

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

BS

FILE: WAC 02 044 51228 Office: CALIFORNIA SERVICE CENTER Date **MAY 25 2004**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

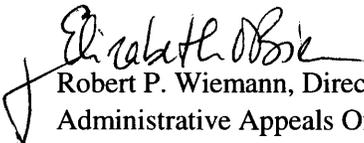
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time of filing, the petitioner was working as a Research Economist for the Research and Planning Office of the Hawaii State Department of Taxation. 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 Master of Science degree in Agricultural and Resource Economics from the University of Hawaii at Manoa (2001). 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 work, the petitioner submitted several witness letters.

Francis Okano, Tax Research and Planning Officer, State of Hawaii Department of Taxation, states:

I head a staff office charged with tax policy simulation and analysis.... To improve the accuracy of revenue forecasts, our office has initiated reviews and evaluations of our econometric models as well as the development of new models.

Since August 2000, [the petitioner] has been a member of our research team to update econometric models to forecast State General Fund Tax Revenues and related key economic indicators. He updates and revises the revenue and other forecasting models periodically, and provides basic data and information to other staff members in the Tax Research and Planning Office, members of the Council on Revenues, other government agencies and the public. He frequently contacts federal and state agencies and private consultants for necessary data and information to update the models. With his

contribution, we have developed various economic databases to monitor tax collection trends from various economic activities. Partly with his assistance, our office has successfully completed ten new econometric models to forecast total personal income for Hawaii as well as revenue collections by category.

Marie Okamura, Director, State of Hawaii Department of Taxation, states:

[The petitioner] is employed as a professional economist at our Tax Research and Planning Office through the Research Corporation of the University of Hawaii. His duties include the maintenance and update of current economic and revenue databases and forecasting models as well as participation in the development of new models to improve the accuracy of State of Hawaii forecasts of general fund tax revenues. Partly with his assistance, the Council on Revenues forecast of state general fund tax revenues for this fiscal year will probably be one of the most accurate forecast on record.

Dr. Eugene Tian, Economist and Branch Chief, Research and Economic Analysis Division, Department of Business, Economic Development and Tourism, State of Hawaii, states:

As one of the few economists in the State, I worked with [the petitioner] during the past year in the economic forecasting area. [The petitioner] has developed an econometric model to forecast construction expenditures, and state tax revenues for Hawaii. His forecasting results have been used widely by the state for policy making and business planning purposes. I have used his work in my population and tourism forecasting models.... Combining economic theory and computer modeling skills, [the petitioner] would help our government and businesses to make better choices and thus resources are used more efficiently.

The petitioner may have benefited various projects undertaken by his employer, but his ability to impact the economics field beyond the State of Hawaii's forecasting projects has not been demonstrated. In this case, the petitioner's impact is generally limited to the state government that he directly serves.

Dr. Tu Duc Pham, Economics and Research Program Manager, State of Hawaii Department of Taxation, states:

Since August 2000, [the petitioner] has been a junior member of our research team.... With his skill in econometric techniques, we were able to develop a quarterly database and model to forecast total personal income by category.... With his skill in time series analysis, [the petitioner] also developed time series models to forecast construction activity and other key economic indicators.

Hiroshi Yamauchi, Professor Emeritus, Agricultural and Resource Economics, University of Hawaii at Manoa, states:

[The petitioner] came to the United States with extensive knowledge of agriculture and aquaculture practices of China through his research in these industries. At the University of Hawaii, he earned a Master of Science degree in Agricultural and Resource Economics while working in the Department as

a student helper and teaching assistant. Later to sustain his livelihood while continuing to pursue his Ph.D. degree he went to work for the Hawaii State Department of Taxation...

* * *

I am convinced that [the petitioner's] knowledge and expertise of China's agriculture and aquaculture, coupled with the added research and technical skills he has developed as a student and civil servant in Hawaii qualifies him as a uniquely valuable professional with potential for improving economic and trade relations...

Dr. [REDACTED] Community Economic Development Specialist with the College of Tropical Agriculture at the University of Hawaii at Manoa, and former Chair of the university's Department of Agricultural and Resource Economics Department, states:

I believe [the beneficiary's] skills in the area of natural resource and environmental management, combined with his quantitative skills ensure that he can serve the national interest. He has the ability to formulate the complex economic models that combine physical, biological and socio-economic information together in order to determine how best to make use of our natural resources over time.

* * *

Given [the petitioner's] excellent quantitative skills in economics, econometrics, and computer modeling, along with his outstanding credentials, experience, and ability to complete the job at hand, [the petitioner] has the potential to make a significant contribution to the field of natural resource and environmental management in the United States.

Drs. [REDACTED] and [REDACTED] general assertions regarding the petitioner's "potential" to make future contributions are not adequate to demonstrate his eligibility for a national interest waiver. In this matter, the petitioner must submit evidence to demonstrate that his prior work has already significantly influenced his field to a substantially greater degree than that of other qualified researchers.

[REDACTED] Professor Emeritus, Agricultural and Resource Economics, University of Hawaii at Manoa, states that the petitioner "is an economist with extensive experience in fisheries and aquacultural economics research and natural resource management."

John Yanagida, Professor of Natural Resources and Environmental Management, University of Hawaii, states: "I am confident that [the petitioner's] graduate studies and research experiences in economics, quantitative methods, natural resources, and computer applications will enable him to make important contributions to the national interest."

Objective qualifications, such as those discussed by Drs. Pham, Yamauchi, Shang, Cox and Yanagida, 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] further states: "Besides his M.S. thesis, [the petitioner] has several other publications in fisheries and aquaculture." We do not find that publication of the petitioner's work is presumptive evidence of eligibility for the national interest waiver. Publication, by itself, is not a strong indication of impact in one's field, 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. On appeal, the petitioner provides evidence of seven articles citing his work. While the articles presented demonstrate some degree of interest in the petitioner's published work, the petitioner has not shown that an aggregate total of seven citations (during a research career spanning well over fifteen years) adequately distinguishes his work from that of other capable researchers in his field.

Also provided in support of the petition was evidence of the petitioner's professional memberships and academic recognition. Recognition and memberships, 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 three of the requisite 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 agricultural and resource economics field.

The petitioner submitted three conference papers from 1994 and 1995, but the evidence presented 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 commanded an unusual level of interest in comparison to other conference participants. In addressing the petitioner's conference presentations, the director's decision stated:

[M]any professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not justify projections of future benefit to the national interest, nor does it warrant a waiver of the labor certification [process].

In response to the director's request for further evidence that the petitioner had met the guidelines published in *Matter of New York State Department of Transportation*, the petitioner submitted additional witness letters.

Dr. [REDACTED] Procurement Officer, Highways Division, State of Hawaii Department of Transportation, states: "I believe [the petitioner's] expertise in Chinese fish farming systems will be very valuable if give him chance [sic] to serve our fish industries and aquaculture industries." The record, however, contains no letters of support from major U.S. companies in these industries indicating that retaining the petitioner's services in is the national interest.

Dr. [REDACTED] adds: "The forecast reports [the Tax Research and Planning Office] made are widely used by the State's executive as well as legislative offices for policy-making and project planning. Both the state and federal government can apply the forecast models [the petitioner] developed in their policy making." The record, however, includes no evidence showing that forecast models developed by the petitioner himself are utilized with great success outside of the State of Hawaii.

[REDACTED] President, Beimar, Inc., states that the petitioner "has extensive research experience in various economic and natural resource management fields." He further states:

Because China dominates world aquaculture production, [the petitioner's] expertise of such is of substantial interest to the United States as he has performed a wide variety of bio-economic research on advanced Chinese aquaculture, fisheries, and natural resources. In my professional opinion, [the petitioner's] experience in Fisheries Economics has provided him with unique expertise that is virtually unmatched, and that is of substantial interest to the United States.

As stated previously, experience in aquaculture production and fisheries economics represents objective qualifications that are amenable to the labor certification process. *See Matter of New York State Dept. of Transportation, supra.*

Anthony Charles, Professor of Management Science and Environmental Studies, Saint Mary's University, Halifax, Nova Scotia, states:

I have...had the pleasure of having known [the petitioner] for 14 years, dating back to work we carried out on an aquaculture project funded by the Canadian International Development Research Center (IDRC).

* * *

The reality is that fish stocks in the world's oceans and lakes are generally agreed to be fully exploited, with little potential to expand to catches of fish worldwide. Yet the demand for seafood keeps growing. The answer to this mismatch is felt to lie in the strong development of aquaculture. At the same time, there are environmental concerns about aquaculture that must be taken into account. Both with respect to the development of aquaculture and with respect to handling environmental concerns, [the petitioner] has a great deal to offer the U.S.

[The petitioner] comes to the U.S. with an unparalleled familiarity with the intricacies of China's aquaculture system – one that dominates world aquaculture production – and in particular its major aspect of pond-based inland 'integrated fish farming.' His expertise, which focuses on structural, financial and economic aspects of the operation of individual fish farms, is of substantial interest to the United States and other western countries. Furthermore, it is an expertise that is simply not widely available...

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. See *Matter of New York State Dept. of Transportation, supra*. Similarly, arguments about the overall importance of the aquaculture field may establish the intrinsic merit and national scope of the petitioner's graduate research, but such general arguments are not adequate to show that an individual worker with expertise in that field qualifies for a waiver of the job offer requirement. In this case, it has not been shown 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.

██████████ Adjunct Professor of Economics, Hawaii Pacific University, states that many experts have used the petitioner's findings as reference materials. The record, however, contains only seven citations of the petitioner's work. This documentation establishes some degree of interest in the petitioner's published work; however, it has not been shown that an aggregate total of seven citations of numerous published articles and technical reports demonstrates an unusual level of interest from the field. We accept that the petitioner has contributed to the overall pool of knowledge in his field; however, Dr. Loke's letter does not explain how the petitioner's work was of greater benefit than that other capable researchers in the agricultural economics or aquaculture fields.

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 noted that the petitioner had not shown that "his national impact exceeded that of others in the field."

It is noted that the director's decision includes several erroneous references to the regulatory requirements for aliens of extraordinary ability. We find that such analysis is in error. For example, page three mentions "nationally recognized prizes or awards for excellence" and "evidence of the alien's participation on a panel, individually, as a judge of the work of others." Prizes and judging experience, however, are not required for the classification sought by the petitioner. On page five, the director asserts that citations of one's work is not evidence of "national acclaim," a standard not required for the instant classification. Erroneous references to the "regulatory criteria" and national acclaim appear throughout the initial pages of the director's decision.

Nevertheless, at the bottom of page nine and the top of page ten, the director acknowledges that “sustained national acclaim” is not required for this classification and that the petitioner need not demonstrate that he is one of the very few at the top of his field. The director’s remaining analysis relies on the correct standard. Thus, while we withdraw any inference from the director’s decision that a petitioner need demonstrate national or international acclaim, we find that, in light of the remaining discussion in the denial notice, the director’s use of such language is not reversible error. Citizenship and Immigration Services (CIS) notes its authority to affirm decisions which, though based partially on incorrect grounds, are deemed to be correct decisions on other grounds within the power of CIS (legacy INS) to formulate. *Helvering v. Gowran*, 302 U.S. 238 (1937); *Securities Comm’n v. Chenery Corp.*, 318 U.S. 86 (1943); and *Chae-Sik Lee v. Kennedy*, 294 F.2d 231 (D.C. Cir. 1961), *cert. denied*, 368 U.S. 926 (1961).

On appeal, counsel argues that the petitioner has met the eligibility factors set forth in *Matter of New York State Dept. of Transportation*. Much of the supporting documentation presented on appeal was previously submitted and has already been addressed. The petitioner submits two new witness letters.

██████████ former Deputy Mayor of San Diego and former San Diego City Councilman, states that he has known the petitioner for several years and worked with him “on several community projects and church [functions] at the Chinese Community Church.” Tom Hom further states:

My personal background is not in the aquaculture area, however, having served in governmental offices, and also being a business person, I know our country is in constant need of optimizing our aquaculture program. From my acquaintance with [the petitioner], he has much expertise in the aquaculture field. Among his expertise, he has worked in the leadership area of the pond fishing industry and in the fish hatchery production business as well. As you perhaps know, aquaculture is amongst the fastest food production growth in the world today. America should maintain its leadership in this area. People like [the petitioner] can help.

As stated previously, we do not accept the argument that a given field is so important that any alien qualified to work in that field must also qualify for a national interest waiver. ██████████ statements about the overall importance of aquaculture apply to all researchers active in that field and do not single out the petitioner for the benefit of a national interest waiver. Tom Hom’s letter does not explain how the petitioner’s past achievements have measurably influenced the field to a substantially greater degree than that of other aquaculture economists.

██████████ Professor and Director of Human Resources, Freshwater Fisheries Center (FFRC), Chinese Academy of Fishery Sciences, where the petitioner worked from 1986 to 1997, notes that the petitioner was an instructor for an “international training course on integrated fish farming.” As we have previously observed, objective qualifications (such as teaching experience) are amenable to the labor certification process.

Dr. ██████████ further states:

FFRC is one of the top national fisheries research institutes in China. [The petitioner] took an important position for the designated projects as a key research staff in FFRC, specialized in fisheries and aquaculture economics [sic]. As an economist, he had conducted a good number of significant national and international research projects. He guided the research group and developed a database, which was the largest and the most comprehensive so far about the Chinese integrated fish farming. He also developed various bio-economic models for evaluation of production efficiency and optimization of fish farming performance. These models have been extensively applied in the Chinese fish farming industry.

The record, however, contains no evidence to support Dr. [REDACTED] claim regarding industry application of the petitioner's models. A witness statement to the effect that the petitioner's "models have been extensively applied in the Chinese fish farming industry" is not adequate to demonstrate such utilization, when the petitioner provides no evidence from fishery managers, independent experts in the aquaculture field, or industry journals to support this claim. In regard to the petitioner's publications at FFRC, the limited number of citations presented in this case does not show that his bio-economic models have garnered an unusual level of interest in the aquaculture field. And even if we were to accept that bio-economic models developed by the petitioner have been utilized to some extent in China, we find no evidence to indicate that the petitioner's impact on the U.S. fish farming industry is in anyway comparable to his impact in China during the early to mid-1990's. We note here that since 2000 the petitioner has worked for the State of Hawaii as a "junior member" of a research team that forecasts state tax revenues.

In this case, the witnesses offering letters of support consist entirely of individuals having direct ties to the petitioner. 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 contributions that are unusually significant. 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 adequately 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 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.