

B5

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted]
LIN 03 052 50095

Office: NEBRASKA SERVICE CENTER

Date: APR 20 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

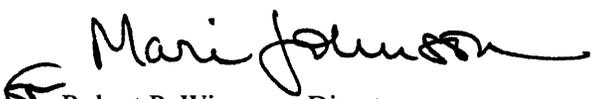
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[Redacted]

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.


Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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 researcher at the Center for Computer-Aided Design at the University of Iowa. 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 holds a Ph.D. in Civil and Mechanical Engineering (Structures, Mechanics and Materials) from the University of Iowa (2002). 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 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.

We concur with the director that the petitioner works in an area of intrinsic merit, theoretical and applied mechanics, and that the proposed benefits of his work 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.

Along with documentation pertaining to his field of research, the petitioner submitted several witness letters.

Dr. [REDACTED] Associate Professor, Department of Mechanical Engineering and Center for Computer-Aided Design, University of Iowa, and Associate Editor of the *American Society of Mechanical Engineers Journal of Pressure Vessel Technology*, is the petitioner’s research supervisor. Dr. [REDACTED] offers a discussion of the petitioner’s published findings, stating:

Crack propagation is an important failure mechanism in structural and mechanical systems. Studying these mechanisms requires the creation of accurate numerical models to enable simulations used in failure prediction. [The petitioner] developed an efficient meshless method to analyze linear-elastic cracked structures subject to single- or mixed-mode loading conditions.... His development of a Coupled Meshless-Finite Element Method – which dramatically reduces computational effort when compared with existing meshless methods – has also been used to model crack propagation und mixed-mode loading condition.

These computational methods can be applied to determine fracture response and reliability of cracked structures in a wide variety of applications, and is of direct benefit to nuclear, aerospace, electronic, biomedical and other industries.

Dr. [REDACTED] does not explain, however, how widely the petitioner's Coupled Meshless-Finite Element Method has been implemented throughout the above industries. Far more important than whether the petitioner's methods "can be applied" is whether they are actually being utilized on an industry-wide basis (rather than only among companies that collaborate with the petitioner or Dr. [REDACTED])

Dr. [REDACTED] further states:

As one of his early original contributions to the field of computational stochastic mechanics, [the petitioner] developed new stochastic meshless methods for probabilistic and reliability analysis of both cracked and uncracked structures under linear-elastic conditions subject to single- or mixed-mode loading conditions.

[The petitioner's] study broke new ground by eliminating the shortcomings of alternative modeling approaches – producing more accurate results with a greater degree of efficiency than existing methodologies in this area.

* * *

Recently [the petitioner] developed a Galerkin-based meshless method for calculating stress-intensity factors for a stationary crack in two-dimensional functionally graded materials of arbitrary geometry.... In contrast to existing methods, there is no need to perform integration along the crack face of the discontinuity, enabling researchers to more easily use [the petitioner's] approach for a wide array of applications.

* * *

[The petitioner's] work equips researchers with the ability to study advanced physical phenomena using computer models with a higher degree of efficiency and accuracy than conventional deterministic models. [The petitioner's] research represents an ongoing and vital contribution to our national defense, the aerospace industry, and environmental engineering institutions.

Dr. [REDACTED] Manager, Automotive Platforms, Rouge Steel Company, states:

I have known Professor [REDACTED] the graduate advisor as well as co-author of many papers with [the petitioner], for over a decade through Battelle Memorial Institute and [the] American Society of Mechanical Engineers. I have followed [Dr. [REDACTED]] fundamental work on probabilistic fracture mechanics, stochastic methods for damage assessment, mechanics of pressure vessel and piping. I am also aware of the impact of [Dr. [REDACTED]] work, nationally and internationally, in several technological areas. It is under the tutelage of Professor [REDACTED] [the petitioner] received his training in mechanics and structures. Within a short span of four years [the petitioner] has published many papers in a variety of international journals and presented his work in many international conferences.

Past "training in mechanics and structures" is an objective qualification 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.

According to his resume, Dr. [REDACTED] Engineer, Westinghouse Savannah River Company, also serves as a "Technical Program Representative, Session Developer, Session Chairman, and Technical Reviewer for ASME [American Society of Mechanical Engineers] Pressure Vessel and Piping Conferences." Dr. [REDACTED] states: "I know about [the petitioner's] work through his dissertation advisor, Professor [REDACTED] with whom we both serve in the ASME Materials and Fabrication Technical Committee (Dr. [REDACTED] is the present Chairman of the Committee)." Dr. [REDACTED] further states that the petitioner's "research findings have led to his lead authorship of papers appearing in such notable journals as the *International Journal of Solids and Structures*, the *International Journal of Pressure Vessels and Piping*, and the *International Journal for Numerical Methods in Engineering*."

Dr. [REDACTED] Assistant Professor of Mechanical and Industrial Engineering, University of Iowa, states: "[The petitioner] has a total of 9 journal publications on the topics of stochastic mechanics, meshless finite element methods and fracture mechanics. The journals that [the petitioner] publishes [sic] are all peer-reviewed journals of great impact in the scientific community, and their standards of acceptance are very high."

Dr. [REDACTED] Senior Research Scientist, Center for Computer-Aided Design, University of Iowa, states that the petitioner's "publications in major professional journals have established him as important member of the world scientific community."

The letters from Drs. [REDACTED] and [REDACTED] note that citation of the petitioner's work by other researchers is an "impartial" and reliable means for determining how important and useful his work is to the greater field. We agree. 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," 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 their initial letters, Drs. [REDACTED] and [REDACTED] stated that the petitioner's work had been cited by others, but the documentation submitted with the petition (at the time of filing) contained no evidence from citation indices to support their claim.

Additional witnesses, many of whom state that they met the petitioner at professional conferences (such as those organized by ASME), offer brief letters complimenting the petitioner on his publications and conference presentations.

Dr. [REDACTED] Associate Professor, [REDACTED] University, states: "I have...witnessed many of [the petitioner's] presentations at major professional conferences, and his participation in such events has made him a familiar figure in his area of research."

Dr. [REDACTED] Assistant Professor, University of Alberta, states: "I have become familiar with the scientific achievements of [the petitioner] through my annual participation in the ASME International Pressure Vessel and Piping Conference."

Dr. [REDACTED] a postdoctoral researcher in the School of Engineering Sciences at the University of Southampton, states he became familiar with the petitioner's "research achievements through his publications in the area of stochastic mechanics."

Dr. [REDACTED] Senior Project Engineer, Tehnsource, Inc., states the he is aware of the petitioner's "research in the area of Computational Stochastic Mechanics through his publication papers...and presentations at national and international conferences."

The record, however, contains no evidence that the presentation or publication of one's work is unusual in petitioner's field, nor does the record adequately demonstrate that independent researchers have heavily cited the petitioner's work in their research. Participation in scientific conferences and symposia is routine and expected in the scientific community. The record contains no evidence showing that the petitioner's presentations regularly commanded an unusual level of interest in comparison to other conference participants.

Dr. [REDACTED] now an Assistant Professor in the Department of Mechanical and Aerospace Engineering at the University of Florida, worked as a postdoctoral research associate at the University of Iowa's Center for Computer-Aided Design from 1999 to 2001. Dr. [REDACTED] states that the petitioner "possesses all of the qualities that make for an outstanding scientific career" and that the petitioner "will surely gain greater recognition through more significant contributions in the future."

Additional letters from Dr. [REDACTED] President of Engineering Mechanics Corporation of Columbus, whose company collaborated directly with the petitioner on a project involving the integrity of reactor pressure vessel control-rod drive nozzles, and Dr. [REDACTED] now an Assistant Professor in the Mechanical Engineering Department at New Mexico State University (who formerly worked at the University of Iowa's Center for Computer-Aided Design from 1996 to 2000 and who now serves with the petitioner as an ASME conference session developer), generally repeat the assertions of previous witnesses.

The director requested further evidence that the petitioner had met the guidelines published in *Matter of New York State Department of Transportation*. In its request for evidence, the Service Center acknowledged that the petitioner had co-written published articles and conference presentations with Dr. [REDACTED], but noted that the record contained no objective evidence (such as citations) to establish the extent to which this research work has affected the work of other scientists. In response, the petitioner submitted less than ten citations, additional witness letters from Drs. [REDACTED] and [REDACTED] and further documentation pertaining to his work.

In a letter outlining the petitioner's response to the request for evidence, counsel incorrectly refers to Dr. [REDACTED] as a "Professor in the School of Engineering Sciences at the University of Southampton." According to his

resume, however, Dr. [REDACTED] obtained his Ph.D. from the University of Southampton in 2000 and has been employed there as a "Research Fellow" since that time.

In their second letters, the above individuals reiterate their support for the petitioner. In addressing the director's observation that much of the petitioner's work occurred under the supervision of his mentor (Dr. [REDACTED] the witnesses indicate that the petitioner was the "senior author" for the majority of his publications. Regarding the issue of co-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 all thirteen of the petitioner's journal articles and all sixteen of his conference abstracts (as listed in his most recent resume) were co-authored with his mentor is not entirely irrelevant either. While an absence of authorship of published materials independent of Dr. [REDACTED] does not diminish the petitioner's role in his research projects, it certainly does not strengthen the petitioner's national interest waiver claim either.

In his second letter, Dr. [REDACTED] states:

[T]he significance of [the petitioner's] publications, and his individual reputation as an authority in the field, is indicated by his invitations to serve as a grant and paper reviewer. For example, the National Science Foundation has asked him to review a significant research proposal independently. [The petitioner] was asked by the National Science Foundation to serve as a reviewer for a research-funding proposal valued at \$900,000 on "Computational Mathematics." He was also asked to serve as a reviewer for the 2003 ASME Pressure Vessel and Piping Conference, 2003, Ohio, USA and is Chairman of [the] "New and Emerging Computational Methods" session for this gathering. [The petitioner] was invited to serve in these capacities because of his own reputation in the field. This reputation was established by the quality of his publications and conference presentations – including eleven journal publications and sixteen conference proceedings...

The letters from Drs. [REDACTED] and [REDACTED] repeat the same information as provided by Dr. [REDACTED] in regard to recent developments in the petitioner's career. In support of the witness' assertions, the petitioner provided documentary evidence of the petitioner's activities subsequent to the petition's filing date (November 29, 2002). For example, the response included correspondence from 2003 regarding papers to be accepted for publication, papers under review, requests for the petitioner's services as a reviewer, and an upcoming ASME conference. As was observed in the director's notice of denial, 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. Even if we were to consider this evidence, for the reasons to be explained below, it is not sufficient to demonstrate the petitioner's eligibility for a national interest waiver.

The petitioner's response includes an e-mail from Junping Wang (dated February 3, 2003), on behalf of the National Science Foundation (NSF), requesting the petitioner's assistance in reviewing "Proposal No. 0311319." The director's decision noted that the evidence presented did "not indicate how many others were also asked to review the proposal." Information provided on appeal from the NSF's website states:

Proposals received by the NSF Proposal Processing Unit are assigned to the appropriate NSF program for acknowledgement and, if they meet NSF requirements, for review. All proposals are carefully reviewed by a scientist, engineer, or educator serving as a NSF Program Officer, and usually by three to ten other persons outside NSF who are experts in the particular fields represented by the proposal. Proposers are invited to suggest names of persons they believe are especially well qualified to review the proposal...

It is not unreasonable to conclude that any individual who has earned a Ph.D. in a particular research field could be viewed as an "expert" in that field. Aside from the issue of the filing date, the petitioner's recent selection as one of "three to ten other persons outside NSF" to review a proposal is not sufficient to significantly distinguish his research accomplishments from those of other qualified researchers who also hold a Ph.D.

Dr. [REDACTED] second letter identifies himself as a member of the "ASME Materials and Fabrication Committee" (which Dr. [REDACTED] and "2003 PVP [Pressure Vessels and Piping] Conference Technical Program Representative." Dr. [REDACTED] states:

[The petitioner] has been serving in the ASME Materials and Fabrication Technical Committee. Currently, he is also serving as a session developer, session chairman and co-chairman for the forthcoming ASME Pressure Vessels and Piping Conference, July 20-24, 2003 in Cleveland Ohio. Meanwhile, the petitioner has reviewed...papers for the PVP Conference.

We note here that because Dr. [REDACTED] the petitioner's mentor, chairs the ASME Materials and Fabrication Technical Committee, it is reasonable to conclude that the petitioner was assigned certain conference duties as Dr. [REDACTED] subordinate. For example, the record contains no evidence showing that the decision to appoint the petitioner as a session chairman and as a peer reviewer was the result of an official national selection process (rather than a result of his ties to Dr. [REDACTED]. In regard to the petitioner's participation in the peer review process, it is apparent that peer review of manuscripts is a routine element of the process by which articles are selected for publication in scholarly journals or presentation at a scientific conference. Participation in peer review of this kind does not significantly distinguish the petitioner from other capable researchers. Moreover, while witnesses on appeal claim that the petitioner has evaluated the work of others as a peer reviewer for three professional journals, the record contains no first-hand evidence of the specific manuscript reviews completed prior to the petition's filing date.

Dr. [REDACTED] second letter states:

[T]he meshless methods developed by [the petitioner] demonstrate significant potential for application in the field of probabilistic fracture mechanics. In particular, these methods can be used for fracture control and life extension of aging aircraft structures.

* * *

[The petitioner's] Interaction Integral Method can be used to access the extent to which constituent material properties and microstructure can be tailored to guard against potential for fracture and failure patterns. Such work has obvious implications for advancing engineering research and development efforts.

Dr. [REDACTED] notes that the petitioner's methods "can be used" in the engineering process but there is no evidence of their national or industry-wide implementation. Nor is there evidence, for example, from representatives throughout the aircraft manufacturing industry reflecting a substantial level of interest in the petitioner's methods. Clearly, the petitioner's current and former colleagues have a high opinion of the petitioner and his work, as do other individuals who know the petitioner through Dr. [REDACTED], or the petitioner's involvement with ASME. The petitioner's findings, however, do not appear to have yet had a measurable influence in the larger field. While numerous witnesses discuss the potential applications of these findings, there is no indication that these applications have yet been realized. The petitioner's work has added to the overall body of knowledge in his field, but this is the goal of all such research; the assertion that the petitioner's findings may eventually have practical applications does not persuasively distinguish the petitioner from other competent researchers.

The statements from the witnesses in this case are not adequate to demonstrate that the petitioner's work has measurably influenced the greater field. The witnesses repeatedly refer to the strength of the petitioner's publication record; however, the record does not show that independent researchers have heavily cited petitioner's work. 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. In response to the director's request for evidence, the petitioner provided evidence of less than ten published articles citing his work. While the articles presented demonstrate some degree of interest in the petitioner's published work, the petitioner has not shown that an aggregate total of nine citations of eleven published articles adequately distinguishes his work from that of other capable researchers in the engineering field.

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. In regard to the petitioner's published and presented work, the director observed: "Such a record of publications and presentations, while noteworthy, is not beyond what would be expected of an exceptional researcher.... The petitioner's response [to the request for evidence] indicated only four citations of the petitioner's work as of the filing date of the petition (although more have occurred since)." 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 field of theoretical and applied mechanics as a whole.

On appeal, the petitioner submits new letters from Drs. [REDACTED] and [REDACTED]. Their new letters generally echo their previous assertions. The witnesses note that the petitioner received a student award at the 2001 ASME Pressure Vessels and Piping Conference. A "Certificate of Recognition" contained in the record states that the petitioner was selected as "a Finalist in the Student Paper Competition" (nine other students were also selected as finalists). Such an award offers no meaningful comparison between the petitioner and qualified professionals in the engineering field who had long since completed their Ph.D. studies.

The witnesses also note that the petitioner holds membership in the American Society of Mechanical Engineers and the American Society of Civil 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 three of the requisite three criteria for this classification warrants a waiver of the labor certification requirement in the national interest.

Dr. [REDACTED] asserts that the petitioner's influence on his field is demonstrated through the University of Iowa's receipt of research grants from the National Science Foundation and the U.S. Nuclear Regulatory Commission. Dr. [REDACTED] assertion that contributing to a project that was awarded funding by a federal agency somehow elevates the petitioner above other competent researchers is flawed in that it applies equally to all researchers who receive governmental funding for their studies. The record contains no official statement from a representative of either of the above agencies explaining how the petitioner's research findings were of greater benefit than that of others in his field.¹ Nor does the record contain documentation showing that the petitioner (rather than Dr. [REDACTED] is a lead investigator or named recipient of a National Science Foundation or U.S. Nuclear Regulatory Commission grant. We note here that the U.S. Government routinely provides millions of dollars in research grants to many thousands of scientists and research institutions on an annual basis.

The remaining documentation presented on appeal was previously submitted and has already been addressed. In this case, the majority of the witnesses consist of individuals having ties to the petitioner through the University of Iowa, Dr. [REDACTED] or the petitioner's coordination of ASME activities. The witnesses repeatedly argue that the petitioner's publication record demonstrates his impact on the field, but the record contains no evidence of a single journal article authored (or co-authored) by the petitioner that has garnered more than three independent citations.

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 various individuals who know him through his activities with ASME, 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.

¹ The e-mail from [REDACTED] dated February 3, 2003 is simply a standard request for review of a proposal rather than an indication from the National Science Foundation that the petitioner has had an unusual level of impact on his field.

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.