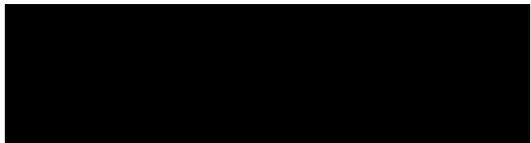


U.S. Department of Homeland Security

Citizenship and Immigration Services

B5

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

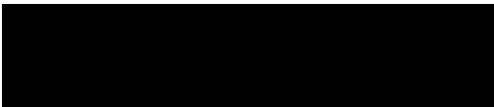


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File: WAC 02 044 51297 Office: CALIFORNIA SERVICE CENTER

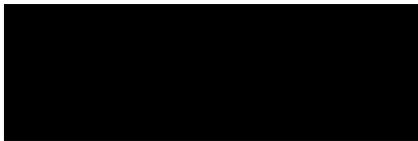
Date: **JAN 22 2004**

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)

ON BEHALF OF PETITIONER:



**identifying data deleted to
prevent closing of unannounced
invasion of personal privacy**

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 **Mari Johnson**
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. The petitioner seeks employment as a postdoctoral research scientist at the University of Arizona. 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 has 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) . . . 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 director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention 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 the 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 regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now CIS] 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.

Counsel states:

[The petitioner] has distinguished herself through her expertise in hydrology, hydroclimatology, and application of remote sensing, image processing, and artificial neural networks for hydrology. [The petitioner] herein demonstrates that she will benefit the fields of high-resolution precipitation estimation and hydrology of snow-covered regions. The result of this work has and will continue to benefit the field of water resource management. . . .

[The petitioner] is currently doing research at the University of Arizona where she continues to research high-resolution precipitation using satellite data. The effect of rainfall estimates has come to national attention as a means to control flooding, drought, and other hydrologic phenomena. [The petitioner] is recognized as a leader both nationally and internationally in the field of hydrology processes in and around semiarid regions. . . .

[The petitioner] is recognized for developing an “algorithm” to improve the native accuracy of the original satellite data, which consequently allows for its use in higher-resolution precipitation estimation techniques. . . .

[The petitioner's] accomplishments are identified by government reports as critical technologies, important to the continued well-being of the world. Technology for a Sustainable Future and Science and Technology Shaping the Twenty-First Century cite research and development in the areas of water research, soil erosion, and climate control as those areas important to develop in order to further the long-term national security or economic prosperity of the United States.

While the government reports named above discuss the overall field of hydrology, counsel has not shown that the reports contain any specific references to the petitioner's work. General references to the science of hydrology refer to the petitioner's *occupation*, not her "accomplishments."

Counsel states that the petitioner has written several articles and textbooks. The petitioner's five listed "textbooks" (one of which is identified as a 15-page paper) concern the field of photogrammetry. Published between 1977 and 1994, they predate the petitioner's graduate study in the field of hydrology. Counsel lists two articles (one of which was, at the time, "in review" and thus unpublished) and, separate from the articles, identifies five "publications" which are actually student papers and conference presentations, with no evidence that any of these papers have been published. Availability in university archives, are not synonymous with publication.

With respect to the impact of these writings, counsel states that the petition includes "the search results for being [a] cited author. *This clearly demonstrates a degree of expertise*" (emphasis in original). Counsel cites "Exhibit 30" in the record. Exhibit 30 is a printout from the ISI Web of Science. The printout bears the heading "Easy Search Results – Summary / Page 1 (Articles 1 – 8)." The printout shows the results of a comprehensive search for the petitioner's surname. Only one of the eight listed articles was co-written by the petitioner; the others have authors who happen to share the petitioner's surname. This printout does not indicate whether the petitioner's article has ever been cited at all, much less establish the number of such citations. It is only a list of articles by researchers who share the petitioner's last name. While citation listings are available to ISI Web of Science subscribers, the petitioner has submitted no such listing. The printout serves only to prove that the petitioner has published one article.

The petitioner submits six witness letters. Five are from current or former faculty members of the University of Arizona, where the petitioner studied and worked since 1994. The remaining letter is from an individual who studied at the University of Arizona until 1997. At best, these letters establish that the petitioner has impressed her mentors at the University of Arizona. The letters cannot serve as first-hand evidence that the petitioner's work has received significant attention, or had a substantial impact, outside of the University of Arizona.

Professor Soroosh Sorooshian offers general observations on the importance of the area of research, and states that the petitioner "has successfully developed an algorithm to improve the native accuracy of the original satellite data." Prof. Sorooshian adds that the petitioner "is now responsible for extending the application of her techniques to snowfall from satellite data over the Southwestern U.S. . . . [T]he results of her work to date on this topic are very promising." Other

witnesses similar praise the petitioner's skill and express confidence that significant advances in the field will, one day, result from her work.

The director instructed the petitioner to submit further evidence to satisfy the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner submits further background materials and witness letters. Dr. Mahta Moghaddam, senior member of engineering staff at the Jet Propulsion Laboratory, states:

While I do not personally know [the petitioner] nor have I worked with her in the past, I am familiar with her research and the significant impact it has on regional, national, and global scales. . . .

My familiarity with [the petitioner's] work originates from my . . . work related to the global water cycle (hydrology and hydrometeorology). Her work provides an essential piece in the puzzle of how water cycles throughout the Earth system and how it is partitioned into various components. Understanding and quantifying the cycling of water is an immense problem with many prominent scientists participating, each providing complementary pieces of information. . . .

There are many scientists working on snow cover estimation from satellite data. However, the traditional approaches are incapable of identifying snowfall, do not estimate snow under clouds, and are associated with and based on a single image per day. [The petitioner's] method, when fully completed, will be capable of providing solutions to all of the above-mentioned problems.

The above letter indicates that the petitioner's method is not yet "fully completed," and there is no indication as to how it is known for certain that the development of the method will be successfully completed.

Dr. David C. Goodrich, a research hydraulic engineer at the Agricultural Research Service of the United States Department of Agriculture, holds a doctorate from the University of Arizona. Dr. Goodrich states that the petitioner has "a unique approach" that "is anticipated to develop a satellite-based approach that can improve accuracy of snow-pack estimates at high resolutions." University of Arizona Professor Charles F. Hutchison states "the successful completion of [the petitioner's] current and planned research efforts . . . will provide [a] much needed contribution to the water resources management community in the entire western US. . . . When completed, her research efforts are expected to yield a new capability of real flow updating of snow cover under clouds."

The director denied the petition, acknowledging the importance of the petitioner's field of research and acknowledging the petitioner's "commendable" experience in the field, but finding that the petitioner's reputation is largely limited to her colleagues at the University of Arizona. The director noted that the witness letters focus on "the petitioner's potential future accomplishments without establishing that the petitioner's past record supports projections of future success."

On appeal, counsel notes “the citation of the petitioner’s research paper by other experts in the field.” On appeal, the petitioner submits a partial copy of a single article, which contains one citation of the petitioner’s work. The citing article was published in July 2002, eight months after the November 2001 filing date of the petition. The appeal does not include any evidence of citations prior to the filing date, despite counsel’s initial reference to the petitioner as a “cited author.”

Counsel states “[t]he file is replete with letters and other evidence to establish the significance of this petitioner’s work in the field [of] Hydrology.” Counsel notes that the AAO has, in the past, reversed decisions in which the director cited a lack of independent support. The cited appellate decisions are not binding precedent decisions, and they do not establish that a lack of independent support can never be a valid basis for denial. Each petition must be judged on its own merits, and the fact that some petitions have been approved without independent letters does not, by any means, imply that every similar petition must be approved. In this instance, almost every witness is directly connected with the petitioner via the University of Arizona, and the witnesses are essentially unanimous in stating that the value of the petitioner’s work lies in what is likely to take place once that work is completed. The petitioner’s contribution lies in the future, contingent on the success of procedures not yet completed, and assertions regarding the value of these future results are, necessarily, speculative.

In supplements to the appeal, the petitioner submits new letters, some of which are from independent witnesses, others of which are from regular or adjunct faculty members of the University of Arizona. These witnesses assert that the petitioner’s continued involvement is essential to the timely completion of the research project at hand, and that the petitioner’s skills warrant her continued presence in the United States. *Matter of New York State Dept. of Transportation, supra*, addresses the issue of specialized training, indicating that an alien’s training in valuable job skills, when such training is available to others in the field, is not a strong argument for a national interest waiver.

The petitioner’s supervisor, Prof. Sorooshian, asserts that “any Ph.D. graduate from the hydrology program at the University of Arizona represents the ‘cream of the crop,’ owing to the program’s reputation, and that it is his “goal to hire the best and most qualified individuals to perform the scientific research required by these projects.” As a post-doctoral researcher, the petitioner’s appointment is a temporary one, already covered by the petitioner’s nonimmigrant visa. Prof. Sorooshian does not explain why the denial of permanent immigration benefits would cease the petitioner’s involvement in employment for which she already holds a valid nonimmigrant visa.

Dr. John Roads, director of the Experimental Climate Prediction Center at the Scripps Institution of Oceanography, discusses the overall importance of accurate precipitation estimates, and asserts that the petitioner’s “research contributes directly to these nationally important issues.” Dr. Roads states that “these projects will suffer unnecessary delay if [the petitioner’s] petition is not granted,” although he does not explain how denial of this petition will affect the validity of the petitioner’s existing nonimmigrant visa.

Dr. Larry Winter of the Theoretical Division at Los Alamos National Laboratory states that the petitioner is "one of the key members" of the Sustainability of Arid/semiarid Hydrology and Riparian Areas (SAHRA) project at the National Science Foundation's Science and Technology Center. Prof. Sorooshian is the director of SAHRA, and Dr. Winter is on its executive committee. Like other witnesses, Dr. Winter refers to projects still underway, the successful completion of which is merely an expectation rather than a documented fact.

The petitioner's work on the SAHRA project at the University of Arizona appears to have been at a relatively preliminary stage as of the petition's 2001 filing date. When the director requested evidence that the petitioner's past track record justified predictions of success, witnesses primarily discussed the petitioner's technical training and her progress on the current project. Counsel's assertions regarding citation of the petitioner's published work are not consistent with the documentation in the record. The waiver request in this instance appears to be, at best, premature, based on the expected significance of developments yet to be realized.

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.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.