

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

MAR 10 2004

IN RE:

Petitioner:
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:

[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, 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 software engineer at Tellme Networks. 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 indicates that her duties at Tellme Networks include "designing, implementing and testing parts of the main engineering platform, communicating with partners and customers, and writing software documentation." Counsel describes the petitioner's work:

[The petitioner] is a high-level scientist/engineer who has conducted ground-breaking research using her high level skills in Engineering, Computer Science and Mathematics to solve real world problems. [The petitioner] has used her superior knowledge of information technology to develop and implement new strategies in diverse fields such as airline transportation, healthcare and communications.

[The petitioner] began her research at the world-renowned Massachusetts Institute of Technology's (MIT) International Center for Air Transportation (ICAT). . . . [S]he developed and implemented algorithms . . . for incorporating robustness in airline scheduling. Also, while at MIT, [the petitioner] collaborated and made important contributions [to] the development of a system called "Health Dialogue." . . . [P]atients will be able to access and as such have a better understanding and more information as to what treatment and other options may be available. . . .

Currently, [the petitioner] is working at Tellme Networks, where she develops and implements strategies enabling clients in different industries to use better technology to anticipate and manage customer requests.

Counsel states that the petitioner's research into airline scheduling and medical informatics has won her recognition in the field. The record does not show that any airline has altered its scheduling methods to accommodate the petitioner's techniques, which would appear to be the most reliable indication that her work on airline scheduling has been influential. The petitioner asserts "I feel very confident that the sub-route switching algorithm will play a major role in the airline schedule design of the future," but the record contains nothing to show that the airline industry has taken any steps to implement the algorithm.

Like her airline scheduling research, the petitioner's medical informatics research is designed to address a need (better communication between and among patients and doctors), but the record does not show that the petitioner's past work has actually been implemented on a meaningful scale.

Counsel states “evidence of [the petitioner’s] standing and recognition in her field can be seen from the various invitations that she has received for different positions due to her expertise in the field.” The petitioner submits one job offer letter from Sabre, Inc., which appears on its face to be a fairly typical job offer letter rather than evidence of particular recognition. The letter is from Sabre’s manager of “College Recruiting,” and the petitioner was still a student as of the date of the letter. Recruitment of college students in this manner, particularly of students at prestigious colleges such as MIT, is not unusual in technology-related fields.

Along with copies of her research writings and background materials, the petitioner submits six witness letters. Dr. John-Paul Clarke, an associate professor at MIT, supervised the petitioner’s master’s degree research at ICAT, states “[the petitioner’s] work was the first to define a measure of robustness and demonstrate that robustness could be built into airline schedules without impacting other operational parameters.” MIT Professor Cynthia Barnhart states that the petitioner “was the first to define a measure for robustness, called the robustness coefficient, and described a method to maximize a schedule’s robustness without negatively impacting the schedule’s profitability.” MIT alumnus Dr. Michael D.D. Clarke,¹ senior research consultant at Sabre, Inc., states that the petitioner’s “work provides a strong proof-of-concept, demonstrating that robustness can be built into a schedule without significant loss of profitability. I feel this approach holds great potential for future research.” All of these witnesses are optimistic about the potential of robust scheduling, but they offer no indication that the airlines have taken any steps to utilize its methods, or that the petitioner’s work has attracted serious attention outside of MIT.

Dr. Mikhail V. Blagosklonny, associate professor at Brander Cancer Research Institute of New York Medical College, states:

[The petitioner’s] work came to my attention through a publication at the website of the American Medical Informatics Association. . . . The work described a system, called “HealthDialogue,” which offers the user the ability to see multiple views of a given document and also allows readers to write and post comments for other readers to see. . . . I felt that this work represented an exciting new direction in patient education and medical research. . . .

[The petitioner] explained that HealthDialogue uses XML and XSL transformations to allow different groups of people to access the same information in a personalized way. . . . Over the last year, we have collaborated to apply the HealthDialogue document system in the medical community, and we have been in touch exchanging ideas and expanding the scope of the original work. . . . I feel strongly that these ideas could dramatically change the way researchers like myself and my colleagues at NIH and the Brander Cancer Research Institute view the link between information technology and medicine.

Dr. Zoya Demidenko, a research scientist at the George Washington University Medical Center, asserts that the petitioner’s work with HealthDialogue “is a major contribution not only to cancer research, but the entire medical field in general.” Dr. Demidenko does not specify the extent to which HealthDialogue is already in use.

¹ It is not clear whether John-Paul Clarke is related to Michael Clarke. Both men are natives of Jamaica, and appear to be roughly one year apart in age, judging from their graduation dates.

Troy Chevalier, vice president of Platform Engineering at Tellme Networks, states that the petitioner “has been instrumental in developing solutions that allows us to interact with our clients’ legacy technologies,” “working directly with our partners to help streamline their operations for use with our applications platform.” There is no indication that the petitioner’s work at Tellme Networks is any more significant than the client support services offered by any number of software companies.

The director instructed the petitioner to submit further evidence to meet the guidelines published in *Matter of New York State Dept. of Transportation*. The director requested documentation of the petitioner’s “influence on the particular field of employment as a whole.” The director noted that the initial letters were from the petitioner’s collaborators, employers, and other associates.

In response, the petitioner has submitted a personal statement, new letters, and background materials. The background materials discuss problems in medical information technology, but these materials contain nothing to show that the petitioner’s work alleviates these problems to a greater extent than the efforts of others conducting research in the same areas.

In her letter, the petitioner asserts that her “current focus is in the field of medical informatics,” although her employer does no work in this area. The petitioner does not indicate the circumstances under which she is conducting ongoing research into medical informatics.

None of the new letters discuss airline schedules. Dr. Mikhail Blagosklonny, in his second letter on the petitioner’s behalf, asserts that the petitioner “stands apart from her colleagues as a truly extraordinary researcher who is working on making the latest advances in the medical field and the newest medications available to every patient in the nation.” Dr. Blagosklonny details ongoing efforts to develop HealthDialogue.

Edwin Aoki, chief architect of the Community, Communications and Advanced Clients Division at America Online, Inc., states “HealthDialogue is an ideal application of XSL transformation technology that provides relevant, audience-specific access to medical information.” Mr. Aoki indicates that the petitioner’s work has not yet been “fully implement[ed].”

Dr. Anil K. Dubey, an instructor at Harvard Medical School, sees “great potential for HealthDialogue’s application as a research tool.” Like other witnesses, Dr. Dubey praises the hypothetical potential of HealthDialogue, without indicating that the system has, thus far, had a discernible impact on the specialty of medical informatics.

Dr. Paraskevi Giannakakou, assistant professor at Emory University, discusses the overall importance of “effective communication” in medical research, and asserts that the petitioner’s work “has already yielded impressive results” although “[m]ore work will be needed to integrate HealthDialogue with other computer-based research and treatment tools.”

The director denied the petition, stating that most of the acknowledgment of the petitioner’s work has come from individuals with demonstrable ties to the petitioner, and thus there is no evidence that the petitioner’s work has had a broader or more significant impact than that of others pursuing similar projects. On appeal, counsel states that there is a pressing need for reliable Internet-based health information services. Counsel contends “[i]t is in this area in which [the petitioner] is making a clear and recognizable difference. . . . HealthDialogue has been commended as a success by experts in both healthcare and computer science.” Counsel also repeats the assertion that the petitioner “has created a program to reform the scheduling of the airline industry by developing a new program. . . . potentially saving airlines tens of millions of dollars.”

Counsel, on appeal, offers no new evidence, instead quoting passages from previously submitted letters. The petitioner's submission on appeal includes no empirical evidence that HealthDialogue or the petitioner's other student projects have had any impact, on a practical level, on health care, the airline industry, or otherwise. The means by which the petitioner's work is said to serve the national interest only apply if the petitioner's plans are actually implemented on a broad scale. There is no evidence of such implementation, a number of years after the petitioner has published and presented her work on the subject. We add, also, that HealthDialogue began as a collaborative project, which commenced before the petitioner was involved; HealthDialogue's original creators do not indicate that the petitioner deserves the bulk of the credit for the final product. Similarly, the petitioner's graduate thesis on robust airline scheduling appeared in August 2000, nearly three years before the filing of the appeal, but the appeal discusses only the potential good that might one day result from the petitioner's work, with no indication that any airline has actually implemented those findings, or intends to do so.

Because the petitioner seeks an employment-based immigrant classification, it is appropriate to consider the petitioner's employment in light of the means by which the petitioner proposes to benefit the national interest. In this instance, the petitioner is not and has never been employed as a medical informatics researcher, and while her employer's clients include airlines, there is no evidence that her job includes introducing robust scheduling to those airlines. The petitioner's claim of eligibility for a waiver rests almost entirely on work she performed while she was a graduate student. We cannot ignore that the petitioner no longer works in the areas by which she claims to have served the national interest. The petitioner claims that medical informatics research remains a "focus" of her efforts, but any such work appears to be a "sideline" unrelated to her employment with Tellme Networks.

For the above reasons, while the petitioner's student research has been productive and has won praise from those involved, we cannot find that the petitioner has produced results which set her apart from her peers to an extent that justifies the special benefit of a national interest waiver.

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.