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U.S. Citizenship
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FILE: LIN 06 077 53735 Office: NEBRASKA SERVICE CENTER Date: **AUG 14 2007**

IN RE: Petitioner: 
Beneficiary: 

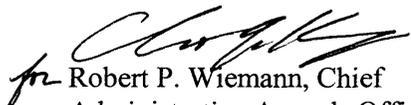
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which 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 an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a research associate. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, 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.

On appeal, counsel submits a brief. For the reasons discussed below, we uphold the director's findings.

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 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 Mechanical Engineering from the University of Illinois at Chicago (UIC). 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 an alien employment 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 the phrase, "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).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

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. *Id.* at 217-18.

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. *Id.* at 219. 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. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, engineering, and that the proposed benefits of his work, improved models to predict the behavior of accidental and deliberate fires and explosions, would be national in scope. 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.

Counsel and several of the petitioner’s references focus on the importance of the petitioner’s work to homeland security. We have recognized above that the proposed benefits of the petitioner’s work would be national in scope. Eligibility for the waiver, however, must ultimately 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. *Id.* at 218, 220. Moreover, it cannot suffice to state that the alien possesses useful skills, or a “unique background.” Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-

trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

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. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner relies heavily on letters from his colleagues and other members of his field. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of industry interest and positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation *and who have applied his work* are the most persuasive.

As stated above, the petitioner received his Ph.D. from UIC in 2003 under the direction of [REDACTED]. [REDACTED] The petitioner then worked as a postdoctoral research associate at UIC through May 2004. As of the date of filing, the petitioner was working as a research associate at the University of Utah, where he works for Dr. Philip Smith on a project for the Center for Simulation of Accidental Fires and Explosions (C-SAFE). The U.S. Department of Energy (DOE) funds the petitioner's current work.

[REDACTED] discusses the petitioner's models designed for spray combustion but applicable to a variety of problems. [REDACTED] explains that stochastic models are the best models for practical problems and asserts that the petitioner's stochastic models "are considered to be the most advanced of their kind, and take into account many important physical processes that are crucial for accurate representation of turbulence effects on particles." [REDACTED] further asserts that the petitioner's models "have been carefully tested in a variety of flows using the data from direct numerical simulations."

██████████, a member of the petitioner's Ph.D. thesis defense committee, asserts that the petitioner, for the first time, provided access to time-correlated data, alleviating the need to make assumptions of the variations of the parameters during an entire period of activity. In addition, the petitioner's model was the first model with the capability to predict mass fraction fluctuations in turbulent flow reactions. ██████████, another member of the petitioner's Ph.D. thesis defense committee and the petitioner's coauthor for several articles, provides similar information, asserting that the petitioner's model "paved the path for engineers to predict the behavior of explosions and combustion events to a degree that was not done before."

██████████, an associate professor at Michigan State University who has coauthored articles with ██████████, asserts that he knows of the petitioner through his published papers. ██████████ also asserts that the petitioner's models are unique because they allow simulations over time and "have the capability of predicting mass fraction fluctuations in turbulent flow reactions."

In response to the director's request for additional evidence, the petitioner submitted more independent letters. While the references all praise the petitioner's doctoral work, only one of them, ██████████ Sazhin of the University of Brighton, appears to have known of the petitioner prior to his joining C-SAFE. ██████████ asserts that he has "long been aware" of the petitioner's work and notes that he recently cited the petitioner's work in a review article. ██████████ asserts that the petitioner's work "was one leading example cited which solved the general problem of simultaneous transient heat and mass transfer by coupled numerical solutions of the conservation equations." ██████████ further asserts that the petitioner's work was cited "as an example of the most advanced work being done in the field on this topic."

The actual review article citation, however, is not indicative of a model that has influenced the field as a whole. In his review article, ██████████ cites the petitioner in a section on coupled solutions. ██████████ cites the petitioner in the first sentence of the section as one of ten studies that has solved the general problem of simultaneous transient heat and mass transfer by coupled numerical solutions of the conservation equations. ██████████ concedes in the next sentence, however, that these models are not directly applicable in multidimensional CFD codes and spends the remainder of the two and a half page section discussing CFD approaches to modeling droplet heating, evaporation and dynamics. ██████████ does not cite the petitioner's work again and it does not appear to be a focus of the section.

██████████ asserts generally that the petitioner's work "received great attention when it was presented at a number of important professional and governmental agency meetings." Similarly ██████████ asserts generally that the petitioner enjoys a reputation as an outstanding researcher. All of the petitioner's references discussing his doctoral work note that he published the results of this work in distinguished journals and presented it at conferences and meetings of the Office of Naval Research.

¹ For example, the petitioner's 2004 article in the *Journal of Fluids Engineering*, submitted into the record, cites a 1997 article coauthored by ██████████ and ██████████

General assertions that the petitioner's doctoral work has been recognized in the field or paved the way for future work are insufficient. None of the references provide examples of work by independent engineers that is based on or was made possible by the petitioner's models. The record does not include letters from any independent engineers that have actually applied the petitioner's models in their own work. Further, the fact that the petitioner presented his work at a meeting of the Office of Naval Research is not determinative. The record lacks letters from high-level officials, or any official, at that office discussing how the petitioner's work has been applied by that office.

Finally, we will not presume the significance of the petitioner's work from the reputation of the journal in which it appeared or the conference where it was presented. Rather, we look for objective evidence of the community's reaction to such publications and presentations. While the petitioner submitted three citations of his articles coauthored with [REDACTED] two of those citations are in articles by Dr. Mashayek. We note that the petitioner submitted these articles in response to the director's request for articles by independent researchers, not those written by the petitioner or his collaborators. As the director explicitly requested independent citations from beyond the petitioner's circle of collaborators, the director concluded, without further elaboration, that the petitioner had submitted evidence of a single independent citation. We reject counsel's assertion that the director erred in failing to consider the citations by [REDACTED]. While self-citation is a normal and expected practice, such citation cannot establish the petitioner's influence beyond his immediate circle of collaborators. Thus, the petitioner's citation record of a single citation from an independent source in an article where he is cited along with nine other articles for the same proposition, is not consistent with work that has influenced the field as a whole.

According to [REDACTED], the petitioner is responsible at C-SAFE for "developing the advanced sub-grid scale turbulence models and their verification and validation." More specifically:

He implemented the localized dynamic procedure model, and did the verification. From his validation work which compares the simulations with experimental measurements he has found the localized dynamic procedure model to be better suited to these fire simulations than the dynamic procedure and Smagorinsky models. [The petitioner] also tailored the one-dimensional turbulence (ODT) model so that it can be implemented into the parallel code. This innovation has never before been reported in the scientific literature. He has just finished the implementation and verification, and the validation process is under investigation.

[REDACTED], Director of C-SAFE, asserts that the petitioner is considered "a leading expert on the mathematical simulation of droplet laden turbulent flows" whose simulations of explosions and sudden fires "has gained him widespread recognition." [REDACTED] however, asserts that this reputation resulted from the petitioner's "groundbreaking simulation models" developed at UIC. As discussed above, however, the record contains little evidence that those models are well known and influential, such as letters from several independent engineers who have relied on the petitioner's models or frequent citation of the petitioner's articles. Regarding the petitioner's work at C-SAFE, Dr.

Pershing asserts that the petitioner implemented and verified the localized dynamic procedure model and “tailored the one-dimensional turbulence (ODT) model, so that it can be implemented into the parallel code, which is the original [sic].”

In response to the director’s request for additional evidence, the petitioner submitted letters from more independent sources. [REDACTED], a professor at Iowa State University, asserts that he met the petitioner at two conferences. He asserts that the petitioner’s current research “has generated new knowledge that greatly help [sic] researchers predict explosion and fire behavior, an area of research with clear importance to the U.S. national interest in preparing for possible terrorist attacks targeting U.S. chemical plants.” [REDACTED] however, does not indicate that he or any identified independent researcher has successfully used the petitioner’s models.

[REDACTED] a professor at the University of Pittsburgh, asserts that he is familiar with the petitioner’s research and publications and that he met the petitioner while visiting the University of Utah for a seminar. [REDACTED] asserts that over the past two years, the petitioner “and his colleagues have improved both the capability and the performance of their fully integrated Uintah simulation code.” Like [REDACTED] asserts that the petitioner’s work “is providing vital new knowledge to help researchers predict the behavior of both explosions and fires” without identifying those researchers or their projects.

[REDACTED], an associate professor at the University of Delaware, asserts that the petitioner’s work on Uintah “is helping create a numerical simulation code capable of predicting large-scale accidental fires and explosions.” More specifically, [REDACTED] asserts that the petitioner “recently produced an excellent one-dimensional turbulence (ODT) model for application in the originally designed parallel code, an approach previously unreported in the literature.”

While the petitioner’s research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. All funded research is considered promising; but it does not follow that working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. Similarly, any research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow, however, that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

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 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 profession, 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 alien employment 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.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.