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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 25 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.

*Mari Johnson*

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 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. 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.

On appeal, counsel reviews the evidence previously submitted. While we agree with the director that not all of the evidence carries the weight claimed by counsel, we find the record as a whole satisfactorily establishes that an exemption from the job offer requirement is in the national interest.

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 1995 Ph.D. in Nuclear Chemical Engineering from the China Institute of Atomic Energy. 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 find that the petitioner works in an area of intrinsic merit, nuclear chemical engineering, and that the proposed benefits of his work, safe and efficient storage of nuclear waste, 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.

The petitioner works at the Pacific Northwest National Laboratory (PNNL). The laboratory is one of nine operated for the Department of Energy (DOE), which funds the petitioner's work. The record includes letters from several of the petitioner's collaborators at that entity. Dr. Denis Strachan, Senior Program Manager of the Environmental Technology Division of PNNL, provides the most comprehensive discussion of the petitioner's work with the Environmental Management Science Program (EMSP) managed by Dr. Strachan. Other letters in the record provide additional details.

Dr. Strachan explains that the long-term disposition of 34 metric tons of excess plutonium now stored by DOE is necessary to protect the public and the environment as well as ensuring that plutonium is not recoverable for use in weapons. Dr. Strachan further explains that current research is aimed at formulating glass that can immobilize nuclear waste. According to Dr. Strachan, the petitioner's work with alkali alumino

borosilicate base glass “will eventually lead to an efficient and cost effective method for plutonium vitrification [immobilization into glass-like waste forms].” Dr. David Shuh, a senior staff scientist with the Actinide Chemistry Group and collaborator with PNNL, asserts that the petitioner demonstrated that plutonium is more soluble in borosilicate glasses than under oxidizing conditions. More specifically, Dr. Loni Peurrung, Director of the Materials Division at PNNL, asserts that the sodium contained in most nuclear waste is traditionally very difficult to immobilize, but the petitioner tripled the sodium solubility with his discovery of two titanate crystals.

Dr. Strachan further states that the petitioner’s conceptual model for partitioning of metal cations calculates plutonium solubility from a set of system parameters, potentially reducing the effort required to develop optimized glass compositions. Dr. Rodney Ewing, a professor at the University of Michigan and collaborator, asserts that the petitioner’s model “not only help[s] develop optimized glass compositions for plutonium vitrification, it also leads to theoretically design glass compositions for other desirable properties and precision fabrication of glass ceramics nuclear waste forms.” Dr. Shuh praises the petitioner’s model, stating that it will not only reduce the effort needed to develop optimized glass compositions for the immobilization of plutonium, but can also “be used to understand the incorporation of radionuclides into glass waste from radioactive wastes.” According to Jun Liu, Principal Member of Technical Staff at the collaborating Sandia National Laboratories, the petitioner’s models are “well-accepted.”

Dr. Strachan continues that the petitioner also provided DOE important information regarding the cesium ion exchanger candidate for radioactive cesium separation, demonstrating a risk of radioactive release under certain conditions. According to Dr. Dennis Wester, a Chief Scientist and Program Manager at PNNL, the petitioner presented his findings on ion exchangers to the Board on Radioactive Waste Management, National Academy of Sciences. Noting that Dr. Yali Su is listed as first author for the presentation, the director requested evidence as to why the petitioner gave the presentation. In response, Dr. Su stated that during the period when the presentation was given, he was on leave from his position as principal investigator and that the petitioner had assumed this position during that period.

While the director was concerned that the petitioner’s selection “by default” to present the work was not persuasive, we note that the petitioner did lead the project in Dr. Su’s absence and is listed as the second author. Ultimately, we cannot conclude that a national laboratory would choose an individual with little involvement in the project to present the work to the National Academy of Sciences. The petitioner also submitted an e-mail message from Harry Harmon to all of the speakers at the conference asserting that Kevin Crowley, Director of the Board on Radioactive Waste Management, had advised that the conference was one of the best National Research Council meetings he had attended.

Finally, Dr. Strachan states that the petitioner is currently working in collaboration with other researchers on a new inorganic ion exchanger. In response to the director’s request for additional documentation, the petitioner submitted evidence from DOE’s website indicating that the petitioner is now the lead principal investigator of a multi-laboratory collaboration funded by DOE on ion exchangers. The information on the site was updated prior to the filing date, suggesting the petitioner already held this position as of the date of filing.

In addition to the above contributions enumerated by Dr. Strachan and elaborated upon by other references, the record contains other assertions. Specifically, Dr. Peurrung asserts that the petitioner developed a catalyst

decomposition hot-press process that can decompose an extremely poisonous gas (CN<sub>2</sub>), unavoidably generated during the conversion of hexacyanoferrate nuclear waste to a ceramic waste form.

Letters from high-level officials at DOE would certainly bolster the petitioner's case. Nevertheless, the letters discussed above are from high-level researchers at national laboratories. Some of the letters are highly specific and adequately identify and explain the importance of the petitioner's contributions and their influence. While we consistently hold that working on federally funded research projects is insufficient, the fact that DOE has selected the petitioner as the lead principle investigator for one of its projects on which three of its national laboratories are collaborating is some evidence of its opinion regarding the petitioner's impact on the field.

The petitioner also submitted evidence of 20 published articles, the vast majority of which list the petitioner as the first author. The director expressed concern that the record did not establish that the petitioner had been widely cited. Counsel asserts that given the few number of nuclear waste articles published, the petitioner's citation history is impressive.

We acknowledge that the disposal of plutonium is not an area in which most universities and laboratories have the resources to research. Rather, it is an area (and a material) highly regulated by the federal government. Nevertheless, this fact does not transform the actual number of citations into a more significant number. Rather, we merely conclude that the lack of more citations does not necessarily contradict other evidence in the record demonstrating the petitioner's influence in the field.

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 testimony in the record, establishes that the nuclear waste 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.