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U.S. Citizenship
and Immigration
Services

B5



FILE: WAC 03 095 51671 Office: CALIFORNIA SERVICE CENTER Date: **JAN 31 2005**

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:



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 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. 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) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement 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 Physics from Fudan University. 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 pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the 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 Dep't. of Transp., 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.

We concur with the director that the petitioner works in an area of intrinsic merit, nanotechnology, and that the proposed benefits of his work, integration of nanostructured germanium with current silicon technology, would allow for novel quantum devices for future computing technologies with national implications.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. 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 the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. 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 219, n. 6.

At the time of filing, the petitioner was a research associate at Arizona State University. [REDACTED] a professor at Arizona State University and inventor of the low electron energy microscope (LEEM), discusses the petitioner's work there. [REDACTED] explains that the petitioner is “one of only a handful of researchers in the U.S who possesses the skills to operate the LEEM and interpret its results.” [REDACTED] elaborates that this work has resulted in the publication of six articles by the petitioner. More specifically, [REDACTED] asserts that the petitioner demonstrated that high quality single crystal silicon carbide thin film could be grown on silicon by pure carbon sources and prepared a super flat silicon terrace on which it is possible to investigate surface mass transportation and thin film growth. More recently, the petitioner fabricated gallium nitride dots through direct nitridation of liquid nitride droplets with hot ammonia molecules, possibly paving the way for mass production of gallium nitride quantum structures at low cost.

[REDACTED] director of the National Laboratory of Surface Physics in China, asserts that the petitioner's work at Arizona State University “is a breakthrough for [the] understanding of surface terrace stability with surface kinetic processing.” [REDACTED] continues that the petitioner's method “provides a unique way to fabricate a step-free silicon surface up to 50 micrometers, which is the largest [that has] ever been reported.”

Prior to accepting the job at Arizona State University, the petitioner was a postdoctoral research fellow and then a research associate at the Institute of Materials Research at Tohoku University in Japan. [REDACTED]

[REDACTED] Chair Academic Official of the Interdisciplinary Research Center at the Institute of Materials Research, discusses the petitioner's work with C₆₀ and other fullerene molecules at the institute. According to another reference letter, fullerene molecules are pure-carbon molecules with important applications.

[REDACTED] asserts that the petitioner combined high-resolution electron energy loss spectroscopy with the atomic-resolved scanning tunneling microscopy (STM) to study C₆₀ absorption on silicon, thereby resolving "a series of problems on the subject." In addition, the petitioner was able to use C₆₀ to prepare silicon carbide thin films on silicon wafers at 200 degrees lower than ordinarily used, a significant benefit to the industry that has been applied in France, Japan, Germany, Hong Kong and China. The petitioner was also the first to display the atomic structure of a 90-atom close-packed gold cluster using a new scanning tunneling microscopy technique. Finally, using high-density continuous wave lasers and pulsed lasers, the petitioner discovered that high-intensity laser irradiation can stop the rotation of molecules in the bulk crystal, and low intensity irradiation can release the frozen molecules. [REDACTED] explains that this finding may be useful for future molecular computers.

In response to the director's request for additional evidence, the petitioner submitted two letters from independent experts in the field. [REDACTED] a principal member of the technical staff at Sandia National Laboratories in New Mexico, asserts that the petitioner's work on silicon carbide has had a significant impact in the field and is being applied in Germany, Italy, Japan, and the U.S. Air Force Research Laboratory. [REDACTED] a senior member of the engineering staff at Jet Propulsion Laboratory in California, asserts that the petitioner's fabrication of gallium nitride dots with a specific crystal structure is a considerable advancement in the field that could lead to solid-state lighting devices replacing vacuum tube and bulb lighting, possibly decreasing worldwide electricity consumption by 50 percent.

At the time of filing, the petitioner had authored 28 peer-reviewed journal articles. The petitioner submitted a list of 138 articles that cite his work and provided copies of most, if not all, of these articles. In response to the director's request for additional evidence the petitioner resubmitted several of the articles that cite his work. Despite this overwhelming evidence of citation of the petitioner's work, the director implied the petitioner had not been frequently cited, stating:

Frequent citation by independent researchers, on the other hand, would demonstrate more widespread interest, and reliance on the petitioner's work, and that the petitioner's work has attracted attention on its own merits, as might be expected with research findings that are especially significant, independent evidence that would have existed whether or not this petition was filed, would be more persuasive than the subjective statements from the individuals selected by the petitioner.

On appeal, the petitioner provides printouts from a citation index demonstrating that his 1996 article on C₆₀ was cited 27 times and his 1997 article on germanium dots was cited 47 times. Most of these citations are independent and continue through the present time. A more recent article by the petitioner has been moderately cited. This citation history adequately supports the reference letters claiming that the petitioner has influenced the field.

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 testimony in the record, establishes that the 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.