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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 23 2003

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations 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. Petitioner seeks employment as a research scientist. At the time she filed the petition, the petitioner was a post-doctoral research associate at the Virginia Polytechnic Institute in Blacksburg, Virginia. 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 did not dispute that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but concluded 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) Subject to clause (ii), 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.
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>> (ii) Physicians working in shortage areas or veterans facilities.

The petitioner obtained a bachelor's degree in chemical engineering from the University of Bombay in 1994. She subsequently entered the United States to continue her studies and received a Ph.D. from the University of Kentucky in May 1999. 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 Service 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 Service 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.

In this case, the director found that the petitioner's field of endeavor, the "characterization, processing, applications development of waste plastics, scrap tire and other polymers" is an area of substantial intrinsic merit, but the director did not find that the proposed benefit of her employment would be national in scope.

We concur with the director's determination that the petitioner's occupation has substantial intrinsic merit, but disagree that the benefit of the petitioner's proposed employment would not have national scope. The research and development of new polymer technology is not limited to a benefit affecting a specific local or geographic interest, but could easily impact the greater field of environmental research. The remaining issue is whether the petitioner 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 qualifications rather than with the position sought. This applies whether the position is publicly or privately funded. It is generally not

accepted that a given project is of such importance that any alien qualified to work on it must also qualify for a national interest waiver. The 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 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 submits several witness letters in support of her petition[redacted] Director of the Sustainable Technology Division, Office of Research and Development, National Risk Management Research Laboratory, U.S. Environmental Protection Agency (EPA) in Cincinnati, Ohio describes the petitioner's work:

> I am familiar with [the petitioner's] work on scrap tire utilization as a sorption media for volatile organic removal from aqueous streams and separations of organic-organic mixtures. Her research findings . . . were presented before the EPA on January 20, 1999 . . . . [The petitioner's] work on organic sorption by scrap tire addressed effectively several issues of environmental concern and scientific nature. Her research has contributed well to our understanding of some of the primary interactions feasible in a polymer-solvent system. Specifically, her work at the University of Kentucky has led to successful correlation and quantitative modeling of the sorption of several solvents in elastomeric systems and practical application to tire-solvent systems. . . . [The petitioner's] work represents one of the first studies of its kind in this area. In addition to the obvious environmental benefits of this research, chemical separations using scrap tire could have a favorable impact on the economy as well. [The petitioner's] novel design for using scrap tire as a sorbent or sorption media is extremely timely and application-oriented. Her work in this field has also been extremely productive. It has resulted in the publication of an article in the journal *Clean Products and Processes* (of which I am the Editor-in Chief). . . . Publication of [the petitioner's] research findings in this journal will ensure widespread dissemination of her work and will enable scientists all over the United States and around the world to apply this important information to their own work.

The petitioner submitted a copy of the article that she coauthored and which was published in [redacted] ournal. The petitioner, however, has not provided any first hand empirical evidence that this article or her work had already attracted significant attention from the scientific community at the time of filing the petition. Eligibility must be established as of the filing date of the visa petition. *Matter of Katigbak,* 14 I&N Dec. 45 (Reg. Comm. 1971). The record contains no evidence that this article has been cited by independent researchers. The record indicates that the petitioner's work at the University of Kentucky produced original results, but any accredited university would require a doctoral candidate to perform original research.

[redacted] a research fellow at the National Risk Management Research Laboratories, EPA, in Cincinnati, Ohio also submits a letter describing the petitioner and her work:

> The field in which [redacted] has devoted tremendous time and talent is of great intrinsic merit. . . . Fundamental studies involving thermodynamic interactions are extremely critical in translating laboratory work into a commercial reality. These applications include organic/aqueous and organic/organic systems and find use in industrial chemical separation and in an environmental setting. . . . TCE contamination is a major environmental problem for which the EPA has sought a solution, and [the petitioner's] innovative proposal for using inexpensive sorbent like scrap tire shows a lot of promise. . . . [The petitioner] possesses a particular valuable combination of training in related fields, including bachelors and doctoral degrees in chemical engineering, and comprehensive post-doctoral research in polymer processing at Virginia Tech. . . . Her original work and high-quality publications represent a major contribution to chemical and environmental separations technology. . . . We have collaborated on environmental research projects of mutual interest. . . . I can state unequivocally that retention of [the petitioner's] talent and brilliant research contributions to chemical engineering is truly in the best interests of the United States.

[redacted] of the University of California, Davis, who met the petitioner at a conference sponsored by the American Institute of Chemical Engineers, and has corresponded with her regarding her research, observes:

> [The petitioner's] studies in thermal degradation and liquefaction of polymers, both in mathematical modeling and experimental verification, have helped to elucidate the chemical reaction behavior of these materials. Deficiencies in current recycling technology have resulted in an acute need for better recycling techniques. . . . Direct liquefaction of plastics, the subject of [the petitioner's] work at the University of Kentucky, has captured the interest of chemical engineers worldwide as this technology represents an environmentally acceptable fuel or feedstock for the production of virgin plastics. . . . [The petitioner's] innovative work is important for understanding the science behind this technology.

[redacted] Vice President of Research and Development at Koch Membrane Systems, Inc., knows the petitioner through her work and through her presentations at his company and at the North American Membrane Conference in 1999. [redacted] states:

> The importance of this research to polymer technology is evident in that fact that the research of more than 40 percent of all chemists and chemical engineers is tied in some way to polymer. . . . [The petitioner's] work on organic separations using scrap tire . . . extremely innovative and timely . . . her original work on high concentration solvent/separation has provided much needed groundwork for the development of inexpensive solvent-resistant membranes.

The petitioner also submits letters from [redacted] the petitioner's research advisor at the University of Kentucky; [redacted] one of the petitioner's Ph.D. thesis

advisors at the University of Kentucky [redacted] advanced engineer, remediation technology at Union Carbide Corporation and one of the petitioner's former co-workers on the scrap tire project at the University of Kentucky; and [redacted] Director of the Consortium for Fossil Fuel Liquefaction Science and Profes[redacted] Chemical and Materials Engineering at the University of Kentucky. They uniformly attest to the importance of the petitioner's work and praise her superior research skills. Additionally, the petitioner submits letters from [redacted] and [redacted] from Virginia Polytechnic, who reiterate the significance of polymer research and the excellence of the petitioner's work [redacted] states:

> [The petitioner] is currently working as a research associate in my polymer processing group. [redacted] accomplishments in her field of dissertation and her expertise in chemical engineering convinced me to hire her to work as a research associate at Virginia Tech. . . . [The petitioner's] primary responsibilities include improving a fiber-spinning process developed in my laboratory to generate composites based on in-situ reinforcement of thermoplastics with liquid crystalline polymers. . . . A major international automobile manufacturer has expressed great interest. . . . Another project in which [the petitioner] is involved is a multi-disciplinary collaboration between Virginia Tech and Clemson University for the development of melt-processable PAN-based carbon fibers. . . .

It is apparent that the petitioner has excelled academically and is engaged in important research. Nevertheless, her exceptional ability is not by itself sufficient cause for a national interest waiver. The benefit that the petitioner presents to her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in 8 C.F.R. 204.5(k)(3)(ii)(F) for an alien of exceptional ability. It is not sufficient to state that the alien possesses unique training or is engaged in promising research. The labor certification process exists because protecting jobs and employment opportunities of U.S. workers having the same objective minimum qualifications as an alien seeking employment is in the national interest. The alien seeking an exemption from this process must present a national benefit so great as to outweigh the national interest inherent in the labor certification process. In this case, the petitioner's initial witness letters generally discuss the potential implications of the petitioner's work and her individual promise as a research scientist, but do not persuasively distinguish the petitioner from other highly competent researchers at this stage of her career.

It is also noted that all but two of petitioner's initial ten witnesses appear to be from her immediate circle of colleagues, employers, mentors, and collaborators. This does not detract from the value of their opinions, as they are in the best position to describe the details of the petitioner's work. However, the record would be more persuasive if it were supported by evidence from independent authorities' recognition of or reliance upon the petitioner's accomplishments, that would demonstrate that her contributions to the field are of such unusual significance as to merit a national interest waiver.

Along with the witness letters and evidence of her educational credentials, the petitioner also submits copies of five articles that she coauthored. The record contains evidence that at least three of these articles had already been published at the time of filing the petition. When assessing the influence and impact that the petitioner's work has had, the act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may establish originality, but it cannot be concluded that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. Similarly, frequent citation by independent researchers can be viewed as a more accurate indication that the petitioner's work has attracted widespread interest or authoritative recognition. In this case, the record does not indicate that the presentation or publication of one's work is unusual in the petitioner's field or that independent researchers have relied upon or heavily cited the petitioner's articles. The record contains no citation history. In fact, there is evidence of only one self-citation in the record.[1] Few or no citations of the petitioner's articles suggests that the work has gone largely unnoticed, and raises the question as to how widely the petitioner's work is viewed as a significant influence in her field of endeavor.

The director requested further evidence that the petitioner has met the guidelines set forth in *Matter of New York State Department of Transportation.* Included in the petitioner's response are copies of Virginia Polytechnic Institute grant proposals and copies of payroll records confirming the petitioner's employment. However, as the director noted in his denial of the petition, the record contains no evidence that the petitioner was a leader or director of these research projects or that she is even mentioned as one of the key personnel in the grant proposals.

New witness letters were submitted in response to the director's request for evidence. Aaron Powell, project research engineer with Luna Innovations, Blacksburg, Virginia states:

> Currently, [redacted] and I are working on a project that is in the fourth reporting period of the NASA Phase I STTR contract titled "Novel Composite Materials for Lightweight, High Strength Cryogenic Storage Tanks.". . . Industry is also looking very favorably towards these exciting developments since this provides a new application for the materials that they produce. . . [redacted] expertise is highly valued since she has done a comprehensive literature survey in this area as well as having performed extensive experimentation. Her work and reports have largely helped us in writing the proposal for the Phase 2 project.

In another letter, [redacted] Petroleum Co., states that he has followed the petitioner's work through her presentations at national conferences and praises the petitioner's exceptional accomplishments in the areas of material and environmental sciences. Phillip Sisk, a former collaborator with the petitioner on the scrap tire research conducted during her Ph.D. work

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[1] "HDPE Liquefaction: Random Chain Scission Model" by Priya Rangarajan, Dibakar Bhattacharyya, Eric Grulke, *Journal of Applied Polymer Science,* cites a 1996 coauthored article by M.V.S. Murty, P. Rangarajan, E.A. Grulke, and D. Bhattacharyya in *Fuel Processing Technology.*

at the University of Kentucky, describes the petitioner to be a meticulous worker and insightful researcher [redacted] and [redacted] also submit second letters of recommendation, again attesting to the petitioner's exceptional research skills and unique expertise.

These letters basically echo the petitioner's previous submissions and do not demonstrate that at the time of filing the petition, the petitioner's individual achievements had significantly impacted her field of endeavor. The opinions of experts in the field, while not without weight, cannot solely form the basis of a successful national interest claim. Evidence in existence prior to the submission of the petition is more persuasive than new materials prepared especially for the submission of the petition. In this case, the record reveals little evidence of formal recognition or awards for the petitioner's individual research, arising from various reputable groups initiating recognition of the petitioner's contributions, as opposed to private letters solicited from selected witnesses in order to support the visa petition. While the petitioner may possess exceptional research ability in polymer science, exceptional ability alone is not sufficient cause for a national interest waiver. *See Matter of New York State Department of Transportation, supra.*

In denying the petition, the director noted that while the petitioner had made original contributions to her field, she had not demonstrated that her achievements and skills contributed a substantially greater benefit to the national interest than is normally encountered in U.S. workers with the petitioner's training and experience.

On appeal, counsel submits extracts from, and copies of previously submitted witness letters as evidence of the petitioner's impact on her field. As noted previously, the petitioner's witnesses consist primarily of her current and former supervisors, mentors, educators and collaborators. Opinions from those close to the petitioner are of value because they have the most direct knowledge of the petitioner's accomplishments, but do not persuasively establish that the petitioner's past record of accomplishment has attracted independent widespread attention or is at such a level that would justify a waiver of the job offer requirement. While many of the witnesses discuss the potential applications of the petitioner's research, there is little first hand independent corroboration that these applications have been realized, or that the petitioner's work was of such recognized significance at the time of filing that it had already influenced the work undertaken by other researchers.

As is clear from the plain wording of the statute, it is 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 the national interest. Similarly, 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. Based on the evidence submitted, the petitioner has not 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. In this case, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.