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U.S. Citizenship  
and Immigration  
Services

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FEB 02 2004

FILE: EAC 01 068 50776 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for a 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.

  
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 (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. The petitioner seeks employment as a researcher in materials engineering. At the time he filed the petition, the petitioner was a researcher at the materials research laboratory at The Pennsylvania State University (Penn State). 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 concluded 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 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.

The petitioner obtained a master's degree in electrical engineering from Penn. State in 1999.<sup>1</sup> 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 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:

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<sup>1</sup> The record indicates that the petitioner received his Ph.D. in Materials from Penn State in May 2002.

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.

The petitioner's work at the materials laboratory at Penn State involves research in the field of electroactive polymers. Improved methodologies in this field have varied defense and commercial applications. The director did not contest that the petitioner's work has intrinsic merit and that the benefits of his services could be characterized as national in scope. The issue is whether the petitioner 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 the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she 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.

In support of his claim, the petitioner submits several witness letters. [REDACTED] is an associate professor in the department of electrical engineering at Penn State. He states that although he does not know the petitioner well, he considers the petitioner "a prominent young scientist who has a bright future in material science and in the rapidly growing area of microelectromechanical systems (MEMS)." Professor [REDACTED] continues:

In the course of his Master's research and later in his Ph.D. work, [the petitioner] has developed and characterized high performance ferroelectric polymer based MEMS transducers. He has done some pioneering research on polymeric thin film transverse strain measurements and the electromechanical properties of electroactive P(VDF-TrFE) copolymer. The petitioner has already more than 50 technical publications and more than a dozen conference presentations, which reflect highly upon his hardworking and diligent nature.

██████████ is a professor of electrical engineering at Penn State and a member of the National Academy of Engineering. He submits two letters in support of the petition. He considers the petitioner to be an "exceptionally talented" individual and a brilliant scholar. Professor ██████████ states:

[The petitioner's] work with my colleague Professor ██████████ has contributed invaluable to the development of the relaxor ferroelectric copolymer high energy electron irradiated Polyvinylidene Fluoride:Trifluorethylene [P(VDF:TrFE)]. This material has revolutionized the range of applicability of polymer actuators combining high force with order of magnitude improved strain and piezoelectric coupling.

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One can see at once how [the petitioner] has been most valuable as he combines a background from high energy beam studies with a deep interest in solid state systems, essential ingredients for these new polymer transducers. [The petitioner] has also been able to use his most unusual capability with instrumentation to design and implement strain measurement capability for these new softer systems that had been major stumbling block for the group. [sic]

As a member of the National Academy of Engineering, we give Professor ██████████ opinion considerable weight, but we also note that he does not fully explain why it is in the national interest to waive the job offer requirement that normally applies to the petitioner's occupation.

██████████ is a professor of electrical engineering at Penn. State. He is also the Director of the International Center for Actuators and Transducers. He states that he is one of the petitioner's doctoral advisors. Professor ██████████ considers the petitioner a distinguished young researcher who developed the "first set-up to characterize the transverse strain of polymeric film. This innovation not only solved the critical problem of the transverse strain measurement of the softer films, but also can measure the load capability of the thin film." Professor ██████████ adds that to his knowledge, several institutions have copied the petitioner's setup. Professor Uchino does not provide any specific information as to which institutions have copied the petitioner's setup.

██████████ Jr. is the President of Summit Applied Research, Inc. M ██████████ states that he knows the petitioner through professional meetings, but they do not have a direct professional relationship. He asserts that the petitioner's work in the area of polymer piezoelectrics is a "very important technological contribution to an area that has high potential for promising commercial and US Navy applications."

██████████ supervised the petitioner's work at Honeywell during the summer of 1998. Dr. ██████████ considers the petitioner an unusually capable scientist and technologist. He adds that the petitioner "played a major role in the development of tunable photonics crystals, which we believe will be important for future generations of optical communication systems." Dr. ██████████ asserts that the petitioner's research in several fields "from photonic crystals to the application of ferroelectric copolymers for various types of devices" has resulted in fifty publications describing this research.

██████████ a professor at the Institute of Physics, Chinese Academy of Sciences, states that the petitioner is one of the "most distinguished research scientists that I have had the opportunity to work with. He worked at our institute from 1987 to 1995." Professor ██████████ adds that due to the petitioner's excellent work, he was twice selected as the most outstanding young researcher at the Institute of Physics.

[REDACTED] is an assistant branch head and senior research engineer at the Advanced Materials Processing Branch at the NASA Langley Research Center. She submits a letter dated September 21, 2000. She asserts that she is not acquainted with the petitioner, but based on her review of the petitioner's published articles and presentations, she considers him a prominent young scientist. She states that as an expert in the area of smart materials research, she knows that lightweight electroactive materials are important to a space mission. Dr. [REDACTED] regards the petitioner's work as "first class achievement in the field."

Dr. [REDACTED] is a group leader at the Jet Propulsion Laboratory at the California Institute of Technology and an adjunct professor at the University of California. In his first letter, he asserts that he does not know the petitioner personally and does not have an institutional relationship with the petitioner's activity. Dr. [REDACTED] also adds, however, that he visited the materials research laboratory at Penn State in 1999. He states:

[The petitioner] is a prominent scientist in the field of Electroactive polymer (EAP). Jointly with his advisor, Dr. [REDACTED] at Penn State University, he developed the high electron irradiated poly(vinylidene fluoride-trigluoroethylene) (P(VDF-TrFE)) copolymer.

Dr. [REDACTED] adds that he was "extremely impressed" with the petitioner's research and has reviewed an abstract for an upcoming conference. He praises the petitioner's research skills as the first to design a setup to "characterize the transverse strain of polymeric film." Dr. [REDACTED] considers the petitioner a "valuable productive scientist with an international reputation," whose research has led to "important breakthroughs in EAP materials and their applications" demonstrating opportunities for environmental research. In his subsequent letter, Dr. [REDACTED] notes that the petitioner was hired at the NASA Langley Research Center where he has since "developed several new EAP devices for NASA micro fly vehicles."

[REDACTED] is a professor and a director of the polymer electroprocessing laboratory at Rutgers University. He asserts that he only knows the petitioner through his publications. Professor [REDACTED] states that the petitioner "has made many significant contributions" in the field of electroactive polymers, and will continue to significantly contribute to the technological base needed by defense and industry. Professor Scheinbim's letter does not provide much other detail.

Although these endorsements express the authors' high regard for the petitioner's research abilities, they mostly come from the petitioner's past and present mentors and colleagues. While such individuals are often in the best position to provide specific details about the petitioner's work, their statements generally do not show, first-hand, that the petitioner's work has already impacted the wider research community. We also note that the letters submitted by M. [REDACTED] and Professor Scheinbim indicate that while they may have only an indirect connection to the petitioner, they also provide the least detail and explanation why the labor certification process should be waived in the national interest.

The petitioner also includes evidence of that he has published at least five articles in which he is the lead author and thirty-six articles that he co-authored. We note that copies of other articles contained in the file either do not indicate where or if they were published or appear to have only been submitted, but not yet published at the time of filing the petition. Eligibility must be established 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). The record also contains evidence that the petitioner's work has been presented at several conferences in his field. There is no evidence in the file to indicate that publishing or presenting one's work is uncommon in the petitioner's field.

We further note that 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," even among researchers who have not yet begun "a full-time academic and/or research career."

This report supports CIS' position that publication of scholarly articles is not automatically evidence of influence. Although this petitioner's publication history is impressive, we would note that merely publishing a given quantity of articles does not compel anyone to read them or utilize the findings presented. The scientific community's reaction to the published articles is the focus. This reaction is usually manifested by the citation of a petitioner's published work by other researchers. Heavy citation by other independent scientists can demonstrate that a petitioner has influenced the field as a whole.

On appeal, counsel asserts that the petitioner has been widely cited by other independent researchers. After reviewing the counsel's submissions on appeal as well as copies of the articles already contained in the record, we note that several appear to be published after the date of filing the petition or are self-citations by the petitioner or his colleagues. Although the petitioner's work has been recognized, we cannot conclude that the level of recognition achieved prior to the date of filing the petition was so significant as to outweigh the inherent national interest in protecting U.S. workers through the labor certification process.

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 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 profession, 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.