U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: DEC 27 2004
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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

PUBLIC COPY

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

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. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and to reconsider.[1] The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will be denied.

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.

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.

The director concluded that the petitioner works in an area of intrinsic merit and that the proposed benefits of his work would be national in scope. However, in regard to the third prong of *Matter of New York State Dept. of Transportation*, both the director and the AAO concluded it had not been shown that the impact of the petitioner's work has had a disproportionately greater effect as compared with the efforts of other researchers in his field.

In the decision dismissing the petitioner's appeal, the AAO concluded:

> The available evidence . . . includes no independent support for the assertion that the petitioner's specific contributions in this area have outweighed those of other researchers in the specialty. It is not sufficient for the petitioner and his witnesses to simply describe the work undertaken by the petitioner and then to state that it has had an impact. Instead, the petitioner must demonstrate that his individual contribution has had a disproportionately greater effect as compared with the efforts of other researchers in his field.

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.

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[1] It is noted that the petitioner was initially represented by attorney [redacted] On motion, the petitioner states: "I have since dismissed the immigration attorney and am serving as my own counsel."

On motion, the petitioner submits three additional letters of support.

Dr. Associate Professor of Engineering, Swarthmore College, indicates that he met the petitioner "at an Acoustical Society of America meeting in June, 2003." Dr. states:

> [The petitioner's] work is well-known to me through his published research papers and conference presentations, as well as through the professional grapevine. His primary expertise is in optical characterization of bubbles by light scattering, an extremely rare and important specialty among researchers in the U.S. The petitioner has chosen to work with Dr. and Dr. at the Applied Physics Labs, University of Washington, on characterizing the behavior of bubbles driven into violent radial motion by ultrasound. This work has led to improved understanding of the phenomenon of sonoluminescence, the production of light by a collapsing bubble. There are many practical applications of this knowledge, including improved production of and timing of light pulses used in fiberoptic communication, but [the petitioner's] main contributions so far have been in the basic understanding of the phenomenon. More recently, he has begun to look at the behavior of echo-contrast agents when they are hit by ultrasound, using optical (light scattering) techniques. [The petitioner's] papers are excellent, and promises [sic] to open up a difficult area of measurement using the technique light scattering.

We acknowledge that the petitioner's work has added to the overall body of knowledge in his field, but this is the goal of all such research. Dr. does not indicate how the petitioner's work is of greater benefit than that of others in his field.

Dr. further states: "Very few researchers in the U.S.A. have the skills and understanding that [the petitioner] does. His specialization in ultrasonics, and in particular the measurement of bubble behavior using light scattering techniques is extremely rare and important." A shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification. *See Matter of New York State Dept. of Transportation*. Similarly, arguments about the overall importance of a given occupation may establish the intrinsic merit of that occupation, but such general arguments are not adequate to show that an individual worker in that field qualifies for a waiver of the job offer requirement.

Dr. Chief Scientist, Impulse Devices, Inc., also notes that he met the petitioner at a scientific conference. Dr. states:

> [The petitioner's] expertise is in alcohol's dynamic quenching property on the light intensity of sonoluminescence. He quantified the time-scale of the alcohol's dynamic quenching property for the first time in sonoluminescence research. This is a very important achievement in the sonoluminescence field because it can lead to establishing the mechanism of light emission, a very important and unsolved aspect of sonoluminescence, which could have a significant impact on fusion research.

Dr. Adjunct Research Professor, Applied Physics Laboratory, University of Washington, and a member of the Corporate Technical Staff, Philips Medical Systems Ultrasound Division, states:

> [The petitioner] has studied the harmonic properties of UCAs [ultrasound contrast agents] and clearly demonstrated with laser scattering experiments that UCA bubbles can generate sub-harmonic frequency as well as harmonic frequency . . . . His work has the potential to greatly impact the future diagnostic systems and [the petitioner] is performing key work in this area.

The letters from Drs. and discuss what may, might, or could one day result from the petitioner's work at the University of Washington, rather than how the petitioner's past efforts there have already had a discernable national impact.

The petitioner's motion included evidence of his authorship of an article appearing in *Journal of Physical Chemistry B* in 2003 and four conference abstracts from 2003. This evidence, however, came into existence subsequent to the petition's filing date (October 7, 2002). A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Pursuant to this standing precedent, the petitioner cannot simply continue to add more and more documentation to his already-adjudicated petition, in hopes of eventually rendering it approvable.

Regardless of the date that the petitioner's published and presented papers came into existence, we do not find that publication or presentation of one's work is presumptive evidence of eligibility for the national interest waiver. The record contains no evidence showing that publication or presentation of one's work is unusual in the petitioner's field, or that independent researchers have heavily cited the petitioner's work. 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.

The petitioner initially submitted evidence of only two cites to his work. The petitioner's motion includes evidence of four additional citations (including one self-citation). On motion, the petitioner notes that he has "published ten papers in peer-reviewed journals and conferences." We do not find that an aggregate total of five independent citations resulting from ten published papers is adequate to demonstrate that the petitioner's research findings have significantly influenced the greater field.

The petitioner states: "The presentations at peered national and international conferences and the articles in peered journals reflected my extraordinary research ability and outstanding performance." In regard to the petitioner's conference papers, we note that participation in scientific conferences and symposia 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 petitioner's motion also includes a discussion regarding his "student" membership in the Institute of Electrical and Electronics Engineers and the Acoustical Society of America. Professional memberships, however, 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 petitioner states: "The lengthy labor certification process and the uncertainty of my availability in the near term tremendously affect my ability to make further contributions in this field." Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. The amount of time involved in the labor certification process cannot be viewed as sufficient cause for a national interest waiver; the petitioner must still demonstrate that he will serve the national interest to a substantially greater degree than do others in his field. By law, advance degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. With regard to Congressional intent, 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.

While the petitioner may have contributed to research projects undertaken at the University of Washington, 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 know the petitioner from encounters at professional conferences. 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.

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 AAO's decision of September 30, 2003 is affirmed. The petition remains denied.