The granting of a patent documents only that an innovation is original; not every patented innovation constitutes a significant contribution to one's field. Dr. [REDACTED] formerly a Professor of Biochemical Engineering at Dalian University of China, supervised the petitioner's graduate studies. Dr. Su states that "a pilot plant was successfully set up based on the technology" from two of the petitioner's patent applications and that "a natural product was successfully produced by the pilot plant and applied in microecological medicine by a pharmaceutical company." While the petitioner and eight other collaborators have been presented "Scientific Achievement" certificates for their innovation entitled "Trehalose Extraction and Purification from Microwave Disrupted Yeast Cells," we cannot ignore that the extent of this recognition was local or regional, rather than national or industry-wide. Similarly, while the record contains evidence of a technology transfer contract between Dalian University of Technology and Dalian Jinxing Chemical Engineering Company for an innovation developed by the petitioner and five collaborators ("Application of Microwave on Cell Disruption and Intracellular Products Extraction"), there is no substantive evidence showing that this innovation is viewed throughout the greater industry as a significant achievement. Finally, and most importantly, there is no evidence showing that the petitioner holds any patents in the United States or that his innovations have attracted a significant amount of interest among biotechnology companies or chemical manufacturers here in this country.

Dr. Shulin Chen, Associate Professor, Department of Biological Systems Engineering, WSU, states:

[The petitioner's] research work in our lab has been focus[ed] on biomass processing and utilization. Biomass is crop and agricultural residues that can be used as feedstock for the production of biofuel and bioproducts in a biorefinery. Biomass is more environmentally friendly than petroleum because biofuel reduces CO₂ emission, and bioproducts produced from biomass are usually biodegradable.... An increasing [sic] in the use of biomass is in the national interest of our country since it can help to reduce our dependence on foreign oil.

* * *

[The petitioner] is working toward developing processes and technologies to produce chemicals and energy such as sugar alcohol, lactic acid, and ethanol from animal manure, wheat straw, and other agricultural by-products and residues.

* * *

[The petitioner] possesses highly specialized skills and is very knowledgeable in his research work. He has been conducting innovative research and developing new research proposals from the creative ideals. With his past research experience and present professional expertise, he could contribute significantly to our [research and development] of bio-based industrial products.

Dr. Suteaki Shioya, Professor and Head, Department of Biotechnology, Osaka University, states:

[The petitioner] was a former UNESCO (United Nations Educational, Scientific and Cultural Organization) trainee in my lab...

* * *

[The petitioner] got a systematic advanced training in general and industrial microbiology through participated in the UNESCO course here and working in my lab, I am sure he has already grown up as a mature scientist in the field of Bioprocess Engineering and Biotechnology [sic].

Objective qualifications, such as those described by Drs. Shioya and Chen, are amenable to the labor certification process. Pursuant to *Matter of New York State Dept. of Transportation, supra*, 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.

Drs. Chen and Shioya's statements about the overall importance of the petitioner's biomass processing and utilization research may establish the intrinsic merit and national scope of his work, but such general arguments cannot suffice to show that an individual worker in that field qualifies for a waiver of the job offer requirement. Pursuant to *Matter of New York State Dept. of Transportation, supra*, the petitioner show that his past individual accomplishments are of such an unusual significance that he merits a waiver of the labor certification process. 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 (5th Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule. Beyond establishing his

eligibility for the underlying visa classification, the petitioner must also demonstrate that his work has already had a significant impact on the bioprocess engineering field as a whole.

Dr. Jan-Christer Janson, Adjunct Professor and Deputy Director at the Center for Surface Biotechnology, Uppsala University, met the petitioner in China while working as an Honorary Visiting Professor at Dalian University of Technology. Dr. Janson describes the petitioner as a “talented scientist in the field of biochemical engineering and biotechnology.”

Also provided in support of the petition were evidence of two academic scholarships awarded to the petitioner and evidence of his “Affiliate” membership in the American Institute of Chemical Engineers. Recognition and professional memberships, however, are criteria for classification as an alien of exceptional ability, a classification that normally requires an approved labor certification. We cannot conclude that meeting one, two, or even the requisite three criteria for this classification warrants a waiver of the labor certification requirement in the national interest.

Also submitted was a form letter from Marquis Who’s Who publishing company informing the petitioner that he was “being considered for inclusion” in an upcoming edition of its *Who’s Who in the World* registry. The record contains no evidence showing that the petitioner was actually included in this publication. Even if the record did contain such evidence, it has not been established how inclusion in this vast directory of professionals would establish the petitioner’s influence throughout the bioprocess engineering field.

Finally, the petitioner submitted a total of three reprint requests for his publications. Requests for reprints do not indicate that the person requesting the reprint has already read and evaluated the article. Therefore, such requests are not sufficient to demonstrate the petitioner’s significant impact in the bioprocess engineering field.

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 additional witness letters and further documentation pertaining to his work.

Dr. Armando McDonald, Associate Professor, Department of Forrest Products, University of Idaho, states:

I have known [the petitioner] for a year since he was hired by Washington State University.... Because of the establishment of the Pacific Northwest Bioproducts Institute among four institutions [including University of Idaho and WSU]...we have the chance to work closely together on the whole utilization of wheat straw and other agricultural residues for the production of value-added chemicals including fuel ethanol.

* * *

The carrier-free cell immobilization method developed by [the petitioner] and his colleagues is a breakthrough in fuel ethanol study, because they provide a practical and economical solution to achieve continuous fermentation for ethanol.

* * *

The achievement to sufficiently demonstrate the innovative creativity of [the petitioner] is the amazing microwave cell disruption method he developed for the separation of intracellular valuable molecules. The most recent development of microwave technology was innovatively and successfully implied by [the petitioner] for the disruption of plant and microbe cells.

In response to the director's observation that articles first-authored by Dr. Jianfeng Xu do not show that the petitioner himself is responsible for significant advances in biochemical engineering, the petitioner provided a letter from Dr. Xu, now a research scientist in the Department of Chemistry and Biochemistry at Ohio University. Dr. Xu states that he worked closely with the petitioner at Dalian University of Technology from 1994 to 1998. Dr. Xu points out that although he was the first-author of a paper published in *Plant Cell Report*, the petitioner contributed significantly to that paper as a co-author. We note here that, according to evidence presented by the petitioner, this article has been cited only twice and therefore the impact of this particular article on the greater field is limited. Regarding the issue of sole authorship, the AAO has long acknowledged the collaborative nature of modern scientific research and therefore co-authorship should not diminish the petitioner's contribution to a given research project. That said, the fact that the beneficiary has not been the primary author or lead scientist for a substantial number of published articles is not entirely irrelevant either. While a lack of evidence of primary authorship does not diminish the petitioner's contribution to a particular research project, it is certainly reasonable to conclude that evidence showing that he played the primary or leading (rather than a subordinate or secondary) role in his published research would carry far greater weight.

In this case, the majority of the witnesses consist of individuals with direct ties to the petitioner. These individuals became aware of the petitioner's research because of their close contact with the petitioner; their statements do 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.

Additional letters describe the petitioner's participation in conferences in China such as the 4th National Conference on Natural Product Resources (2000) and the 4th Asia-Pacific Biochemical Engineering Conference (1997). Participation in scientific conferences and symposia, however, is routine and expected in the scientific community. It has not been shown, for example, that the petitioner has served as the keynote speaker at a conference here in the United States or that his individual presentations have commanded an unusual level of interest. In his second letter, Dr. Chen states that the petitioner was "selected to give two presentations at the 25th Silver Anniversary Symposium on Biotechnology for Fuels and Chemicals [in May 2003]." Dr. Chen also notes that the petitioner has recently "been working with the scientists of WSU and other institutions on the whole utilization of wheat straw and cheese whey for the production of fuel ethanol, lactic acid and other valuable products." New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (legacy INS) held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Subsequent developments in the petitioner's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date.

Also provided in response to the director's request for evidence was an updated summary of citation references of the petitioner's work. According to the documentation presented, the greatest number of times one of the petitioner's published articles had been cited was ten times. That article, published in *Chinese Traditional and Herbal Drugs*, was cited in various Chinese journals, but it does not appear to have attracted a similar degree of attention from researchers in the United States or any other country. We find no evidence

to substantiate the claim that the petitioner's impact in the U.S. is in anyway comparable to his impact in China.

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, the petitioner requests oral argument. Oral argument, however, is limited to cases where cause is shown. The petitioner must show that his case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, the petitioner has shown no cause for argument; the petitioner simply expresses a desire to make his case in person based on the amount of evidence presented. This evidence has been thoroughly addressed above. Consequently, the petitioner's request for oral argument is denied.

Much of the documentation presented on appeal was previously submitted and has already been addressed. The petitioner presents three new witness letters from individuals who he met at the 25th Symposium on Biotechnology for Fuels and Chemicals in May 2003.

Dr. Gregory Luli, Vice President, Research and Development, BC International Corporation (BCI), states that he was impressed with the carrier-free continuous ethanol fermentation process developed by the petitioner and his colleagues. Dr. Luli further states:

In my opinion, this process is very promising and this idea is a very significant contribution to fermentation science. I am hopeful that BCI will work with [the petitioner] in the future, combining his innovation with our patented technology to develop the next generation fuel ethanol production process.

I do believe his process will be commercialized in the coming few years based on the scientific principles behind it. However, it's very hard to commercialize a completely new technology because very few investors are willing to take the risk to support a new, unproven technology...

Dr. Praveen Vadlani, Principal Research Scientist, AgRenew, Inc., states that his "knowledge of [the petitioner's] work is mainly based on [the petitioner's] presentation at the symposium and the discussions [they] had." Dr. Vadlani further states:

[The petitioner] is working on the production of value-added products from agricultural wastes. Technologies that utilize agricultural resources to make industrial chemicals and materials will have a tremendous impact on the rural economy and will contribute significantly to the environment. For example, the excellent research work presented at the symposium talked about the simultaneous production of nisin, a valuable natural food preservative, and lactic acid, the building block of biodegradable polymers, from cheese by-product. [The petitioner] not only provided a process to economically produce these two important products, but also to give a feasible solution to the serious by-product disposal problems posed to cheese manufacturing.... I strongly feel [the petitioner's] work will have a significant impact in his field.

The letters from Drs. Luli and Vadlani discuss what may, might, or could one day result from the petitioner's work, rather than how the petitioner's past efforts have already had a discernable impact on his field.

Dr. Siqing Liu, Research Scientist, Fermentation Biotechnology Unit, National Center for Agricultural Utilization Research, United States Department of Agriculture, also claims to have met the petitioner at the 25th Symposium on Biotechnology for Fuels and Chemicals in May 2003. Dr. Liu states: "[The petitioner] is a productive researcher; he has published 17 papers of high quality [and] he is still early in his career. These facts are sufficient enough to distinguish him from other postdocs with similar experience to a substantial degree." On March 31, 1998, the Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, 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," rather than a mark of distinction, among postdoctoral researchers. 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. In this case, there is no evidence of the petitioner's authorship of a single journal article that has garnered more than ten independent citations. Nor has it been shown that the petitioner's published articles have attracted an unusual level of interest among scientific researchers throughout the United States.

For the reasons set forth above, the petitioner has not established that his past accomplishments set him significantly above his peers such that a national interest waiver would be warranted. While the petitioner has plainly earned the respect and admiration of his immediate colleagues and some individuals who he met at a scientific conference in 2003, it appears premature to conclude that the petitioner's work has had and will continue to have a nationally significant impact. In this case, the petitioner's findings do not appear to have yet had a significant influence in the larger field. In sum, the available evidence does not establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, 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 project or area of research, 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.