**U.S. Department of Homeland Security**
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Washington, DC 20529

**U.S. Citizenship and Immigration Services**

B-6

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUL 23 2004

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]

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.

Elizabeth Walsh
Robert P. Wiemann, Director
Administrative Appeals Office

Unwarranted invasion of personal privacy

**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, Texas Service Center, and 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. At the time of filing, the petitioner was pursuing his Ph.D. and working as a research specialist in the Department of Food Science at the University of Arkansas. 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.

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. --
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> > (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 petitioner holds a Master of Science degree in Food Science and Technology from Mississippi State University. 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 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.

Along with copies of published research, the petitioner initially submitted several letters of support.

Professor, Department of Food Science, University of Arkansas, states:

> I have known [the petitioner] for approximately 2.5 years as a Research Specialist in my laboratory at the Department of Food Science at the University of Arkansas where he has been working on USDA [United States Department of Agriculture] funded projects related to value-added food products from soy; and more recently on novel technologies to stabilize milled rice and also to produce alternative nutritional food products from rice co-products.
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> This work has been valuable in serving the cereal and meat processing industries and has been supported by private companies, federal and state agencies.

* * *

I am pleased to include [the petitioner] in my research staff of professional scientists and he has made significant contributions through his USDA funded research on the extraction and characterization of pectin from soy hulls and evaluation as a food ingredient. This work has produced valuable information on better use of soy hulls and new methods for pectin evaluation. The quality of the pectin was comparable with those from commercial sources and represents a significant fundamental and applied scientific contribution. More recently he has been developing novel processing methods to produce food emulsions from rice bran that would make an important nutritional contribution to the American diet. He has also conducted important novel research on the stabilization of milled rice against rancidity. This has provided Anheuser Busch with valuable information to assist them in maintaining milled rice quality for brewing applications. The quality of his research is evidenced from his technical publications that were reviewed and well accepted by the scientific community before being published.

Professor, Department of Food Science, University of Arkansas, states that he "served on [the petitioner's] Ph.D. committee, and supervised a special topics research project" that the petitioner conducted in the spring of 2002. The letter from repeats the assertions contained in the letter from Dr. Proctor. In the same manner as states that the petitioner has "transferred his research findings to industry and the academic community through numerous refereed scientific publications and technical reports."

We acknowledge that the petitioner has published the results of his work in respected scientific journals. We do not find, however, that publication of one's work is presumptive evidence of eligibility for the national interest waiver. When judging the influence and impact that the petitioner's 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. Frequent citation by independent researchers, on the other hand, would demonstrate more widespread interest in, and reliance on, the petitioner's work. The petitioner, however, has provided no evidence showing that his published work has been heavily cited.

further states: "[The petitioner] has made valuable contributions to my research program and his technical skills and knowledge will continue to be an important asset." We note here that the petitioner's technical skills and educational background are amenable to the labor certification process. Pursuant to *Matter of New York State Dept. of Transportation, supra*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education that could be articulated on an application for a labor certification.

, Stuttgart, Arkansas, states:

has supported rice research at the University of Arkansas for many years. As Research Manager - Rice Products, I have worked closely with the research scientists, providing

> materials for experiments and feedback on results. It is through this interaction that I have come to know [the petitioner].
>
> Arkansas is the leading rice producing state, accounting for about 45% of the rice production in the USA. Annually over 90 million cwt. rice is produced in Arkansas. This will lead to about 7 million cwt. rice bran as a co-product from the rice milling process. Rice bran represents a potential source of edible and health products. Rice bran contains several phenolic compounds as well as vitamin E derivatives that have shown health benefits. Food utilization of rice bran is very limited due to lipase activity and subsequent oxidation and free fatty acid formation during storage. [The petitioner's] research has a potential to overcome this limitation and convert this co-product into value added products, which would find valuable industrial applications. He has also developed a method for the stabilization of milled rice against rancidity. This method is being considered by the largest brewing company in the world (Anheuser-Busch) for reducing rancidity of milled rice prior to brewing.

General assertions regarding "potential" future applications resulting from the petitioner's research are not adequate to demonstrate his eligibility for a national interest waiver. Rather, the petitioner must submit evidence to demonstrate that his work has already significantly influenced his field to a substantially greater degree than that of his peers. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

s further states:

> [The petitioner] has already made significant scientific contributions by extracting and characterizing pectin, an important food ingredient, from soy hulls. Soy hull is a more economic source of pectin than the conventional sources, such as citrus peel. Since soybeans are another major crop grown in Arkansas, this work represents a significant new product from Arkansas crops. New materials from soy co-products are important to the soy industry in Arkansas and the USA and would, therefore, make a significant contribution to the nation's economy.
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> * * *
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> Recently [the petitioner] has been developing methods to utilize rice bran to produce food grade emulsions. This type of work is critical to enhance the nutritional value of the American diet. His commitment to excellence, as displayed by his outstanding research and extensive high quality publishing record, is equal to America's brightest young scientific talent. I...look forward to continuing the strong working relationship I have with him.

Kalapathy, Assistant Professor, Claflin University, and *Associate Editor for the Journal of American Oil Chemists' Society*, states:

> I have known [the petitioner] for the last three years. I had the opportunity to work with him in a pioneering work on soy hull pectin, which involved developing a Fourier Transform Infrared

spectroscopic (FTIR) method to characterize soy hull pectin. This FTIR method eliminated tedious liquid chromatographic method that involves time consuming sample preparation methods and hence not suitable for online quality control assessments in the food industry. FTIR method is very simple, fast and cost effective and can be easily adapted for online quality control evaluation. [The petitioner] has contributed to the basic and applied research by his research accomplishments through developing new products and new technology for product characterization. His achievements in the area of food product research and development in a very short time have always impressed me.

The Department of Food Science at the University of Arkansas is engaged in identifying new sources for novel food ingredients to improve the food quality, creating cost effective production technologies that have a positive impact on the national economy, and developing analytical technologies for quality control. [The petitioner] has taken the lead in developing new soy hull based food pectin as an alternative to citrus-based pectin. He also has demonstrated that soy hull pectin possessed valuable functional properties that could be utilized in a variety of food products to enhance the product quality. Currently his research is directed towards improving the quality of milled rice and developing nutraceutical ingredients from rice bran using simple and environmentally safe processing technologies. As rice is becoming a favorite food item in the USA, [the petitioner's] research contribution will have a beneficial impact on the growth and economy of the rice industry in the USA.

[The petitioner] has published ten refereed articles in various internationally recognized scientific journals in almost two years of period [sic]. As an associate editor of the JAOCS, I am very familiar with the current research in the area of Food Science and Technology. I consider [the petitioner's] research accomplishments as very high quality work that has the potential to lead new research directions in the food science.

[The petitioner] is a dedicated researcher and has proven to be a valuable food scientist at the University of Arkansas.

We accept that the petitioner has contributed to research projects undertaken at his university, but the record contains no objective evidence (such as citations) to establish the extent to which this research work has affected the work of other scientists or the U.S. food industry in general.

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 two articles published subsequent to the petition's filing date.

[redacted]or Agricultural Utilization [redacted] United States Department of Agriculture, states:

I am aware of [the petitioner's] professional qualifications through his publications which I have handled as Associate Editor of the *Journal of the American Oil Chemists' Society*.

* * *

> Based upon my experience and my knowledge of the applicant, I believe he has established himself as an outstanding researcher in the area of lipid chemistry and development of value-added products from agricultural commodities.

Like [redacted] Research Professor, Department of Food Science and Technology, University of Nebraska-Lincoln, is also an Associate Editor for the *Journal of the American Oil Chemist's Society*. [redacted] states: "[The petitioner] is a very productive researcher, publishing ten refereed articles in internationally recognized, highly regarded scientific journals in almost two years of period [sic]. I consider [the petitioner] to be one of the future leaders for the food industry."

In his second letter, [redacted] offers information regarding the petitioner's recent publications stating:

> [The petitioner's] recently published article *(Journal of the American Oil Chemist's Society,* 2002, 79:867-870) on milled rice quality improvement attracted the scientific and business community for its enormous merits and utilities. The paper entitled "Aqueous extraction, composition, and functional properties of rice bran emulsion" opened a new era in rice bran utilization and resulted in an invitation for a presentation at the AOCS 2003 meeting which attracted the attention of the [redacted] More recently he has demonstrated the difference in oxidation of whole and broken milled rice *(Journal of the American Oil Chemist's Society,* 2003, In Press) and is investigating the cause and control of this phenomenon. Based upon my knowledge, I can unequivocally say that his research accomplishments are substantially equal or greater than other researchers working in the field of lipid chemistry and value added product research. The quality of his research is evidenced from his technical publications that were reviewed and well accepted by the scientific community.

The documentation in the record, however, contains no evidence showing that publication or presentation of one's work is unusual in the petitioner's field or that independent researchers have heavily cited his work.

[redacted] Professor, Department of Food Science, Louisiana State University, states:

> I have worked closely with scientists at the University of Arkansas because of my interest in rice. Arkansas is by far the leading producer of rice in the United States and, as would be expected, the faculty at the University of Arkansas are some of the most respected rice researchers in the world. Their rice research programs are at the forefront of technological advancement and are instrumental in the U.S. effort to compete in the global marketplace. It appears [the petitioner] is an important component of that research team and I believe that it would be safe to say that their capability would be greatly diminished if he were not part of the team. In his relatively short career he has established an impressive list of publications and has worked on several federally funded research projects. In just the last year he has published eight refereed journal articles and has had one more accepted for publication. This reflects an unprecedented degree of productivity and heralds a researcher of the highest caliber.

Publication, by itself, is not a strong indication of impact in one's field, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a

very persuasive and credible avenue for establishing outside reaction to the petitioner's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.)* attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work. Their citation of the petitioner's work demonstrates their familiarity with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and national benefit — a researcher's work would have, if that research does not influence the direction of future research. In the present case, the petitioner has not provided a citation history of his published work to demonstrate that his findings have significantly influenced the greater field.

The director denied the petition, finding that the petitioner had 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 did not dispute the intrinsic merit or national scope of the petitioner's work, but found that the petitioner had not demonstrated that he would serve the "national interest to a substantially greater degree than an available worker having the same minimum qualifications."

On appeal, counsel states:

> The Administrative Appeals Office should return this matter to the director with instructions to notify the petitioner of the intention to deny the waiver application and allow a response to the notification.
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> An issue of fundamental fairness is present here. The director has in the past and in other various cases has issued a request for additional information to allow the petitioner to address any deficiencies that the petition may have. It is fundamentally unfair to mislead an applicant for benefits by denying the application summarily without allowing the applicant to provide information or point to the director the existence of information in the submission.

The director, however, did allow the petitioner the opportunity to provide further information and respond to the deficiencies in the record. On August 19, 2003, the director issued a Request for Evidence notice and supplemental attachment citing the deficiencies in the record. The director received the petitioner's response to this request on November 4, 2003 and indicated such on page 2 of the notice of denial. We note here that page 4 of counsel's appellate brief includes a discussion of an "RFE that was issued on August 19, 2003." We find, therefore, that the director acted in accordance with the regulation at 8 C.F.R. § 103.2(b)(8).

Counsel also argues that "[t]he director failed to consider all of the evidence submitted by the petitioner," mainly the letters of support from experts in the petitioner's field. The statements from these witnesses have already been addressed above. We note here that almost all of these individuals have at one time or another collaborated with the petitioner or his mentors at the University of Arkansas. These individuals became aware of the petitioner's work because of their close association with him or [redacted] their statements do not

show, first-hand, that the petitioner's work is attracting attention on its own merits, as we might expect with research findings that are unusually significant.

With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the petitioner's work, rather than how his past efforts have already had a discernable impact beyond the original contributions normally expected of a capable doctoral student at a respected university. While the petitioner may have contributed to research projects undertaken at the University of Arkansas under the supervision of [redacted] the petitioner's ability to significantly impact the field beyond these projects has not been adequately demonstrated. The record contains assertions from [redacted] hat the petitioner's work has attracted the attention of Anheuser-Busch and Archer [redacted] but the record contains no letters of support from officials of these companies attesting to the petitioner's benefit to the national interest or confirming that these companies have successfully introduced new production processes as a direct result of the petitioner's findings. Similarly, while [redacted] credits the petitioner with contributing to basic and applied research by "developing new products and new technology for product characterization," there is no first-hand evidence to support her assertion (such as, for example, an approved patent or licensing agreement naming the petitioner as the inventor).

Clearly, the petitioner's superiors and research collaborators have a high opinion of the petitioner and his work, as do three editors from the *Journal of the American Oil Chemist's Society*, a journal in which the petitioner and his superiors have often published their work. The petitioner's findings, however, do not appear to have yet had a measurable influence in the larger field. While numerous witnesses discuss the potential applications of these findings, there is no indication that these applications have yet been realized. The petitioner's work has added to the overall body of knowledge in his field, but this is the goal of all such research; the assertion that the petitioner's findings may eventually have practical food applications does not persuasively distinguish the petitioner from other competent researchers.

For the reasons set forth above, the petitioner has not established that his past accomplishments set him significantly above his peers such that a national interest waiver would be warranted. While the petitioner has plainly earned the respect and admiration of his witnesses, it appears premature to conclude that the petitioner's work has had and will continue to have a nationally significant impact. In sum, the available evidence does not establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner.

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 the 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 project or area of research, 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 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 not sustained that burden.

**ORDER:** The appeal is dismissed.