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FILE: LIN 06 117 53547 Office: NEBRASKA SERVICE CENTER Date: DEC 17 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

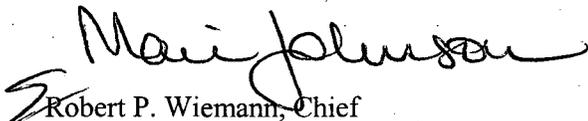
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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.


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 a member of the professions holding an advanced degree. The petitioner seeks employment as a research assistant professor. 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 and evidence that several of the petitioner's Chinese-language articles have been cited between one and five times each by coauthors, colleagues at institutions where the petitioner studied or worked and independent researchers. In his request for additional evidence, the director requested "copies of any published articles by other researchers citing or otherwise recognizing your research and/or contributions." The petitioner submitted only a single citation in response to that notice and now submits additional citations on appeal, although no single article has garnered more than five citations and only one article has been cited that many times.

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 Automotive Engineering from Jilin University of Technology in China in 1996. 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, tire mechanics, and that the proposed benefits of his work, improved vehicle safety, 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.

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 he 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.

Counsel and some references note the petitioner's membership in professional associations, including the Society of Automotive Engineers (SAE), which has 90,000 members. The petitioner's memberships appear commensurate with the petitioner's education and experience. Regardless, membership in professional associations is one of the regulatory criteria for aliens of exceptional ability, a classification that normally requires an alien employment certification. Section 203(b)(2)(A) of the Act, 8 U.S.C. § 1153(b)(2)(A). We cannot conclude that meeting one criterion, or even the requisite three criteria, warrants a waiver of that requirement in the national interest. *Id.* at 222.

According to the Form ETA-750B signed by the petitioner, he has the following education and experience in the field. Initially, as stated above, he received his Ph.D. in Automobile Engineering from Jilin University of Technology in China in June 1996. He then worked as a postdoctoral fellow through May 1998. From June 1998 through June 2000, the petitioner worked as an associate professor at Tsinghua University in China. From October 2000 through September 2003, the petitioner worked as a postdoctoral scientist. As of the date of filing, the petitioner was working as a research assistant professor at the University of Alaska, Fairbanks.

The petitioner provided no letters from his colleagues in China describing his research there. The petitioner's collaborator in Alaska, Dr. [REDACTED] and two of the independent references, however, discuss the petitioner's research in China. Dr. [REDACTED] asserts that in China, the petitioner "made significant advancements on dynamic force-slip analysis from which vehicle driving/braking/cornering force generation and creating active vehicle dynamic unite." Specifically, the petitioner's research results on vehicle shimmy responses "provide a valuable method to build real-time vehicle control models." The petitioner also "explored" a method of evaluating tire tread and carcass problems simultaneously, previously only considered separately. The petitioner's road profile using both tire normal stiffness and suspension attempts to contribute to ride comfort under variations of tire load and inflation pressure, which "will impact many fields, such as power spectrum density (PSD), vertical acceleration, suspension control, load transfer and vibration."

Dr. [REDACTED], a professor emeritus at Carleton University in Canada, asserts that he has known the petitioner "for a number of years," but does not indicate how he came to know the petitioner. Dr. [REDACTED] provides similar information about the petitioner's research in China as that provided by Dr. [REDACTED]. Dr. [REDACTED] asserts that this work is of fundamental importance in controlling vehicle vibration. Dr. [REDACTED] further asserts that the significance of this work is apparent from its publication and the petitioner's promotion to the position of Associate Professor at Tsinghua University. Several other references make similar statements. We will not presume the petitioner's influence in the field from the mere fact that his articles have been published and the fact that he has been promoted to a faculty position at a competitive university.

Dr. [REDACTED] Head of the University of Michigan Transportation Research Institute, asserts that he knows the petitioner through interaction at conferences and through his publications. Dr. [REDACTED] further asserts that the petitioner's research in China produced "significant publications on the technique of tire mechanics and modeling." Dr. [REDACTED] explains the difficulty in modeling tire-ground interactions, which "are of major significance in vehicle virtual design, active control and numerical simulation for better handling the strong nonlinearities of the interface and decreases in design and test costs and cycles."

The petitioner did not previously submit any evidence of the petitioner's influence in China, including in response to the director's request for additional evidence. As stated above, on appeal, the petitioner now submits evidence that nineteen of the petitioner's Chinese articles, including his dissertation, have been cited between one and five times each. As also stated above, however, per *Matter of Soriano*, 19 I&N Dec. at 764, we will not consider that limited citation evidence.

Dr. [REDACTED] Director of the Center for Computer Aided Design (CCAD) at the University of Iowa, discusses the petitioner's work at the National Advanced Driving Simulator and Simulation Center (NADS) at the University of Iowa. Dr. [REDACTED] asserts that he and the petitioner were working on projects with "common bottlenecks concerning the conception and development of our numerical simulations" and that they shared fruitful discussions and exchanges. Dr. [REDACTED] praises the petitioner's technical skills and "quick learning."

Dr. [REDACTED] elaborates that at NADS, the petitioner addressed the slope stop-still issue in vehicle real-time modeling, important because real-time modeling involves "non-steady states, such as urgent turning, rapid accelerating, obstacle avoidance, crosswind response, slalom, etc." Dr. [REDACTED] concludes that this work is "highly beneficial to the field as it increases simulation fidelity and decreases vehicle design and test costs. Dr. [REDACTED] then discusses the petitioner's work in Fairbanks, concluding that the petitioner is an indispensable member of his research team, which focuses on vehicle mobility for cold regions. Dr. [REDACTED] Dean of the College of Engineering and Mines at the University of Alaska, Fairbanks, praises the petitioner's contributions to the field in general.

Dr. [REDACTED] asserts that the petitioner "pioneered a number of innovations in real-time high-fidelity vehicle modeling and simulation, which greatly expedite vehicle development and design processes." While Dr. [REDACTED] asserts that the results are applicable to the U.S. Army Future Combat Systems (FCS) Program, he does not assert that the petitioner's work is already being applied in the that program. Dr. [REDACTED] further discusses the petitioner's work in Fairbanks but concedes that this work had yet to be published in peer-reviewed journals although five manuscripts had been prepared.

Dr. [REDACTED] a professor at Concordia University, Canada, asserts that he is familiar with the petitioner's work, which he characterizes as cutting-edge. He affirms its importance to the U.S. Army without explaining his familiarity with the U.S. Army. Dr. [REDACTED] concludes that the petitioner's "methodology could enable us to develop techniques and technologies for enhancing the efficiency and fidelity of real-time vehicle modeling and simulation." While Dr. [REDACTED] asserts that the petitioner's "proven track record of contributions to the field of vehicle-terrain interactions is well known among the peers in the international community," he does not provide any examples of independent designers or research laboratories utilizing the petitioner's models.

In response to the director's request for additional information, the petitioner submitted a letter from [REDACTED], Technical Director of the U.S. Army Cold Regions Test Center. While Mr. [REDACTED] asserts that his work at the center allows him to understand the petitioner's contributions, he does not suggest that the U.S. Army has adopted the petitioner's models. The mere fact that the U.S. Army is funding the petitioner's research is not, by itself, sufficient. All research must provide some potential benefit to secure funding. It does not follow that every researcher who is working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

Dr. [REDACTED], the Ford Motor Company Chair in Electromechanical Systems at The Ohio State University, asserts that he "came to know" the petitioner through the petitioner's work in Fairbanks. While Dr. [REDACTED] characterizes the petitioner as a "pioneer" in the field, Dr. [REDACTED] ultimately discusses work that had yet to be published as of the date of filing. It is difficult to gauge the impact of work that has yet to be published and, thus, disseminated in the field. Thus, such work cannot be considered evidence of eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

The remaining independent letters submitted in response to the director's request for additional evidence are similar, many of them appearing to focus on work that was published after the date of filing in this matter. They provide general praise, asserting that the petitioner's models constitute a significant breakthrough in the field and that the petitioner is a well-known pioneer in the field without providing specific examples of how the petitioner's models are being used in the field. While Dr. [REDACTED], a professor at the University of Michigan, asserts that the petitioner's "work has become a foundation for the other scientists in this critically important component of automotive research and technology," he does not identify any other scientist relying on the petitioner's work and does not claim to be using the petitioner's models himself.

Also in response to the director's request for additional evidence, the petitioner submitted evidence that, after the date of filing, he received a request to review a manuscript for an upcoming conference and a certificate of recognition from the SAE Military Vehicle Committee of the SAE 2006 World Congress. In addition, the petitioner also submitted evidence of additional conference presentations. This evidence does not relate to the petitioner's eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The bulk of the evidence in this matter consists of the petitioner's publication record and the letters discussed above. The petitioner's publication record establishes that the petitioner is a prolific author. It is inherent to the field of research to publish one's findings, and a researcher in the field for several years can be expected to have produced several published articles and to have presented his work. We will not presume that every researcher who has authored several articles has influenced the field. At issue is the significance of the individual articles. The record before the director included only a single citation and the context of that citation is unknown as the petitioner only provided the reference page. While the petitioner has submitted more citations on appeal, no one article by the petitioner has been cited more than five times and only one article has been cited that many times. While we concur with counsel that citations are not the only evidence that can demonstrate an influence in the field, the letters in this matter, while from experts in the field, are not persuasive.

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 his reputation and who have applied his work are the most persuasive. While all of the independent letters in this matter provide general praise and describe contributions that are alleged to be groundbreaking, the references fail to provide a single example of the petitioner's models being applied in independent research laboratories. It can be expected that a model that is truly groundbreaking and is serving as the foundation for future research in the area, as is alleged in this matter, would have been adopted in multiple laboratories. The petitioner has not established that this is the case.

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.