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

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

File: [REDACTED] Office: Nebraska 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:

SELF-REPRESENTED

**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, Nebraska 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, the petitioner was working as a research programmer in the Department of Natural Resources and Environmental Sciences, University of Illinois at Urbana-Champaign ("UIUC"). 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 Biometrics from UIUC. 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. George Gertner, Professor of Biometrics, UIUC, states:

I have known [the petitioner] for thirteen years. I was his M.S. and Ph.D. advisor at the University of Illinois.... For the last three years, he has been employed by me as a scientific research programmer. He assisted me in the completion of a large project entitled, “error and uncertainty for ecological modeling and simulation...” The primary goal of the project

was to attempt to make large-scale ecological and environmental modeling systems more accurate and precise by providing a framework for identifying specific errors and uncertainties inherent with such systems, and by providing relevant software as a tool for researchers and managers of natural resources ecosystems. [The petitioner] tackled this project both in an applied and in a theoretical fashion. He has four academic papers published in internationally circulated journals and six articles presented in international and national conferences based on this research.

The record, however, contains no evidence showing that the presentation or publication of one's work is unusual in the petitioner's field, nor does the record sufficiently demonstrate that independent researchers have heavily cited or often relied upon the petitioner's findings in their research.

Dr. Gertner further states:

[The petitioner] is extremely competent in statistical issues related with the calibration of ecosystem models. Because of the importance of model estimation, numerous statisticians and mathematicians have worked for many years to develop the estimation methods for different models under different conditions. However, estimation of complicated ecological models combined with complex ecosystems has continued to challenge ecological modelers for a long time. [The petitioner] has applied very sophisticated statistical methods in model estimation and has solved this problem. A paper based on his method entitled, "A Bayesian approach for estimating the parameters of a forest process model based on long-term growth data" has been published in *Ecological Modeling*, a leading journal in ecosystem modeling. The work was a major step forward in parameterization of complex models. This is the first time that calibration of complicated models for complex ecosystems has been based on realistic, objective, and systematic information.

The fact that the petitioner was among the first to develop a new model estimation method carries little weight.<sup>1</sup> Of far greater importance in this proceeding is the importance to the overall field of the petitioner's methodology. The petitioner has presented a citation index showing that the paper entitled, "A Bayesian approach for estimating the parameters of a forest process model based on long-term growth data" was cited a total of three times. Such a limited number of citations suggests that this work has gone largely unnoticed by the greater field.

Dr. Gertner further states:

In terms of [the petitioner's] employment as a research programmer, there are very few researchers with the background expertise he possesses. When I advertised the position for a Research Programmer three years ago, there were only two applicants. The reasons [the

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<sup>1</sup> Dr. Gertner was the first and corresponding author of "A Bayesian approach for estimating the parameters of a forest process model based on long-term growth data." The petitioner and Dr. Jens Peter Skovsgaard were listed as co-authors.

petitioner] is exceptional are because of his technical expertise in statistics, computer software development, and computer modeling as it relates to natural resources and environmental systems; and his knowledge and ability to develop both statistical methods for quantifying errors and uncertainty in these types of systems and the related computer software. There are simply not other people qualified for this very technical work.

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*.

Lianjun Zhang, Associate Professor of Biometrics, State University of New York, states:

[The petitioner] is specialized in developing/improving statistical methods for estimation and assessment of ecological models, analyzing non-spatial and spatial variability (uncertainty) of ecological dynamics, and applying computer study of ecosystems. This is clearly reflected in his papers, presentations, and software. His articles...have been published in internationally circulated professional journals.

I have also learned from his advisor and colleagues that [the petitioner] is an extremely hardworking, highly self-motivated and intelligent scientist. His strong background and ability in ecosystem modeling and assessment, quantitative methods, and computer skills will bring great potential and significant contributions to the practice of forestry and ecology in the United States.

Objective qualifications, such as those described by Drs. Gertner and Zhang, are amenable to the labor certification process. 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 experience that could be articulated on an application for a labor certification.

Also submitted was a letter from Dr. Biing Guan, Professor of Forest Biometrics, National Taiwan University. The majority of Dr. Guan's letter is identical in content to that of Dr. Zhang's. While these individuals, in signing their letters, are clearly supportive of the petitioner, it appears that, based on the identical wording, at least one of them did not independently formulate the wording of his letter, thus detracting from the weight of the evidence.

Alan Anderson is an Affiliated Staff member at UIUC and a Project Manager and Research Biologist for the U.S. Army Corp of Engineers' Research and Development Center in Champaign, Illinois. He states:

[The petitioner] is an exceptional scientist in the field of natural resources data analysis and ecological modeling. The statistical methods he employs in spatial modeling and uncertainty

analysis is...especially exciting due to the utility of the applications to practical management of our country lands, including military training bases. A review of his work and his publishing record clearly demonstrates that [the petitioner] is an exceptional researcher.

As has been observed in *Matter of New York State Dept. of Transportation*, a plain reading of the statute and regulations shows that aliens of exceptional ability are generally required to present a job offer with a labor certification at the time the petition is filed, and only for due cause is the job offer requirement to be waived. Clearly, exceptional ability in one's field of endeavor does not, by itself, compel CIS to grant a national interest waiver of the job offer requirement. Similarly, arguments about the overall importance of natural resources data analysis and ecological modeling may establish the intrinsic merit of the petitioner's work, but such general arguments cannot suffice to show that an individual worker in that field qualifies for a waiver of the job offer requirement.

Dr. Jens Peter Skovsgaard, Professor, Forest Production and Modeling, Danish Center for Forest, Landscape and Planning, states that he has collaborated with Dr. Gertner for more than a decade and has known the petitioner "personally since 1998." Dr. Skovsgaard states:

As witnessed by a strong record of publications in leading, international, peer-reviewed professional journals, [the petitioner's] research represents a substantial contribution to ecological modeling and, in turn, a significant input to the development of sustainable practices for ecosystem management.

While we do not dispute the overall prestige of the journals in which the petitioner's work has been published, we do not find that publication of the petitioner's work in international journals is presumptive evidence of eligibility for the national interest waiver. Such publication does not necessarily reflect the overall field's reaction to the petitioner's work. While heavy citation of the petitioner's past articles would carry considerable weight, the petitioner in this case has presented only three citations. Witness statements to the effect that researchers from throughout the field rely on his published findings cannot suffice to establish such influence, when the limited citation history presented by the petitioner fails to support these claims.

Also submitted was a copy of a letter from an editor of *Forest Science* dated March 12, 2001, requesting that the petitioner referee a manuscript. Peer review of manuscripts is a routine element of the process by which articles are selected for publication in scholarly journals. Occasional participation in peer review of this kind does not significantly distinguish the petitioner from other capable researchers.

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 additional witness letters and further documentation pertaining to his work.

In his second letter, Dr. Gertner states:

In addition to his achievements in methodology, [the petitioner] has also made considerable contributions in the application of uncertainty analysis. [The petitioner's] most significant publication is an article entitled, "Uncertainty analysis of predicted disturbance from off-road vehicular traffic in complex landscapes." The paper was just published seven months ago, but I believe it will be a highly cited paper, since the methodology developed and described is very unique and important.

\* \* \*

[The petitioner] has co-authored another three uncertainty analysis papers that were published in international journals.

Brian Deal, Assistant Professor, Department of Urban and Regional Planning, UIUC, states:

I am one of the Principal Investigators of a project entitled, "Land use evolution and impact assessment model (LEAM)." LEAM is a computer-based tool that simulates land-use change across space and time by discerning the salient drivers of change in the region of study.... In short, the LEAM system has been designed to enhance our understanding of the connection between urban, environmental, social, and economic systems.

The model, its development, and its application to several regions in the continental United States is conducted and managed by a team of faculty, staff, and students from UIUC.

\* \* \*

[The petitioner's] research on parameter estimation and decision-making processes using his own Bayesian estimation method and other advanced spatial statistical analysis methods have improved the way the model is applied. His innovative work has dramatically increased the accuracy and precision of LEAM applications, greatly improving its reliability and validity.

[The petitioner] possesses a strong academic background which he has successfully translated to our research. He is skilled computer programmer and adept adjusting to new and complex problems. His skills and expertise have made him an important part of our work and I believe he will continue to make substantive contributions in the future.

As stated previously, any objective qualifications necessary for the performance of a research programmer position can be articulated in an application for alien labor certification. 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. 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. An alien seeking a national interest waiver must demonstrate that his work has significantly influenced the field.

Three of the witness letters submitted in response to the director's request for evidence were from co-authors of a research paper entitled, "Process-based models for forest ecosystem management," one of the three articles listed in the citation index of the petitioner's published work. Dr. Alan R. Ek, Professor, Department of Forest Resources, University of Minnesota, describes Dr. Gertner and the petitioner's 1999 "Bayesian Approach" paper as "an outstanding piece of work" and states that the petitioner "has exceptional insight and analytical capabilities that are sorely needed in science today." The letters provided by the two other co-authors of "Process-based models for forest ecosystem management," Dr. Thomas Burk, also of the University of Minnesota, and Dr. Annikki Makela of the University of Helsinki, contain identical second paragraphs. Both of their letters conclude: "Based on its advantages, I consider that the method Gertner *et al.* developed in 1999...state-of-the-art." Once again, it is not clear who authored the identical content in these witness letters, but it is highly improbable that both individuals independently formulated the exact same wording. It is acknowledged that these two individuals have lent their support to this petition, but it remains that at least one of them did not independently choose the wording of his or her letter.

Also submitted was a letter, signed by [REDACTED] on behalf of Dr. Alan Moore, Director of the U.S. Army Corp of Engineers' Research and Development Center in Champaign, Illinois. The letter, addressed to Dr. Mary Ann Lila, Head, Department of Natural and Environmental Resources and Environmental Sciences, UIUC, commends Dr. Gertner for his work in support of the Land Based Carrying Capacity program, but it does not mention the petitioner.

The petitioner in this case has not shown that his approach to model estimation and methods for uncertainty analysis have had an usually significant impact on the overall field.

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 also noted: "[T]he only article of the petitioner's which has been cited is an article which the petitioner second-authored nearly four years ago, which has been cited three times."

On appeal, the petitioner states:

I have submitted copies of my first-authored technical articles that described development and improvement of methods for uncertainty analysis. These papers are evidence that I have made contributions that other Ph.D. holders (not merely "research programmers") could not make in my team.

Publication, by itself, is not a strong indication of impact, 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 further states: "The decision did not consider the small number of cited methods as an indicator of significant achievements." Contrary to the petitioner's assertion, however, the director's decision did address the "small number" of citations of the petitioner's work.

A substantial portion of the petitioner's appeal disputes the director's observations in regard to identical statements from Dr. Thomas Burk and Dr. Annikki Makela. Their letters state that "the method Gertner *et al.* developed in 1999 is state-of-the-art" and "greatly improved the situation." The director concluded there was no evidence showing that either author "had made those statements in published material." While the citation language is not the same as the description in their witness letters, the evidence presented is clear that these authors did favorably cite the petitioner and Dr. Gertner in their article entitled "Process-based models for forest ecosystem management." In that regard, we concur with the arguments presented by the petitioner. Any suggestion by the director that further published materials from Dr. Thomas Burk and Dr. Annikki Makela are required in order to demonstrate their favorable reaction to the petitioner's work is hereby withdrawn.

That said, we find the total number of citations presented here (three) insufficient to demonstrate that the petitioner's work has had substantial impact on the overall field. The witness letters show that the petitioner's work has provided new and useful information to the overall body of knowledge in his field, but this is the goal of all such research. In this case, the statements from witnesses selected by the petitioner, while useful in describing his expertise and the overall importance of his research, fail to demonstrate that his individual research accomplishments are so unusual that he merits the benefit of a national interest waiver.

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.