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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]
EAC 03 020 52360

Office: VERMONT SERVICE CENTER

Date: DEC 06 2004

IN RE:

Petitioner:
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

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) 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 Meteorology and Physical Oceanography from the University of Miami (2001). 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.

The intrinsic merit and national scope of the petitioner’s research are immediately apparent. It remains to be shown that this particular researcher, to a greater extent than others performing similar research, qualifies for a special exemption from the job offer/labor certification requirement which, by law, normally attaches to the visa classification that he has chosen to seek.

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

Dr. Chidong Zhang, now Associate Professor of Meteorology and Physical Oceanography, University of Miami, and formerly an Assistant Professor at the University of Washington (1992 to 1996), states:

I have known [the petitioner] since 1997 when he became a Ph.D. student of mine. [The petitioner] and I have co-authored three publications....

* * *

Dr. Gu is currently a research faculty member in the Goddard Earth and Technology Center (GEST), University of Maryland, and a scientist at the Laboratory for Atmospheres, NASA/Goddard Space Flight Center.

* * *

One of the most fundamental features of tropical climate is a zone of concentrated rainfall called the Intertropical Convergence Zone (ITCZ), which is located north of the equator in both the Pacific and Atlantic Oceans, elongated in longitude and confined in latitude.

* * *

Theories have been proposed to explain the ITCZ. One of the major ITCZ theories attributes the ITCZ to synoptic-scale perturbations. This theory, first proposed in 1971, has been a main controversy in the study of the ITCZ and had never been validated. It was [the petitioner] who famously quantified the contribution of synoptic-scale perturbations to the ITCZ, evaluated the usefulness and limitation of this theory, drew a final conclusion, and therefore achieved a milestone in the atmospheric sciences. I should expect that future journal articles on the ITCZ will cite [the petitioner's] research.

The expectation that the petitioner's published work will be cited at some unknown future date is not adequate to demonstrate eligibility for a national interest waiver. There is no indication that the petitioner's findings had achieved a significant level of attention throughout his field as of the petition's filing date. A petitioner must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). While the documentation accompanying the petition indicated that the petitioner has co-written published articles and conference presentations, the initial submission included no citation history to establish the extent to which these research findings have significantly impacted the work of other scientists.

We do not find that publication or presentation of one's work is presumptive evidence of eligibility for the national interest waiver. 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 or no 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.

Dr. Zhang further states:

Time-space spectrum and wavelet analyses are two prevailing analytical tools in the Geosciences. But their limits had hindered our ability to fully understand the atmospheric motions for decades, until [the petitioner] creatively and independently combined them together into a wavelet time-space spectrum analysis. Using [the petitioner's] new tool, which he developed in a remarkable three years' time, scientists can now examine both eastward- and westward-propagating parts of any atmospheric field at any longitude. This powerful analysis capability marks a level of achievement dreamed of by scientists throughout their entire careers.

Another analysis tool developed by [the petitioner] is a cloud tracking method. This method allows us to identify and track cloud systems as they move around in satellite images. Using this tool, [the

petitioner] isolated and separated cloud patterns belonging to different types of atmospheric perturbations.

Dr. [REDACTED] letter does not specifically identify the other the research institutions that currently use the petitioner's new tools, nor is there any evidence showing, for example, that the petitioner has authored patents for these technologies.

Dr. [REDACTED], Research Scientist, Climate Diagnostics Center, University of Colorado, received his Ph.D. in Atmospheric Sciences from the University of Washington in 1992. Dr. Mapes states: "Dr. Gu's continued presence and work in the United States will make significant contributions to our ability to understand and predict the physical environment which sustains the life and economy of the United States."

Dr. [REDACTED], Physicist, Aeronomy Laboratory, National Oceanic and Atmospheric Administration (NOAA), Boulder, Colorado, states:

I am . . . very familiar with [the petitioner's] work through my frequent interactions with his former advisor, Dr. [REDACTED]

Based on my review of his work at the University of Miami, Columbia University, and his recent research activity at the NASA Goddard Space Flight Center in Maryland, in my opinion [the petitioner] is a highly talented individual who has carried out a series of very original and creative work in the field of atmospheric physics and oceanography.

Dr. Brant Liebmann, Research Associate, NOAA – University of Colorado Climate Diagnostics Center, Boulder, Colorado, states:

I assume that [the petitioner] asked me to write this letter because I am a colleague of his advisor, Dr. [REDACTED]

In spite of their importance to the global climate system, the fundamental aspects of the ITCZs, such as why they form where observed and how they are maintained, are still not well-understood. The argument of [the petitioner], which seems to be well supported by his analysis of observations, is that westward propagating disturbances are quite important for maintaining the mean position and intensity of the ITCZs. In my opinion, his most interesting and unique contribution is that he was able to deconstruct the cloud field into its various components . . . and then reconstruct the individual components in order to determine their relative importance in maintaining the ITCZs with other convective regions of the tropics.

Dr. [REDACTED], Research Meteorologist, NOAA Hurricane Research Division, Miami, Florida, states:

I have known the petitioner professionally for the last few years during his tenure at the University of Miami.

For the first time, [the petitioner] has uncovered through unique observational studies how the incipient hurricane disturbances vary from month to month over tropical locations around the world. [The petitioner's] research found that variations of these disturbances – known as “easterly waves” – are intimately tied to a band of thunderstorms that circle the earth.

The fact that the petitioner and Dr. [redacted] were among the first to publish this finding carries little weight. Of far greater relevance in this matter is the importance to the overall field of the petitioner's discovery. Without further objective evidence (such as heavy independent citation), the witness' statements fall short in demonstrating that the greater field views the petitioner's findings as unusually significant.

Dr. [redacted] Senior Scientist, Laboratory for Atmospheres, and Tropical Rainfall Measuring Mission (TRMM) Project Scientist, NASA Goddard Space Flight Center (GSFC), states:

In February 2002, I was happy to offer [the petitioner] a research faculty position in my research group in NASA/GSFC through the employment of the GEST [Goddard Earth Science and Technology] Center, UMBC [University of Maryland Baltimore County].

* * *

[The petitioner's] research here focuses primarily on the area of satellite precipitation estimation, tropical convection and variability, an integrated part of the TRMM project, a joint mission between NASA and National Space Development Agency (NASDA) of Japan.... [The petitioner's] exploration of different space and time variation patterns of rainfalls will definitely help us to clarify the physical mechanisms controlling tropical variability.... This kind of research will also significantly improve or understanding of the relationship between different dynamical processes.... Furthermore, [the petitioner] has been working on the precise estimation and validation of rainfall from TRMM satellite. Improved precipitation estimations from satellite data will result in a number of important national benefits.

Dr. Adler and other witnesses discuss what may, might, or could one day result from the petitioner's work at NASA/GSFC, rather than how the petitioner's past efforts at NASA/GSFC have already had a discernable impact beyond the original contributions expected of a capable postdoctoral researcher.

[redacted] Research Meteorologist, NASA/GSFC, discusses the petitioner's prior work at the University of Miami. Andrew Negri states:

By developing the new mathematical method of 2-d wavelet spectrum analysis, [the petitioner] has been uniquely able to investigate the spatial and temporal variations of tropical synoptic-scale disturbances around the globe.

* * *

[The petitioner] also solved a long-standing scientific problem: defining the role of tropical synoptic-scale disturbances in the seasonal migration and preferred latitudinal location of the ITCZ.

The initial witness letters were not supported by direct evidence that the petitioner's findings have measurably influenced the greater field. Witness' statements to the effect that the petitioner's published findings represent key contributions in his field are not adequate to establish such influence, when the petitioner provides no evidence from citation indices to support these claims. While heavy citation of the petitioner's past articles would carry considerable weight, the petitioner did not initially submit such evidence. It is further noted that the preceding witnesses all appear to have direct ties to the petitioner or his former mentor, Dr. [REDACTED]. These individuals became aware of the petitioner's work because of their contact with the petitioner or Dr. [REDACTED]. 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 unusually significant.

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 a letter from counsel inquiring as to whether the adjudicator had properly examined the documentation submitted with the petition.

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 noted that the record lacked evidence showing "how [the petitioner's] papers were received" by the greater field. The director also noted that the majority of the letters of support were from individuals who have worked with the petitioner. We withdraw the director's observation that "there is no evidence that these person's are recognized experts in the [petitioner's] field of endeavor." The documentation initially presented adequately demonstrates that these individuals are experts in meteorology and atmospheric science. While the wording of the director's decision could certainly be improved, we find that the decision is by no means so flawed as to undermine the grounds for denial.

On appeal, counsel argues that the director did not properly consider some of the awards presented to the petitioner. Counsel states that the director's decision did not discuss the "Great Science and Technology Achievement Award" and the "First-class Award of Science and Technology Advancement" that were presented in China in October and November of 1996, respectively. We note, however, that the certified translations for these awards contained in the record indicate that these awards were presented to "The Institute of Atmospheric Physics" rather than the petitioner. Furthermore, it is noted that the petitioner began his master's degree studies at the University of Miami in August 1995; therefore, the extent to which the petitioner contributed to the Institute's receipt of these awards remains unclear. Finally, in regard to the petitioner's graduate scholarships, university study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The petitioner's receipt of graduate scholarships may distinguish him from other students seeking to further their education at a particular university, but it offers no meaningful comparison between the petitioner and experienced professionals in the research field who have long since completed their educational studies.

In addition to discussing the petitioner's awards, counsel notes that the petitioner holds membership in American Geophysical Union. We acknowledge the petitioner's submission of evidence of professional memberships, scholarships, and awards. However, recognition and professional memberships relate to the 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

classification as an alien of exceptional ability warrants a waiver of the labor certification requirement in the national interest.

The documentation accompanying the petition included evidence showing that the petitioner reviewed an article submitted for publication in the *Journal of the Atmospheric Sciences* in 2002. On appeal, the petitioner submits a letter, dated May 16, 2003, requesting that he review an article submitted for publication in the *Journal of Climate*. This evidence came into existence subsequent to the petition's filing date. See *Matter of Katigbak*. 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. Occasional participation in peer review of this kind does not adequately distinguish the petitioner from other capable researchers.

The record also includes evidence showing that the petitioner has presented his work at various scientific conferences. Participation in scientific conferences and symposia, however, is routine and expected in the scientific community. Many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not justify projections of future benefit to the national interest, nor does it warrant a waiver of the labor certification process. The record contains no evidence showing that the petitioner's conference presentations commanded an unusual level of interest in comparison to other conference participants.

The appellate submission included four additional letters of support.

Dr. [REDACTED] Senior Atmospheric Scientist, NASA/GSFC, states:

I am particularly impressed with [the petitioner's] creative work in developing a new analysis method (the 2-dimensional wavelet spectrum analysis) to isolate and quantify various tropical wave/disturbances from the meteorological background, including those pre-storm systems. This method provides a more efficient and accurate global description of tropical waves/disturbances than previous studies.

* * *

In addition, [the petitioner] has made significant contributions towards understanding a long-standing meteorological riddle namely: Why does the InterTropical Convergence Zone (ITCZ) always stay in the Northern Hemisphere in the Pacific and Atlantic Oceans?

* * *

[The petitioner] has systematically quantified various components of the ITCZ and its variations. He has further quantified the contributions of those components to the ITCZ.

In his second letter, Dr. Adler states:

[The petitioner's] original work on tropical convection and synoptic-scale disturbances in the Atlantic-West African sector, Monsoon, and ITCZ has been summarized in a series of papers. One of them has already been published in *Geophysical Research Letters*, the premier publication of the field. Other two manuscripts, submitted for publishing to prestigious scientific journals (*Journal of Geophysical Research* and *Journal of Climate*), disseminate [the petitioner's] recent major findings. This series of work by [the petitioner] is the first study of its kind to develop new technology by using high-quality, high-resolution TRMM products aimed at understanding and exploring global weather and climate change.

We note here that the three papers discussed in Dr. Adler's recent letter were published subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing; new circumstances cannot retroactively establish eligibility as of that date. *See Matter of Katigbak.*

Dr. [REDACTED] now Associate Professor, Department of Atmospheric Science, Colorado State University, previously worked at NASA/GSFC from 1987 to 2000 and coauthored several papers with Dr. [REDACTED] during that time. Dr. Kummerow asserts that the petitioner's "publications in the *Journal of Atmospheric Science*, *Journal of Climate*, and *Journal of Geophysical Research*, have had a major impact on the field."

Counsel states that the director "did not give any consideration to the merit" of the petitioner's publications. Counsel notes that the petitioner has authored more than 20 publications. Publication, by itself, is not a strong indication of impact in one's field, 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 or no 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. On appeal, the petitioner has provided evidence of a single citation of his published work. A single citation resulting from more than 20 publications is hardly adequate to demonstrate that the petitioner's research findings have significantly influenced the greater field.

Dr. [REDACTED] Senior Research Scientist, Earth System Science Interdisciplinary Center, University of Maryland, and former Program Manager, Office of Global Programs, NOAA, states that he "was asked to review [the petitioner's] archival publications and his discoveries in the area of tropical meteorology and atmospheric science." Dr. [REDACTED] does not indicate that he was aware of the petitioner's work prior to the request that he review "thirteen (13) archival publications of [the petitioner], including three manuscripts submitted for publication in 2003," nor does Dr. [REDACTED] indicate that he has utilized the results of the petitioner's work in his own research. Dr. [REDACTED] letter discusses the petitioner's published findings and repeats the observations of prior witnesses.

While the petitioner may have contributed to research projects undertaken at NASA/GSFC and the University of Miami, his ability to significantly impact the field beyond these projects has not been adequately demonstrated. Clearly, individuals from institutions where the petitioner has studied and worked have a high opinion of the petitioner and his work, as do other witnesses who are colleagues of Drs. [REDACTED] and [REDACTED]. The petitioner's findings, however, do not appear to have yet had a measurable influence in the larger field.

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 witnesses, it appears premature to conclude that the petitioner's work has had and will continue to have a nationally significant impact. 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.