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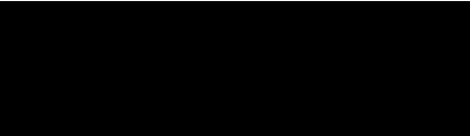
U.S. Department of Homeland Security

Citizenship and Immigration Services

**B5**

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



File: 

Office: Nebraska Service Center

Date:

**JAN 21 2004**

IN RE: Petitioner:  
Beneficiary:



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:



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. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The petitioner filed a motion to reopen. After granting the motion to reopen, the AAO affirmed denial of the petition. The matter is now before the AAO on a motion to reconsider. 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 or as an alien of exceptional ability. 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 the underlying visa classification, 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.

On motion, the petitioner challenges the AAO's finding that the work he performed "subsequent to the [petitioner's] filing date may not be considered." The petitioner calls attention to a letter dated January 8, 2001, from Mary Mulrean, Acting Director, AAO, which was issued in response to a written case status inquiry from the petitioner. The AAO letter states: "The AAO has included a copy of your doctoral degree diploma in the record of proceeding." The petitioner argues that the AAO contradicts itself by including his doctoral degree (which was awarded subsequent to the petitioner's filing date) in the record of proceeding, but by refusing to consider the research that he performed subsequent to the petitioner's filing date. The petitioner states:

The issue noted in the [AAO's March 28, 2003 decision] still begs the question on how the [AAO] accepted my request and responded in January 2001 (attached). In fact, the [AAO's January 8, 2001] letter has inspired me, without any limitation, for sending documents, as [they] become available, to the relevant offices including your office in support of my petition.

Based on his misinterpretation of the January 8, 2001 letter, the petitioner has ignored the AAO's prior findings and continued to supplement the record with unsolicited documentation. This issue was specifically addressed in the AAO's September 5, 2001 appellate decision, which states:

The petitioner indicated that he would submit further evidence within thirty days of the appeal's May 22, 2000 filing date. The petitioner has since submitted further documents on more than five separate occasions between May 2000 and April 2001. The regulation at 8 C.F.R. § 103.3(a)(2)(vii) states "[t]he affected party may make a written request to the AAU for additional time to submit a brief. The AAU may, for good cause shown, allow the affected party additional time to submit one." The petitioner indicated only that further information would be forthcoming within thirty days; he did not indicate that he needed more time, nor did he show good cause for such an extension.

The petitioner had not requested (let alone been granted) additional time to submit the later

submissions, nor had he shown good cause to warrant repeated extensions. The regulations do not state or imply that the petitioner may freely supplement the record up until the date of appellate adjudication. We shall consider those submissions that fall within the thirty-day period which the petitioner had requested. The petitioner's subsequent submissions, apart from being untimely, deal with the petitioner's activities subsequent to the filing of the petition.... Subsequent developments in the alien's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date.

Subsequent to filing the present motion on April 21, 2003, the petitioner has supplemented the record four times between May 2003 and November 2003. The regulation at 8 C.F.R. 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an appeal once it has been filed. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation that allows a petitioner to submit new evidence in furtherance of a previously-filed motion. By filing a motion, the petitioner does not guarantee himself an open-ended period in which to repeatedly supplement the record with evidence that plainly did not exist at the time the motion (let alone the underlying petition) was filed. Otherwise, a petitioner could indefinitely delay the adjudication of the motion, simply by repeatedly submitting new documents and requesting still more time to prepare still more submissions. For the purpose of this proceeding, we shall consider only the documentation submitted with the petitioner's motion on April 21, 2003.

CIS' regulations state that any evidence submitted by the petitioner is to be included as part of the relating petition (or record of proceeding). 8 C.F.R. § 103.2(b)(1). Inclusion in the record of the petitioner's untimely submissions (such as his doctoral degree diploma from December 2000) is a standard procedure in compliance with the aforementioned regulation. That said, it does not follow that CIS is required to consider late submissions (such as supplementary documentation submitted several weeks after a motion has been filed) or evidence that does not establish eligibility as of the petition's filing date. The petition in this case was filed on January 25, 1999.

8 C.F.R. § 103.2(b)(12) states, in pertinent part:

*Effect where evidence submitted in response to a request does not establish eligibility at the time of filing.* An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed.

Pursuant to the regulations and published precedent, CIS is not required to consider evidence that came into existence subsequent to the petition's filing date. See *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which CIS held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Education or experience acquired subsequent to the petition's filing date cannot retroactively establish eligibility as of that date. The AAO's inclusion of the petitioner's doctoral degree from December 2000 in the record of proceeding has no bearing on whether that evidence, or other evidence that came into existence after January 25, 1999, is considered timely or sufficient to

establish eligibility at the time of filing. Pursuant to *Matter of Katigbak, supra*, the petitioner cannot simply continue to add more and more documentation to his already-adjudicated petition, in hopes of eventually rendering it approvable.

On motion, the petitioner submits a recent e-mail from an editor of the *European Journal of Law and Economics* stating that one of his articles will appear in the November 2003 or January 2004 issue of that journal. Another recent e-mail from an issue manager at Elsevier, publisher of the *Journal of Energy Policy*, states: "I am not able, at the moment, to say in which issue your article will be published. That is because there is a large backlog of papers for this journal." Also submitted was a letter dated October 23, 2002 from an editor of *Resource and Energy Economics* stating that the petitioner's manuscript was being processed for review. Additionally, the petitioner submitted a letter dated March 10, 2003 from an editor of *Agricultural Economics* acknowledging receipt of a manuscript and stating that it was under review.

In the March 28, 2003 decision, the AAO stated:

Articles submitted for publication after the date of filing the immigrant visa petition cannot establish the petitioner's eligibility retroactively. As noted above and in the [AAO's appellate] decision, a petitioner must establish eligibility at the time of filing. A petition cannot be approved at a future date after the petitioner may become eligible under a new set of facts. The petitioner's publication history does not establish his national influence in the scientific community.

The articles submitted to the *European Journal of Law and Economics*, *Journal of Energy Policy*, *Resource and Energy Economics*, and *Agricultural Economics* for future publication fail to establish the petitioner's proven influence throughout the scientific community. On motion, the petitioner supports this finding by expressing his belief "that the influence of any scientific work may not be observable until it gets published."

In the March 28, 2003 decision, the AAO further stated:

Further, when judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a measure as is the citation history of a published work. Publication of scholarly articles is not automatic evidence of influence on the field. A published article may show 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. Here, the record contains no evidence that independent researchers in the environmental field have cited or relied upon the petitioner's work.

To that end, the petitioner submits the results of an April 8, 2003 internet name search on "webcrawler.com" reflecting less than ten entries for his name. This evidence does not show that the petitioner's work has had an unusual degree of influence in the environmental economics field. The petitioner has not presented evidence from a scientific citation index or copies of numerous journal articles authored by independent scholars showing that his own publications, which

existed as of January 25, 1999, or any of his subsequent articles for that matter, were heavily cited. In contrast to a scientific citation index, an internet name search offers no valuation of the significance of the petitioner's work to the field of environmental economics.

A review of the remainder of the evidence presented on motion indicates that all of the documents presented relate to research or events that occurred subsequent to the petition's filing date. *See Matter of Katigbak, supra*. Even if we were to accept this evidence, it does not show that the petitioner's work was of greater benefit than that of others in his field. For example, a letter from an editorial assistant for *Agricultural Economics* dated February 3, 2003 requests 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 scholarly researchers.

The petitioner disputes the AAO's finding that "[t]here is no evidence of record from any high-ranking official of the State of Ohio describing how the petitioner's work has had significant impact in the field." The petitioner argues that a letter from Daniel Johnson, Division Chief, Market and Monitoring, Public Utilities Commission of Ohio ("PUCO"), refutes this finding. The petitioner states that Daniel Johnson is "in charge of a big division at PUCO" and that he issued his letter "with the highest ranking officials' (at PUCO) approval." Daniel Johnson's letter, submitted in response to the director's request for evidence, states:

[The petitioner] has been working as a graduate student intern under my supervision since the beginning of 1998. [The petitioner's] major responsibility to PUCO is the completion of his doctoral thesis...

PUCO has been sponsoring [the petitioner's] ongoing research because of the importance of the topic to a rational design and implementation of national and statewide energy policies. Along with pursuing his advanced degree at Ohio State University, he has explored opportunities for diversifying his experience. The successful completion of candidacy examination in essence establishes him as an expert in the field of emissions.

\* \* \*

I am convinced that the completion of [the petitioner's] project can be valuable to policy makers in the Midwest seeking pragmatic decisions pertaining to global climate change issues. It will also inform the design of energy policies resulting in lower energy costs to the residents of Ohio and the citizens of the Midwestern States.

Daniel Johnson discusses what may, might, or could one day result from the petitioner's work, rather than how the petitioner's past efforts have already had a discernable impact beyond the original contributions expected of most doctoral students at a respected university. 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. *See Matter*

*of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm. 1998). Similarly, arguments about the overall importance of the petitioner's work may establish the intrinsic merit of his occupation, but such general arguments would not suffice to show that an individual worker in that field qualifies for a waiver of the job offer requirement. The record contains no evidence showing that the petitioner's findings have had a measurable impact beyond Ohio. For example, the witnesses offering letters of support are limited to individuals from Ohio (such as the petitioner's research supervisors at Ohio State University and PUCO). A review of the evidence presented by the petitioner does not show that his research has attracted an unusual degree of attention among independent researchers in his field.

The petitioner cites no precedents in support of his motion to reconsider. *Matter of New York State Dept. of Transportation*, *supra*, the precedent decision under which this petition has been reviewed, requires the petitioner to demonstrate that his 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 219, note 6. The petitioner must submit evidence showing that his individual work is acknowledged as particularly significant not only by those individuals with direct ties to him but throughout the greater field. In this matter, the petitioner has not established that his work has had a measurable national impact, or that his past record of accomplishment significantly distinguishes him from other similarly qualified researchers in his field.

The regulation at 8 C.F.R. § 103.5(a)(3) states that a motion to reconsider a decision on a petition must, when filed, establish that the decision was incorrect based on the evidence of record at the time of the initial decision. In this matter, the petitioner has failed to offer arguments or evidence to demonstrate that CIS erred in considering the evidence presented prior to issuance of the director's denial.

In sum, the available evidence does not persuasively establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement that, 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 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 AAO's decision of March 28, 2003 is affirmed. The petition is denied.