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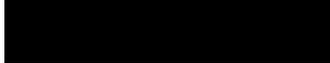
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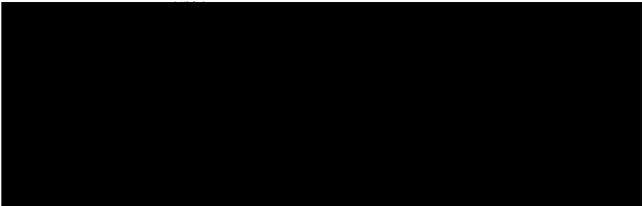
**U.S. Citizenship
and Immigration
Services**



FILE:  Office: NEBRASKA SERVICE CENTER Date: **MAR 15 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:


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.


Mari Johnson
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. 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) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement 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's degree in Geodetic Science from Ohio State University. 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 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 the 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 Dep't. of Transp., 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.

We concur with the director that the petitioner works in an area of intrinsic merit, geodesy, and that the proposed benefits of his work, accurate mapping of Earth's gravity, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

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 the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

At the time of filing, the petitioner was a Ph.D. student at Ohio State University working as a graduate research associate in the university's Laboratory for Space Geodesy and Remote Sensing Research. This laboratory is supported by research grants from the National Aeronautical and Space Agency (NASA) and the German Geodetic Institute. The petitioner's Master's work at Ohio State concerned positioning techniques and was funded by the U.S. Air Force. While we will consider all of the evidence below, we note at the outset that it does not follow that every researcher working with a government grant inherently serves the national interest to an extent which justifies a waiver of the job offer requirement. For the reasons discussed below, the record does not establish that the petitioner's recent work interpreting international satellite data has had any influence on the field, especially as of the date of filing. In addition, the record does not adequately establish that the petitioner's earlier positioning work was influential in the field.

The petitioner submitted several reference letters. All but one of the initial letters from professors at Ohio State are very general. Similarly, all but one of the more independent letters provide general praise of the petitioner's skills with little discussion of his past achievements.

Dr. Dorota Brzezinska, an assistant professor at Ohio State, praises the petitioner's academic performance, the prestige of Dr. Jekeli, and the importance of the petitioner's area of research without identifying any specific accomplishments made by the petitioner himself. Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements which establish the alien's ability to benefit the national interest. *Id.*

Dr. Karl Heinz Ilk, Head of the Theoretical Geodesy Department at the University of Bonn, asserts that he came to know of the petitioner through his publications and presentations. Dr. Ilk asserts that it is his opinion that the petitioner's skills will allow him to contributions to the field. Dr. Ilk does not identify any contributions the petitioner has already made or explain how the petitioner has influenced his own work or the field in general. The record contains similar letters from Dr. Wang Yan Ming, a principal scientist at Raytheon ITSS, and Dr. Ramon Garcia, Head of the Graduate program, Earth Sciences School, at the University of Autonomous of Sinaloa, Mexico.

Dr. Ralph R. B. von Frese, a professor at Ohio State, provides more details about the petitioner's work. Regarding the petitioner's earlier positioning work, he states:

[The petitioner] has been developing a new method to determine the static and kenematic positions of moving platforms (ground vehicles, airplanes, etc.) independent of any reference stations using the Global Positioning System (GPS).

Dr. Oscar L. Colombo, a consultant on geodesy and precise navigation for NASA and the U.S. Department of the Navy, praises the petitioner's work on point-positioning techniques (the use of GPS radio signals received at the vehicle plus precise orbit and satellite clock information). Dr. Colombo asserts that prior to the petitioner's work, differential GPS (the use of signals received simultaneously at ground sites as well as the vehicle) was thought to be the most reliable and precise method, whereas the petitioner demonstrated that point-positioning could be just as accurate. Dr. Colombo concludes: "[The petitioner's] demonstration should help clarify some of the basic ideas behind many precision GPS applications." Dr. Colombo does not imply that the petitioner's work in this area was already considered influential in the field.

Dr. Cheinway Hwang, a professor of geodesy at National Chiao Tung University in Taiwan and a co-investigator of Dr. Jekeli and Dr. Shum, provides more detail regarding this project. Dr. Hwang asserts that this work "represented a milestone in precision GPS applications especially as it circumvents the intentional degradation of the GPS signals (Selective Availability) by the Air Force (which in the mean time has been discontinued)." Dr. Hwang notes that the U.S. Air Force funded this work. Dr. Hwang does not clearly explain the significance of the petitioner's work on positioning. For example, he does not explicitly state that the Air Force's decision to discontinue GPS was made as a direct result of the petitioner's work. The record does not include any letters from high-level officials with the U.S. Air Force confirming the significance of the petitioner's work and explaining its influence on Air Force positioning techniques.

The evidence regarding the petitioner's work relating to NASA and international satellites is even less persuasive. Dr. von Frese states:

Furthermore, [the petitioner's] PhD research topic is being sponsored by NASA and involves the recovery of global mean and temporal gravity fields using satellite gravity mission data

from several state-of-the-art satellites that include CHAMP (launched in July 2000), GRACE (launched in March 2002) and GOCE (proposed launch in 2005). He is investigating and developing new methods to solve for high-resolution global gravity models using data from satellite-borne instrumentation such as GRACE's Gravity Recovery and Climate Experiment and GOCE's Gravity Field and Steady State Ocean Circulation Explorer.

These gravity dedicated satellite missions are or will be delivering unprecedented scientific results to the Earth science community in the U.S. and worldwide. We need new faster and more robust methods to solve for tens of thousands of unknowns in processing the tremendous amount of data that number in the many millions of measurements from these missions. Currently, [the petitioner] is formulating the geodetic boundary problems using in situ satellite measurements and developing faster linear solvers for this problem on the supercomputer platform. His technique will efficiently provide monthly mean estimates of the redistributions of ocean and ground water masses over the Earth, the ocean tides, post-glacial rebound, and other signals of the Earth's climate change from the satellite gravity observations. These new scientific results are extremely important for developing new understanding of the Earth-ocean-atmosphere interactions that are of great societal concern.

Commenting on this aspect of the petitioner's work, Dr. Colombo states that the petitioner's "expertise and work record should also qualify him to take part in scientific programs associated with [NASA's geodesic] missions." Dr. Colombo does not explain how he came to know of the petitioner's work. He also fails to indicate that the petitioner has influenced his own work.

Dr. Hwang states:

A significant aspect of [the petitioner's] research is the development of numerical algorithms that are able to handle millions of observations and estimate hundreds of thousands of parameters in an efficient and nearly optimal manner.

Dr. Hwang notes that this technology is being pursued internationally and that few universities provide training in this field. Dr. Hwang does not, however, indicate that the petitioner has already contributed to the development of these algorithms.

Dr. C. K. Shum, the petitioner's co-advisor at Ohio State, discusses the importance of the petitioner's recent research area and asserts that the petitioner "will help enhance our understanding of the role of the Earth system dynamics in observing changes in the gravity field from satellite measurement such as the NASA/GFZ gravity mapping mission, Gravity Recovery And Climate Experiment (GRACE)." More specifically, Dr. Shum asserts that the petitioner's dissertation, when completed, will provide insights as to how "the atmosphere-Earth-hydrosphere-cryosphere interacts dynamically through mass and angular momentum exchanges."

The petitioner also submitted a letter from his other supervisor at Ohio State, Dr. Christopher Jekeli. While Dr. Jekeli asserts that the petitioner "is rapidly becoming a leading expert in satellite orbit analysis and gravity modeling," and that he will "continue to make significant contributions in these areas for years to come," Dr. Jekeli provides little discussion of the petitioner's past accomplishments. Rather, Dr. Jekeli asserts that the petitioner's work "relates to new modeling techniques of measurements obtained with satellite gravity sensors

currently being deployed by NASA.” While Dr. Jekeli then asserts that the techniques “promise to yield improved gravity field determinations on a global scale,” it is not clear that the petitioner was personally involved in the development of these techniques. Dr. Jekeli provides no details regarding the specifics of the petitioner’s contributions and how they have influenced the field of Geodesy.

On appeal, the petitioner submits a much more detailed letter from Dr. Shum, asserting that the petitioner is the only one who “can ensure the continued success of our project.” Dr. Shum refers to recent citations by others in the field. As stated by the director, the petitioner must establish his eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Nothing in Dr. Shum’s new letter suggest that the petitioner had already influenced the field as of the date of filing.

The petitioner also submits a new letter from Dr. Jekeli asserting that there are no U.S. workers at present time pursuing the petitioner’s line of research. It cannot suffice to state that the alien possesses useful skills, or a “unique background.” Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dep’t. of Transp.*, *supra*, at 221.

In addition, as with the letter from Dr. Shum, Dr. Jekeli’s new letter at best suggests the petition may have been filed prematurely. For example, Dr. Jekeli asserts that at a 2003 conference, “it was clear that several investigators are now also pursuing these new techniques” developed by Dr. Jekeli and extended by the petitioner for processing satellite-tracking data. In explaining why the petitioner’s name was not listed on grant applications submitted to NASA, Dr. Jekeli states, “it is *now* patently clear that [the petitioner] is a necessary component of these efforts.” (Emphasis added.) Even with these new letters, the record still lacks evidence from high-level officials at NASA, such as the key participants named on the GRACE project named on the materials provided,¹ confirming the significance of the petitioner’s work.

The record also contains evidence of the petitioner’s scholarships, an academic award, and requests to review papers. As stated above, academic performance alone is insufficient to establish eligibility for a waiver of the job offer requirement. Moreover, recognition from one’s peers is one of the regulatory criteria for aliens of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that meeting one, or even the requisite three criteria, warrants a waiver of that requirement. In addition, we cannot ignore that scientific journals and conference presentations are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer can be said to have influenced the field to some degree.

Finally, the petitioner submitted evidence that he had published five articles as of the date of filing. As stated by the director and reiterated above, while the petitioner submitted evidence of additional articles published after the date of filing, we cannot consider that evidence of the petitioner’s eligibility as of that date. As evidence of the influence of these articles, the petitioner submitted evidence of “citations.” One “citation” is simply an addendum to a report listing the articles written by the members of the International Association of Geodesy who prepared the report. Another “citation” is simply a bibliography of Geodesy articles from 2001. Only the final citation is an actual reference to the petitioner’s work by another researcher.

¹ Dr. Shum is identified in the materials as a member of the U.S. Science Team, but not the lead member or a key participant.

The petitioner also submitted an acknowledgement in a standard GPS textbook, GPS Theory and Practice. In it, the authors thank the petitioner and several others “for some hints and advices.” The record does not contain letters from the authors of this book explaining the nature of the petitioner’s contribution to this book. An acknowledgement for an unsolicited comment is not necessarily evidence that the petitioner has influenced the field. In light of the above, the petitioner’s publication history is not indicative of an influence on the field.

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.