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U.S. Department of Homeland Security  
Citizenship and Immigration Services

*ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass., 3/F  
425 I Street, N.W.  
Washington, D.C. 20536*

**BS**

[Redacted]

File: WAC 03 004 51383 Office: California Service Center

Date: **JAN 21 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)

IN BEHALF OF PETITIONER:  
[Redacted]

**INSTRUCTIONS:**

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*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 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 on October 1, 2002, the petitioner was working as a postdoctoral research associate in the Department of Biology at Arizona State University ("ASU"). 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 Master of Science degree in Environmental Engineering from Bradley University (Illinois) and a Ph.D. in Aquatic Biology from Saitama University (Japan). 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 the petitioner 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.

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

Dr. James Elser, Professor and Director of Undergraduate Programs, Department of Biology, ASU, states:

Since December 2000, [the petitioner] has been on my project and has played a key role in our department. First, he has been producing excellent research work of high quality and

consistent quantity on a regular basis. Second, he has acquired a variety of technical skills necessary for testing cutting-edge ideas in ecosystem and physiological ecology. In particular he has mastered skills related to small-scale analytical chemistry for inorganic and biochemical constituents, chemostat operation and maintenance, plankton culturing and manipulation and mathematical modeling of ecological systems. He has developed skills in compilation and statistical analysis of complex data sets and has presented his findings at regional and international scientific meetings.

We note here that any objective qualifications necessary for the performance of a research position can be articulated in an application for alien labor certification. 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.

Dr. Elser further states:

[The petitioner's] innovative ideas have changed several of our laboratory techniques. He has simplified several lab chemistries, which has been instrumental in obtaining accurate data in a relatively short time. He is also involved in training graduate students with new techniques in the lab. Also, [the petitioner's] contribution in my multi-million dollar National Science Foundation project has been invaluable. With his assistance, hard work and skills we are about to complete several very important research sub-projects and they will soon turn into international publications of high quality of which [the petitioner] will be the first author.

Dr. Elser's statements regarding the potential benefit of the petitioner's ongoing research and the expectation that he will eventually publish his results cannot suffice to demonstrate eligibility for a national interest waiver. Such statements fail to persuasively distinguish the petitioner from other competent researchers. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. 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. An alien seeking a national interest waiver must demonstrate that his work has already significantly influenced the field.

Dr. John Fuessle, Postdoctoral Research Scientist, ASU, collaborates with the petitioner on projects in Dr. Elser's laboratory. Dr. Fuessle states: "Professionals with [the petitioner's] abilities are difficult to find. We are falling woefully short of training a sufficient number of U.S. citizens that have the type of skills and knowledge that [the petitioner possesses]." 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, supra*.

Marcia Kyle, Research Associate, ASU, states:

[The petitioner] has brought to us an excellent academic background, unique skills that have greatly improved the research being done in [Dr. Elser's] lab. [The petitioner's] arrival to our lab has modified several of our old experimental methods, which are now being followed not only by our lab, but also other laboratories in the U.S. who are collaborating with us.... The petitioner is a critical part of our lab, taking responsibility for many experiments as well as participating in the day-to-day operation of the lab.

In the same manner as Dr. Elser, Marcia Kyle emphasizes the petitioner's unique laboratory skills and academic background. As we have already observed, objective qualifications such as these are amenable to the labor certification process. It cannot suffice to argue that the petitioner possesses "unique skills" or an "excellent academic background." Pursuant to *Matter of New York State Dept. of Transportation, supra*, exceptional ability in one's field of endeavor does not compel CIS to grant a national interest waiver of the job offer requirement.

Dr. Takashi Asaeda, Professor and Head, Department of Environmental Science and Human Engineering, Saitama University, supervised the petitioner's Ph.D. studies. Dr. Asaeda states that after joining his laboratory in 1996, the petitioner was involved in three research studies. Dr. Asaeda further states:

In the first project, [the petitioner] was able to develop a simulation model to quantify required fish biomass to keep the balance in lakes so that the lake always remains clean and ecologically healthy. This work was presented in an International Symposium in the Netherlands and was well received by scientists... In the 2<sup>nd</sup> research project where he spent most of his time, his research results were outstanding. He explained several biological phenomena in aquatic life through his experimental and mathematical simulation work. It has helped the advancement of science in aquatic biology area significantly. His achievements are evident in his two major journal publications from this work alone in *Hydrobiologia* and *Marine and Freshwater Research* and several scientific symposiums. Worldwide scientists have cited his research findings including in the United States and Japan. In the third project at the Natural History Museum, he was able to solve a problem by using [an] innovative and unconventional technique, which was never used before. He employed the artificial nylon-cords to divert the lake nutrients from harmful plants and was able to devise a new technique to keep the lake ecosystem healthy and clean. This work was also well received by scientist[s] when he presented it to the scientific community in Japan. As a matter of fact, Dr. Acharya's current research is also related to this issue, which is important to any country in the world in terms of environmental protection...

In addition to the witness letters, the petitioner submitted copies of his published research articles. 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. Dr. Asaeda states that the petitioner's work has been cited and that it has captured the attention of other scientists. The petitioner, however, has presented no evidence from citation indices to substantiate Dr. Asaeda's claims.

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 two additional witness letters, a copy of a manuscript submitted for publication, and background information about the petitioner's field of research. The background information helps to establish the intrinsic merit and national scope of the petitioner's work, but it does not set the petitioner's accomplishments apart from those of other competent researchers in the field.

A letter from Rajendra Bhattarai, Wastewater Regulatory Manager, City of Austin, states:

The U.S. Environmental Protection Agency has recently promulgated nutrient criteria for the waters in the U.S. and the Texas Commission of Water Quality is currently drafting nutrient criteria and standards for waters in the State of Texas. In response to these new water quality standards and regulations, the City of Austin is preparing a strategy to ensure full and timely compliance with the nutrient standards and regulations. [The petitioner's] research will help the City of Austin's project team to better understand the complex effects of nutrients on water quality and will enable the City to comply with the new regulations in a cost-effective manner. During the current difficult economic time when all governments (local, state and federal) have to do more with less, [the petitioner's] research takes an added significance. The results from his research will help us to improve our environment while keeping the costs down. The cost of nutrient removal for Austin alone is expected to run into approximately \$100 million. Even a 10 – 20% savings cost, based on [the petitioner's] research, would greatly benefit a cash-strapped municipality like Austin. When one considers hundreds of municipalities across the U.S., the potential savings to the nation could be in the range of several hundred million dollars.

Rajendra Bhattarai describes the "potential" benefits of the petitioner's research for the City of Austin; however, he offers no objective data showing that the petitioner's findings have already had a discernable impact on Austin's water treatment strategies. Also lacking is evidence showing that the petitioner's specific methodologies have been successfully implemented in water treatment systems around the country.

Rajendra Bhattarai further states:

Besides his contributions on water quality, [the petitioner's] other original publications in biological research and frequent citations provide more documentary evidence of his extraordinary ability in his research field. Over a span of several years, [the petitioner] has authored or co-authored numerous original articles, reports, and posters in nationally and internationally renowned peer-reviewed journals and conferences.

The record, however, contains no evidence that the presentation or publication of one's work is a rarity in the petitioner's field, nor does the record sufficiently demonstrate that independent researchers have heavily cited or relied upon the petitioner's work in their research. In the same manner as Dr. Asaeda, Rajendra Bhattarai asserts that the petitioner's work has been frequently cited. However, without objective documentation to substantiate the claims of these two witnesses, their assertions are insufficient to demonstrate that the petitioner's influence extends throughout the field. Were the petitioner to have provided a complete citation history of his published work or copies of the actual articles citing his work, their statements would carry greater weight.

Also submitted was a letter from Dr. Bruce Harrison, Co-Director of the Genome Sequencing and Analysis program, Whitehead Institute, Center for Genome Research. Dr. Harrison describes the importance of the petitioner's ongoing research related to ribosomal RNA and DNA in plankton and discusses some of his original findings on plankton growth. Pursuant to *Matter of New York State Dept. of Transportation, supra*, we generally do not accept the argument that a given project is so important that any alien qualified to work on that project must also qualify for a national interest waiver. General statements regarding the overall importance of the petitioner's research projects may establish the intrinsic merit and national scope of his work, but such general arguments would not suffice to show that his individual accomplishments are of such an unusual significance that he qualifies for a waiver of the job offer requirement. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. 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 (5<sup>th</sup> Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule.

In this case, the majority of the witnesses have direct ties to the petitioner or his research projects. The petitioner has not submitted sufficient evidence to show that his work has attracted an unusual level of attention from independent researchers throughout his field. We acknowledge that the petitioner's findings have added to the general pool of knowledge, but it has not been shown that the greater scientific community views his findings as particularly significant. The witness letters generally center on petitioner's ongoing research and the expectation of future results. The witnesses discuss what may, might, or could one day result from the petitioner's work, rather than how his past efforts have already made a discernable impact beyond the original contributions expected of most postdoctoral researchers. While numerous witnesses

discuss the potential applications of his current work, there is no indication that the applications have yet been realized.

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. The director stated that the petitioner had failed to establish that he would serve the national interest to a substantially greater degree than others in his field. The director noted the absence of letters of support "from major public agencies or national organizations like the U.S. Department of Health and Human Services and the National Science Foundation" vouching for the petitioner's individual importance to the national interest.

On appeal, the petitioner challenges the director's finding that the witnesses were limited to his current and former colleagues. The petitioner states that his witnesses "are world renowned scientists and professionals" and that it is wrong to "discount their opinions because they do not work for national organizations." The petitioner further states "...it is inconceivable that they would stake their reputation if I was not as good as they suggested."

The director's observation that the witnesses appear limited to his current and former colleagues is not intended to cast aspersions on their integrity. We acknowledge that two of the petitioner's witnesses do not appear to be current or former colleagues. Also, while letters from witnesses from public agencies or national organizations are certainly helpful, their absence from record is not automatically fatal to the petitioner's national interest waiver claim. Nevertheless, it is apparent that the majority of the witnesses in this case became aware of the petitioner's work because of their collaborations with the petitioner or his superiors. While letters from the petitioner's research supervisors and collaborators certainly have value, they do not show, first-hand, that his work is attracting attention on its own merits, as we might expect with research findings that are especially significant. Witness statements to the effect that the petitioner's work has had "a substantial impact in the field of ecological chemistry" cannot suffice to establish such influence, when the petitioner provides no evidence from citation indices to support these claims. Independent evidence that would have existed whether or not this petition was filed would be more persuasive than subjective statements from individuals selected by the petitioner.

Clearly, the petitioner's witnesses have a high opinion of the petitioner and his work. 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.

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, 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.