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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 23 2007
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IN RE: Petitioner:
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:

[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.

Maura Deadrick
for 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 seeks employment as a senior development 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 the classification sought, 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. Counsel asserts that the initial claim that two articles by the petitioner had been cited 146 and 183 times respectively (when, in fact, not a single published article had cited this work) was inadvertent and resulted from the limited search capabilities of the search engine. The petitioner submits an e-mail response from , a technical information specialist with the petitioner's current employer, stating that the Institute for Scientific Information (ISI) only allows citation searches by the author's last name and first initial and "the year the article was published." She further asserts that she "attempted to separate as best I could, but many wrong ones slipped through."

This explanation is not consistent with the record. Initially, counsel explicitly asserted that two of the petitioner's "articles" had been cited 146 and 183 times. The petitioner submitted e-mail correspondence from asserting that she was forwarding the results of a citation search for two of the petitioner's "papers" published in conference proceedings in 2001 and 2002. The search criteria for the two searches included only the year (2001 and 2002) and the petitioner's last name and first initial. The results for these searches were 146 and 183 total citations respectively. The results do not list the titles or coauthors of the *cited* articles or, in fact, even the number of *cited* articles. In fact, it is obvious from the most cursory review that these results represent the number of citations of *all* articles by anyone with the petitioner's last name and first initial in any science journal in 2001 and 2002 respectively. Without the number of articles cited[1] and confirmation that any of the cited authors is the petitioner, the number of citations is meaningless.

Contrary to 's claim on appeal, there is no indication in her initial e-mail correspondence that she had made any attempt to weed out citations of articles not authored by the petitioner, such as by adding the name of the journal to the search criteria or by reviewing the results other than in the aggregate. Rather, she merely added her own comments that the numbers 146 and 183 represented the citations for each of the petitioner's two articles, a claim that is simply not consistent with the actual results provided. Moreover, assuming the search *criteria* are limited to the author's last name and first

[1] According to Google Scholar, there were at least 615 articles authored by someone with the petitioner's last name and first initial in 2001 and 621 in 2002.

initial and the year of publication as claimed, the petitioner has not established that ISI does not provide *results* by individual article. Such results would list the actual article (by author, journal, volume and page number) and the number of citations for that individual article, allowing a review of whether or not the cited article is, in fact, the petitioner's article.

In response to the director's request for copies of the actual citing articles, the petitioner submitted the results of his own search through Google Scholar reflecting that one of his earlier articles (prior to 2001) had been minimally cited. The petitioner also submitted an unpublished manuscript citing one of his presentations.[2] Thus, the initial evidence purporting to document over 100 citations for each of the petitioner's presentations was not merely an exaggeration of the petitioner's citation record, but entirely false.

It is simply not credible that anyone who reviewed the initial e-mail correspondence from with any care would reasonably interpret the search results as establishing that the petitioner's two presentations had been cited over 100 times each. The misrepresentation of the petitioner as a widely cited author, either deliberately or through a failure to carefully review the evidence being submitted, seriously undermines the credibility of counsel and the petitioner. Moreover, the petitioner misrepresented his citation record not only to the director, but also to at least some of his references. Thus, it is not clear that these letters represent opinions based on the petitioner's actual accomplishments. As such, while citations are not the only evidence of an influence in the field, the letters in this matter have somewhat reduced evidentiary value.

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.

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[2] Our search of the petitioner's name in combination with his U.S. coauthor, in Google Scholar produced results for the petitioner's presentations in California in 2001 and an Institute of Electronics and Electrical Engineers (IEEE) conference in 2002. While this search does not preclude citations not discovered by Google Scholar, the results reveal only one self-citation of the petitioner's presentation in California and no citations of his IEEE presentation.

> (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 Electrical Engineering and Computer Science from the University of Michigan. 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, bio-Micro Electronics and Mechanics Systems (MEMS), and that the proposed benefits of his work, the development of next generation sensor technology and other MEMS devices, 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 obtained his Ph.D. from the University of Michigan in June 2003. The petitioner then worked as a senior MEMS Engineer for RheoSense, Inc. through May 2005. As of the date of filing, the petitioner was working as a Senior Development Engineer at Seagate Technology. Initially, the petitioner submitted several letters from individuals with either current or past affiliation with the University of Michigan, RheoSense or Seagate and some from more independent members of the field.

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 (Comm. 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 795-796. 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 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 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.

the petitioner's direct thesis advisor at the University of Michigan, provides the following information:

> [The petitioner] was instrumental in developing new technologies for microfabricated biological analysis systems. He worked on a device that, when perfected, will shrink the equipment used in a genetic engineering laboratory down to a device the size of a laptop computer. These devices will be completely inexpensive, portable, battery-operated, and robust for outdoor field use. They will replicate the work currently done in a large, expensive laboratory, at a fraction of the cost and at the location of greatest interest. On-site monitoring of biological hazards or of rapidly spreading infectious diseases is a logical application.

Dr. Burke does not identify any company that has expressed an interest in pursuing such devices or that the petitioner is listed on a patent application for such a device. another professor at the University of Michigan, asserts that there is a shortage of individuals with the petitioner's skills. As stated above, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221.

, currently a professor at Case-Western and former professor at the University of Michigan, was the petitioner's coauthor for both conference presentations while the petitioner was a Ph.D. student. notes that his research group "is widely credited for being the first group in the world to detect DNA separations on a microfluidic chip integrated with an on-chip detector" and that this project was featured in *Science.* Another former colleague at the University of Michigan, asserts that the petitioner worked on a project with the goal of developing the first miniaturized DNA sequencing system with integrated optical detection. Dr. asserts that the "implementation of this new system was the first in the world and was published in the journal Science."

The initial letter from purportedly a principal engineer of Raytheon Company, was not on company letterhead and was unsigned. Thus, this letter had no evidentiary value. On appeal, the petitioner submits a signed copy of this letter, still not on company letterhead. also focuses on the importance of the petitioner's project as indicated by the reporting in *Science.*

In response to the director's request for additional evidence, the petitioner submitted discussions of 1998 *Science* article on Scienceblog.com, IndustryWeek.com and ScienceDaily.com. As noted by the director, the petitioner is not a coauthor of the 1998 *Science* article. On appeal, , an assistant Professor at Texas A&M University, notes that the

National Institutes of Health (NIH) funded the project and the University of Michigan built a $1 million clean room laboratory specifically for this project. The director acknowledged the importance of the petitioner's general area of research and we concur. As stated above, however, 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, most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. Thus, the petitioner's mere affiliation with a project that had previously been reported in *Science* and is well funded is insufficient.

Regarding the petitioner's personal achievements, asserts that the petitioner "invented Al_xO_y coating technology," which decreases plastic's permeability, thus allowing DNA analysis in a microfluidic channel on a plastic platform. characterizes this invention as "the core success in this project" and asserts that it also has wider applications. He does not, however, indicate that the University of Michigan pursued a patent that other entities are interested in licensing or provide other examples of this coating technology being applied or at least considered beyond the University of Michigan.

In addition, asserts that the petitioner's unique combination of MEMS and optics expertise, allowed him to design "a high sensitivity, micro size photo detector and optical filter specified for this project." asserts that this design will also benefit other bio-fluorescence detection projects but fails to identify any such project that has expressed an interest in pursuing the petitioner's detector or filter.

Finally, asserts that the petitioner fabricated "a monolithic chip with integrated microfluidic channel, optical filter and optical detector," which significantly advances the possibility of commercialization of a portable DNA analyzer. asserts that this work "has attracted widespread attention in the field and cited [sic] by many other researchers." We note that is a coauthor of all of the petitioner's MEMS manuscripts. As discussed above, the record contains no evidence that the petitioner's recent MEMS work has been cited in any published article. Thus, at best, is attesting to facts he has not verified, somewhat reducing his credibility.

Similarly, , a former colleague at the University of Michigan, asserts that he has "learned that [the petitioner] recently published two papers in IEEE magazines which have been cited more than 140 times each." Once again, this information is patently false as the petitioner merely presented his work at two conferences, one of which was an IEEE conference, neither of which has been cited in any published article. Thus, the letter from has no evidentiary value.

also supported the petition initially. In his initial letter, he asserts that he has "known and worked closely with" the petitioner for over three years and asserts that the petitioner's work

"continues to provide the basis for further research in the field of on-chip fluorescence detection, both inside and outside of research group." does not provide a single example of an independent research group applying the petitioner's work. Similarly, while asserts that he would "very like to introduce [the petitioner's] technology to our future weapons systems," he does not indicate that his company or any other has begun investigating application of the petitioner's technology into weapons systems.

Director of the Carbohydrate Microarray Laboratory at Stanford University, asserts that he knows the petitioner's work "through his presentations in international conferences and his Ph.D. dissertation." does not explain how he became aware of the petitioner's dissertation, which is unpublished. While asserts that the petitioner "was the Engineer [who] built the first microfluidic channel on plastic platform with on-chip optical detector and achieved single base pair resolution in DNA separation," he does not reference a patent application or identify any laboratories applying this work. Significantly, does not assert that the petitioner's work has influenced his own research; rather, he asserts that the petitioner's work "*will* benefit all other researches for future bio-medicine instrument development." (Emphasis added.)

The petitioner did not submit any letters from his former colleagues at RheoSense. Rather, he submitted a letter from an assistant professor at Washington University in St. Louis, who asserts that she met the petitioner two and half years ago at a conference where he was displaying a new RheoSense product to be incorporated into the company's rheometer. While Dr. asserts that the product "was very innovative and attracted lots of interest," she does not explain its significance or the petitioner's role in developing this product. The record contains no evidence that the petitioner is listed as an inventor on any of RheoSense's patent applications. Regardless, it is inherent for a senior MEMS engineer to design new products. As stated above, 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. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 221, n. 7.

Executive Director for Advanced Transducer Development at Seagate Technology, asserts that the petitioner was hired to lead that company's MEMS projects. The petitioner, however, had only been with this company for three months as of the date of filing the petition. While praises the petitioner's past accomplishments, his predictions about the future impact of the petitioner's work is necessarily speculative. Specifically, he asserts that the petitioner's process to create the highest density artificial sieving matrix on a silicon wafer "could fully replace" traditional chemical sieving matrices that have a high cost and create hazardous waste disposal. Similarly, asserts that the petitioner's special pressure sensor used for bio-sampling and polymer measurement, developed at RheoSense "can significant[ly] help scientists to explore giant molecular motion behavior including DNA and protein."

In response to the director's request for additional evidence, the petitioner submitted what purport to be independent evaluations of his work. All of the letters, however, are from former students at the

University of Michigan whose time at the university overlapped with the petitioner's own time there. None of these letters establish the petitioner's impact beyond the University of Michigan. While Dr. asserts on appeal that one of the petitioner's former colleagues from the University of Michigan, of Cornell University, "requested [the petitioner's] research for a Veterans Affairs funded project, himself does not make this claim.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

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.