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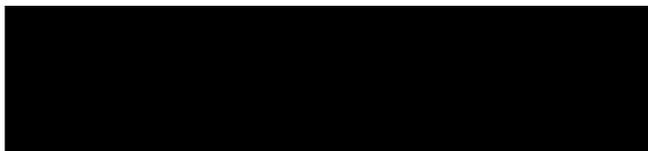
U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: LIN 06 086 53175 Office: NEBRASKA SERVICE CENTER Date: DEC 17 2007

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.

A handwritten signature in cursive script that reads "Robert P. Wiemann".

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 in the field of physics. 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 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.

On appeal, counsel submits a brief. For the reasons discussed below, the petitioner has not overcome the director's basis for denial.

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.¹ in Physics and Mathematics from the Ioffe Physico Technical Institute in St. Petersburg, Russia. The petitioner also has received two Master's degrees, one of which she earned

¹ While the translation indicates that the petitioner's degree from Ioffe Physico Technical Institute is a "Doctor of Philosophy," the original Russian indicates that the degree is a Kandidat Nauk. The petitioner did not submit an evaluation of this foreign credential equating it to a U.S. Ph.D. Regardless, as stated in the text of this decision, the petitioner has two Master's degrees, including one from a U.S. institution.

after her Ph.D. 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 (Nov. 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, 217-18 (Commr. 1998)(hereinafter "NYSDOT"), 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. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* 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, physics, and that the proposed benefits of her work, the development of precise atomic clocks, 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.

In response to the director's request for additional evidence and again on appeal, counsel asserts that the alien employment certification process would not serve the national interest in this matter because the petitioner's area of research lends itself to employment by government agencies that require U.S. citizenship or lawful permanent resident status and will not pursue the alien employment certification process in her behalf. The petitioner has submitted job offers from the Main Maritime Academy, a "government funded educational establishment" according to counsel. Counsel provides no support for her assertion that the alien employment certification process remained a "time consuming and expensive process" at the time the petition was filed.² Regardless, we are not persuaded that the national interest waiver was intended as a blanket waiver for every researcher with the potential for U.S. government employment. Moreover, the inapplicability or unavailability of the alien employment certification process cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at 218 n. 5.

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. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." *Id.* at 221. 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 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 she seeks. By seeking an extra benefit, the petitioner assumes an extra element 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.

According to the petitioner's curriculum vitae and documents in the record, the petitioner obtained her first Master's degree in 1985 at St. Petersburg State Technical University in Russia. In 1996 she obtained her Ph.D. from the Ioffe Physico Technical Institute in St. Petersburg. In 2001, the petitioner obtained her second Master's degree from Old Dominion University in Virginia, where she then worked as a research assistant and laboratory instructor through 2003. As of the date of filing, she was working as a research associate at the University of Washington.

At the Ioffe Physico Technical Institute, the petitioner worked under the direction of Dr. [REDACTED] where she focused on developing magneto-hydro dynamic (MHD) generators. Dr.

² As of March 28, 2005, the Department of Labor instituted a new system for the processing of alien employment certification applications. 69 Fed. Reg. 77386 (Dec. 27, 2004).

██████████ explains that the petitioner searched for ways to create MHD generators with the lowest possible ratio of power to weight. Dr. ██████████ asserts that the only other research teams pursuing this goal are in Japan and that the petitioner's proposed solution is more promising. Dr. ██████████ concludes that the petitioner "developed several very original ideas, which on many occasions helped to find solutions."

Dr. ██████████ Chief Scientist at the ██████████, asserts that the petitioner worked in her group. Dr. ██████████ explains that MHD generators are those that induce electric current when conductive plasma crosses the magnetic field lines, which may increase the effectiveness of thermal power stations by up to 20 percent and decrease pollution. The petitioner used a model MHD generator to verify that the use of ionizationally unstable plasma of pure noble gases increases the efficiency of a MHD generator. Dr. ██████████ concludes that this work "contributed substantially to the development of the field of Magnet Hydro Dynamics."

██████████, a senior scientist at the Ioffe Physico Technical Institute, asserts that while pursuing her research on unstable gases and plasmas for MHD generators, the petitioner "was the first who found that acceleration acting on the boundary between two gases with different densities leads to turbulent mixing of these gases [which] thereby substantially shrinks the length of [the] working part of the gas volume." This work relates to determining the parameters of shock tubes, used in the development of prototype aircraft and to make corrections to the results of experimental measurements and testing. The petitioner then proposed a means of increasing plasma conductivity to increase MHD generator efficiency. Mr. ██████████ concludes that the petitioner's method is cheaper and safer than other proposals and "can be used" in power stations and supersonic aircrafts.

Dr. ██████████, a professor at St. Petersburg State University, asserts that the petitioner's discovery that instabilities developed in the plasma may lead to an increase in productivity is "most promising" because it demonstrates that an increase in conductivity may be obtained without any additional expense of energy or other cost because the inconsistencies are "self-developed." Dr. ██████████ concludes that this work "will widen the area of application of MHD phenomena in various fields: tokamak devices for fusion problems, industrial processing plasmas, space and astrophysical plasmas, solar influence on the geospace environment, ultra light vapor-fueled cavity reactors with MHD for powering multi-megawatt NEP systems, and many others."

Other scientists and professors at St. Petersburg State University and other St. Petersburg institutions and a former faculty member of the Ioffe Physico Technical Institute provide similar information. The petitioner also submitted a letter from Dr. ██████████ a professor at The State University of New Jersey, Rutgers. While Dr. ██████████ asserts that he has known the petitioner "for several years and . . . have followed her work and publications," he does not explain how he came to know the petitioner. None of the letters discussing the petitioner's work with MHD provide examples of the petitioner's work actually being applied in any of the areas identified as potential applications. Moreover, the petitioner submitted only a single citation by a coauthor of her work in Russia, which is not consistent with work that has been widely applied.

Dr. [REDACTED], a professor at Central Michigan University, discusses his collaboration with an atomic physics group at Old Dominion University that included the petitioner. We note that Dr. [REDACTED] coauthored articles with the petitioner during her time at Old Dominion University. At that university, the petitioner's objective was a precision determination of the transition matrix elements in atomic cesium, important information with a wide range of applications in physics. Dr. [REDACTED] asserts that, due mainly to the petitioner's efforts, "we were able to determine several atomic transition probabilities with a substantially higher precision than in any experiment performed in [the] past." More specifically, Dr. [REDACTED] asserts that the petitioner's data has precision of "about 0.5-0.1%" and that the approach is expected to produce the "unprecedented level of 0.01%."

Dr. [REDACTED], a research scientist at Princeton University, asserts that he met the petitioner at a conference in 1999 and has followed her work since that time. Dr. [REDACTED] asserts that while at Old Dominion University, the petitioner focused on shock waves and their interaction with plasma. He asserts that the petitioner "discovered that when the geometry factor is combined with thermal gradient factors, other results of the shock interaction are possible, and this leads not only to the dissipation but also to the restoration of the shock." Thus, by achieving the right "combination of the shock shape," it is possible "to achieve full shock dissipation." The significance of this work is that if the shock wave of a jet is dissipated, the jet becomes undetectable to radar.

The petitioner submitted evidence that her coauthor at Old Dominion University, Dr. [REDACTED] has authored two articles that cite her work at that university. These citations do not demonstrate that the petitioner's work has been applied beyond her immediate circle of collaborators at Old Dominion University.

Dr. [REDACTED], a professor at the University of Washington and a member of the National Academy of Sciences, indicates that he supervises the petitioner's current work on atomic clocks. Dr. [REDACTED] discusses the importance of atomic clocks, the official source of time for the U.S. Department of Defense, Global Positioning Systems (GPS), the National Aeronautics and Space Agency (NASA) and the standard time in the United States. Physicists use atomic clocks to test theories arising from general relativity and to test the frequency of pulsars. Dr. [REDACTED] explains that while much research focuses on making such clocks smaller or cheaper, the petitioner has also focused on making them more accurate and reliable. The petitioner's area of research is also applicable to the field of quantum information. While Dr. [REDACTED] describes the processes used by the petitioner and her role on the projects, he does not explain the significance of the results she has achieved so far other than to assert that she has made "vital contributions." While Dr. [REDACTED] identifies two significant conference presentations, he does not identify any other institution that has been influenced by the petitioner's work. The record contains only a single citation of the petitioner's work with Dr. [REDACTED]

The record contains an independent letter from Dr. [REDACTED] a staff physicist and laboratory fellow at Los Alamos National Laboratory. While Dr. [REDACTED] discusses the importance of the areas of application for the petitioner's work, he does not assert that the petitioner's work is already influencing these areas. Rather, he concludes that "a scientist in her field is beneficial for the present and future of US prosperity." The petitioner submits a similar letter from Dr. [REDACTED], a supervisor at the Jet Propulsion Laboratory, California Institute of Technology. Neither Dr. Lamoreaux nor Dr. [REDACTED] explain how they came to know of the petitioner's work or assert that they have personally applied the petitioner's work. As stated above, 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. *NYSDOT*, 22 I&N Dec. at 218.

On appeal, counsel asserts that this office attaches "a significant importance to letters of support from scientists who have not collaborated with or supervised the alien. These requirements are met in the present case." 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 (Commr. 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 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 her reputation *and* who have applied her work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

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. 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 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.