

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services



FILE: LIN 03 024 53360 Office: NEBRASKA SERVICE CENTER Date: MAY 11 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, 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 director denied the petition on July 8, 2003. On August 5, 2003, the petitioner filed a motion to reconsider. Six days later, on August 11, 2003, the petitioner filed the present appeal. On September 17, 2003, the director denied the petitioner's motion to reconsider. It is noted that the arguments presented on appeal are identical to those offered in support of the motion to reconsider. Regardless, our discussion in this matter shall relate only to the director's July 8, 2003 decision and the petitioner's appellate submission.

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 Laboratory Manager/Head Chemist for University Laboratories in Novi, Michigan. 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 Organic/Polymer Chemistry from the McMaster University in Canada (2000). The director found 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 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. Ronald Childs, Professor Emeritus, Department of Chemistry, McMaster University, supervised the petitioner's Ph.D. dissertation. Dr. Childs states:

My research is currently in the development of novel types of membranes for the treatment of water. My group is a large one with extensive funding from government and industrial sources, including particularly U.S. based companies. Our work is internationally recognized, particularly as we are one of the few groups worldwide that have expertise in the formation of new types of membranes. Our work has led to a large number of papers and several patents. Two of our membranes are now being commercialized. I am called on as a consultant in the area of membrane formation by major corporations including the 3M Company, Millipore, and Osmonics in the U.S.

* * *

[The petitioner's] main accomplishments include the incorporation of poly(styrene-sulfonic acid) into pores of polyethylene membranes by radical polymerization. These pore-filled ion-exchange membranes have high ion-exchange capacities and are capable of separate inorganic salts with high performance under pressure-driven. The microstructure was investigated and the membranes were fully characterized. This research was characterized by a high level of innovation and the clear application of a broad range of scientific experience in organic chemistry and membrane separation science. [The petitioner] is quick to grasp the essence of complex science and engineering concepts and has multidisciplinary expertise.

[The petitioner] had several publications and papers submitted in the *Canadian Journal of Chemistry* and *Journal of Membranes Science*. The papers including his Ph.D. work at McMaster University were also submitted for publication. During his years at McMaster, he attended several international conferences, such as [the] North American Membrane Society Conference, seminars, and workshops.

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 published work has been heavily cited.

Dr. Michael Guiver, Research Officer, Institute for Chemical Process and Environmental Technology, National Research Council of Canada, states:

Though I have made only brief acquaintances with [the petitioner] at international conferences, I am familiar with research projects carried out by the McMaster Membrane Groups led by Professors Ron Childs (Chemistry) and Jim Dickson (Chemical Engineering). [The petitioner] had worked in this research group and received a Ph.D. Degree.... His work focused on pore-filled cation-exchange membranes. He attended several North American Membrane Society (NAMS) conferences. His work is extremely important for expanding the knowledge on ion-exchange gel structures on pore-filled membranes.

We accept that the petitioner has contributed to the overall pool of knowledge in his field; however, Dr. Guiver does not explain how the petitioner's work was of greater benefit than that of other chemists conducting membrane studies. In the same manner as Dr. Childs, Dr. Guiver mentions the petitioner's involvement in several NAMS conferences, but the evidence presented in this case is not adequate to demonstrate that the petitioner's presentations have had substantial national impact. Participation in scientific conferences and symposia is routine and expected in the scientific community. The record contains no evidence showing that the petitioner's individual presentations regularly commanded an unusual level of interest in comparison to other conference participants.

Dr. Jiang Ji, Senior Polymer Scientist, Koch Membrane Systems, states:

I met [the petitioner] at McMaster University. [The petitioner] and I had the same Ph.D. supervisor at McMaster University.... I am really impressed by the petitioner's work on pore-filled ion-exchange membranes. He was able to transform polyethylene microfiltration membranes into hydrophilic nanofiltration membranes containing strong polystyrene-sulfonic acid groups [that] can serve as fuel cell or water purification membranes.

* * *

It is worthy noting that [the petitioner] demonstrated negative rejections with experiment and successfully modeled the nanofiltration separation performance using these pore-filled membranes in mixed ions. His new approach to the difficult process of pore-filled ion-exchange membrane fabrication and negative rejection phenomenon was patented.

The record contains no evidence showing that the petitioner holds a patent approved by the U.S. Patent and Trademark Office (USPTO) as of the petition's filing date or that the invention has received significant attention from throughout the chemistry 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 innovation. 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. In this case, the petitioner must show not only that his innovation is important to his immediate acquaintances, but throughout the greater scientific community or manufacturing industry.

Dr. Douglas Lloyd, Professor of Chemical Engineering, The University of Texas at Austin, states:

I have met [the petitioner] several times at NAMS annual conferences. For example, [the petitioner] presented his Ph.D. research work on pore-filled ion-exchange membranes at NAMS'97, May 1997, Baltimore, Maryland and co-authored a paper on modeling salt transport across pore-filled ion-exchange membranes at International Congress of Membranes (ICOM), May 1999, Toronto, Ontario,

Canada. [The petitioner's] qualifications and the importance of his research regarding present needs of the American membrane separation industry are extensive and well documented, as his publication record is a substantial and growing body of important work.

In the past several years, I have been in contact with [the petitioner's] research supervisor Professor James M. Dickson in the Department of Chemical Engineering at McMaster University (Canada). Thus, I followed [the petitioner's] work and development as a researcher. During his years at McMaster, [the petitioner] had selected a hydrophobic polyethylene microfiltration, TIPS membrane (manufactured by the 3M Company) incorporated with poly(styrene-sulfonic acid), resulting in unique performance membranes. When separating mixed salts, these so-called "pore-filled" ion-exchange membranes selectively allow cations of various valences to transport across the negatively charged membranes under pressure-driven conditions. This could be used to remove toxic heavy metals and reduce the necessary energy demand, increasing the driving force of the electrical potential to result in much higher (better) separation performance.

[The petitioner's] unique combination of demonstrated research skills in membrane science and technology has allowed him to make a substantial contribution in a number of areas critical to the interests of the United States.

We generally do not accept the argument that a given project is so important that any alien qualified to work on that project must also qualify for a national interest waiver. Dr. Lloyd's observation that the petitioner's research skills have benefited various projects "in a number of critical areas to the interests of the United States" may establish the intrinsic merit and national scope of the petitioner's work, but such general comments are not adequate to show that the petitioner's individual accomplishments are of such an unusual significance that he qualifies for a waiver of the job offer requirement. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule.

Dr. G.A. Shakeel Ansari is an Associate Editor for the *Bulletin of Environmental Contamination and Toxicology*. Dr. Ansari discusses the petitioner's involvement as a peer reviewer for this journal. In regard to the petitioner's participation in the peer review process, it is apparent that peer review of manuscripts is a routine element of the process by which articles are selected for publication in scholarly journals or presentation at a scientific conference. Participation in peer review of this kind does not significantly distinguish the petitioner from other capable chemistry researchers.

Dr. Ansari describes the petitioner as "an expert in the areas of membranes and separation, chemical reaction kinetics, isotope effects, chemical analysis, and environmental contamination." Dr. Shyang-Lin Kuo, Senior Project Engineer, General Motors, who has collaborated with the petitioner through contracts with University Laboratories, asserts that the petitioner "has shown expertise in laboratory management and familiarity with Environmental Protection Agency (EPA) methods." Objective qualifications, such as those mentioned by Drs. Ansari and Kuo, 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. Kuo further states:

Located in the Metro Detroit Area, University Laboratories has a series of contracts of environmental research and testing with auto companies, such as General Motors (GM), Daimler Chrysler, Ford Motor Company, Delphi Automotive, Michigan Automotive Compressors Inc. (MACI), etc. It should be noted that not only GM plants but also other American auto companies are benefited [by] these research and testing results.

For example, University Laboratories led by [the petitioner] has a contract project with MACI annually that is to reduce contamination from the facility and to monitor the discharging of wastewater from the auto part manufacturing and assembly plants. This is one of the areas that make[s] [the petitioner] quite unique since he used his ability to apply chemical analysis to auto manufacturing processes. [The petitioner] introduced innovative design details, such as “Baseline Control Report” and “Fingerprinting Testing Project,” which is able to pinpoint contamination sources. [The petitioner] consistently produces analytical documents and calculations quickly with high accuracy. Thus, the auto companies use the results to reduce or eliminate the need for unnecessary treatments of industrial wastes. This advancement largely reduces the costs of separation processes...

Dr. Gerald Winslow, Senior Engineer, Department 5850, Daimler Chrysler, Detroit, Michigan, states that his company has “several contracts with University Laboratories on contamination and recovery of PCB [Polychlorinated byphenyl].” He further states:

The contracts with University are to develop an analytical method with appropriate detection limits based on current EPA method 8082.... [The petitioner’s] greatest talent is in developing innovations for new analytical methods. He grasps new concepts quickly and accepts constructive opinion and instruction concerning his work.

The petitioner’s work may have benefited various companies that receive services from University Laboratories, but his ability to impact the field or industry beyond his company’s contracts has not been demonstrated. The performance of chemical wastewater analysis for a given client is of interest mainly to that particular client. Drs. Kuo and Winslow do not adequately explain how the petitioner’s work has had a significant impact outside of the Metro Detroit Area.

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 further documentation pertaining to his work. A significant portion of the petitioner’s response relates to developments that occurred subsequent to the petition’s filing date. For example, the petitioner provided a recently published article in *Desalination* and further evidence of his completion of manuscript reviews. This evidence cannot retroactively establish that he was already eligible for the classification sought as of the filing date. See *Matter of Katigbak, supra*.

Also provided was a certificate indicating that the petitioner completed a training course offered by his former employer entitled "Scintrex Radiation Training Course Level A." As stated previously, objective qualifications (such as a training course) are amenable to the labor certification process. *See Matter of New York State Dept. of Transportation, supra.*

The petitioner's response also included evidence showing that University Laboratories assisted the Federal Bureau of Investigation in a criminal investigation of a flight attendant who drugged a passenger. Also provided was documentation showing that University Laboratories and Environmental Permit Specialists submitted a cooperative bid for a United States Trade Development Agency project in Shanghai, China in 2001. Correspondence dated November 16, 2001 reflects that University Laboratories and Environmental Permit Specialists were not awarded the contract to perform the feasibility study for which they were bidding.

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:

The evidence must establish eligibility...as of the filing date of the petition. In this case, as of that date, the evidence indicates that the petitioner had only published two refereed articles in the past ten years...

* * *

The petitioner's initial evidence included a letter from Dr. Douglass Lloyd who wrote that the petitioner's "publication record is a substantial and growing body of work." However, ...the evidence does not establish that the petitioner's publication record is substantial...

* * *

The record contains no evidence that any other researchers have ever cited the petitioner's work in published material or written any comments about it. While one [witness] wrote that "[the petitioner's] work is a very well regarded solution to a quite challenging problem," the lack of published citations of the work does not support such a statement.

* * *

The petitioner wrote about the potential applications of a membrane he fabricated over six years ago, but his response contained no documentary evidence that the discovery has yet been utilized.

On appeal, the petitioner submits evidence of a job offer from the National Food Safety and Toxicology Center at Michigan State University dated July 21, 2003. The petitioner states: "It is clear that environmental work is national in scope. Thus, it would be contrary to the national interest to require a labor certification." We note here that the petitioner's work was already found by the director to have been national in scope. In

the present case, we accept that the benefits of “crop protection” and “environmental work” are national in scope; however, the petitioner must still show that his past scientific achievements have measurably influenced the greater field. 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.

The petitioner argues that “[s]imply counting the number of publications is [a] lousy practice when judging the petitioner’s work.” While a lack of recently published articles due to proprietary considerations is certainly not fatal to the petitioner’s national interest waiver claim, it does not strengthen his claim either. Regardless, the director’s analysis of the petitioner’s published work was not limited to the number of articles published. In addressing the published articles contained in the record, the director noted that the evidence presented was not adequate to demonstrate the importance of the petitioner’s published findings to the greater scientific community. When judging the influence and impact that the petitioner’s work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner’s conclusions. While heavy citation of the petitioner’s published articles would carry considerable weight, the petitioner has not presented such citations in this proceeding.

The petitioner further states: “A comprehensive evaluation of a petitioner’s profile should consider all professional activities involved, including but not limited to, degrees/diplomas/certificates, licenses, memberships, publications patents, books, conference papers, manuscript reviewing, and professional experience, etc.” Memberships, licenses and professional experience, however, relate 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. Beyond establishing his eligibility for the underlying visa classification, the petitioner must demonstrate that his work has had a significant impact in the chemistry field or environmental industry.

In this case, the scientists offering letters of support consist entirely of individuals who have collaborated with the petitioner or those who know the petitioner from encounters at professional conferences. These individuals became aware of the petitioner’s work because of their association with the petitioner; 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 “had an important impact on treatments of industrial wastewater...and environmental research at the national level” cannot suffice to establish such attention, when the petitioner provides no evidence from citation indices to support this claim. While the petitioner may have benefited various projects undertaken by his employers, his ability to significantly impact the field beyond their immediate 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. While witnesses discuss the potential applications of his research findings, 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.