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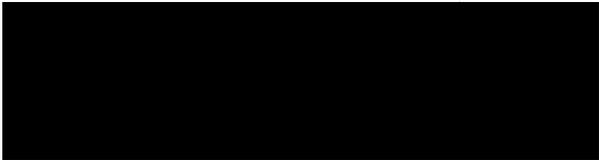


FILE: WAC-01-244-52350 Office: CALIFORNIA SERVICE CENTER Date:

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:



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.

Mari Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 an alien of exceptional ability. The petitioner seeks employment as an assistant research professor in physics. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Ph.D. in Physics from Stockholm University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

While not raised on appeal, we note that the first several pages of the director's decision contain references to "national acclaim" and the requirements for aliens of extraordinary ability, a benefit not sought by this petition. The director's decision does include some analysis under the correct standard and even acknowledges on page eight that sustained national acclaim is not required. The initial discussion, however, is troubling. By repeatedly discussing the lack of evidence regarding national acclaim, the director certainly implied that this absence was a consideration in the decision. Nevertheless, we cannot sustain an appeal based solely on the director's inclusion of some problematic language. The record must establish the petitioner's eligibility for the classification sought.

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, laser-plasma physics, and that the proposed benefits of his work, progress towards fusion energy and safe storage of nuclear waste, 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.

While obtaining his Ph.D. at Stockholm University, the petitioner worked in the laboratory of Dr. [REDACTED] Chairman of the Atomic Physics Department and member of the Royal Swedish Academy of

Sciences.¹ In a letter supporting the petition, Dr. [REDACTED] asserts that while working with the CRYRING accelerator at the Manne Siegbahn Institute of Physics in Stockholm, the petitioner “made several breakthroughs in his research field.” Dr. [REDACTED] provides the following examples:

[H]e first clearly revealed the important contribution of dielectronic recombination process in the enhanced recombination rates of multi-charged ions. He is also the first person to have revealed the energy dependence of the enhanced recombination rates of bare ions. These discoveries are not only of importance to theory, but also of practical application to controlled fusion plasma research and thus peaceful use of fusion energy research.

Initially, the petitioner provided letters from other collaborators in the field, many of whom claim to have known the petitioner through his publications before working with him, providing similar information. The references include Dr. [REDACTED] Fellow of the Joint Institute for Laboratory Astrophysics, former Chairman of the Atomic Molecular and Optical Physics Division of the American Physics Society and former Visiting Professor at Stockholm University; Dr. [REDACTED] a professor at Stockholm University, Associate Editor-in-Chief of the Journal of Computational Methods in Sciences and Engineering and Co-founder of the Scientific Association for Physics and Medicine in California; and Dr. [REDACTED] Group Leader at Oak Ridge National Laboratory.

After obtaining his Ph.D., the petitioner worked as a research fellow at University College in London. At the time of filing, the petitioner was an assistant research professor at the University of Nevada, Las Vegas, in the laboratory of Dr. [REDACTED]. Dr. [REDACTED] asserts that in his laboratory, the petitioner “made breakthroughs in the production of multi-charged ions (oxygen ion, carbon ion and iron ions) by laser ablation, and in the studies of ion molecules interactions.” In addition, Dr. [REDACTED] asserts that the petitioner is working with nuclear waste storage and laser-plasma interaction. According to Dr. [REDACTED] laser deposition of multiple ceramic thin film barriers on borosilicate glass for nuclear waste storage will enhance the immobilization of radioactive nucleotides in borosilicate glass, significantly reducing the radioactivity threat to the environment. Dr. [REDACTED] indicates that of 20 proposals, TRW, a Department of Energy contractor based in Nevada, chose to pursue only the petitioner’s technique. Dr. [REDACTED] concludes that Laser-plasma interactions are important to our ability to realize controlled fusion for peaceful uses.

While the above letters are all from collaborators, in response to the director’s request for additional documentation, the petitioner submitted more independent letters. Dr. [REDACTED] a professor at the University of Aarhus in Denmark, asserts that the petitioner has overcome the most challenging work in physics research. Dr. [REDACTED] Head of the Physics Department at the University of Giessen, asserts that the petitioner’s techniques have “overcome the difficulty of the energy spread and emittance of the primary ion beam in traditional electron-ion interaction and charge transfer researches by ion (electron) – beam gas-target technology.” Dr. [REDACTED] continues:

Further, using electron cooling technique, [the petitioner] has reached the very low temperature region in the study of electron-ion interaction, and revealed some very important phenomena in electron-ion interactions at the first time. In the charge transfer studies, [the

¹ According to the academy’s website, www.kva.se, indicates that membership in the academy constitutes exclusive recognition of successful research and achievements. The academy is responsible for awarding the Nobel prizes in physics and chemistry.

petitioner] has applied his expertise in stored ions to the ion trap combining with laser plasma ion source, and investigated the interaction of atoms and molecules with a wide range of ions which is hard to produce by other techniques.

Dr. [REDACTED] concludes that the petitioner is continuing this research using ion trap and time-of-flight techniques, noting that the "facility of ion trap and laser ablation is one of the very few of such devices in the world."

The director acknowledged that some letters were "independent testimonies" but in the next statement concludes that the references "collaborated directly or indirectly with the petitioner or the individuals connected with the petitioner's research projects or institution." The director further concluded that the research upon which the petition is based was performed while the petitioner was "pursuing his Ph.D. degree."

As noted by the petitioner, he did submit letters from independent references. While the letters of record are similar and the independent references do seem to have a connection with institutions where the petitioner has worked, the letters provide examples of specific achievements and are from researchers with notable accomplishments. Moreover, the record contains other objective evidence of the petitioner's influence beyond his immediate circle of colleagues.

Specifically, on his resume, the petitioner lists 61 published articles and conference abstracts. The petitioner submitted copies of these articles and their citation history. This history reveals that twelve of the petitioner's articles have been cited ten or more times and six of his articles have been cited over 20 times, including a first-authored article that has been cited 34 times. The director determined: "Citation of the work of others is expected and routine in the scientific community. The self-petitioner does not establish national or international acclaim by demonstrating that his or her work has been cited in print." The petitioner does not need to demonstrate national or international acclaim for the classification sought. We find that while it is inherent to the field of scientific research to *publish* one's findings, evidence that one's articles have been *widely cited* is certainly evidence of the articles' influence in the field.

Finally, while a Ph.D. student may bear a heavy burden of establishing some degree of influence over the field as a whole, this office has never held that graduate students are precluded from obtaining national interest waivers based solely on their career stage. Regardless, the director's concern that the petitioner's research had been performed while a Ph.D. candidate does not appear to fit the facts of this case. The petitioner obtained his Ph.D. five years prior to filing the petition.

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 laser-plasma physics 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.

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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.