



U.S. Citizenship
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MAR 04 2004

FILE: LIN 02 218 52225 Office: NEBRASKA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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.

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 still actively studying for his doctorate from Northwestern University (NU). The petitioner received his degree in December 2002, at which time the petitioner began working as a postdoctoral research assistant at NU. 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 Citizenship and Immigration Services] 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.

The petitioner describes his work in the field of mechanical engineering. The petitioner states that his most significant contribution at the Laboratory of Impact Engineering at the University of Science and Technology of China was his use of a Flux-Corrected Transport Algorithm to more accurately study shock waves from collisions or explosions. At NU, the petitioner states that he has "broken new ground in the research of meshless particle methods and nanotube fracture," and that he is "particularly well known for [his] study of the stability properties of particle methods and development of a new model of carbon nanotube."

Along with copies of his published articles and other documentation, the petitioner submits several witness letters. NU Professor Ted Belytschko lists very impressive credentials, including membership in the National Academy of Engineering and numerous international awards. Prof. Belytschko discusses the petitioner's work and its significance:

As new numerical technologies, meshless particle methods are drawing extensive attention of pioneering researchers since they have shown great promise in solving some of the most difficult academic and engineering problems, such as fracture and crack propagation [and] fluid-structure interaction. [The petitioner's] work provides a unified analytical method for studying the stability of the meshless particle methods. In my opinion, his methods can serve as a guideline that makes the stability analysis more efficient and more reliable.

Prof. Belytschko adds that the petitioner's new model for carbon nanotube fracture "is a major breakthrough in theory and application because it describes not only linear but also nonlinear characteristics of the behavior of [the] nanotube accurately. His studies on the nanotube fracture will help scientists and engineers design high strength structures to be used in the aerospace industry and national defense."

NU Professor Brian Moran explains "[c]arbon nanotubes are a key building block for devices and structures at the nano-scale. They show great promise for applications ranging from nanocomposites, nanoelectronic components and nanosensors, to nanoscale mechanical probes." Prof. Moran asserts that the petitioner's "new method of simulating nanotube behavior represents a breakthrough in the field of computational nanotechnology."

Dr. John E. Dolbow, assistant professor at Duke University, declares the petitioner to be “one of the most prominent scientists and engineers in the field of mechanical engineering today.” Dr. Dolbow was, like the petitioner, a research assistant at Northwestern University prior to accepting a faculty position at Duke. Dr. Wenhui Zhu, senior engineer at Infineon Technologies Asia Pacific, was formerly a postdoctoral fellow and assistant professor at the University of Science and Technology of China while the petitioner was studying there. Both of these witnesses describe the petitioner’s work in terms that are generally similar to those discussed above.

Dr. Yijun Liu, associate professor at the University of Cincinnati, states “[a]lthough I have never worked or collaborated with [the petitioner], I have great respect for his outstanding accomplishments.” Dr. Liu asserts that the petitioner’s combination of methods and algorithms for studying shock waves is a “perfect combination,” which “will enable scientists and engineers to catch the dynamic failure effectively, which is currently a crucial area of research for national defense. The national and international impact of such groundbreaking contributions in the field cannot be overestimated.”

The director instructed the petitioner to submit further evidence to meet the guidelines published in *Matter of New York State Dept. of Transportation*. One of the director’s specific requests was for evidence that other researchers have cited the petitioner’s work, which would be expected if he is, as claimed, among the most influential researchers in his field. In response, the petitioner states that one of his published articles has been cited in “four other publications,” which the petitioner has not shown to be an especially significant citation record in the field.

The petitioner also submits new witness letters, all from individuals who have collaborated with the petitioner at NU. Prof. Belytschko, in a new letter, repeatedly characterizes the petitioner’s work as influential. Prof. Belytschko clearly holds a very high opinion of the petitioner’s work, but the record offers no indication as to how this claimed influence has manifested itself. The petitioner’s citation record is minimal, and praise for his work comes almost entirely from his professors and collaborators. The record also offers no evidence of practical or “real world” implementations of the petitioner’s findings. Therefore, the record does not establish that the petitioner has had significant influence outside of universities where he has worked or studied. Witness statements about future impact, such as NU Professor George C. Schatz’s prediction that the petitioner’s “methods will stimulate the development of numerical modeling and simulation for micro/nano scale system[s] on a national and international scale,” are necessarily speculative by nature. Witnesses observe that NASA has provided grant support for the petitioner’s work, but the record contains nothing to show the extent to which NASA has implemented the petitioner’s findings.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner’s work, but finding that the petitioner has not established that his efforts represent so substantial a benefit to the United States as to warrant a national interest waiver.

On appeal, the petitioner submits copies of additional articles and job offer letters. These documents show that the petitioner remains active in his field, and that his services are in demand, but employability is not the eligibility threshold for the national interest waiver. We note that both job offer letters are dated the same day, April 9, 2003. One letter is from NU, extending his postdoctoral fellowship by three months. The other letter shows that the University of Iowa has offered the petitioner a tenure-track assistant professorship.

The petitioner asserts that the director “has made a mistake as a result of repeated disregard of overwhelming evidence in support of my claims.” The petitioner states that the witness letters “did demonstrate how labor certification would be inappropriate in this case,” because several witnesses had contended that the

petitioner's abilities significantly exceed the minimum requirements for positions in the field, and that no shortage exists in the occupation. With regard to the "minimum requirements" argument, we note that 20 C.F.R. § 656.21a indicates that a United States college or university seeking to fill a teaching position need not establish the unavailability of qualified workers; the institution need only establish that the alien was found, through a competitive recruitment and selection process, to be more qualified than U.S. applicants. The relevance of this observation becomes apparent when considering that at least one United States university has offered the petitioner a tenure-track position.

Furthermore, while several witnesses have been highly complimentary with respect to the petitioner's work, the record does not establish a consistent or coherent pattern of measurable impact or attention beyond the institutions where the petitioner has worked and studied. The petitioner, on appeal, has not demonstrated that the evidence was "overwhelming" as he claims.

The petitioner argues that the significance of his role in specific projects is demonstrated by his author credits on published articles. The director did not dispute the petitioner's co-authorship of these articles. Rather, the director questioned whether the petitioner had initiated this research, as opposed to following the instructions of another individual who conceived the projects.

The petitioner asserts, on appeal, that he has documented that his "research is widely cited by other engineers or otherwise widely recognized in the field." The petitioner then repeats the titles of four articles that cite his work. We are not persuaded that four citations of one article, with no evidence of citation of anything else by the petitioner, amounts to "wide" citation or otherwise establishes that the petitioner stands out from others in his specialty in terms his influence on others.

The petitioner observes that his research has received funding from numerous government agencies. The record, however, contains nothing from any ranking official of those funding agencies to establish that those agencies consider the petitioner's work to be of greater significance than that of countless other researchers operating with federal funding. Because grant funding is the rule rather than the exception with regard to academic research, receipt of such funds is not self-evident proof of the significance of a particular project, or of the role of one researcher involved with that project.

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.