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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted]
LIN 03 023 50917

Office: NEBRASKA SERVICE CENTER

Date: **MAY 04 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.

Robert P. Wiemann
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 (AAO) 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 of filing, the petitioner was working as a research scientist for Northwest Plant Breeding Company in Pullman, Washington. 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) Subject to clause (ii), 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 petitioner holds a Ph.D. in Plant Science from the University of Idaho (1994). 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 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 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.

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 he merits the special benefit of a national interest waiver, over and above the visa classification sought. 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 note 6.

Along with documentation pertaining to his field of research, the petitioner submitted several witness letters.

Dr. [REDACTED] President and Chief Executive Officer, Northwest Plant Breeding Company, states:

For your information, I am the owner of Northwest Plant Breeding Company, which I initiated with University approval, while I was still a faculty member at Washington State University [WSU], Pullman, WA. I retired from WSU in early 1994, after serving 36 years as a plant breeder/teacher/geneticist in the Crop Science Department.... I published more than 400 research papers, abstracts and book chapters over my career period at WSU, and encourage our research staff to publish on research completed at our company. The company (NPB) has...evolved over the years from a single proprietorship, to an S-corporation, and we are evolving toward a C-corporation status...

* * *

[The petitioner] has been employed as a Plant Research Scientist in the Plant Biotechnology Laboratory, at Northwest Plant Breeding Company, Pullman, Washington, since October 1, 1999. He has been conducting research in the field of Plant Biotechnology/Genetics under my supervision. The research he conducts is specialized, helping us to develop new cultivars and new technologies. Usually, via conventional methods, it requires 10 to 12 or more years to develop a new cultivar of a crop having good quality, resistance to diseases and high yielding capacity. In contrast, we have developed a technology, employing Biotechnological protocols, which can significantly shorten crop variety

development time to three or four years, and have recently been awarded a U.S. patent, No. PCT/US99/19498.

During the past three years [the petitioner] has worked on various projects and we have filed two patent applications in 2002, in which he is one of the co-inventors. He has many other publications. [The petitioner] is also the co-author for a book chapter entitled, "Isolated microspore culture in Corn (*Zea mays*): Production of doubled haploids via induced androgenesis" that will be published this year by the International Atomic Energy Agency/FAO Genetics and Plant Breeding Section, in Vienna, Austria.... [The petitioner] has been known to me since 1993 when he was a student of the last Advanced Plant Breeding course I taught at Washington State University.... I have been both pleased and very satisfied with his performance with our company.

Dr. [REDACTED] Senior Vice President, ACCESS Plant Technology, Inc., states:

ACCESS is the exclusive marketing and licensing agent for the microspore embryogenesis (Meg™) technology developed and owned by Northwest Plant Breeding Company of Pullman, Washington. The Meg™ Technology is an important new technology that can cut the time for developing new varieties of both agronomic and vegetable crops by as much as fifty percent.

While the record indicates that petitioner has co-authored subsequent patent applications that build upon Northwest Plant Breeding Company's existing Meg™ Technology, there is no evidence showing that the petitioner was a principal developer of this initial patented technology.

Dr. [REDACTED] further states:

[The petitioner] has been conducting research in the field of Plant Biotechnology/Genetics, specifically development of wheat microspore embryogenesis and the extension of this powerful technology to corn, oil seed rape (canola) and other species. Using this technology immature corn pollen grains (microspores) are treated, isolated, cultured *in vitro*, and regenerated into fertile homozygous plants (essentially instant inbred lines). This process can shorten the development time for new commercial corn hybrids by 2-3 years.

* * *

[The petitioner] is a named co-inventor on two U.S. patent applications filed so far in 2002, and he co-authored a training manual on the microspore culture of corn to assist the effort to efficiently transfer this technology to new licensees. I consider [the petitioner] an integral contributor to the NPB technology development team. NPB is a small, entrepreneurial biotechnology and wheat breeding company for the Northwest wheat market. The company is teetering on the edge of commercial success, which if achieved will be due in no small part to [the petitioner].

The petitioner may have benefited research and development projects undertaken by his employer, but his ability to significantly impact the greater field has not yet been demonstrated. In the present case, the petitioner's influence must extend beyond "the Northwest wheat market."

The record contains evidence of two patent applications, but there is no evidence showing that the petitioner himself is a named inventor of an approved U.S. patent. We note here that anyone may file a patent application, regardless of whether the invention constitutes a significant contribution. There is no evidence showing that any of the petitioner's patents were approved by the U.S. Patent and Trademark Office (USPTO) as of the petition's filing date or that the inventions described in the patent applications have received significant attention throughout the plant biotechnology field. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (legacy INS) held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Even if the petitioner were to provide evidence of an approved patent as of the petition's filing date, it would carry little weight in this matter. Of far greater relevance in this proceeding is the importance to the greater field of the petitioner's innovations. The granting of a patent documents that an innovation is original, but not every patented invention constitutes a significant contribution to one's field. According to statistics released by the USPTO, which are available on its website at www.uspto.gov, that office has approved over one hundred thousand patents per year since 1991. In 2001, for example, it received 345,732 applications and granted 183,975 patents. The petitioner must show not only that his innovations are important to his immediate employer and fellow collaborators, but throughout the greater agricultural research community. For example, the petitioner has provided no evidence showing that, as of the petition's filing date, his innovations (rather than those limited to Dr. [REDACTED] have been successfully marketed on a national scale or attracted widespread interest among U.S. agricultural product manufacturers.

A letter from [REDACTED] Director, Administration and Marketing, Northwest Plant Breeding Company, is devoted mostly to the petitioner's objective qualifications. It states:

For this position of Plant Scientist/Co-Director (Research and Development), we require a Doctor of Philosophy degree in Plant Science, or a related field, and at least five (5) years of relevant employment experience.

* * *

[The petitioner] is amply qualified to fill our position for permanent employment as Plant Scientist/Co-Director (Research and Development). He holds a Doctor of Philosophy in Plant Science...

In addition, [the petitioner] possesses more than fifteen (15) years of progressively responsible and relevant employment experience...

Objective qualifications, such as those discussed in Timothy Loughney's letter, are amenable to the labor certification process. Pursuant to *Matter of New York State Dept. of Transportation, supra*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education that could be articulated on an application for a labor certification.

Dr. [REDACTED] Professor [REDACTED] Breeding and Genetics Program, WSU, states that the petitioner was a student in one of the graduate courses he taught at WSU in 1990. Dr. Ullrich states:

I strongly believe [the petitioner's] current research interests are valuable for the agricultural industry with considerable interest to the USA. He is working in the field of Plant Biotechnology/Genetics. His

research focus is on reducing the time required for cultivar development and selection for high quality food wheat, which is of high interest in a health conscious society like ours.

While Dr. [REDACTED] statements help to establish the intrinsic merit and national scope of the petitioner's work, such general arguments are not adequate to show that the petitioner qualifies for a waiver of the job offer requirement. Dr. [REDACTED] letter does not discuss the petitioner's individual research accomplishments nor does it describe how the petitioner's work is of greater benefit than that of others in his field.

Dr. [REDACTED] now Associate Professor of Postharvest Physiology, WSU, formerly of the University of Idaho, served on the petitioner's "research supervisory committee" at the University of Idaho. Dr. [REDACTED] asserts that "there is a severe shortage of experts like [the petitioner] in the nation having agriculture research experience particularly with oilseed and food crops." Pursuant to *Matter of New York State Dept. of Transportation, supra*, a shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification.

A few of the witnesses mention the petitioner's published and presented work, but they do not explain how that work has measurably influenced the greater field. Evidence accompanying the petition included copies of the petitioner's published articles and conference abstracts. The record, however, contains no evidence indicating that the presentation or publication of one's work is unusual in the petitioner's field, nor does the record sufficiently demonstrate that independent researchers have heavily cited or often relied upon the petitioner's findings in their research. Publication, by itself, is not a strong indication of impact, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the petitioner's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work. Their citation of the petitioner's work demonstrates their familiarity with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and national benefit — a researcher's work would have, if that research does not influence the direction of future research. In this case, the petitioner has failed to provide evidence showing that his previously published work was heavily cited.

The director requested further evidence that the petitioner had met the guidelines published in *Matter of New York State Department of Transportation*. In response, the petitioner submitted additional witness letters and further documentation pertaining to his work.

In his second letter, Dr. [REDACTED] states:

The new starch mutants, [the petitioner] helped to invent, will be exploited by NPB in new food products, as well as in new wheat varieties, and in products made [by] the starch/protein isolation industry in the U.S. Already, two of the new starch quality mutants he shared inventing have entered

commercial production in [the] Central U.S. Because of one mutant's unusual properties, it is expected that the mutant will have many other uses and potential for licensing to others.

That the petitioner played a role in inventing starch mutants for commercial use demonstrates only that he performed the job expected of him in his capacity as research and development scientist. Beyond showing that his innovations have entered production in a particular geographic region of the U.S., the petitioner must also show that his individual work is viewed throughout the plant biotechnology field or greater agricultural industry as particularly significant.

Dr. [REDACTED] further states:

[The petitioner] has also shared in the invention of another new technology, which is expected to play an important role in wheat quality, not only in the U.S. but also widely over the world. This technology will soon be licensed, but provides a trait that should be introduced to all types of wheats produced in the world since the trait can significantly enhance product use qualities.

* * *

[The petitioner] has not published articles since joining NPB, because of the proprietary nature of our business activities, and our need to protect the patentability of our inventions. However, as soon as we are assured of the patent issuance, we intend to publish, since publication will increase not only wide recognition of the technologies invented, but also, NPB's opportunities to license the technologies, and see them practiced more widely than NPB alone.

While a lack of recently published articles due to proprietary considerations is not fatal to the petitioner's national interest waiver claim, it certainly does not strengthen his claim either. The petitioner still has the burden of demonstrating that his work has already measurably influenced the greater research field. Dr. [REDACTED] assertions that the petitioner's recent work "will soon be licensed," published, and "practiced more widely than NPB alone" are not sufficient to demonstrate his eligibility for a national interest waiver. A petitioner cannot file a petition under this classification based on the expectation of future developments. See *Matter of Katigbak, supra*.

Dr. [REDACTED] also discusses the petitioner's objective qualifications, stating: "[The petitioner] is...a skilled plant breeder, continuing his expertise developed during his research work in Pakistan... In addition, he has developed new skills in electrophoresis needed by NPB for designing new wheats to meet objectives of a major U.S. food company." As we have already observed, objective qualifications such as these are amenable to the labor certification process.

Dr. [REDACTED] Assistant Professor, Department of Food Science and Nutrition, WSU, states:

Our recent cooperative research with NPB Company has shown that wheat varieties with the unique starch composition (starch with reduced amylose content has potential) are suitable not only for production of bread with improved quality and shelf life, but also for making high quality Asian noodles. Since U.S. agricultural exporters compete with increasing sophisticated suppliers from around the world and have lost a share of the market for noodle wheat in Asian countries, there is a great urgency to improve wheat quality for making Asian noodles. Wheat varieties with unique starch

composition, developed with the significant contribution of [the petitioner], will place the U.S. wheat industry in a favorable position in the competitive world wheat market...

Dr. [REDACTED] Associate Professor of Pharmaceutical Sciences, WSU, states: "I am hopeful that [the petitioner's] invention provides a method for culturing microspores that leads to plant regeneration and is capable of producing novel germplasm and can be useful for the development of pharmaceutical plants."

In the same manner as Drs. [REDACTED] and [REDACTED] additional witnesses discuss what may, might, or could one day result from the petitioner's work, rather than how the petitioner's past efforts have already had a discernable impact beyond the original contributions normally expected of a capable agricultural research and development scientist. Beyond establishing his eligibility for the underlying visa classification, the petitioner must also demonstrate that his work has already had a significant impact in the plant biotechnology field or the agricultural industry as a whole.

Dr. [REDACTED] Provincial Director, Provincial Oilseed Directorate, Pakistan Oilseed Development Board, Peshawar, states:

Upon completion of his studies, [the petitioner] was deputed to [the] Pakistani Oilseed Development Board...and had worked under my supervision. To my understanding, he is competent in his field. He had worked in breeding/genetics of various crops including corn, sunflower, canola, and soybean. He started a canola hybrid program, which is in progress successfully.

An additional letter from [REDACTED] Senior Scientific Officer, Provincial Oilseed Directorate, Pakistan Oilseed Development Board, Peshawar, states:

It is to certify that Pakistan Oilseed Development Board (PODB) has developed the canola new variety "Bulbul-98" by the team...including [the petitioner], Research Officer for the local agro-climatic condition... The PODB is also engaged in the production of certified and quality seed of canola variety "Bulbul-98" for the local farmers...

We cannot ignore that the extent of the petitioner's contribution was local or regional, rather than national or industry-wide. In this case, there is no substantive evidence showing that the "Bulbul-98" project to which the petitioner contributed is viewed throughout the petitioner's field as a significant achievement. Nor is there evidence showing that the petitioner holds any patents for the development of "Bulbul-98" or that his innovation attracted a significant amount of attention from plant researchers or agricultural producers here in the United States.

Also provided was evidence of the petitioner's membership in The Honor Society of Agriculture. Professional membership, however, relates to the criteria for classification as an alien of exceptional ability, a classification that normally requires an approved labor certification. We cannot conclude that meeting one, two, or even the requisite three criteria for this classification warrants a waiver of the labor certification requirement in the national interest.

The petitioner also submitted evidence of his invitation (dated April 25, 2003) to participate in the "Planning Workshop on the Development of a Protocol for Cassava Double-Haploids and their Use in Breeding" held at the International Center for Tropical Agriculture in Palmira, Colombia. The record contains no evidence

showing that the petitioner attended this workshop. Furthermore, the workshop invitation came into existence subsequent to the petition's filing date. *See Matter of Katigbak, supra.* We note here that participation in scientific conferences and symposia is routine and expected in the scientific community. It has not been shown, for example, that the petitioner has served as the keynote speaker at a scientific meeting or that his individual presentations have commanded an unusual level of interest.

Finally, the petitioner submitted a single reprint request for one of his publications. Requests for reprints do not indicate that the person requesting the reprint has already read and evaluated the article. Therefore, such requests are not sufficient to demonstrate the petitioner's significant impact in the plant biotechnology field. Frequent citation by independent researchers, on the other hand, would demonstrate more widespread interest in, and reliance on, the petitioner's work. The evidence presented here, however, does not establish the extent to which the petitioner's published work has affected the work of other scientists.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director acknowledged the intrinsic merit and national scope of the petitioner's work, but found that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. The director stated "...there is little first-hand documentation which indicates that the petitioner has set himself apart from most other experienced researchers holding a Ph.D. in plant science." The director also stated:

[The petitioner] was co-inventor of two inventions for which a patent is pending, and his [witnesses] indicated that these inventions hold promise; but there is no evidence that significant utilization of those patents had occurred as of the date this petition was filed. (The evidence must establish eligibility as of the filing date of the petition.)

On appeal, the petitioner submits a letter from Dr. [REDACTED]. He states:

We have a unique business developing and adapting our microspore culture technologies to other species. It is this research area for which [the petitioner] is unusually skilled, and therefore uniquely qualified. For those reasons, it just did not seem necessary and efficient to request Labor Department Certification, when it would so likely not lead to any substantial benefit, either to Northwest Plant Breeding Company or [the petitioner].

Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. As was observed in *Matter of New York State Dept. of Transportation, supra*, the national interest waiver is not merely an option to be exercised at the discretion of the alien or his employer. Rather, it is a special, added benefit that necessarily carries with it the additional burden of demonstrating that the alien's admission will serve the national interest of the United States.

More than one month after filing the appeal, the petitioner has since submitted a letter from the U.S. Representative for his Congressional district. The letter from Congressman [REDACTED] states:

NPB is a company in my district located in Pullman, Washington. A majority of the 5th Congressional District is made up of agricultural land and NPB's devotion to the efficiency of crop plant research is

extremely beneficial. [The petitioner] is an essential employee at NPB and the benefits from his research and potential patents will be felt throughout the United States as well as internationally. [The petitioner] has spent his time researching and cannot divulge his findings until the patents have been awarded. If [the petitioner] were to publish his findings before the patents were granted, NPB would experience a substantial financial loss by...publicizing his research of which non-investing companies would be able to take advantage. Thus, the reason for not being published. I hope you will reconsider the basis of reasoning for [the petitioner's] denial and base it on his commitment and dedication to the agricultural world.

In this matter, the petitioner's undoubted "commitment and dedication to the agricultural world" is not in question. The letter from Congressman [REDACTED] implies that the Service Center based its decision primarily on the absence of published findings resulting from the petitioner's work at NPB. A review of the director's decision does not support this conclusion. Rather, the director's conclusion was based on a lack of "first-hand documentation [indicating] that the petitioner has set himself apart from most other experienced researchers holding a Ph.D. in plant science" and a lack of evidence showing that "significant utilization of [the petitioner's] patents had occurred as of the date this petition was filed." It is noted that the director's decision, in the last paragraph on page 3, acknowledged that "the petitioner has not published any articles since returning to the United States in 1999 because of the proprietary nature of the petitioner's business activities and because of its need to protect the patentability of its inventions." In the same manner as that of the previous letters, the letter from Congressman Nethercut's office describes the petitioner's objective qualifications (which are amenable to the labor certification process) and discusses the future benefits associated with his work (rather than his past achievements that have measurably influenced the greater field).

In this case, the scientists offering letters of support consist entirely of individuals with direct ties to the petitioner or Dr. [REDACTED]. These individuals became aware of the petitioner's work because of their association with him or Dr. [REDACTED]. Their statements do not show, first-hand, that the petitioner's work is attracting attention on its own merits, as we might expect with research findings that are unusually significant. Witness' statements to the effect that the petitioner's work has "attracted a great deal of interest throughout the industry" cannot suffice to establish such attention, when the petitioner provides no evidence from citation indices or independent experts in the agricultural industry to support this claim. While the petitioner may have benefited various research and development projects undertaken by his employer, his ability to significantly impact the field beyond his company's projects has not been demonstrated.

For the reasons set forth above, the petitioner has not established that his past accomplishments set him significantly above his peers such that a national interest waiver would be warranted. While the petitioner has plainly earned the respect and admiration of his witnesses, it appears premature to conclude that the petitioner's work has had and will continue to have a nationally significant impact. In this case, the petitioner's work does not appear to have yet had a significant influence in the larger field. While numerous witnesses discuss the potential applications of his innovations, there is no substantive evidence showing that these applications have yet been realized at the national or industry-wide level. In sum, the available evidence does not establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner.

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 the

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 project or area of research, 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.

ORDER: The appeal is dismissed.