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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: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

MAR 31 2004

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

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 seeks employment as a postdoctoral research scientist at Lawrence Technical University (LTU). 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.

In addition to copies of his published articles and abstracts, the petitioner submits several witness letters to describe his work with carbon fiber reinforced polymers (CFRP) and its significance. Some witnesses discuss fiber reinforced polymers (FRP), of which CFRPs appear to be a subcategory. Dr. Nabil Grace, chairman of LTU's Department of Civil Engineering, states:

> [The petitioner] has demonstrated exceptional ability in his research skills in contributing to the design approach of carbon reinforced (CFRP) concrete bridge beams. . . .
>
> [The petitioner's] study revealed the breakthrough result that the forces in external unbound strands depend on the failure modes governing design; the increase in the reinforcement ratio causes decrease in the post-tensioning forces for both the tension and compression failure modes; and that the combination of bonded and unbonded pre-stressing levels can significantly increase the ultimate moment capacity of the beam.

Dr. Harold Josephs of LTU states "[b]ased on the worldwide research and development work, the use of CFRP strips to rehabilitate bridge structures has become routine for many firms in Western Europe and Japan. In the U.S., the bridge design approach developed by [the petitioner] will play an important role in the research and construction of innovative designs, such as presently being implemented in the Bridge Street Bridge, in Southfield, Michigan." Other witnesses assert that the Bridge Street Bridge is the first of its kind.

The witnesses assert that the petitioner has contributed to the ongoing effort to make bridges stronger and lighter. The witnesses who offer the most information about the petitioner's work, however, are all the petitioner's collaborators and professors, and there is no evidence that any effort has been made to utilize the petitioner's ideas except for one bridge in the town where LTU is located. Other witnesses offer more general praise for the petitioner's work. For instance, Vikram A. Dalal, assistant administrator at the Office of Research and Development at the Ohio Department of Transportation, states that the petitioner "has contributed significantly to the progress" of two Department-sponsored projects. Other witnesses refer vaguely to the petitioner's "expertise."

The fact that the petitioner's research findings have practical applications cannot suffice to qualify him for the waiver. It is difficult to imagine engineering research that is *not* intended to have practical applications. Because the petitioner's initial evidence did not distinguish the petitioner from other productive researchers in

his specialty, the director requested further information and evidence to meet the guidelines published in *Matter of New York State Dept. of Transportation.*

In response, counsel states that the petitioner is "considered unique outside his immediate circle of colleagues. The preliminary result of [the petitioner's] research is a breakthrough in the field of Structural Engineering, specifically in bridge designing." Counsel repeats the earlier assertion that the petitioner's "research is playing a very important role in the planning and construction of" the Bridge Street Bridge, "the first CFRP pre-stressed concrete bridge in the USA."

The petitioner submits additional letters. Professor Zhishen Wu of Ibaraki University, Japan, calls the petitioner "an irreplaceable asset to Structural Engineering related research," who possesses "experience and ability unmatchable in the field of strengthening structures like bridges and other high rise buildings." The record does not reveal how Prof. Wu is familiar with the petitioner's work, or whether Prof. Wu has worked with the petitioner.

Professor Alan Prasuhn of LTU states that, while the Bridge Street Bridge in Southfield is the first in the United States to use CFRP pre-stressed concrete, "the use of CFRP strips to rehabilitate structures has already become routine for many firms in Western Europe and Japan." Prof. Prasuhn states "the design approach developed at Lawrence Tech will play a very important role in the research and construction of [other] innovative bridges," but the record does not show that this view is shared by authorities in charge of bridge construction and maintenance in other parts of the United States. Materials in the record indicate that Dr. Nabil Grace, not the petitioner, is the leader of the bridge project.[1]

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work, but stating that the petitioner has not persuasively demonstrated that his work thus far sets him apart from other researchers in the specialty to an extent that would justify a national interest waiver. On appeal, the petitioner submits additional copies of published articles and copies of previously submitted letters, in addition to copies of documents relating to the petitioner's educational background. There is no indication that counsel was involved in preparing or submitting the appeal.

The only new letter on appeal is from Dr. Victor Fernandez of LTU. Portions of this letter are largely, or entirely, identical to sections of the earlier letter from Professor Zhishen Wu. Dr. Fernandez's letter is one of several in the record in which, due apparently to a computer error, every apostrophe (') has been replaced with a string of three characters (â€™). These similarities necessarily raise questions regarding the true origin of the statements contained in the letters.

The petitioner, on appeal, states that his published work demonstrates his "direct impact" on his field, and he asserts that his "research work . . .will drastically improve the economy of the USA." The director has already observed that it is routine, even expected, for postdoctoral researchers to publish their work, and thus the existence of published work by the petitioner is not compelling evidence of eligibility. The petitioner has not submitted citation records or other evidence to show that his publications have had a disproportionately high impact in his field.

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[1] Various materials available over the World Wide Web mention Dr. Grace in connection with the Bridge Street Bridge project, but not the petitioner. A search using www.google.com for the petitioner's name in connection with the phrase "Bridge Street Bridge" did not yield any matching results. LTU's own website discusses the bridge project at http://www.ltu.edu/engineering/corporations_tech_transfer.asp, and credits Dr. Grace, but the petitioner's name cannot be found using the site's "search" function.

On appeal, the petitioner discusses his training and research in detail, stating that the use of "innovative FRP materials [results in] increased safety and reliability at a much lower cost compared to conventional design." While the record amply shows considerable interest in using CFRP technology in bridges and other large structures, the record does not demonstrate that the petitioner is personally responsible for innovations in that technology that have objectively distinguished the petitioner from other active and productive researchers in the field. General arguments regarding the benefits of CFRP materials cannot suffice here, because eligibility for the waiver must rest on the petitioner's own work, rather than on the overall importance of the research specialty he has chosen. The petitioner's witness letters amount to statements from close collaborators, which do not demonstrate any wider reputation, and vague endorsements from other witnesses, attesting to little more than the petitioner's skill as a researcher.

The Form I-290B Notice of Appeal advises the petitioner that an extension beyond 30 days "may be granted only for good cause shown," pursuant to regulations at 8 C.F.R. § 103.3(a)(2)(vii). The petitioner indicated that he would submit a supplement within 30 days of the appeal's June 2, 2003 filing date. The appeal, in the record, is accompanied by substantial documentation. On January 18, 2004, the petitioner reported a change of address. In this correspondence, he did not indicate that any further evidence would be forthcoming. Since that time, nine months and more after the filing of the appeal, petitioner has repeatedly submitted new evidence. The petitioner did not request a nine-month extension in advance, nor did he state good cause for the delay in submission. The petitioner's filing of an appeal does not secure for him an indefinite or open-ended period in which to repeatedly supplement the record.

The new evidence did not exist at the time the petitioner filed the petition or the appeal. A February 2004 journal article, co-authored by the petitioner and three others, discusses "the flexural response of box beams reinforced and prestressed using . . . CFRP tendons." A February 11, 2004 letter informs the petitioner of his selection as a "biographical candidate into the ***Manchester Who's Who Among Executives and Professionals***." On September 15, 2003, the American Concrete Institute invited the petitioner to review a manuscript of a journal article. Electronic mail messages contain invitations for petitioner to participated in conferences in late 2003. An alien must be eligible for an employment-based visa petition at the time the petition is filed. Subsequent developments cannot establish eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971).

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.