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FILE: [REDACTED]
EAC 02 284 53187

Office: VERMONT SERVICE CENTER

Date: SEP 02 2005

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.

Mari Johnson

§ Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter 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 seeks employment as a senior research associate at Polytechnic University, New York, New York. 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. --

(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 director did not dispute 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 the pertinent 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 the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] 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.

The petitioner describes his work:

My research work at Polytechnic University is focused on new material synthesis, process and use.

The project [on] which I am currently working is "Grade Index (GI) – Plastic Optical Fiber," funded by Japan Science Technology (JST). . . . My current project is to design and synthesize a new kind of deuterated or fluorinated monomer, and then to polymerize the monomer making Grade-Index fiber. This photonics polymer materials [sic] will be used in telecommunications such as optical cable, thermo-optic switches, optical attenuators, tunable filters, waveguide lasers and amplifiers. . . .

Fiber-optics lines have a number of advantages over copper twist pairs cables or coaxial cables. Most important thing is that a fiber can carry data at a much higher rate – millions of megabits per second. However, it is very expensive to install an optical fiber network linking many homes. Plastic Optical Fiber can afford a low-cost network. Step-Index Plastic optical fiber (POF) . . . have [sic] several advantages over traditional glass fibers. . . . POF offers the prospect of cheap mass production. POF is not only more flexible than glass fiber, but also thicker. It is easy to install and connect. Low-cost networks with POF will combine, amplify, switch, and restore optical signals without converting them to an electronic transmission for processing. No doubt that the optical laser and amplifier based on POF for the home network will be the most important development in the future of ALL-OPTICAL NETWORKS. . . .

My research work is focused on new POF materials. . . . Now Cytop, a perfluoropolymer, synthesized by [redacted] Co. afford [sic] the attenuation of 40 dB/km at 1.3- μ m wavelength as a POF material. However, the free-radical polymerization of this monomer is difficult. The rate of the polymerization is very slow. And also the synthesis of this monomer is very difficult requires more steps reaction [sic] and each step gave a lower yield, resulting [in] this monomer [being] very expensive. Now we are synthesizing a partially fluorinated and partially deuterated monomer by one or two steps using a cheap starting

material. It is heartening to note that this approach has been recognized to be at the very top level of this field. . . .

I am a well-known young scientific researcher, and renowned for my pioneering research in polymer science.

The petitioner repeatedly states that his expertise makes him "indispensable" to the research project currently underway.

The petitioner submits letters from eight witnesses, all of whom have demonstrable ties to the petitioner. Five of the witnesses have taught, worked, or studied at Polytechnic University. Two further witnesses taught the petitioner at Nagoya University, and the remaining witness was the petitioner's graduate advisor at the Chinese Academy of Sciences.

Professor [REDACTED] who supervises the petitioner's present research at Polytechnic University, states that the petitioner "has made a couple of important developments in the preparation of plastic optical fibers materials and we now intend to publish and patent his work. . . . I evaluate him about top 5% among my associated scientists."

Before working for [REDACTED] the petitioner had worked in the laboratory of Professor [REDACTED] at the same university. [REDACTED] states that the petitioner had "discovered how to accomplish difficult tasks" such as "a complex synthesis of a vinyl monomer that was optically active via stereospecific substitution of a deuterium for one of the methyl groups of an isopropyl group." Prof. Green states: "We hope that [the petitioner's] work will lead to important insight about the nature of polymer crystallization." While in [REDACTED] Green's laboratory, the petitioner collaborated with [REDACTED] of the Federico II University of Naples, Italy. [REDACTED] states that the petitioner "has received sustained international acclaim" in his research specialty, and that the petitioner "is going to make significant research contributions to this cutting-edge field."

Another professor at Polytechnic University, [REDACTED] was also president of the American Chemical Society at the time of filing. Prof. [REDACTED] states that the petitioner "has worked very effectively on several quite varied problems and discovered how to accomplish difficult tasks"; for example, the petitioner "devised an advanced method to determine the diad tacticity of poly(N,N-dimethylacrylamide). This assay is an essential step in the stereocontrol of the polymerization of N,N-dimethylacrylamide." He concludes: "I believe that [the petitioner's] potential and contribution to this field will be significant."

Professor [REDACTED] who worked with the petitioner at Nagoya University, calls the petitioner "a renowned specialist of structural regulation of macromolecules," whose "significant findings . . . have been followed by peers in the polymer research community." Nagoya University Professor [REDACTED] deems the petitioner "a very bright scientist and one of the key researchers in the field of polymer science. He has contributed in a very significant way to a better understanding of the mechanism of stereocontrolled polymerization and the structure-property relationship."

Professor Fu Xi, the petitioner's graduate advisor at the Chinese Academy of Sciences Institute of Chemistry, calls the petitioner "an outstanding young chemist" who "has contributed to the scientific community through his cutting edge work."

The petitioner claims that his published research has been widely cited in the field. The petitioner submits copies of ten articles that contain citations of the petitioner's work. Two of the articles were written by the petitioner's collaborators, and these citations amount to self-citations. Thus, the petitioner's initial submission includes eight articles that independently cite his work.

The director instructed the petitioner to submit additional evidence to satisfy the guidelines set forth in *Matter of New York State Dept. of Transportation*. In response, the petitioner submits background information about POF, as well as new letters from Prof. [REDACTED] and Prof. [REDACTED]. Prof. [REDACTED] discusses the overall importance of POF research, and asserts that the petitioner's "expertise and background give him a crucial and indispensable role in this project, which would be interrupted by his absence." Prof. [REDACTED] letter contains similar language, in some places almost word-for-word.

The director denied the petition, acknowledging the intrinsic merit of the petitioner's occupation but finding that the petitioner's work lacks national scope, and that the petitioner had not shown that he stands out in his field to an extent that would warrant a waiver of the job offer/labor certification requirement that normally attaches to the immigrant visa classification that the petitioner had chosen to seek. The director noted that many witnesses referred to possible or potential future benefits that may eventually arise from the petitioner's work, rather than actual, documented advances in the field.

On appeal, counsel argues that the petitioner's work is national in scope. Scientific research at major institutions is inherently national in scope, because the results are disseminated nationally (and internationally) through publications and conferences and because the findings of such research tend to apply universally rather than only locally. We therefore withdraw the director's finding that the petitioner's work lacks national scope.

Counsel asserts that the petitioner's "publications have been cited about 120 times in total," including 108 citations by "authors other than himself." Factoring in self-citations by the petitioner's co-authors, the record shows about 90 independent citations of the petitioner's work, with the most cited articles showing 26 and 15 independent citations, respectively. This is a considerably greater number of citations than the eight originally documented. We note that the director's request for evidence did not discuss the issue of citations or request more evidence thereof, and therefore the appeal marks the petitioner's first opportunity to supplement the record with particular attention to citations.

Referring to a review article in the record, counsel states: "Drs [REDACTED] [sic] from National Research Council of Canada enlisted petitioner's work as **one of "the key concepts and main synthetic strategies in dendriemer chemistry** [sic]" (counsel's emphasis). This representation is somewhat misleading. The petitioner submits a copy of "Dendrimers and Dendrimer-Polymer Hybrids" by [REDACTED] and [REDACTED] from *Advances in Polymer Science*, v. 142. The abstract for that article includes the sentence: "This review gives a brief introduction to some of the key concepts and main synthetic strategies in dendrimer chemistry." An article by the petitioner is one of at least 152 articles cited in the piece; the citation is one of two endnotes appended to the sentence: "These observations on dendrimer carrying methacrylate monomers confirm earlier results." The remainder of the paragraph concerns findings reported by a different group of researchers. Thus, the review article does not, as counsel appears to imply, single out the petitioner's work.

Four new letters accompany the appeal. Professor [REDACTED] of Polytechnic University states that the petitioner has "proposed a series of very innovative and original methods of synthesizing polyfluorinated acetals," which "represents a breakthrough in developing an entire series of alternative methods which start with readily available precursors and proceeding in a clever way to construct this challenging ring system."

██████████ an assistant professor at the University of Missouri-Columbia, states that the petitioner's "breakthrough in synthesis of radically polymerizable fluorinated monomers opens a way to produce low-cost and high-performance fluorinated materials.

██████████ of Exflor Research Corporation states "I am very sure that [the petitioner's] work is getting a lot of attention from all over the world. One of the world-leading companies in [the] electronics industry recently expressed interest in his work and we will have a business meeting soon." It would appear that ██████████ must have some connection to the petitioner's work, if "we will have a business meeting" regarding a company's interest in the petitioner's work. The record does not reveal the nature of this connection, or any indication of the identity of the "world-leading company" or the nature or extent of its interest in the petitioner's work.

██████████ a research associate at Corning Incorporated, states:

I have never worked/collaborated with [the petitioner] before. The significance of [the petitioner's] work is evident in light of worldwide citation of his papers. . . . [The petitioner's] work represents a breakthrough in the field of fluorinated monomers which are used to produce polymer optical fiber. . . . [The petitioner] successfully prepared perfluoropolymer optical fiber with low loss attenuation and low material dispersion which permit data transmission with broadbands up to 10 gigabites/per second [sic]. His work has substantially outperformed these of other research groups around the world.

While not all of the letters in the record are equally persuasive, the best of those letters serve to illustrate the significance of the petitioner's work. Heavy citation of the petitioner's published work reinforces the conclusion that other researchers are paying close attention to the petitioner's efforts. On balance, the preponderance of evidence in the record supports approval of the petition. 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.