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U.S. Citizenship  
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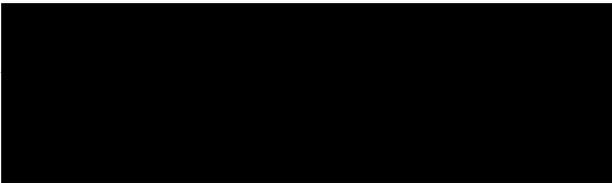
IN RE:

Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:



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.

for Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time of filing, the petitioner was working as an engineer for the Milwaukee office of Bloom Consultants, L.L.C. 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 Civil Engineering from North Carolina State University. The director found that the petitioner 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.

Asphalt Team Leader, Office of Pavement Technology, Federal Highway Administration, U.S. Department of Transportation, states:

I was involved in one of [the petitioner's] research projects, "Fatigue Performance Evaluation of WestTrack and Arizona SPS-9 Asphalt Mixtures Using Viscoelastic Continuum Damage Approach," this was sponsored by the FHWA and the North Carolina Department of Transportation. [The petitioner] played a pivotal role in this research project by successfully developing the simple performance test for fatigue cracking of asphalt concrete using the indirect tensile test. This breakthrough is based on [the petitioner's] cutting-edge knowledge of viscoelastic continuum damage mechanics. [The petitioner] is the first in the field of pavement to successfully characterize asphalt concrete in the indirect tensile testing mode using viscoelastic continuum damage mechanics. Viscoelastic continuum damage mechanics is a new area of science just be explored in for use [sic] in the field of asphalt pavement. [The petitioner] is a leader in this area.

The importance of a simple performance test cannot be overstated. Highway agencies and contractors are looking for a test to predict the actual field performance of asphalt concrete in terms of fatigue cracking and other distresses. The simple performance test is exactly developed to fulfill the work. The

simple performance test supplements the still evolving Superpave performance prediction models and related test procedures, which provide comprehensive information about the performance of a mix, particularly for projects in extreme climates or with very heavy traffic loads. The subsequent superior asphalt pavement is of substantial benefit to effectively maintain and expand the existing infrastructure and to improve the productivity and mobility of the national highway transportation system. The transportation systems play a supporting role in our national economic well-being. Highway travel is the predominant mode of transportation for both passengers and freight. The number of vehicle-miles traveled now exceeds 2.6 trillion miles in the United States, and continues to grow at a rate of about 2.5 percent per year. More freight is moving on the highways than ever before. [The petitioner's] research work is of significant importance to improving the system.

Dr. [REDACTED] Professor, Department of Civil Engineering, North Carolina State University, states:

[The petitioner] was the first to derive the three-dimensional viscoelastic solution of indirect tensile creep compliance and verified the closed-form formula using three-dimensional finite element viscoelastic analysis. The two-dimensional solution used before the development of three-dimensional solution has many limitations and is not as accurate as the three-dimensional solution. [The petitioner's] work is a real breakthrough that greatly advanced the knowledge of the field of asphaltic materials and pavement. [The petitioner] is the first to successfully develop the simple performance test for fatigue cracking of asphalt concrete and to characterize the field performance of WesTrack mixtures in the laboratory while other researchers failed to do so.

The director takes issue with a statement from Dr. [REDACTED] indicating that the petitioner's research findings "have been identified by Transportation Research Board, National Research Council<sup>1</sup> as achievements having immediate application interests to Department of Transportation operations throughout the United States."

According to a May 30, 2002 letter from [REDACTED] Engineer of Design, Transportation Research Board, U.S. National Academies of Science, Engineering, and Medicine, the petitioner submitted a paper that "was approved for presentation at the Transportation Research Board's (TRB) 81<sup>st</sup> Annual Meeting in January 2002" and that would later be published in the *2002 Transportation Research Record*. The letter from Stephen Maher notes that that the petitioner's paper "was selected as one of the 100 Practical Papers, among approximately 2000 submitted" to the Annual Meeting. Stephen Maher's letter further states that "the recognized practical papers are often of potential immediate application to State Departments of Transportation operations throughout the United States."

The director observed that the [REDACTED] letter "indicated that the selecting committee merely reported that the papers it recognized 'are often of potential immediate application' and made no specific indication that the petitioner's paper was one which would prove to be one of immediate application interest."

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<sup>1</sup> Published material from the Transportation Research Board (submitted by petitioner) states: "The Transportation Research Board is a unit of the National Research Council, a private, nonprofit institution that is the principal operating agency of the National Academy of Sciences and the National Academy of Engineering. Under a Congressional charter granted to the National Academy of Sciences, the National Research Council provides scientific and technical advice to the government, the public, and the scientific and engineering communities."

On appeal, counsel points out that the sub-heading on the cover page of TRB's 2002 *Catalog of Practical Papers*, in which the petitioner's paper appears, states: "2002 TRB Annual Meeting research papers of immediate practical interest to State Department of Transportation professionals." For this reason, we do not find that Dr. [REDACTED] mischaracterized the evidence as implied in the director's decision. Furthermore, while publication or presentation of one's work is certainly not presumptive evidence of eligibility for a national interest waiver, the TRB's selection of the petitioner's work from approximately 2000 research papers is not entirely without merit either. Here, the evidence presented is adequate to distinguish the petitioner's work from that of his peers. That the petitioner's paper was among the five percent of those accepted by the TRB shows that other researchers (beyond the walls of the institutions where the petitioner has studied and worked) view the petitioner's work as particularly significant.

[REDACTED] Research Operations Engineer, Office of Materials and Road Research, Minnesota Department of Transportation, indicates that he has never worked with the petitioner [REDACTED] states:

[The petitioner] successfully developed the state-of-art and state-of-practice simple performance test for fatigue cracking of asphalt pavement and practically validated it using WesTrack asphalt mixtures. The breakthrough greatly advanced the development of pavement.... [The petitioner] also studied the effects of testing modes on the characterization of asphalt concrete and found that the fatigue life from one testing mode in the laboratory may not be representative of actual field performance of pavement. Before [the petitioner's] research, other researchers assumed that any testing mode, either uniaxial or indirect tensile, is effective in characterizing asphalt concrete.

Dr. [REDACTED] Professor of Civil Engineering, Israel Institute of Technology, Haifa, Israel, states:

[The petitioner] is the first to develop the experimental and analytical methodology using Digital Imaging Correlation (DIC) in the field of asphalt concrete. Compared to traditional Linear Variable Differential Transducer (LVDT) method, [the petitioner's] research with DIC opened up a non-contact full-field displacement/strain analysis method that compares an image of a deformed specimen with the image of an initial, undeformed specimen. In addition, with DIC [the petitioner] determined the load-induced deformation separately from the rigid body translation (e.g., rocking in the Indirect Tensile (IDT) testing that is caused by the improper setting of the specimen and/or loading fixture) owing to DIC's ability to measure full-field displacements. This groundbreaking achievement makes it possible to obtain correct measurements from a test that would have been otherwise discarded. Without question, [the petitioner's] research provided a more accurate method to characterize asphalt concrete, which is a significant advancement in highway pavement technology.

[REDACTED] Research Development Engineer, Kansas Department of Transportation, states: "[The petitioner] has developed the simple performance test for fatigue cracking of asphalt concrete which substantially benefits the development of pavement. In addition, [the petitioner] has developed the theoretical foundation for characterization of asphaltic concrete under the indirect tensile testing mode."

Dr. [REDACTED] Professor and Head, Department of Civil Engineering, and Director, Center for Transportation Research, National University of Singapore, indicates that he has never worked with the petitioner. Dr. [REDACTED] further states:

[The petitioner's] research findings have important impacts on the development of asphalt pavement. [The petitioner] is the first who successfully derived the closed-form solution of Indirect Tensile (IDT) creep compliance and center strain, based upon the theory of viscoelasticity, elastic-viscoelastic correspondence principle, and is also the first who verified his findings using three dimensional. This accomplishment established the theoretical foundation of experimental characterization of asphalt materials subject to IDT testing mode. One new breakthrough in [the petitioner's] findings is the optimization of deformation measurements gauge length using Digital Imaging Correlation (DIG) method. The application of DIC method to the field of asphalt pavement opened up a new phase of experimental and analytical technique by providing full-field and accurate measurements. [The petitioner] is the first to successfully apply work potential theory to characterize the fatigue performance of asphalt concrete subject to indirect tensile loading. This achievement solved the technical problem confronted by other researchers for years: recommendation of Superpave volumetric mix design is opposite to WesTrack test road results. In addition to the state-of-the-art theoretical developments, [the petitioner] applied them to understanding the mechanisms and fatigue behavior of asphalt concrete in the field. [The petitioner] developed the simple performance test for fatigue cracking of asphalt concrete based upon fracture energy from work potential theory. His novel method can discriminate and more accurately predict the future field performances of asphalt concretes before the construction of asphalt pavements, which provided a robust technique to quality assurance and quality control. Thus, [the petitioner's] work presents an important contribution in preventing construction of inferior highway and reducing the highway maintenance expenditure.

Professor and Head, Road and Railway Engineering Section, Faculty of Civil Engineering, Delft University of Technology, the Netherlands, states:

Using the viscoelastic continuum damage mechanics, [the petitioner] successfully developed the methodology of characterizing asphalt concrete subjected to indirect tensile test.... In addition, [the petitioner] theoretically developed the indirect tensile creep compliance solution, using elastic-viscoelastic correspondence principle.

The petitioner also provided evidence of his published and presented work. The initial evidence, however, included no evidence showing that publication or presentation of one's work is unusual in the petitioner's field, or that independent researchers have often cited the petitioner's work.

Also submitted was evidence of the petitioner's membership in various professional associations. Professional memberships 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 classification as an alien of exceptional ability warrants a waiver of the labor certification requirement in the national interest.

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 letters, publications, evidence showing that some of his work has been cited, additional documentation pertaining to his professional memberships, and further background materials.

A letter from Dr. [REDACTED] Assistant Professor, Department of Civil and Environmental Engineering, Rowan University, Glassboro, New Jersey, indicates that he has never met the petitioner, but that he relied upon the petitioner's work in a project for the Wisconsin Highway Research Program. Dr. [REDACTED] states: "The use of the test developed by [the petitioner] provided a method of control in the field during production and greatly increased the performance of asphaltic mixtures by quantifying performance by actual measurement instead of empirical means."

[REDACTED] Engineer Associate, Virginia Department of Transportation – Materials Division, states that she is utilizing the petitioner's findings in "a research project being performed at Virginia Tech and sponsored by the Virginia Transportation Research Council."

[REDACTED] Institute of Highway Research, Beijing, China, states that his institution successfully applied the petitioner's indirect tension test to examine specimens cored from existing pavements.

[REDACTED] Environmental Manager of Land Quality, We Energies, an electric, gas and steam utility company headquartered in Wisconsin, states that his company "has utilized [the petitioner's] research findings on fly ash in highway pavements for internal projects" and for approximately "50 paving projects...in Wisconsin."

[REDACTED] Chair of the Wisconsin Highway Research Program, Wisconsin Department of Transportation, states that the petitioner is currently developing a set of highway construction guidelines for the Wisconsin Department of Transportation.

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 provided a thorough analysis of the evidence presented. For example, the director noted blatant misstatements regarding a 1998 *Scientific News* article initially submitted with the petition. At the bottom of page 5 of her letter accompanying the petition, counsel stated: "As further evidence of the significance of his scientific findings, [the petitioner's] work was reported by *Science News*." Professor [REDACTED] offered a similar observation. The January 24, 1998 article in *Science News*, however, reported on the work of Dallas Little of Texas A&M and Dr. [REDACTED] rather than the "scientific findings" of the petitioner). The director correctly observed that the petitioner was in China pursuing his master's degree at Southeast University at that time. We note that the petitioner did not enter the United States until August 5, 1998. In the future, counsel should refrain from mischaracterizations of the evidence. Such actions only raise doubts as to the reliability and sufficiency of the remaining evidence. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, counsel argues that the petitioner has contributed to his field to a degree that far exceeds his peers and that his work has influenced his field.

In this matter, we find that the strength of the evidence presents sufficient grounds for approving the petition. The evidence submitted by the petitioner is adequate to meet the three-prong test established by *Matter of New York State Dept. of Transportation*. The totality of the evidence indicates that the petitioner's reputation is by no means confined to the institutions where he has studied and worked. The petitioner has produced letters of support from several witnesses who are demonstrably major authorities in the engineering field. The statements of witnesses from outside of the petitioner's immediate circle of colleagues show that his work has advanced his field to a substantially greater degree than that of other similarly qualified researchers. Upon careful consideration of the documentation presented, we find that the petitioner has shown that engineering researchers from throughout the United States and around the world view his findings as particularly important. The record of proceeding in this matter does not put forward the strongest possible national interest waiver claim, but nevertheless its strengths outweigh its weaknesses and, on balance, the claim is strong enough to merit approval of the petition.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further evidence in the record, establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.