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U.S. Department of Homeland Security  
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Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **MAR 18 2004**

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:

[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.

*for* *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. At the time she filed the petition, the petitioner was a graduate research assistant at the University of Cincinnati (UC), researching "corrosion control of metals and the subsequent adhesion of paints to metal substrates." 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.

Counsel asserts that the petitioner "is considered a 'WORLD AUTHORITY' in her field." The petitioner describes her work:

[C]hromates, a group of highly-efficient corrosion inhibitors, have been widely used in various industries for decades. . . . [T]hese chromates have been found [to be] highly toxic and carcinogenic to human beings. . . . My research aims at application of new corrosion inhibitors to eliminate toxic chromates. . . .

I have made several unique and significant contributions to the field of corrosion control of metals, which are reflected in the following three areas:

- ***Characterization of silanes on metals.*** Silanes, an innovative group of environmentally friendly chemicals, have been studied as a promising replacement of toxic chromates. . . . The results that I obtained have already been referred in industry.
- ***Discovery of water-borne silanes and development of novel silane surface treatments for corrosion control of metals.*** I have discovered several water-borne silanes eliminating several major shortcomings of the early silane systems. . . .
- ***Study of corrosion mechanism of an aerospace alloy.*** . . . I have intensively studied the corrosion mechanisms of the popular aerospace alloy AA 2024-T3, and have developed a new model of corrosion theory for this alloy.

The petitioner submits several witness letters with the petition. Professor Wim van Ooij, who has supervised the petitioner's doctoral research at UC, states:

[The petitioner] has contributed successfully to the development of a novel technology in the field of corrosion control of metals for replacing traditional chromate- and phosphate-based treatments. . . .

[The petitioner] went to the drawing board and invented and designed a new corrosion inhibiting process.

[The petitioner's] invention is of enormous significance for many metal-finishing industries. I consider this invention a breakthrough. It constitutes the major chromate replacement process that the world has so long been waiting for. The invention eliminates all prior limitations of our former silane processes. . . . This process has been used by her in performance tests with companies in the US, France, Germany, the Netherlands, as well as in US-government-funded research projects. She has demonstrated that her process works with high-strength steel, hot-dip galvanized steel, aluminum alloys and others, and that the performance in terms of corrosion protection and paint adhesion often surpasses that of the currently used phosphates and/or chromate systems.

UC Professor Donglu Shi asserts that the petitioner's "pioneering efforts have already contributed significantly to the field and may lead to a broad impact on the U.S. industries. . . . [The petitioner] has achieved unprecedented success in identifying and characterizing silanes as eco-friendly corrosion inhibitors."

Dr. Vijay Subramanian, a materials engineer with Federal Mogul Sealing Systems who has known the petitioner "for about 5 years," states that the petitioner "has developed an entire new field . . . known as water-based silane surface treatment," and that the petitioner's research "enables industry to eliminate [the] conventional chromating process." Other individuals who have worked or studied with the petitioner offer similar praise for the petitioner's abilities and contributions. While these letters are highly favorable toward the petitioner, they do not demonstrate that the petitioner's work is acknowledged outside of her circle of collaborators and mentors.

The petitioner states "our team was awarded the 1999 Industrial Innovation Award by the prestigious Royal Society of Chemistry." Documentation in the record indicates that the award went to a 17-member team including Prof. van Ooij and other UC researchers, as well as researchers at a British company. The award documentation does not identify the individual recipients of the award. Published materials regarding the award do not mention the petitioner at all, let alone credit her individually with significant improvements in the project up to that time. These materials state that "[t]he work began in 1995," four years before the petitioner joined Prof. van Ooij's group. Significantly, Prof. van Ooij does not mention the award in his letter, and he did not mention the petitioner in a published interview about the award. Another witness, Adrian Whyte of Chemetall PLC, does link the petitioner with the award, stating "[t]he success of our work with [the petitioner] and her peers led to my successful application for the Royal Society of Chemistry Innovation award." The record contains no background information about this award, the number issued annually, or the process by which one "applies" for it.

The director requested additional evidence to meet the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner has stated that a military contractor and Lawrence Livermore National Laboratory (LLNL) have both expressed interest in working with her, but she cannot accept these offers because, lacking permanent resident status, the petitioner cannot obtain a security clearance.

The petitioner also submits further letters. Dr. Tiangan Lian, a metallurgist at LLNL, asserts that LLNL's efforts to hire the petitioner "as a postdoctoral corrosion scientist" stemmed from the petitioner's "leading role" in the UC research group, which is "recognized as the world leader in this technology." Sander van Susteren, chemical engineer at ElectroCoat B.V., states:

I have worked for Weert Groep, the Netherlands, for several years as a research engineer. I started to know [the petitioner] in 2000 when our company (Weert Groep) finally decided to eliminate toxic chromate-based process for corrosion control of metals. In the course of seeking

a new solution for corrosion control process, the silane surface treatment that [the petitioner] had invented finally caught our eyes. . . .

[T]he test results consistently showed that the silane mixture that [the petitioner] developed greatly outperformed the others in terms of corrosion protection as well as paint adhesion.

David A. Taylor, coating systems manager at Mubea, Inc., a manufacturer of automotive suspension springs, states that “the research work completed by [the petitioner] in the area of water-soluble silanes . . . is a viable replacement for our zinc phosphate process. The lab test samples have demonstrated to be equal or better with respect to our customers’ requirements when compared to my existing production.”

The director denied the petition, stating that “[t]he evidence submitted does not distinguish the petitioner from other researchers to a substantial degree. . . . [S]ome of the petitioner’s work has been published, although there is no published evidence that those articles have been acclaimed or cited as being major breakthroughs.” The director asserted that “nearly all” of the petitioner’s witness letters are from individuals “from the petitioner’s circle of acquaintances including two from the company which sponsored her Ph.D. work.” The director also concluded “[t]he evidence does not indicate that the petitioner has made any achievements apart from her doctoral mentor and thus it cannot be concluded with certainty what contributions, if any, she has made as an individual to her field.” The director noted that Prof. van Ooij had been working with silanes for five years by the time the petitioner joined his group.

On appeal, counsel asserts that a brief will be forthcoming within 60 days. To date, over seven months after the filing of the appeal, the record contains no further submission. We consider the record of proceeding to be complete and will render a decision based on the record as it now stands.

Counsel argues that the petitioner has submitted “[i]ndependent documentation in the form of letters from a number of writers,” and that “[t]here is no requirement the work has to be cited by others.” Counsel also argues that the record demonstrates that private companies have already begun implementing the petitioner’s technology.

Counsel is correct that some companies are using the petitioner’s water-soluble silanes, but there is no evidence that this usage is large-scale or widespread. If even small-scale implementation presumptively qualifies the petitioner for a national interest waiver, then it follows that the only materials scientists subject to the labor certification requirement would be those incapable of creating useful products. Clearly, such a standard is too low.

While counsel is correct that the regulations do not specifically require citations of published work, such citations would represent objective evidence of the impact of the petitioner’s work. The petitioner has submitted a wide variety of background evidence regarding the dangers of chromates. The petitioner has not shown that her work has attracted a comparable level of attention, as might reasonably be expected from the development of a product that eliminates the problems of chromates. Prof. van Ooij’s laboratory has attracted some notice for its work with silanes, the most prominent example of which being the British award cited above. As we have already noted, the record is ambiguous at best regarding the petitioner’s role in the work that actually won the award.

In response to the director’s assertion that the petitioner’s “evidence does not indicate that the petitioner has made any achievements apart from her doctoral mentor,” counsel states “doctoral students are required to work independently, and, thus, her achievements are apart from her doctoral mentor.” Counsel offers no evidence to show that the petitioner’s work was entirely independent from that of Prof. van Ooij. The

petitioner's patent application (filed in 2000, still pending as of February 17, 2004) and two invention disclosures all list Prof. van Ooij's name first, and the petitioner's name second. Prof. van Ooij is also listed as a coauthor of the articles that the petitioner has published while studying at UC. This evidence does not support the claim that the petitioner's "achievements are apart from her doctoral mentor."

The record shows that Prof. van Ooij considers the petitioner to have been a valuable member of the research team at UC, and that LLNL and other entities can foresee other applications for the petitioner's work. On the whole, however, the record does not show that the petitioner's documented impact on her field has been greater than that of others in that field, to an extent that would warrant a special exemption from the job offer requirement that, by law, normally attaches to the immigrant classification that the petitioner chose to seek.

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.

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FILE: LIN 01 223 50264 Office: NEBRASKA SERVICE CENTER Date: **MAR 18 2004**

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.

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. On February 27, 2004, the petitioner requested that the appeal be withdrawn.

ORDER: The appeal is dismissed based on its withdrawal by the petitioner.

  
Robert P. Wiemann, Director  
Administrative Appeals Office