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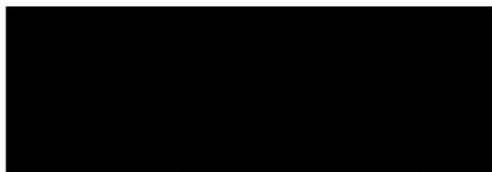
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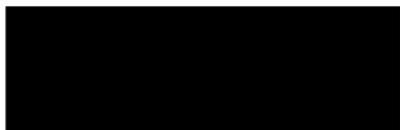
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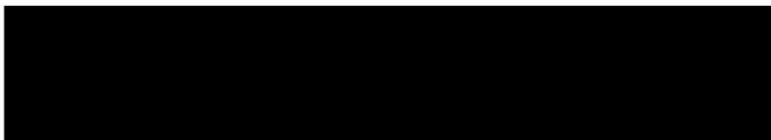
Office: TEXAS SERVICE CENTER Date: JUN 0 2 2008

IN RE: Petitioner:  
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:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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 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 research associate at Brookhaven National Laboratory (BNL), Upton, 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:

(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 (Commr. 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 also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

In an introductory statement accompanying the initial submission, counsel stated:

Currently, [the petitioner] is employed as a Research Associate in the National Synchrotron Light Source at Brookhaven National Laboratory, where he is successfully conducting innovative research on x-ray studies on substrate-supported lipid bilayers and multilayers and optical and x-ray studies on novel liquid crystal phase transitions. . . .

In general, [the petitioner] has been on the frontline of liquid crystals and soft matter physics. Specifically, he is researching supported lipid films at both solid-liquid and liquid-air interfaces, collaborating with other scientists at the lab to develop novel methods for studying nanoparticles such as membrane proteins, viruses or DNA complexes. His findings will have broad applications, including pharmaceutical uses. The goal of his projects is to develop the most novel and advanced scientific technology in these areas.

The petitioner stated:

I am dedicated to research and development in the area of liquid crystal and soft matter physics. . . .

In my capacity as a physicist, I . . . have contributed significantly to providing pioneering research and development in liquid crystals, specifically, ferroelectric smectic liquid crystals. Most notably, I have had three [*sic*] breakthroughs in the field which include (1) I discovered a unique surface structure associated with electric field in one kind of novel liquid crystals. (2) I designed and built a light-weight and compatible polarimeter for analyzing x-ray polarization which can be used at different x-ray beamlines with different energies. (3) I discovered and confirmed a very unusual phase sequence reversal in one compound and its binary mixtures. (4) I characterized several newly synthesized LC compounds formed by hockey-stick-shaped molecules.

Toward the end of his statement, the petitioner stated: "I am dedicated to the cause of finding the most efficient renewable energy sources." He did not explain how his work with liquid crystal technology relates to the quest for renewable energy sources. Based on the petitioner's submissions, it appears that liquid crystals are not an energy source, but rather components of products such as "next generation displays," which consume rather than produce energy.

Regarding the scientific community's reaction to his work, the petitioner stated that his "reported research results have been cited more than 39 times by peers from different countries." The petitioner's initial submission does not document this claimed rate of citation. Rather than submit a printout from a citation index or comparable evidence of all the claimed citations, the petitioner submitted what counsel called "[s]elective copies" of 22 citing articles. Between a quarter and a third of those articles contained self-citations by the petitioner and/or his co-authors.

The petitioner's initial submission included six witness letters, examples of which we will discuss here. Four of the six witnesses have worked with the petitioner either at the University of Minnesota or at BNL. Ron Pindak, who heads the Science Program Support Section at BNL's National Synchrotron Light Source, stated:

As an integral part of our laboratory, [the petitioner] has already succeeded in making remarkable advances on several forefront research projects. For example, [the petitioner] conducted the first high-resolution in-situ X-ray reflectivity measurements obtaining atomic-resolution structural information on the formation of lipid bilayer membranes on substrates. He also measured the structural ordering of lipid-protein complexes on water. These research projects provide fundamental knowledge relevant to applications in biotechnology.

Director of Research at the Center for Research, Pessac, France, stated:

I have known [the petitioner] since 2005, when he was working at the National Synchrotron Light Source (NSLS) to design a polarimeter, which is a device to analyze the polarization of

x-ray signals. I was visiting Brookhaven National Laboratory (BNL) to conduct a cutting-edge research on bent-core liquid crystals. . . .

My visit to BNL during that time was to use polarization-analyzed resonant x-ray scattering technique to study two bent-core liquid crystal compounds and determine the structure of the B2 phase. In order to carry out these studies, we needed a better polarimeter to analyze the x-ray signals. . . . [The petitioner] nicely designed and built the polarimeter, which was immediately put to use during the April synchrotron run of 2005. That run was really successful and we obtained very important structure information of the B2 phase. During the run, it also generated several new ideas for future runs. Therefore, I [went] back to NSLS to continue collaboration with [the petitioner] to conduct a groundbreaking resonant x-ray scattering experiment, which is the first complete polarization study in the world performed on a nonchiral liquid crystal. During this run, we obtained extremely critical results and determined the structure of the B2 phase in one compound. [The petitioner was] the leading experimenter of these two runs. Without [the petitioner] and his polarimeter, none of the above results [would have] been achieved.

Two of the witnesses assert that they know the petitioner primarily from his research. Professor [redacted] of Case Western Reserve University credited the petitioner with making “significant inroads into our understanding of ferroelectric smectic liquid crystals” and “outstanding work in resonant x-ray scattering.” [redacted] concluded that the petitioner’s “results are major achievements in this field, are very important in the theoretical modeling of liquid crystal phase diagrams, and possibly may lead to new device applications.”

Kent State University Professor [redacted] President of the International Liquid Crystal Society, stated that the petitioner’s “findings will have great impact on theoretical modeling of variant smectic phases. . . . Understanding their phase behavior will certainly benefit the LCD technology.”

On September 3, 2007, the director requested “documentary evidence to establish that the beneficiary is unique within his field” and that the petitioner will benefit the United States to a greater degree than other qualified workers in that field. In response, the petitioner submitted additional exhibits and new arguments from counsel.

Counsel stated that the petitioner’s “current area of research is in condensed matter physics. Specifically, he is studying membrane proteins and viruses, as they relate to drug design and delivery.” The petitioner’s initial submission contained no specific indication that the petitioner worked in that area. Rather, the petitioner had stated that he is “dedicated to research and development in the area of liquid crystal and soft matter physics.”

In a letter accompanying his response to the director’s request for evidence, the petitioner stated that he remains involved with liquid crystal physics, applicable to “future ultra-fast liquid crystal display applications,” but he is also studying “two-dimensional (2D) assembly of the bionanoparticles, such as membrane proteins and viruses, on the lipid membranes.” In the initial submission, counsel only briefly

mentioned the petitioner's work relating to "lipid membranes," and at that time, when the petitioner himself listed what he considered to be his most important contributions, he did not mention work with "membrane proteins and viruses." Also, on appeal, the petitioner once again focuses on liquid crystals rather than assembly of bionanoparticles.

of Case Western Reserve University stated:

While I do not personally know [the petitioner], I can judge that he is a very talented researcher and is an expert in the field of liquid crystals. I am particularly familiar with his work on ferroelectric smectic liquid crystals, in which he shows how the molecules orient in various smectic phases of liquid crystals. This research is very important since it directly relates to the application of these fascinating materials in LCD used for displays. . . . [The petitioner's] work as published in scientific journals of substantial reputation has had and still has a significant degree of influence in my field of research.

The petitioner submitted an updated citation index, showing a total of 52 citations of his papers published between 2000 and 2006, with the great majority of those citations having appeared prior to the filing of the petition.

The director denied the petition on December 7, 2007, stating that the petitioner had established the intrinsic merit of his work but not its national scope, and that the petitioner failed to distinguish himself sufficiently from others in the same field. The AAO disagrees with the finding that the petitioner's work lacks national scope. The petitioner conducts scientific research regarding basic principles of physics which, by nature, are not limited to a particular geographic region. These findings are published internationally, rather than proprietarily held by a private employer with limited reach. The AAO therefore withdraws this finding by the director, and finds that the petitioner's work is national in scope.

Counsel's brief on appeal consists largely of references to evidence both previously submitted and newly provided on appeal. The petitioner submits new witness letters as well. Professor [redacted] of Brandeis University states that he collaborated with the petitioner "last year" (*circa* 2006) at BNL, studying "the microscopic structures of several novel no-layer-shrinkage smectic LC [liquid crystal] materials." Prof. [redacted] credits the petitioner with important contributions and states that the petitioner has an unusually high "citation rate for a freshly graduate[d] Ph.D." The record shows that [redacted] received several honors, including the 2004 Benjamin Franklin Medal in Physics, for his work with ferroelectric liquid crystals. Such accolades identify him as a formidable authority in liquid crystal research and add weight to Prof. [redacted] assertions that the petitioner "is significantly superior to most other scientists with a similar professional record" and "has made great contributions to LC research."

Professor John T. Ho of the State University of New York at Buffalo comments on both the petitioner's work with liquid crystals and the petitioner's "research on lipid membranes," stating that the petitioner's findings regarding the latter "help reveal the cell membrane formation mechanism," which in turn "will certainly help us better understand the drug delivery process." With respect to liquid crystal research, Prof. Ho states:

[The petitioner] has revealed a very unusual phase-sequence reversal in a special compound and its binary mixtures. This result is a significant finding in the LC field. It not only greatly enhances our understanding of these phase sequences, but also provides very critical information for the theoretical modeling of the phase diagrams of variant ferroelectric smectic LCs. It transforms our conventional thinking of these phase sequences in smectic LCs, and stands out in significance among others in this field. . . .

[The petitioner's] outstanding research work is evident in his many influential papers published in the peer-reviewed journals. His work has been cited over 50 times by the researchers and scientists [around] the world in his field. This achievement is very impressive and noteworthy.

The letters indicate that the petitioner's work with lipid membranes, which has received widely varying degrees of emphasis throughout this proceeding, closely relates to the petitioner's liquid crystal work as both areas of study involve similar x-ray techniques. The two projects, therefore, represent a diversification of the petitioner's research efforts, rather than a diversion from one project in favor of the other, or a sudden shift from one field to an entirely different field.

The director found that the petitioner's citation record "is not unusual or greater than [what] his peers have accomplished," but numerous witnesses have stated that the petitioner's citation record is, in fact, substantial relative to his peers. The director also stated that the petitioner's "accomplishment is not considered a significant or substantial breakthrough," thus giving no weight to the several witness assertions to the effect that the petitioner's work represents a significant advance within the specialty.

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 evidence in the record establishes that the scientific 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 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.