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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: JAN 31 2007

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IN RE:

Petitioner:

[REDACTED]

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:

[REDACTED]

EXHIBIT COPY

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

Robert P. Wiemann, Chief
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. 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.

On appeal, counsel states:

We believe that in both the original application and the response to the Request for Evidence, substantial documentation was provided to show that [the petitioner's] work in this field has had a substantial impact and important impact which has been recognized by other experts, and the extent of his accomplishments place him at a level where labor certification should be waived and permanent residence granted as an Advanced Degree Alien Performing Work in the National Interest.

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 director found that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention 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.

The petitioner has been employed as a Research Associate in the Composite Materials and Structure Center (CMSC) at Michigan State University (MSU) since April 2003. From September 2001 to April 2003, the petitioner worked as a Research Associate at the University of Illinois at Urbana-Champaign (UIUC). Along with his published articles and documentation pertaining to his field of research, the petitioner submitted several letters of support.

In a letter dated April 12, 2004, Dr. [REDACTED] University Distinguished Professor of Chemical Engineering and Materials Science, and Director of the CMSC, MSU, states:

[The petitioner's] contributions have focused on the development and testing of the new approach for environmentally friendly "green" biodegradable composites. Natural fiber reinforced composites are "green" composites that are environmental friendly. The composite industry is mainly concentrated in high structural applications, which require costly synthetic fibers and petroleum-based resins. Natural

fibers can effectively replace requirements in low structural applications. The various applications can be found easily in automotive, construction and defense industries where lightweight, inexpensive, biodegradable composites are needed. [The petitioner] and his colleagues in MSU are finding ways to make tough, lightweight and versatile materials that can be fabricated into items ranging from automotive parts to tennis rackets to housing panels to furniture to bridges – all from plants and agricultural products.

* * *

[The petitioner's] excellent research work represents a significant advance on previous work in this field. [The petitioner's] successful research results have shown that recycled cellulose fibers possess superior thermal properties that compare favorably with glass fibers. [The petitioner] has demonstrated his . . . ability to make important contributions to process eco-friendly composite materials from biodegradable polymers, which is very important in our environment conscious society.

Dr. [REDACTED] Professor, Department of [REDACTED] UIUC, states that the petitioner worked on “the development and application of dynamic vapor sorption technology to characterize and mathematically model moisture sorption phenomena and on flavor release in dry food systems.” Dr. Cadwallader further states:

The petitioner's outstanding research work on sorption phenomena provides critical information about isotherms in a range of temperatures. . . . Such data can be used for making appropriate decisions about storage conditions, and packaging systems that may optimize or maximize retention of aroma, color, texture, nutrients and biological stability.

Dr. [REDACTED], Emeritus Professor, [REDACTED] Shinshu University, Japan, discusses the petitioner's study relating to the physicochemical properties of monolayer membranes, stating:

One of the noble scientific achievements by [the petitioner] is that the insertion of a second polar moiety into an amphiphilic structure influences molecular properties and therefore the physical characteristics of the monolayer. The interest in amphiphilic structures with hydroxyl groups as a second polar moiety within an amphiphilic structure is not only as versatile model components, but also they could be important industrial materials.

Dr. [REDACTED] further states that the petitioner's research results “have been published in international journals.”

The petitioner's initial submission included copies of several articles indicating that his published work has been moderately cited in articles written by other researchers. When judging the influence and impact that the petitioner's published work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. In this case, the moderate citation of the petitioner's articles shows that other researchers have acknowledged his influence and found his work to be significant.

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 additional letters of support and further documentation pertaining to his activities in his field.

In his second letter dated August 22, 2005, Dr. [REDACTED] states:

During [the petitioner's] tenure at the Composite Materials and Structures Center (CMSC) of Michigan State University, he has made many important findings and his work has made important contributions in the field of polymers and composites. His work has been instrumental for the advancement of biotechnology, particularly in environmentally friendly composites from renewable resources. Through his publications, [the petitioner] has gained [sic] international notoriety.

* * *

In the last two years, tremendous progress has been made through [the petitioner's] research in designing new formulations of bio-plastic composites and in novel processing methods in the CSMC.

Dr. [REDACTED] Professor, Department of Physics, Central Michigan University, asserts that the petitioner has "made significant and tangible contributions to the bio-based composites and 'green' nanocomposite materials." Dr. [REDACTED] further states: "The biopolymer plastic processing technology that [the petitioner] has designed in the laboratory has revolutionized the field."

The director denied the petition, finding 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 concluded that the petitioner had not demonstrated the ability to serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

On appeal, the petitioner submits additional letters of support and citation indices for his published articles.

Dr. [REDACTED] Fellow and Director of Research and Development, Guidant Corporation, states:

I became aware of [the petitioner's] work through his publications. . . . [The petitioner] has . . . achieved important scientific results in his research projects on natural fiber reinforced environmentally friendly composites. From the results of his experiments, it is quite evident that natural fibers have a very promising future and can be used as a substitute for glass fibers.

Dr. [REDACTED] Professor, Research Institute of Industrial Technology, Department of Polymer Science and Engineering, Gyeongsang National University, South Korea, states that the petitioner "has made tremendous progress in designing new formulation of bio-plastic composites and novel processing."

[REDACTED], Director, [REDACTED], Tokyo, Japan, states:

[The petitioner] is known to me through his outstanding publications in the international journals.

* * *

Toughness in composites is important to ensure that during use delamination and crack propagation within the composite is minimized. As for example in one of [the petitioner's] research works, the tensile static and dynamic mechanical properties were studied in order to observe if greater favorable effects on the mechanical properties would accompany toughness. [The petitioner] showed that the main factor contributing to high fracture toughness in this study was better wetting of the fibers by the matrix when the toughness modifier was present. With improved ductility of the matrix, it caused ductile tearing along the fiber-matrix interface during crack propagation. Therefore, the focus of [the petitioner's] research has been to produce natural fiber based composites that can be safely disposed off after their intended use without polluting the atmosphere, in an environmentally safe manner.

Dr. [REDACTED], Professor, Institute for Materials Science, Polymer and Recycling Technology, University of Kassel, Germany, asserts that the petitioner "has made very important and permanent contributions to the bio-based composites and 'green' nanocomposite materials."

In this matter, we find that the evidence presented by the petitioner is adequate to meet the three-prong test established by *Matter of New York State Dept. of Transportation*. The moderate number of cites to the petitioner's published work, along with the statements of witnesses from outside of the petitioner's immediate circle of colleagues, shows that the petitioner's 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 researchers from throughout his field view his findings as significant breakthroughs in materials science and engineering. 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 greater 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.