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FILE:

[REDACTED]
EAC 05 055 50080

Office: VERMONT SERVICE CENTER

Date: JAN 09 2007

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:

SELF-REPRESENTED

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.

5 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which 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 an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a senior environmental engineer. 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, the petitioner submits his own statement. For the reasons discussed below, we find that the petitioner has demonstrated that a waiver of the alien employment certification is warranted in the national interest.

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 requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Environmental Engineering from the University of Virginia. 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 “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 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 (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.

We concur with the director that the petitioner works in an area of intrinsic merit, water quality modeling, and that the proposed benefits of his work, improved water quality and use, 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. *Matter of New York State Dep’t of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a “unique background.” 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 221.

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 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 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.

As stated above, the petitioner received his Ph.D. from the University of Virginia in 2002. The petitioner subsequently accepted a position as a staff environmental engineer at Tetra Tech, Inc., a major contractor of the U.S. Environmental Protection Agency (EPA). In 2003, Tetra Tech promoted the petitioner to a senior environmental engineer.

At the University of Virginia, the petitioner worked as a graduate research assistant for [REDACTED] a professor at that institution. [REDACTED] explains that the petitioner worked on hydrodynamic and water quality modeling of two reservoirs in Maryland for the Maryland Department of Environment (MDE). [REDACTED] explains that the petitioner combined technology used by the U.S. Army Corps of Engineers with technology used by the EPA, thereby overcoming problems encountered by previous groups in accurately predicting summer super-saturated dissolved oxygen in reservoirs. [REDACTED] also praises the petitioner's independent projects, which resulted in published articles and his doctoral thesis.

[REDACTED], Chief of the Water Quality Modeling Division at MDE, asserts that the MDE sponsored a project to develop nutrient Total Maximum Daily Load (TMDL) data for two reservoirs in Maryland that serve 1.8 million people. [REDACTED] praises the results of the petitioner's efforts on this project, asserting that he "significantly advanced the existing water quality modeling technology through developing a series of innovative modeling approaches." [REDACTED] continues:

In addition to developing a linked hydrodynamic and water quality simulation system based on the CE-QUAL0W2 and WASP.EUTRO modeling framework, and a zooplankton dynamics enhanced eutrophication model, he has pioneered a new modeling approach that hybridizes the cutting-edge artificial intelligence technologies with conventional water quality modeling algorithms to improve the efficiency and accuracy of water quality models. His great efforts not only have contributed in accurate models for Loch Raven and Prettyboy Reservoirs to support MDE's TMDL efforts, but have also significantly contributed to the general research field of mathematical environmental modeling.

[REDACTED], Vice President of Water Resources at Tetra Tech, discusses the petitioner's first project for that company. Specifically, the petitioner worked on the Pennsylvania Wissahickon

River study, developing a hydrodynamic and water quality model of a river system significantly impaired due to wastewater effluent and urban development. [REDACTED] notes that "several previous attempts by other groups had ended in failure," including an unsuccessful three-year study by a nonprofit organization.

[The petitioner] was able to quickly surmount many of the obstacles that had defeated all the previous researchers, and used innovative techniques to develop the first accurate flow analysis of the system. He also developed an innovative approach to simulate the growth of algae in the stream and evaluate the relationship between the in-stream algae and nutrient inputs.

[REDACTED], TMDL Program Manager for the EPA's Region III in Philadelphia provides a similar assessment of the petitioner's work on this project. [REDACTED] adds:

[The petitioner's] work was impeccable, producing a modeling system that advanced the science of water quality analysis. His work resulted in an environmental control plan that was accepted by both [t]he environmental groups as well as the municipalities.

[REDACTED] also indicates that the petitioner has "provided excellent advice to EPA on other demanding environmental analysis issues and concerns." The record contains an e-mail message from [REDACTED] of the University of Nebraska to [REDACTED] requesting a copy of the petitioner's modified model for the Wissahickon River so that the University of Nebraska need not "reinvent this wheel."

Andrew Parker, Director of Water Resource Modeling at Tetra Tech, discusses California and Delaware projects on which the petitioner has worked. The petitioner modified the Environmental Fluid Dynamics Code to simulate multiple algae species and their unique dependencies on nutrients, sunlight and temperature for Clear Lake in California and incorporated a predictive sediment diagenesis algorithm into an existing program for more accurate representation of sediment/nutrient dynamics in the Appoquinimink River in Delaware. Finally, as of the date of filing, the petitioner was working on the Klamath and Lost Rivers TMDL modeling project for EPA's Regions 9 and 10, the Oregon Department of Environmental Quality and the North Coast Regional Water Quality Control Board. This project is highly contentious and has commanded national attention and White House involvement.

The petitioner also submitted an e-mail message from [REDACTED] at the EPA to [REDACTED] expressing appreciation for the Lost River Modeling report and asserting that the petitioner's models have been "invaluable in meeting the State's and EPA's needs for this important project." [REDACTED] further characterizes the work as "ground-breaking."

[REDACTED], President of Watercourse Engineering, Inc., explains that he serves as an independent peer reviewer from the Klamath TMDL modeling project. [REDACTED] discusses the model

modifications developed by the petitioner and asserts that they “provided significant contributions to the Klamath and Lost River TMDL’s, affording EPA and the states of California and Oregon a set of efficient and powerful modeling tools for environmental modeling studies.” [REDACTED] notes that “these innovative and practical modifications on the Lost and Klamath Rivers are neither simple nor typical engineering applications.” Significantly, the Army Corps of Engineers has been developing the W2 model for nearly 10 years and there are few professionals capable of readily modifying this computer code as the petitioner has done.

The record demonstrates that the petitioner’s models have been applied in Maryland, Pennsylvania, Delaware and two separate projects in California. We are satisfied that the successful use of these models on projects in several parts of the United States, including on projects that previously defied solution despite a concerted effort and on a project that has garnered national attention, demonstrates the influence of the petitioner’s work.

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 field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the water quality modeling community recognizes the significance of this petitioner’s research rather than simply the general *area* of research. The benefit of retaining this alien’s services outweighs the national interest that is inherent in the alien employment certification process. Therefore, on the basis of the evidence submitted, the petitioner has 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 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.