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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
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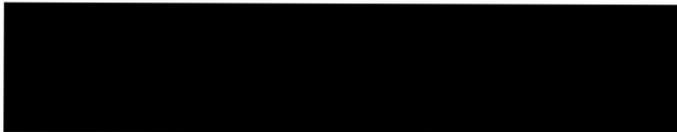


FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **APR 22 2009**
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IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

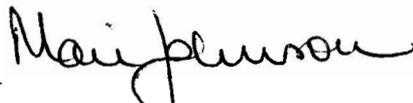
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


John F. Grissom
Acting 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 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 is a postdoctoral research associate at Duke University, Durham, North Carolina. 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.

On appeal, the petitioner submits a personal statement and copies of documents already in the record.

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 U.S. 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.

To describe the nature and importance of his work in condensed matter physics, the petitioner submitted nine witness letters when he first filed the petition. [REDACTED] of the University of Pittsburgh provided basic information regarding the petitioner’s work there:

[The petitioner] did his Ph.D. thesis in my laboratory on the subject of two-dimensional turbulence. . . .

Two-dimensional turbulence is a branch of fluid mechanics that is relevant for understanding atmospheric and oceanic flows. . . . In [the petitioner's] research thesis, hydrodynamic vortices were created in the laboratory and their intensification due to vortex-vortex interactions were studied by the-state-of-the-art techniques of infrared imaging and laser Doppler velocimetry. [The petitioner's] research was unique and his findings contributed to our understanding of formation of vortices and flow instabilities.

█ of the Chinese University in Hong Kong stated:

I met [the petitioner] in the summer of 2001 when I visited █'s lab at the University of Pittsburgh. . . . During my 6 weeks of stay there, [the petitioner] and I worked together on the research project of two-dimensional thermal convection. It was during that time that I noticed his special understanding and broad knowledge in physic[s], especially in the area of fluid turbulence. . . . Although I have not met [the petitioner] in the last few years, I noticed from reading the literature that his scientific career is really taking off. For example, he has published just within the last 18 months 4 papers in the journal *Physical Review Letters*, which is indisputably *the best* physics journal in the world. This is a tremendous achievement for a research scientist in the field. In many universities in the world a single publication in this journal is sufficient to lend someone a full professor position.

(Emphasis in original.) Several other witnesses have asserted that publication in *Physical Review Letters* is a major achievement in its own right, but █ did not identify any of the “many universities” that purportedly offer full professorships on the basis of publication in *Physical Review Letters*, and the record contains nothing from any hiring authority at any university to support █ statement (or to show that any university has, in fact, offered the petitioner a full professorship).

█ who supervises the petitioner's postdoctoral work at Duke, stated:

He has created a series of experiments to characterize the nature of convection and flow in thin liquid films. . . . He has been an important collaborator in a combined experimental and theoretical project on thin film flows that involves myself and █ of the Technion in Israel. Overall, he has carried out outstanding research, both in quality and quantity.

█ stated:

[The petitioner] has made many very valuable contributions to our group's research at Duke. Working with █ and █ . . . [the petitioner] has constructed and carried out experiments describing the complex dynamics of liquid mixtures subjected to thermal heating. [The petitioner's] laboratory studies were absolutely crucial in validating predictions made by theoretical models.

[REDACTED], mentioned in letters quoted above, stated:

I have known [the petitioner] since August 2005 when I started my sabbatical leave at Duke University joining the research group led by [REDACTED] . . .

[The petitioner] made significant scientific contributions to the field of two-dimensional turbulence where new non-invasive techniques were implemented with a great potential for future research. Important results were also obtained by [the petitioner] in the field of polymer-turbulence interactions where polymer stretching imparts a drastic effect on quenching turbulence. He also obtained new, important and unexpected results regarding the exponential tail for the decaying two-dimensional turbulence. These results might shed a new light on the physics of final stage of a vortex liquid.

The remaining four witnesses did not claim to have collaborated with the petitioner. University of Chicago Professor [REDACTED] then President-Elect of the American Physical Society and a recipient of the American Medal of Science, stated:

While he was still a graduate student, I met [the petitioner] and talked to him about his research in the laboratory of [REDACTED] at the University of Pittsburgh. Since then he has become a PhD and moved to Duke and started a new research effort under the direction of [REDACTED] I have kept up with his work and read his papers.

. . .

The first thing to be said is that [the petitioner's] work is very solid. It is a really substantial addition to knowledge in our field, which is the flow behavior of fluids.

[REDACTED] of the University of California, Irvine, provided more details than Prof. [REDACTED]

[The petitioner's] work at Pittsburg [sic] focused on the extremely challenging and important problem of two-dimensional turbulence. . . . Though somewhat surprising, the flow of systems that are effectively two dimensional is relatively common, occurring in various thin films and biological membranes. Therefore, [the petitioner's] work on understanding turbulence in two dimensional systems will have wide ranging impacts. . . . [At] Duke University, . . . he has continued studies in hydrodynamics, but now in binary mixture systems. This work is especially timely because of possible impacts on oil refining techniques and oceanography studies. Interesting fluid behavior occurs when two fluids are mixed in this context, and this behavior can have a positive or negative impact on the industrial application or environmental response.

[REDACTED] of Georgia Institute of Technology praised the petitioner's work, but provided few details about it apart from identifying the petitioner's research specialty as "thermal convection in binary mixtures." [REDACTED] stated: "The US trains rather few physicists working on

fluid dynamics and turbulence, so [the petitioner's] presence in our country is likely to fill a niche that will enable him to contribute in an important way to our nation's welfare and security." With regard to the unavailability of qualified U.S. workers, the job offer waiver based on national interest is not warranted solely for the purpose of ameliorating a local labor shortage, because the labor certification process is already in place to address such shortages. Similarly, the Department of Labor allows a prospective U.S. employer to specify the minimum education, training, experience, and other special requirements needed to qualify for the position in question. Therefore, these qualifications, taken alone, do not justify a waiver of the certification process which takes these elements into account. *Matter of New York State Dept. of Transportation* at 218. We must focus on the merits of the individual alien, rather than a claimed shortage of qualified professionals in the alien's field.

██████████ of the Ecole Supérieure de Physique et Chimie Industrielle de Paris, France, stated:

I have followed the work of [the petitioner] for several years, ever since he joined ██████████'s group in the Department of Physics at the University of Pittsburgh, where he worked on the project "Turbulence in soap films." The goal of the project was to exploit the properties of soap films to generate new knowledge on two-dimensional turbulent flows. During his PhD studies, he made outstanding contributions. He succeeded in using soap film to investigate for the first time in the world two dimensional thermal turbulence. He reported new series of data on velocity distributions that challenged theorists. He discovered the coexistence of Boganoio and Kolmogorov scaling laws and performed for the first time in the world simultaneous measurements of thermal and mechanical powers in a turbulent system. . . .

His work was very significant because he developed new experimental pathways for the study of two-dimensional turbulence in complex situations, a phenomenon of particular relevance in the evolution of the climate. His work will provide extremely valuable guidance for the elaboration of complex numerical codes aiming at modeling the climate.

On February 22, 2008, the director issued a request for evidence, instructing the petitioner to "submit any available documentary evidence that, as of the petition priority date, you had a degree of influence on your field that distinguishes you from other scientists with comparable academic/professional qualifications," such as copies of articles that contain citations to the petitioner's published work.

In response, the petitioner submitted copies of three articles that contain citations to the petitioner's work. The petitioner himself wrote one of these three articles, citing his own prior work, which leaves two independent citing articles. One of these articles was published in April 2008, after the director issued the RFE, although the petitioner's work cited therein was published prior to the filing date. Counsel acknowledged that the petitioner's documented citation record "seems trivial compared to that of most other research scientists working in the other fields," but counsel claimed that the petitioner's specialty "is a relatively small circle and the citation number of any researchers in the field is very

small.” The petitioner submitted documentation indicating that “the top experts in the [petitioner’s] field[] have small citation numbers,” averaging less than one citation per paper per year on recently-published papers pertaining to the topics of “turbulence” or “convection.”

The petitioner submitted letters from two of the individuals named on the petitioner’s list of “top experts.” [REDACTED] of the University of California, Santa Barbara, who (like [REDACTED] [REDACTED]) is a member of the National Academy of Sciences, stated:

Although I do not know [the petitioner] personally, I am familiar with his research since he worked in a field closely related to my own. . . . [T]here is only a relatively small number of researchers working in the specific area of thermal convection. Because of this, their papers get cited only by a small number of people, and large numbers of citations should not be expected. The relatively small number of citations does not in any way imply a low level of importance of the work, and the real contributions to scientific knowledge must be measured by other means.

asserted that the petitioner had accumulated a “remarkable record” of published work.

[REDACTED] of the University of Bordeaux, France, stated:

[The petitioner’s] work . . . is not only of great importance for the study of thermal convection in general but opens the way to a new field, *turbulent thermal convection* in two dimensions. As a researcher in the field of turbulence, I have read his work with great interest both for the results obtained but also for the techniques used to obtain the correct information from the experimental system used. In particular his use of infrared imaging . . . will remain a standard for any experimentalist desiring to use such a technique. This work is new and . . . is a pion[e]er’s work. I myself have followed up on this work in an experiment which is inspired by the results and the system of [the petitioner’s] work. . . . There are only a few experimentalists and theorists working in this field which is the main reason why [the petitioner’s] work is not cited frequently. This does not mean that the work is of less importance . . . , on the contrary, his work will stand as a major breakthrough in this young and very promising field.

The record shows that [REDACTED] work, which according to [REDACTED] drew heavily on the petitioner’s earlier work, attracted substantial attention among physicists.

The petitioner also submitted a new letter from [REDACTED] who agreed with the above witnesses that “the typical numbers of citations that individual papers within [the petitioner’s] fields typically receive is smaller than some other fields.”

The director denied the petition on August 12, 2008, stating that the petitioner had not established “a degree of influence in your field which distinguishes you from others with comparable academic and professional qualifications.” The director noted the low number of citations of the petitioner’s work,

and found that the witness letters described the petitioner's "work and experience mostly in general terms."

On appeal, the petitioner asserts that the director failed to give due consideration to arguments and exhibits submitted previously. The AAO sees merit in the petitioner's assertion. With respect to the citation of his work, the petitioner did not merely claim a high citation rate relative to his specialty, he provided empirical evidence to show that even the work of highly honored experts writing in that same specialty garnered a low overall rate of citation. While a high citation rate can be a strong factor in favor of approving a given petition, it has never been the AAO's position that a high citation rate is always necessary for approval, or, for that matter, that a high citation rate is a sure guarantee of approval. Citation rate is one factor among many, not the only factor or necessarily the most important factor. Where, as here, a petitioner has produced empirical evidence that citation is infrequent within a given narrow specialty, it would be arbitrary and inflexible to fail to take that evidence into account.

Concerning the petitioner's witness letters, the witnesses are not simply a cross-section of the petitioner's professors and co-workers. The petitioner has produced several letters from witnesses who are not only independent of the petitioner, but also highly placed in their field with substantial and verifiable records of major achievement. The opinions of such witnesses possess a degree of authority, provided the record does not contradict those letters or somehow cast doubt upon them. Even the more general letters credit the petitioner not merely with "promise" or "potential," but significant past achievements that have influenced the work of others 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.