



U.S. Citizenship
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FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date: JUN 7 2004

IN RE:

Petitioner:

[Redacted]

Beneficiary:

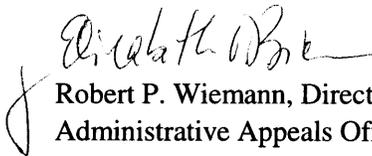
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained, and the petition will be approved.

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 graduate research assistant in the Department of Electrical Engineering at the University of Michigan. 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 Electrical Engineering from the University of Virginia.¹ 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

¹ Subsequent to filing the petition, the petitioner received his Ph.D. in Electrical Engineering from the University of Michigan in 2003.

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 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 note 6.

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

Jerzy Kanicki, Professor of Electrical Engineering and Computer Science, University of Michigan, states:

This letter confirms the significant contributions of [the petitioner] to the research area of bio-optoelectronics. More specifically, he developed one of the components needed for an artificial vision system, which is a monolithically integrated bacteriorhodopsin.... The rhodopsin is photosensitive protein pigment that is essential for vision in dim light, found in the rods of the retina. In animals and humans, this protein helps to spot moving objects against an unchanged background. The artificial

photo-receiver [the petitioner] has developed could be very useful for dynamic image analysis, motion and edge detection, and a variety of other applications. One of the possible applications would be a highly intelligent artificial vision system that could be used by military personnel to identify mobile targets through various stages of obscuration and camouflage. This of course can also result in better aimpoint selection of the guided weapons.

[The petitioner] also specializes in the technology of semiconductor opto-electronic modulators. The Multi-Quantum Well Dual Focus Fresnel Lens-Modulator he has developed combines the quantum-confined stark effect with the principle of Fresnel diffraction through alternative rings etched in a multiple quantum well compound semiconductor hetero-structure, and simulates the variable focus function of the in-depth vision.... The outstanding performance of this type of semiconductor modulator holds great promise for the realization of adaptive optoelectronic eyes, a key imaging technology that can facilitate its own image collection, can identify objects of interest within the image and thereby provide vastly more useful information to the user with a greatly reduced data link bandwidth for efficient target acquisition. Research work on these optoelectronic components and systems present a great potential for advanced military applications. This work was cited in *Laser Focus World* as a "Newsbreak" (April 2000, p. 13).

The record contains this published piece about the petitioner's work and an e-mail from the Senior Editor of *Laser Focus World* (dated March 7, 2000) requesting that the petitioner review the piece for accuracy prior to its upcoming publication.

Dr. [REDACTED] Optoelectronics Program Manager, Engineering Sciences Directorate, United States Army Research Office, states:

[The petitioner] is currently conducting his doctoral research work in the department of Electrical Engineering at the University of Michigan. His research project involves the development of a new generation of protein-semiconductor integrated photoreceivers and optical interconnect system. It is part of a Multidisciplinary University Research Initiative (MURI) funded by the Office of the Secretary of Defense via the Army Research Office.... The goal of this MURI project is to address the fundamental technology in which bioorganic molecules and semiconductors in combination with reconfigurable polarized light interconnects will achieve novel computing and sensing applications.

[The petitioner] is making excellent progress and significant contributions toward the implementation of the final goal of this research project. Recently, he demonstrated, for the first time in the world, a highly sensitive bio-photoreceiver based on the monolithic integration of bacteriorhodopsin (bR) and GaAs/AlGaAs modulation doped field effect transistor. The optoelectronic integrated circuit he demonstrated opens up the possibilities of realizing more complex optoelectronic devices and circuits with integrated bR as an ultrasensitive, and polarization-dependent photodetector material for application in artificial vision, biological detection and polarization-dependent optical interconnects.

Paramount to the success of the Army is the availability of very intelligent surveillance and target acquisition (VISTA) systems capable of seeing the entire battlefield to detect, classify, identify, and

track potential targets.... The intelligent artificial vision system, based on the sensitive biophotoreceivers and polarization dependent optical interconnects being developed in [the petitioner's] research work, will integrate both the sensitive detection and some complicated signal preprocessing capabilities of the mammalian retina, and the multifunctional signal amplification, processing and transport capabilities of the high density integrated circuits. It will provide a new solution that may produce better probabilities of recognition/identification.

On the basis of the key contributions [the petitioner] has made in the area of biooptoelectronics, I believe it is at our country's best interest to approve his request for a national interest waiver...

Dr. [REDACTED] Research Advisor of the Institute of Biophysics, Biological Research Center of the Hungarian Academy of Sciences, states:

I am...engaged in fundamental research of the photoelectric response of a light sensitive protein, called bacteriorhodopsin. I have published over 100 scientific papers in this field. My work is closely related to the research of [the petitioner] because he is doing research on application of the photoelectric response of these proteins for novel photoreceivers. Thus I am able to accurately assess the worth of his research and his contributions to date.

* * *

[The petitioner] has done important work, which has resulted in significant extension of the scope of our ability to combine the advantages of biotechnology and semiconductor optoelectronics technology for a new world of applications. His bacteriorhodopsin-field effect transistor integrated biophotoreceiver, as an example, combines the sensitive differential photo-sensitivity of the retinal protein with the powerful signal amplification and processing capability of the semiconductor transistors, and demonstrated remarkable functions in different fields of light-signal processing. He also described the photoinduced polarization sensitivity in the bacteriorhodopsin film and proposed a novel light polarization biodetector. The integrated bio-optoelectronic devices are proving to be a novel technology with significant economic and scientific applications. [The petitioner] has also contributed extensively to the underlying mechanism of the conductive signal coupling at the interface between semiconductors and proteins.

Dr. [REDACTED] Scientist/Staff Engineer and Program Manager, IBM Microelectronics Division, states:

[The petitioner's] work in the area of bioelectronics is among the best ever done anywhere in the world, and has actually directed the course of research in other labs. By integrating Bacteriorhodopsin, which is a light harvesting protein, with dense array of semiconductor field effect transistors (FET), he demonstrated an ultrasensitive bio-photodetection chip that surpasses the traditional semiconductor detectors in speed of response, power consumption and pre-processing capabilities. [The petitioner] presented his work in the 14th annual meeting of Laser and Electro-Optic Society (LEOS 2001). This work has attracted...attention from many peer investigators.... The nature of his contribution is, I

believe, undeniable in terms of fundamental scientific-technology and also of potential industrial applications.

Another area [in which the petitioner] had been heavily involved is the design and micro-fabrication of semiconductor optical modulators. The high contrast, large bandwidth, polarization rotation vertical transmission modulator he invented properly meets many extremely stringent demands of medical imaging and is becoming one of the major optional components for many designers of the next generation medical imaging and optical data processing systems. The Fresnel Lens electro-optic modulator...is an elegant component that will soon find its application as a novel optical switch for optical interconnects.

Dr. [redacted] Technical Staff Member, Bell Labs, Lucent Technologies, states:

Perhaps [the petitioner's] most important contribution...to the field of optoelectronics was his contribution to a new technology to integrate light sensitive bio-materials, such as proteins, with inorganic semiconductor devices for novel photonic sensors. Through his persistent research efforts on the integration between protein and semiconductor amplifiers, a new generation of intelligent photonic sensor was presented with tremendous potential in medical and military industry. [The petitioner] also developed a new process to electrochemically modify the surface of semiconductors so that weak biological signals from the integrated proteins can be transferred into the semiconductor and get efficient amplification.

* * *

Another major contribution [the petitioner] has made is in the areas of electro-optic modulators for image processing. [The petitioner's] Semiconductor Quantum Well Dual Focusing Fresnel Lens Modulator works like an optical lens, but with a fast switchable focal length. The imaging plane of the Fresnel lens modulator can be modulated by varying the bias voltage on the device. This device has been further integrated with other processing electronic and optoelectronic devices to realize adaptive focal plane arrays and adaptive optoelectronic eyes, which are of major economic and military significance. In addition, [the petitioner] has proposed the first optoelectronic analog processor for medical imaging. When such an optical processor is fully realized, it will bring great progress to the reliability of our computer-aided clinical diagnosis technology.

Dr. [redacted] Research Scientist, Department of Radiology, Johns Hopkins University, states:

As a scientist from the Biomedical Technology Research Center, supported by National Institutes of Health (NIH), in the Johns Hopkins University, I am aware of continuing quests for higher processing speed and larger storage capacities. The current digital computer technology only allows the serial manipulation of the megabyte-image data, a process that is quite time consuming considering the size of the huge image database.... [The petitioner] and his colleagues have proposed a prototype optical processor which applies integrated semiconductor optoelectronic components to fulfill real time optical data processing functions. In their integrated optical architecture, most of required image processing

functions can be completed optically through a system of lenses, mirrors, beam splitters, light detectors, and integrated semiconductor spatial light modulators. The power of optical processing lies in the ability to manipulate image data via parallel processing at the speed of light. With this technique, every pixel of a two dimensional image can be both relayed and processed at the same time, which is many times faster than that of electronic computers. For the optical processor, [the petitioner] *et al.* have proposed that the modulated and processed light moves through the processors without a need for regeneration of the information until the information is converted back to an electronic representation. It will thus require small amounts of power. The entire processing package will also be small and light weight.

In addition to proposing the prototype optical processor architecture for medical imaging, [the petitioner] led innovations in the successful development of the active component of the optical processor system, the integrated semiconductor spatial light modulators (SLM). [The petitioner] has designed and fabricated a novel electro-optic polarization rotation multiple-quantum-well transmission modulator. The combination of semiconductor quantum-well devices epitaxy technology and ultra-thin wafer processing were used to fabricate the device structure. Superior to the conventional neumatic liquid-crystal devices, the electro-optic modulators demonstrated by [the petitioner] have integrated both the advantages of high depth of modulation and fast response onto the same device chip. His device demonstrated a record-breaking contrast ratio of 406:1, and a large 10-dB dynamic range of 6.2 nm. The excellent electrooptic modulation figure-of-merit exhibited by this modulator is significant to the realization of the optical processing of medical images.... The contrast ratio of the modulator is one of the key factors for the data processing accuracy of the system. The SLM [the petitioner] presented outperforms most of the existing electro-optic modulators and is the best candidate for its usage in the optical processing of the medical images. [The petitioner's] continuous effort will be indispensable for the growth of research aimed at the next generation of medical imaging systems.

In short [the petitioner's] impressive contributions towards optical technologies for medical image processing and all-optical computing have clearly established his outstanding research ability in the field. And his research achievement has proven itself to be one of the key steps towards realizing true all-optical image processing. This technology greatly improves the efficiency and reliability of computer-aided diagnosing techniques. It is worth noting [that] the artificial vision research work, which [the petitioner] is currently working on, is leading such research in the world. Due to the unique nature of the photosensitive protein network, the artificial retina system [the petitioner] is developing is superior to the conventional silicon CCD camera for its capability of rapid edge detection and outline extraction. These capabilities are essential for the early stage diagnosis of some tumors, such as mammographic image processing.

Professor of Physics, Middle Tennessee State University, credits the petitioner with developing "novel integrated optoelectronic devices and circuits that allow dynamic and reconfigurable manipulation of both wavelength and spatial attributes of light for sensing and image processing." Dr. states:

The reconfiguration and data pre-processing capabilities of these technologies will allow the design and manufacture of real-time sensing and imaging systems. This presents a significant improvement over the current generation of sensing and imaging systems, most of which are not capable of real-time data collection, analysis and presentation.

Research Staff Member, U.S. Naval Research Laboratory, states:

The importance of [the petitioner's] investigations is that, through his comprehensive study on the semiconductor/protein interfaces, action potential signals generated from the ultra light-sensitive and intelligent biomaterial can be effectively transported to a high speed semiconductor circuit for amplification and post signal processing. This is the first step towards the development of a bioelectronic technology for artificial vision systems. The artificial photoreceptor [the petitioner] demonstrated last November has shown excellent capability of selectively detecting motion of images in real time and of performing vectorial extraction of their edge components. These unique features differentiate [the petitioner's] artificial photoreceptors from the conventional semiconductor or thermopile photodetectors, and make them extremely useful for military purposes. [The petitioner] has firmly established his international reputation through his monumental original contributions in this area.

I know [the petitioner] through the brilliant work he has done for the United States in the field of optoelectronic devices.... His dual focusing Fresnel lens EO-modulators can be stacked to image objects over a wide range of distances without involving any mechanical movement. This invention has a major effect on electronic imaging technology, and is finding important applications in bar-code readers, video camera autofocus units, and the self-adapting artificial vision systems. [The petitioner] was also the first to demonstrate a quantum well polarization EO-modulator with an ultrahigh contrast ratio. The device exhibits high modulation speed and substantial modulation depth, which is the essence for medical optoelectronic imaging systems.

Professor and Chair, Department of Biomedical Engineering, University of Oklahoma, states that the novel optical processor developed by the petitioner "offers distinctive advantages for medical imaging" including "high speed, compact size, analog nature and low cost." Dr. further states: "The optical processor would facilitate image processing and the application of computer-aided diagnosis to screening and diagnostic radiography at both academic and community hospitals.... The work has been published in *Medical Physics*, one of the top biomedical journals."

In support of the witness' statements, the petitioner presented citation indices for his published work. When judging the influence and impact that the petitioner's published 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. In this case, the substantial number of citations of the petitioner's published articles shows that other researchers in the United States and from around the world have acknowledged the petitioner's influence and found his work to be significant.

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 further witness letters, a certification from the University of Michigan stating that the petitioner had met all of the requirements for his Ph.D. degree, two job offer letters, and a letter requesting that the petitioner review a manuscript for publication. The petitioner's receipt of his Ph.D., the job offers, and the peer review request came into existence subsequent to the petition's filing date. 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. In regard to the petitioner's involvement in the peer review process, such participation is not presumptive evidence of eligibility for a national interest waiver. Peer review of manuscripts is a routine element of the process by which articles are selected for publication in scholarly journals or presentation at a scientific conference. Participation in peer review of this kind does not adequately distinguish the petitioner from other capable scientific researchers.

Professor of Engineering, University of Michigan, states that he has been the petitioner's Ph.D. advisor since 1998. Dr. further states:

[The petitioner] has completed all the requirements of his Ph.D. by now, and will receive his Ph.D. shortly. After that he will continue to work in my group as a postdoctor. It is essential to have [the petitioner] working in this project so that the whole proposed research program can be completed by the expected deadline.... It would be a waste of time and resources to attempt labor certification, and it is not reasonable to expect that one would be able to find a scientist of [the petitioner's] knowledge and ability by putting an advertisement in a newspaper...

In his appellate brief, counsel takes issue with the director "not even mention[ing] Dr. letter." The director's decision, however, mentions this letter twice (on pages 5 and 8). Dr. states that "[i]t is essential" that the petitioner remain working in his current research program. Dr. does not explain how the petitioner will be able continue working at the University of Michigan after termination of his temporary postdoctoral position. If the university intends to offer the petitioner a permanent position, then labor certification would then be a viable consideration. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. If, on the other hand, the university has no intention to offer the petitioner a permanent position, then it is not apparent why the petitioner would need to be a permanent resident to continue working in a temporary position (with an "expected deadline"), for which the petitioner already holds a valid nonimmigrant visa. This issue is not a trivial one; it makes little sense to argue that the petitioner must be allowed to remain permanently in the United States for the sake of pursuing another year or two of temporary research. The temporary nature of postdoctoral employment does not automatically prevent approval of a national interest waiver, but neither is it a strong factor in favor of such approval.

More persuasive is the letter from Assistant Professor, Department of Electrical and Computer Engineering, University of Wisconsin-Madison, who states:

Major contributions from [the petitioner's] research work...include the very first demonstration of a sensitive bio-photosensor that mimics the...differential sensitive visual functions of the vertebrate retina.

Additionally, [the petitioner] made another significant contribution in his pioneering work on the ultrafast photoelectric properties of the light sensitive bacteriorhodopsin protein. For the first time, he shed light on the full understanding of the dynamics of the photochemical cycles of the photosynthesis proteins, which is extremely important in the field of life sciences. His research effort may eventually lead to the development of a new generation of protein-based photocells for highly efficient solar energy conversion. [The petitioner] is currently the leading scholar in this 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.

On appeal, the petitioner submits evidence of three tenure-track job offer letters for assistant professor positions at North Carolina State University, Pennsylvania State University, and the University of Georgia. While these three job offers came into existence subsequent to the petition's filing date, we find that this evidence is a strong indication of the petitioner's standing in his field. It is worth noting that recent Ph.D. graduates, upon completion of their academic program, typically go on to work in postdoctoral positions that provide further advanced research training. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, states that postdoctoral appointments are "viewed as preparatory for a full-time academic and/or research career." The petitioner, on the other hand, even prior to officially receiving his Ph.D. degree from the University of Michigan, had received multiple tenure-track job offers from top U.S. universities for assistant professor positions.

Far less persuasive than the evidence of record in this case are the arguments put forward by counsel in his appellate brief. Counsel states: "It should be noted that [the petitioner] does now have his Ph.D. degree.... If the examiner would have actually taken the time to read what our office submitted, this would not be an issue for us to address."

We note, however, that on the bottom of page 4, the director's decision states: "A certificate submitted as additional evidence indicates that the petitioner completed all Ph.D. requirements in the field of electrical engineering as of March 20, 2003, and that conferral of the degree was expected on August 15, 2003." Counsel should take note of this statement in the director's decision before faulting the Service Center Adjudicator for not having "taken the time to read" information contained in the record.

We find that the petitioner's Ph.D. from the University of Michigan is not highly relevant to the outcome of this case as it was conferred subsequent to the petition's filing date. Subsequent developments in the alien's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date. *See Matter of Katigbak, supra.* We further note that educational qualifications, such as the completion of a

Ph.D. program, 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 education that could be articulated on an application for a labor certification. Regardless of the issues surrounding the petitioner's Ph.D., the petitioner has already shown that he qualifies as a member of the professions holding an advanced degree based on his Master of Science degree in Electrical Engineering from the University of Virginia.

Counsel further states: "Perhaps [the Nebraska Service Center] has secretly instituted a quota on Chinese. Perhaps it has secretly adopted a new standard without the knowledge or consent of Congress or any court... Perhaps the Nebraska Service Center feels we have too many Chinese in this country." Counsel offers no evidence or any statement from the director's correspondence that would lend support to his absurd observations. Nowhere in the director's decision or the request for evidence is there any indication that the petitioner's ethnicity was used as a basis to deny this petition.

Counsel also states: "Congress instituted the National Interest Waiver to allow the very brightest to avoid...the labor certification process.... Congress has allocated thousands of visas for this category, and every year thousands of visas go unused." The number of employment-based visas set by Congress for a particular classification represents the "maximum" number visas to be issued for that classification during a given year. Self-petitioning aliens and petitioning U.S. employers still bear the burden of establishing eligibility for the visa classification sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). Contrary to counsel's observation, Congress does not specifically allocate a set number of visas for alien's seeking national interest waivers; but, rather, for aliens who qualify as "members of the professions holding advanced degrees or aliens of exceptional ability." Aliens seeking a national interest waiver are simply one of the sub-categories of the overall employment-based second preference visa classification and therefore they receive no specific yearly visa allocation from Congress (as claimed by counsel).

Counsel concludes by stating: "This case is one of several that I will be submitting to the Office of Professional Responsibility in Washington in the hopes of starting an investigation of the illegal practices being employed at...the Nebraska Service Center." With regard to counsel's allegations of "illegal practices," any formal complaint filed against the Nebraska Service Center is a separate matter, outside of the AAO's jurisdiction. Counsel's strongly-worded opinions regarding the Nebraska Service Center being incapable of properly adjudicating national interest waiver petitions add nothing of substance to the proceeding at hand; these observations are not considered argument or statement of fact.

In this matter, we find that the strength of the evidence constitutes sufficient grounds for approving the petition. The evidence presented by the petitioner is adequate to meet the three-prong test established by *Matter of New York State Dept. of Transportation*. The independent citation of the petitioner's published work, along with the statements of witnesses from outside of the petitioner's immediate circle of colleagues, shows that petitioner's work has advanced his field to a substantially greater degree than that of other similarly qualified researchers. Upon careful consideration of the documentation presented, we find that the petitioner has shown that researchers from throughout scientific community view his discoveries as significant breakthroughs in the areas of bio-photonics and semiconductor optoelectronics. The witness letters presented reflect a consensus

among scientific experts from throughout the United States that his research achievements are unusually significant.

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 field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further evidence in the record, establishes that the greater scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has 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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.