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

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: APR 03 2008

EAC 05 253 50911

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.

Mari Johnson

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 did not complete Part 6 of the petition regarding the proposed employment but has a Ph.D. in Engineering. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, the petitioner has not overcome the director's valid bases for denial.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Engineering from the City University of New York (CUNY). 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.*

In order to determine whether the petitioner's proposed employment in the United States will serve the national interest, it is necessary to know what the petitioner proposes to do. As stated above, the petitioner did not complete Part 6 of the petition regarding his proposed employment. Moreover, the petitioner did not complete the education or employment sections of the uncertified Form ETA 750B. Finally, the petitioner did not submit a curriculum vitae. On the Form G-325A Biographic Information submitted in support of the petitioner's Form I-485 Application to Register Permanent Residence or Adjust Status, the petitioner indicated that he was working as a postdoctoral associate for the National Oceanic and Atmospheric Administration Cooperative Remote Sensing Science and Technology Center (NOAA-Crest) and as a consultant for "JIT." The petitioner's research up to this point has

focused on remote sensing of temperature and vegetation to track the spread of disease, specifically malaria.

We concur with the director that the petitioner works in an area of intrinsic merit, engineering, and that the proposed benefits of his work, improved tracking of disease, 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. *NYSDOT*, 22 I&N Dec. 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.

The petitioner initially submitted nine letters; published proceedings of a conference at CUNY that include his presentation; an article in the Bangladesh *Journal of Engineering* by "F.M. Atiq," a variant of the petitioner's name, and an unpublished dissertation. In response to the director's request for additional evidence, the petitioner submitted another brief letter from his Ph.D. advisor, an article published after the date of filing, a request for a reprint of the new article and the results of Internet searches establishing that the petitioner's new article is available on the Internet. The director concluded that, as of the date of filing, the petitioner had not published any articles and that, even if he had, the mere act of publishing one's research was insufficient without evidence of the impact of the published research. The director then concluded that the letters failed to establish the petitioner's impact in the field.

On appeal, counsel asserts that the letters were sufficient because they came from "highly reputed scientists, dignities [sic] and professionals of the field who have reviewed the [petitioner's] research." Counsel then challenges "the finding of the adjudicating officer that the record does not establish that [the] petitioner has published any articles in peer-reviews articles [sic] to prior of [sic] the filing of [the] petition." Counsel then proceeds to list new evidence in the form of a letter accepting the petitioner's manuscript for publication dated May 7, 2007, a 2006 article citing the petitioner's 2006 article and a reference to the petitioner's research in a Spring 2007 edition of

CUNY Matters. We note that the petition was filed on September 16, 2005. Thus, the new evidence clearly postdates the filing of the petition, the date as of which the petitioner must establish his eligibility. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Regardless, as will be discussed below, the new evidence is not persuasive.

Counsel is not persuasive that reference letters alone warrant approval of the national interest waiver. 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.

[redacted], the petitioner's doctoral mentor at CUNY, discusses the petitioner's work at CUNY. Dr. [redacted] explains:

> His work in the area of satellite remote sensing application has brought several important practical results that will improve world public health system preparedness for possible malaria and dengue epidemics.
>
> I am very impressed with [the petitioner's] successful integration of satellite sensed environmental data and models of insect growth and disease transfer. His research creates a synthesis of the complex interaction of weather, vegetation, insect populations and human illness that actually captures the key aspects of this system and can predict new spread of illness. It is new and important work that will have global benefits. This research will have benefits not simply in planning for forecasted epidemics, but additionally, there will be enormous economic and social gains from the stability that comes with better managed public health.

then provides more technical details about the petitioner's work in calculating a normalized difference vegetation index (NDVI) that correlates with malaria cases in the following month and his use of trend, correlation and regression analysis. While [redacted] asserts that the petitioner's simulation models "are increasingly being used in problem solving and in decision

making," he provides no examples of independent researchers, government agencies or international health organizations such as the World Health Organization (WHO) using the petitioner's models. In fact, [redacted] later merely "anticipates" that the petitioner's models "will become widely adopted."

[redacted] one of the petitioner's coauthors and his Ph.D. thesis advisor, also predicts the "widespread use of this specific application of remote sensing to track vector-borne diseases, such as malaria, will be very useful for lime disease, dengue, West Nile virus and plagues of this class." Dr. [redacted] however, provides no examples of how the petitioner's models are being used or are even being considered for use by government agencies, WHO or independent research teams. The petitioner submitted a similar letter from other colleagues at CUNY, [redacted] and [redacted]

The above letters are all from the petitioner's colleagues at CUNY. While such letters are important in explaining the details of the petitioner's work and his role for various projects, they cannot establish by themselves the petitioner's influence in the field as a whole. The remaining letters will be discussed in detail below. These letters, however, all provide general praise, discuss the importance of the petitioner's area of research, which is not in dispute, and affirm the potential of the petitioner's work to someday be influential. Such letters cannot demonstrate that the petitioner has a track record of success with some degree of influence on the field as a whole. Rather, these letters establish that while the petitioner's research may be promising, the future benefit of his work is, at present time, very speculative.

Dr. Gary Matlock, Director of NOAA's National Ocean Service's National Centers for Coastal Ocean Science, asserts only that the petitioner's models "provide a reasonable potential for developing reasonable estimates of the magnitude of malaria from vegetation data." He concedes that there "was some indication that the research results presented by [the petitioner] had potential application beyond his specific area of inquiry." While Dr. Matlock subsequently urges CIS to approve the petition, his overall assessment of the petitioner's work does not suggest that it has already proven influential.

Dr. Reza Khanbilvardi, Director of the International Center for Environmental Resources and Development as well as a faculty participant with NOAA-Crest, concedes that his own remote sensing work differs from the petitioner's focus. Dr. Khanbilvardi asserts that the petitioner's work "intrigues" him and is a "wonderful extension of [remote sensing] technology." Dr. Khanbilvardi speculates that the petitioner's approach "will become a powerful tool for impacted countries and public health bureaus to use in planning to fight diseases spread following environmental correlates." While Dr. Khanbilvardi concludes that the petitioner's background "is exactly the qualities the United States should seek," he does not claim to have been personally influenced by the petitioner's work or provide examples of how the petitioner's work has already influenced the field of remote sensing or disease tracking.

Dr. Philip Ardanuy, Director of Remote Sensing Applications at Ratheon Information Solutions, asserts that he is writing "to endorse the relevance of the [petitioner's] research." We have already

acknowledged the substantial intrinsic merit of the petitioner's field. At issue is the petitioner's record in this area. While Dr. Ardanuy asserts that it is in the national interest to keep "the best scientists and researchers such as [the petitioner] active and working in the United States," he provides no examples of how the petitioner has already influenced the field. Rather, he asserts in general terms that the petitioner "adds significant value in a field of significant and increasing national importance."

Finally, Dr. I. Filanovsky, a professor at the University of Alberta, asserts that he is appreciative of new technologies and discusses the potential of the petitioner's work. Dr. Filanovsky does not claim to have been influenced by the petitioner and provides no examples of the petitioner's models being confirmed or otherwise used beyond the petitioner's immediate circle of colleagues.

The petitioner's dissertation is unpublished and has little evidentiary value in establishing the petitioner's influence in the field. As of the date of filing, the petitioner had presented his work at a NOAA sponsored program at CUNY. The record does not establish how widely the proceedings of his program were circulated. The petitioner also appears to have authored an article in the Bangladesh *Journal of Engineering* in 2002. We concur with the director that publication, in and of itself, is not presumptive evidence that a waiver of the job offer requirement in the national interest is warranted. Rather, we look to the impact of a given article. The record contains no evidence, such as a record of citations, indicating that the petitioner's 2002 article has garnered any attention in the field.

As stated above, the petitioner must establish his eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1); (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Regl. Commr. 1971). To hold otherwise would lead to the untenable result that a researcher with no influence in the field could establish a priority date on the hope that his pending research will prove influential while the petition is still pending. Thus, we cannot consider the petitioner's 2006 article, the request for a reprint of that article, the mention of the petitioner's work in *CUNY Matters* and the single citation of that article. Regardless, none of this evidence is persuasive. The petitioner has not established that it is remarkable for postdoctoral researchers to publish their work. Moreover, a single citation is not evidence that the petitioner's work has influenced the field as a whole. A request for a reprint may demonstrate the requestor's interest in the petitioner's work but, absent a citation, does not reflect any ultimate reliance on that work. Finally, the petitioner has not demonstrated that coverage by *CUNY Matters* of the petitioner's work at CUNY demonstrates his influence in the field as a whole.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to present some benefit if it is to receive funding and attention from the scientific community. The record, however, does not establish that the petitioner's work has yet to prove influential. While the petitioner's research clearly has practical applications, it can be argued that any Ph.D. thesis or published article, in order to be accepted or published, must offer new and useful information to the pool of knowledge.

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.