U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 10 2006

LIN 05 240 54308

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. The matter is now before the Administrative Appeals Office (AAO) 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 seeks employment as an application scientist at [redacted] 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 has 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 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.

Counsel describes the petitioner's work:

> [The petitioner] is a multi-degreed scientist with extensive experience in materials science and mechanical engineering. More specifically, he has been conducting valuable research in the field of lead-free solder materials research which can help to accelerate the lead-free "green package" movement in the electronics industry, and also contributing significantly in the development of nano-mechanical testing instruments which can help to increase the availability and productivity of lead-free electronic components. . . .
>
> As evidence of the recognition [the petitioner's] work has received from the research community, leading researchers have submitted letters of support testifying that [the petitioner] is among the elite researchers in his specialized field. Included are letters from researchers at **Sandia National Laboratories, the Oak Ridge National Laboratory, the U.S. Navy's Navy Post Graduate School** and from scientists at research universities and industry R&D departments throughout the United States. **Please note** that included are two (2) Independent Advisory Opinions from scientists who have not worked with [the petitioner] and do not know [the petitioner] personally but rather through his publications and presentations at scientific conferences. . . .
>
> [The petitioner's] innovative and novel contributions . . . prove his ability to make unprecedented, unparalleled, and vital contributions to the national interest. He has a truly impressive record of success in lead-free solder material research and mechanical engineering

> **research and has made breakthroughs that are already reaping significant benefits.** In addition, he has solved critical problems that have hindered scientists for years and his specific contributions to material science and mechanical engineering research are above what can be expected from others with similar education and experience.

(Counsel's emphasis; internal citations omitted.) Here, we shall discuss examples of the letters mentioned by counsel. The two independent witnesses are Dr. [redacted] a principal member of technical staff at Sandia National Laboratories, and Professor [redacted] of the University of Tennessee and Oak Ridge National Laboratory. Dr. [redacted] states:

> [The petitioner] has made important contributions in advanced electronic packaging and, specifically, the field of lead (Pb) free soldering technology. . . .
>
> I am familiar with [the petitioner's] studies by means of his publications. . . . Otherwise, I have had no personal interactions with him in either job-related or social circumstances.
>
> [The petitioner] has made significant contributions to the field of Pb-free soldering for electronics packaging. There is an effort in the world-wide electronics industry to replace the traditional tin (Sn)-lead (Pb) solders with one or more alloys that do not contain Pb. The substitution of new Pb-free solders for the traditional Sn-Pb solders will require a complete revamping of both manufacturing and reliability databases. [The petitioner] has performed careful studies of the mechanical properties of the Sn-Ag-Cu [tin-silver-copper] alloy, which is the leading candidate, Pb-free replacement solder. In particular, [the petitioner] examined the effects of aging on the subsequent stress-strain and creep properties of the solder. Now, in-and-of themselves, those data will be critical towards the development of computational models for predicting the reliability of Pb-free solder interconnections. But moreover, [the petitioner] used those measurements, in concert with very careful microstructural observations, to develop the framework for understanding the microstructure/mechanical properties relationship of the Sn-Ag-Cu solder. The microstructure/mechanical properties relationship is crucial towards optimizing the implementation of the Pb-free solders, thereby allowing US electronics manufacturers to continue to maintain a substantial market share of this industry.
>
> In summary, [the petitioner] has established himself as an excellent researcher in the field of advanced electronic packaging.

Prof. [redacted] states:

> Although I have never directly collaborated with [the petitioner], I am fully aware of [his] research work. In fact, I invited him to visit our department to present a seminar in February 2005. **The purpose of this letter is to provide independent testimony on his past achievements, and the impact he has had on the development of lead-free components.** . . .

> [G]reat efforts have been made in the industry to develop lead-free and environmentally friendly soldering materials to replace lead-based solders. However, some limitations still exist in lead-free technology regarding the reliability of solder joints within electronic systems, particularly the area of thermo-mechanical reliability. To help overcome these limits, [the petitioner] developed a power law stress dependant energy barrier model for Sn3.9Ag0.6Cu lead-free solder alloy at different scales. The results of his work [are] significant in providing a fundamental understanding of the scaling role of microstructure on the time-dependant plastic deformation of a lead-free solder, and it helps the industry to predict the reliability and lifetime of solder joints. [The petitioner's] model is a significant aid for industry in the transition to the use of lead-free electronic components.
>
> [The petitioner] also conducts research in the area of micro/nano mechanical testing systems. At [redacted], he is a principal member of a team that develops high-precision nanomechanical testing instruments for ultra-thin materials. The accurate testing results provide critical information in the development of advanced materials, MEMS, and nanotechnology.

The remaining witnesses were all involved with the petitioner's doctoral studies, and discuss (in varying degrees of detail) the petitioner's research concerning lead-free solder alloys.

The director instructed the petitioner to submit additional evidence in order to "establish you have a past record of specific prior achievement which justified projections of future benefit to the national interest." The director indicated that the petitioner must show that he has influenced the field as a whole. As a means of establishing this influence, the director requested "copies of any published articles by other researchers citing or otherwise recognizing you research and/or contributions."

In response, counsel states:

> The Petitioner . . . is a top-notch researcher whose work has already been cited by researchers throughout the United States (including by scientists at NASA) as well as by researchers in Germany and Taiwan. As noted in Exhibits 6-12, his articles have been cited no less than 15 times since May 2005 – 15 citations in only six months! This is a remarkable display of influence. (Please note that attached as Exhibit 15 is a recent AAO decision granting an NIW approval to a researcher with a comparable number of citations.) Additional evidence of [the petitioner's] impact is the numerous times researchers **have paid** to download his research articles from the Internet. . . . Please note that downloading [the petitioner's] articles requires a specific payment and is NOT covered by a blanket subscription to a journal as is often the case. As a result, the fact that numerous researchers have been willing to pay a separate fee to have access to the results of [the petitioner's] research is persuasive evidence of the importance of his work.

"Exhibits 6-12" are seven pieces that contain bibliographic references to one or more of the petitioner's articles. Only five of these exhibits can be considered "articles." Counsel identifies Exhibit 12 not as an article, but as a "[l]ist of lead-free related articles presented on the prestigious National Semiconductor

website [that] includes citations to three (3) of [the petitioner's] research [*sic*]." Counsel identifies Exhibit 10 as an "[a]rticle citing five (5) of [the petitioner's] articles," but Exhibit 10 is not an article that appeared in a peer-reviewed journal, nor is it a report of its author's original research that relied, in part, on the petitioner's past work. Rather, it is a partial printout from a web page entitled "Bibliography for Designing Lead-Free, RoHS-Compliant, and WEEE-Compliant Electronics." Its compiler, [redacted] states in the introduction that "[t]his bibliography is now 284 pages long" and includes "[r]eferences to well over 4,400 papers, magazine articles, and reports" as well as hundreds of books and web pages. To give another idea of the size of the web page, the portion of the printout listing four of the beneficiary's articles bears the legend "Page 350 of 376." Clearly, this comprehensive list of available resources is a reference work rather than an "article" containing new findings or information. The list's inclusion of four articles and one conference presentation by the petitioner does not constitute "citation" of the petitioner's work in any relevant sense; if inclusion in an exhaustive list counts as "citation" then, in the same sense, every table of contents or electronic database contains "citations." The bibliography, thus, does nothing to single out the petitioner's work. Also, the bibliography shows that the quest for lead-free electronics has produced thousands of published articles, and therefore it cannot be said that the petitioner stands out in his field simply because he is working on lead-free electronics.

Exhibits 10 and 12, which are simply bibliographies rather than "articles" as such, account for more than half of the "citations" claimed by counsel, leaving seven independent citations contained within five articles.

With regard to the prior AAO decision mentioned by counsel, that decision was never published as a precedent decision. Even so, the fact patterns in that proceeding and in this one do not parallel each other so closely that a comparison of citation figures decisively establishes that this present petition ought to be approved. Frequent citation was not the sole or primary deciding factor in the appellate decision cited by counsel.

The petitioner submits evidence that researchers have purchased downloads of three of his articles eleven, seven, and four times, respectively. These figures show that people have expressed sufficient interest in the petitioner's work to obtain copies, but they do not show how many of these readers were influenced by the petitioner's work and implemented the petitioner's findings in their own subsequent work. Counsel asserts: "the fact that numerous researchers have been willing to pay a separate fee to have access to the results of [the petitioner's] research is persuasive evidence of the importance of his work," but the petitioner offers no comparative evidence to show that the volume of downloads purchased is unusually high within his specialty.

Three new letters accompany the petitioner's response to the director's notice. Dr. [redacted], a member of Group Technical Staff at Texas Instruments, states:

> I do not know [the petitioner] personally, and I have not directly worked with him in the past. However, having listened to [the petitioner's] presentations and read [the petitioner's] technical reports . . . and his journal publications, I can state without hesitation that [the petitioner] has made significant contributions to Pb-Free semiconductor packaging. . . .

> [The petitioner] *is one of the few scientists who have made breakthrough contributions to the research of Pb-Free issues. His level of expertise is considerably above that ordinarily expected in the field.* For instance, his work proves that thin cast lead-free solder is less creep-resistant than the bulk solder. . . . Another groundbreaking aspect of [the petitioner's] work is his development of new creep models, which have enable[d] reliability engineers to implement SnAgCu ternary lead-free solders into electronic packages. In addition, [the petitioner's] work has revolutionized our thinking about the IMC eutetic structures after creep. . . . This is a very significant finding with respect to how one might use the microstructure to control the materials properties.

(Emphasis in original.) Dr. [redacted], director of Research and Development at [redacted], states:

> The petitioner is a key member of our research team and is currently working to develop a new nanotensile instrument to test exceedingly small specimens in tension. This instrument will provide an advanced technique for nanoscale characterization of lead-free solder joints, microfibers, silicon microbeams, MEMS, free-standing thin films, and a growing number of biological materials such as soft tissues, lab animal tendons/ligaments, etc. . . .
>
> In conclusion, I attest that [the petitioner's] research results have been very noteworthy and have had a positive national impact. . . . [The petitioner's] substantial expertise in the fields of mechanics and material testing makes him irreplaceable with respect to advancing micro- and nanoinstrumentation.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work but finding that the petitioner had not demonstrated that he has had, and is likely to continue to have, considerably more impact on the field than others in that field. The director acknowledged the witness letters in the record, but found that the petitioner had not demonstrated that labor certification would be inadequate. The director found that "the evidence does not establish that the petitioner's research has been widely cited by other scientists," and noted that "one of the claimed citations is simply a website bibliography for any material published in the area of designing lead-free, RoHS-compliant, and WEEE-compliant electronics since 2003."

On appeal, the petitioner submits several exhibits (most of them copies of previous submissions) and arguments from counsel. Counsel again cites the appellate decision discussed previously, as well as another AAO decision, in which the AAO stated that an alien with 10 citations of one paper "and a smaller number citing other work" "has been moderately cited." The AAO found frequent downloads of that alien's articles to be "less persuasive" than the "moderate" citation record. Counsel in the present proceeding has actively sought for the AAO to consider a prior decision in which the AAO found more than ten citations to be "moderate," although this finding is incompatible with counsel's contention that 15 citations (most of which are not actually "citations," as shown above) are "remarkable."

The petitioner documents two more citations of his work, and resubmits documentation of the 15 citations claimed previously. Counsel protests the director's "disparaging remarks about an article that cited five of

[the petitioner's] research papers, arguing that the citing paper was 'simply a website bibliography' of articles within a field of research." Counsel fails to demonstrate that the "paper" is not, in fact, a bibliography of articles. The web page consists of a massive list of article and book titles, prefaced by the compiler's remarks about why he compiled the list and how long it took him to do it. The title, as noted previously, begins with the word "Bibliography," and the web page's compiler, [redacted] repeatedly refers to the page as a "bibliography" in his prefatory remarks. The web site address, http://r-e-d-inc.com/rohsbib.htm, appears to incorporate an abbreviation for "*RoHS Bib*liography." The web page is so obviously a bibliography that we can see no valid reason why it is "disparaging" to refer the page as such.

Counsel states that the director "failed to appreciate the importance of this document," and observes that the web page received over 1,100 visits between November 6, 2005 and January 11, 2006, for a total of over 12,000 visits. The counter on the web page does not specify whether the number reflects unique visitors, or multiple visits by a smaller pool of visitors.

More to the point, the number of visits the page has received is utterly irrelevant to the question of whether the page is an "article," as counsel continues to claim, or a "bibliography," which is what its creator calls it. The number of visits may demonstrate that the web page is a valuable resource for researchers in the field, but there is no rational way to conclude that this heavy traffic does anything to distinguish the petitioner's five listed articles from the thousands of other articles and other publications listed on the same web page. Thus, counsel does not succeed in refuting any of the director's findings regarding [redacted]' web page. To the contrary, counsel's claims regarding this site range from hyperbolic to baseless. Clearly Mr [redacted] has invested enormous amounts of time, effort and money into building the web page, but nothing in that page serves to distinguish the petitioner's work from that of hundreds or perhaps thousands of other researchers in the same field.

The director, in denying the petition, had stated that articles and citations that appeared after the filing date could not establish eligibility, because an alien must establish eligibility as of the filing date pursuant to *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Counsel correctly observes that, while subsequent articles and citations do not establish eligibility as of the filing date, they do address the relevant issue of whether the petitioner has remained active and influential in the field. That being said, the new tally adds only two citations to the petitioner's total. [redacted]' bibliography shows that there are many thousands of books, articles, and web sites devoted to lead-free solders and related topics in the construction of electronic components. Clearly, the petitioner is far from the only researcher carrying on work in this subspecialty. The petitioner has offered no objective evidence to show that his own citation history exceeds those of most other researchers conducting such work.

The director had quoted a report from the Association of American Universities (AAU), indicating that publication is "expected" of postdoctoral trainees, and the director stated: "It has not been demonstrated that the petitioner's publishing history, in terms of numbers, exceeds that expected of successful scientists." Counsel, on appeal, labels the director's comment as "egregious and truly insulting" and submits an article from *American Scientist* indicating that "postdocs average 1.2 peer-reviewed publications per year." In contrast, counsel claims that the petitioner has published "at least 12 publications since 2004, see CV attached as Exhibit 14 of the RFE Response" (counsel's emphasis).

Counsel may have misconstrued the context of the director's remarks. The director appears to have referred to the AAU report simply to show that it is not rare for a researcher to publish his or her work, because publication is "expected" even at the earliest stages of one's career. One must keep in mind that "postdoctoral" does not simply mean "subsequent to a Ph.D."; the term refers specifically to a certain type of position. The director was not comparing the petitioner to "postdocs"; there is nothing in the record to indicate that the petitioner's position at Hysitron is a postdoctoral position. The petitioner completed his first Ph.D. in 1995, a decade before the filing date. Therefore, counsel's attempt on appeal to compare the petitioner to the average postdoctoral researcher is not apt. Because the *American Scientist* article focuses on postdoctoral researchers, it does not address the usual output of a researcher who has held a Ph.D. for ten years. (The petitioner earned a second Ph.D. in 2004, but there is no evidence that the entire postdoctoral training process starts over again in such circumstances.)

We turn, now, to counsel's claim that the petitioner's CV shows "at least 12 publications since 2004." To arrive at this number, counsel has counted not only peer-reviewed journal articles, but also conference proceedings (not addressed in the AAU report or in the article cited by counsel). The petitioner's CV lists only nine journal articles published in 2004 or 2005. Of these nine articles, five are credited as collaborations with researchers in China. These five articles have nothing to do with nanotechnology or lead-free solders, which form the crux of the petitioner's waiver claim. The articles relate to "ceramic-lined copper pipe," "Fe-V-W-Mo alloy modified by rare earth," "multi-element low alloy wear-resistant steel," and "high-speed steel rolls." The "Work Experience" section of the petitioner's CV does not indicate that the petitioner performed any research in the above areas while in the United States. That section of the CV does, however, include this listing:

> University of Science and Technology Beijing, Beijing. (May 1995 – Nov. 1996)
> **Research Engineer**
> • Worked on several projects include [*sic*]: (1) technology to fabricate W and W-Ni-Fe nano powders by high energy ball milling; (2) Alloying effects on the structures and properties of the Fe-V-W-Mo alloy; (3) The effects of heat treatment on the performances of Multi-element Low Alloy Wear-resistant steel (MLAWS); (4) Development of extrusion/ centrifugal casting processes for the High Speed Steel (HSS) roll; (5) ceramic-lined compound copper pipe.

The above list of the petitioner's 1995-1996 projects very closely matches the subject matter of the aforementioned five articles. Thus, the available evidence indicates that, of the petitioner's nine journal articles published in 2004-2005, five relate to work that the petitioner had actually performed nearly a decade earlier, pertaining to areas of metallurgy that the petitioner no longer appears to pursue.

Leaving aside the delayed publication of the petitioner's earlier work, what remain are four published articles in 2004 and 2005, averaging two articles per year that relate to the petitioner's recent work in the United States. Thus, even if the sheer number of articles published were a strong factor, the record does not strongly distinguish the petitioner in this regard.

Counsel asserts that the director "failed to take into account [the petitioner's] participation as a judge of the research of other scientists in his field." Specifically, the petitioner had peer-reviewed two manuscripts submitted for publication in scholarly journals. One of the peer-review requests was originally directed not to the petitioner, but to Dr [redacted] the associate professor who supervised the petitioner's work at the University of Wyoming. The message conveying the invitation includes the passage: "If you are unable to undertake this yourself, perhaps you could kindly pass it on to a knowledgeable colleague." Dr. [redacted] forwarded the request to the petitioner. Without some objective benchmark to show that participation in peer review is a rare privilege, rather than a more or less routine duty among university researchers, we cannot find that one direct request and a second request passed along by a superior are strong evidence that the petitioner stands out in his field.

The petitioner submits another independent witness letter on appeal, and counsel asserts that the director failed to give due consideration to the witness letters submitted previously. The new letter is from Dr. [redacted], senior vice president of [redacted] who states:

> [The petitioner] exemplifies that type of researcher our country must retain in order to continue to be the world's leader in science. His ground breaking work in the field of materials science is extraordinarily important for the emerging field of nanotechnology. . . .
>
> I have never directly collaborated with [the petitioner] and do not know him personally. However, I am very familiar with his excellent research on lead-free solders. . . . I can attest to the importance of his research on lead-free solder alloys. . . .
>
> The ability to predict the reliability and lifetimes of solder joints is a priority, especially with the introduction of new solder compositions. [The petitioner's] work has established a power law stress dependent energy barrier model (a constitutive law describing the time-dependent plastic deformation of Pb-free solder), which enables design engineers to understand and implement Sn3.9Ag0.6Cu lead-free solders into electronic devices. . . .
>
> The importance of [the petitioner's] research cannot be overstated. I should also point out that [the petitioner's] effectiveness and creativity significantly exceed comparably trained and educated researchers.

When considering witness letters, we must look not only at the independence and standing of the witnesses, but also at the content of those letters. The letters in the record credit the petitioner with "significant contributions" to his area of research. These letters have received due consideration. At the same time, we note that 8 C.F.R. § 204.5(k)(3)(ii)(F) indicates that evidence of recognition for significant contributions to the field can form part, but not all, of a claim of exceptional ability. Because, by statute, "exceptional ability" is not by itself sufficient cause for a national interest waiver, the benefit which the alien presents to his or her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F). Because the statute and regulations contain no provision allowing a lower national interest threshold for advanced degree professionals than for aliens of exceptional ability, this

standard must apply whether the alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree. *Matter of New York State Dept. of Transportation* at 218.

A few witnesses have relied on stronger language to emphasize the claimed importance of the petitioner's work, but the record offers no objective indication that the petitioner's innovations have been implemented on a wider scale than the work of other researchers in the field. Counsel's assertions regarding the petitioner's output and citation rate have, upon closer inspection, proven to be substantially exaggerated. There is no reason to believe that counsel's assertions regarding downloads of the petitioner's articles. Documentation that the articles have been downloaded a certain number of times means little without some baseline for comparison with other articles.

We do not dispute that the petitioner's past and present work has been productive and useful, but "productive and useful" is not the standard for approving the special benefit of a national interest waiver. Without a doubt, the petitioner qualifies for classification as a member of the professions holding an advanced degree, but the petitioner has sought a further benefit with its own evidentiary requirements. Upon consideration of the evidence presented and the arguments offered to establish the significance of that evidence, we are not persuaded that the petitioner has met this higher burden. The possibility remains open, of course, that the influence of the petitioner's work will become more apparent with the passage of time, and nothing in this decision prevents another attempt at securing the waiver at some future time when evidence of greater impact has become available.

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 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.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.